



Federal Circuit Review: *Netflix, Inc. v. DivX, LLC*

July 14, 2026

***Netflix, Inc. v. DivX, LLC*, No. 2024-1541 (Fed. Cir. Feb. 13, 2026)**

In *Netflix, Inc. v. DivX, LLC*, the Federal Circuit addressed a recurring issue in patent cases arising from inter partes review (IPR): when a disputed claim phrase can be read in more than one way, how should the court determine which noun or phrase a limiting modifier actually attaches to? The appeal arose from an IPR involving U.S. Patent No. 10,225,588, directed to systems and methods for streaming partly encrypted media content. The Court ultimately reversed the Patent Trial and Appeal Board's construction of a key limitation, vacated the Board's final written decision rejecting Netflix's obviousness challenge, and remanded for further proceedings under the Court's construction. For patent practitioners, the decision is notable not because it announced a new doctrinal rule, but because it gives a particularly clear example of the Federal Circuit using ordinary grammar, claim structure, the specification, and prosecution history together to resolve a claim-construction dispute in a technically dense setting.

Procedural History

The dispute began after DivX, a video technology company, accused Netflix of infringing the '588 patent in the US District Court for the Central District of California. Netflix then pursued an inter partes review before the Patent Trial and Appeal Board, challenging all claims as obvious over prior-art combinations. The Board instituted review. The Board found in favor of DivX, finding the patent non-obvious over Netflix's art. In a first appeal, the Court vacated an earlier Board decision and remanded because of legal error in the Board's obviousness analysis. On remand, the Board again ruled for DivX, this time based on a narrow claim construction of a limitation reciting "locating encryption information that identifies encrypted portions of frames of video within the requested portions of the selected stream." The Board majority concluded that the phrase "within the requested portions" required the encryption information itself to be located within those requested portions. Netflix appealed again, arguing that the Board had grammatically and legally misconstrued the limitation and that, under the correct construction, the prior art satisfied the claim language.

Holding

The Federal Circuit reversed the Board's claim construction, vacated the final written decision, and remanded the case. The central issue was whether the modifier "within the requested portions of the selected stream" attached to "encryption information" or instead to the nearer phrase "encrypted portions of frames of video." The Court held that the better reading was the latter. In other words, the claim required that the encrypted portions of the video frames be within the requested portions of the selected stream. It did not require that the encryption information *itself* be located there. The Court reviewed claim construction de novo and relied heavily on ordinary grammatical principles, including the presumption that, absent punctuation or other textual cues to the contrary, a modifier ordinarily attaches to the nearest reasonable referent.

The Court also examined the surrounding claim language, the patent's specification, and prosecution history from a related grandparent patent. Those sources reinforced the Court's conclusion that the patent contemplated the encryption information as separate metadata used to identify which frame portions were encrypted, rather than information that itself had to appear inside the requested portions of the selected stream.

Specifically, the Court relied on the related grandparent patent's prosecution history as confirmatory intrinsic evidence of how one skilled in the art would understand the phrase at issue. During prosecution of the previous patent, the applicant described the claimed "encryption information" as information used to identify which portions of video frames were encrypted, i.e., metadata that points to encrypted frame portions rather than material that must itself be embedded within those requested portions of the stream. The Federal Circuit used that history not as a free-standing disclaimer analysis, but to reinforce the construction already supported by grammar, claim structure, and the specification: "within the requested portions of the selected stream" modifies the "encrypted portions of frames of video," not the "encryption information."

The opinion is therefore a useful reminder that Federal Circuit claim construction remains a contextual exercise: textual canons matter, but they are tested against the patent document as a whole. Once the Court adopted Netflix's construction, it concluded that the prior art met the disputed limitation, eliminating the predicate for the Board's contrary obviousness determination. The Court did not itself enter a final unpatentability judgment, however; instead, it vacated and remanded so the Board could conduct whatever further proceedings were necessary under the corrected construction.

The patent at issue was one of seven that DivX had asserted against Netflix. Once the Federal Circuit reversed the PTAB decision, DivX gave Netflix a covenant rather than continue to assert infringement. Of the remaining six patents, two were found to not include patentable subject matter under 35 U.S.C. § 101, and Netflix was granted summary judgment in its favor. The case then proceeded to a seven-day jury trial on the four remaining patents, where the jury returned a complete defense verdict finding no infringement.

Takeaways

This decision is important in at least three respects. First, it underscores that small differences in syntactic framing can materially affect validity outcomes, especially in IPRs where a single claim limitation may determine whether a prior-art combination succeeds. Second, it shows the continued importance of intrinsic evidence in resolving what might initially appear to be a purely grammatical dispute. Finally, it illustrates that appellate correction of claim construction can be outcome-determinative even when the Board has already considered the patent multiple times. As a practical matter, parties should expect that a claim-construction theory that aligns grammar, technical logic, and the specification will be more resilient on appeal than one that depends on isolating a phrase from the larger claim context.

Practice Tips

Practitioners and IP owners alike can take away a few major practice tips.

In the IPR and litigation context, claim-construction arguments should arise from ordinary language first. Additionally, related prosecution history should be used strategically. The Federal Circuit's willingness to look to prosecution history from a related ancestral patent suggests that practitioners should evaluate not only the file history of the challenged patent itself, but also the family record for statements that clarify how a skilled artisan would understand the claim language.

For patent prosecutors, this case is a drafting lesson. If a modifier is intended to reach a particular noun or phrase, punctuation, parallel structure, and definitional language can reduce the risk of later dispute. Patent drafters should assume that courts will scrutinize syntax closely when the claim language becomes central to patentability or invalidity.

Finally, this case highlights the importance of clarity in patent specifications. The specification is the first source of intrinsic evidence of claim meaning. DivX encourages dialogue between practitioners and IP owners to closely review specifications to ensure that understanding of invention is sufficiently conveyed.

This case summary is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions about this case summary should be directed to:

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