

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TOPIA TECHNOLOGY, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 21-1821-CJB
	)	
EGNYTE, INC.,	)	
	)	
Defendant.	)	

MEMORANDUM ORDER

In this patent infringement action filed by Plaintiff Topia Technology, Inc. (“Topia” or “Plaintiff”) against Defendant Egnyte, Inc. (“Egnyte” or “Defendant”), Plaintiff alleged that Defendant’s Desktop Sync/Egnyte Drive/Desktop Client (“Desktop App”) and its Smart Cache/HybridCloud/Turbo (“Storage Sync,” and together with the Desktop App, the “accused products”) infringe United States Patent Nos. 10,289,607 (the “607 patent”), 10,642,787 (the “787 patent”), 10,754,823 (the “823 patent”), and 11,003,622 (the “622 patent,” and collectively, the “asserted patents” or “patents-in-suit”). (D.I. 107; D.I. 458 at 2-3)¹ On July 11, 2025, the Court issued a Memorandum Opinion (the “Memorandum Opinion”) granting Defendant’s Motion for Summary Judgment of Non-Infringement (the “Non-Infringement

¹ Plaintiff originally also asserted infringement of United States Patent Nos. 9,143,561 (the “561 patent”) and 10,067,942 (the “942 patent”). (D.I. 107) But after the United States Patent Trial and Appeal Board later issued Final Written Decisions finding the asserted claims of those patents invalid, the parties agreed to stay the instant case without prejudice as to any such claims. (D.I. 327; D.I. 329; D.I. 330; D.I. 352 at 2) The '561 patent, the '942 patent, and the four asserted patents each belong to the same patent family and share substantially the same specification. (D.I. 86 at 2 n.1 & 3 n.2; D.I. 352 at 2; D.I. 449 at 185) Therefore, below, the Court will cite to the '607 patent to discuss issues relating to all of the asserted patents, unless otherwise noted. Additionally, all of the patents ever asserted in this case are found on the docket as exhibits. (D.I. 1, exs. 1, 3-7) Hereafter, the Court will simply cite to the patents by their patent number.

Motion”). (D.I. 458) Presently before the Court is Plaintiff’s Motion for Reargument (“Motion”) regarding the Memorandum Opinion, which is filed pursuant to Local Rule 7.1.5. (D.I. 462) For the reasons set forth below, the Court DENIES Plaintiff’s Motion.

I. BACKGROUND

1. Plaintiff commenced this action on December 27, 2021. (D.I. 1) Thereafter, the parties consented to the Court’s jurisdiction to conduct all proceedings in this case including, trial, the entry of final judgment, and all post-trial proceedings. (D.I. 19) Plaintiff filed the operative Amended Complaint on July 7, 2023. (D.I. 107)

2. The Court then held a *Markman* hearing on September 13, 2023. (D.I. 160) Thereafter, the Court issued a series of claim construction orders on the various disputed claim terms identified and argued by the parties. (D.I. 236; D.I. 242-44; D.I. 246; D.I. 258-59) Particularly important for purposes of this Motion, the Court ordered that the phrase “responsive to the user modifying a content” (referred to as “term 5” during the *Markman* process), as it appears in each of the asserted claims (or the independent claims from which they depend),² should be construed to mean “referring to a condition of the user modifying a content as an initial triggering event for a corresponding recited action[.]” (D.I. 259)³ The Court recognized that an additional dispute arose during the *Markman* hearing that was not properly teed up in the

² At the time of the Memorandum Opinion, the asserted claims were claims 4-5, 7, 12, 17, and 19 of the '607 patent, claims 1-4 and 8 of the '787 patent, claims 1-2 and 8 of the '823 patent, and claims 1-2 and 11 of the '622 patent (collectively, the “asserted claims”). (D.I. 458 at 3 (citing D.I. 352 at 2; D.I. 361, ex. 8 at 2))

³ Relatedly, the Court also construed “when the user modifies a content of the [] file” and “when a content . . . is modified by the user” (referred to as “term 2” during the *Markman* process) as used in the asserted patents to mean “where the automatic synchronization is initiated by the user modifying the content of the file.” (D.I. 243)

joint claim construction briefing—i.e., whether “modifying” a file includes saving the file. (D.I. 243) So the Court declined to address that dispute at that time. (*Id.*)

3. On January 21, 2025, Defendant filed its Non-Infringement Motion, along with various other summary judgment and *Daubert* motions filed by the parties that day. (D.I. 351) The Non-Infringement Motion was fully briefed as of March 18, 2025, (D.I. 423), and the Court heard oral argument on that motion on April 9, 2025, (D.I. 449 (hereafter, “Tr.”)). After having had the benefit of that fulsome argument, on July 11, 2025, the Court issued its 19-page Memorandum Opinion granting Defendant summary judgment of non-infringement. (D.I. 458) In the Memorandum Opinion, the Court first noted that (in light of the Court’s prior claim construction decision, which is not at issue here), each of the asserted claims requires that there is an “initial triggering event” that starts the file synchronization process described therein—and that this occurs when the user is “modifying a content” of a first file that is stored on the first client device. (D.I. 458 at 10 (citing D.I. 259)) From there, the Court took up a further claim construction dispute between the parties—the one that had first percolated during the initial *Markman* hearing—about what it means for a user to be “*modifying a content*” of a file. (*Id.* (identifying the parties’ competing proposal for the construction of “modifying a content”)) After setting out a lengthy and detailed explanation of the parties’ arguments and the reasons for its decision, the Court ultimately adopted Defendant’s proposed construction of “modifying a content”; in doing so, the Court concluded that, in the context of the asserted patents, this phrase means “editing content of the file, which does not involve saving the file.” (*Id.* at 10-17) Having adopted this claim construction, the Court thereafter concluded that Plaintiff could not raise a genuine dispute of material fact as to infringement because, as the Court explained:

Again—and turning back to what the claims require—there can be no infringement unless the file is “automatically received from the

first client device responsive to the user modifying a content of the first file[.]” (’607 patent, 10:64-66)—i.e., the “condition of the user modifying a content [is] an initial triggering event for [the] corresponding recited action[.]” (D.I. 259). (*See also* D.I. 243 (“By the end of the *Markman* hearing, both parties agreed that modification of the file by the user was the only triggering event that initiates the start of the file synchronization process.”) (citations omitted)) So since the record establishes that the accused products do *not* begin the synchronization process when the file is *modified*—and instead, at a minimum, only do so when any modifications are *saved*—then there can be no infringement here. (Tr. at 143; D.I. 403 at 11 (Plaintiff claiming that there is a genuine dispute of material fact as to the infringement inquiry because “the [a]ccused [p]roducts initiate synchronization when the user modifies the content of the file, i.e., saves the changed content to persistent storage[even if] the file remains open”); Defendant’s Summary Judgment Hearing Slides, Slide 33)

(*Id.* at 18-19)

4. Thereafter, Plaintiff filed the instant Motion on July 25, 2025, requesting reargument as to the Memorandum Opinion. (D.I. 462) The Motion was fully briefed as of August 4, 2025. (D.I. 465) Thereafter, in October 2025, the parties filed additional submissions related to Defendant’s identification of subsequent authority regarding the Motion. (D.I. 466; D.I. 467)

II. STANDARD OF REVIEW

5. The purpose of a motion for reargument, which is also sometimes referred to as a motion for reconsideration, is to “correct manifest errors of law or fact or to present newly-discovered evidence.” *Max’s Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). Motions for reargument are the functional equivalent to motions to alter or amend judgments under Rule 59(e). Fed. R. Civ. P. 59(e); *see also Talley v. Christiana Care Health Sys.*, Civil Action No. 17-926-CJB, 2019 WL 2605589, at *1 (D. Del. June 25, 2019) (citation omitted).

6. The moving party has a “heavy burden” to meet in order to demonstrate that a motion for reargument should be granted. *In re TK Holdings Inc.*, Case No. 17-11375-BLS (Jointly Administered), Civ. No. 23-738-RGA, 2024 WL 964205, at *7 (D. Del. Mar. 6, 2024) (internal quotation marks and citation omitted), *aff’d*, 2025 WL 2602538 (3d Cir. Sept. 9, 2025); *see also Talley*, 2019 WL 2605589, at *1. That party must show that one of the following circumstances is at play: (1) there has been an intervening change in the controlling law; (2) new evidence is now available that was not available when the court granted the motion at issue; or (3) there is a need to correct a clear error of law or fact or to prevent manifest injustice. *Max’s Seafood Café*, 176 F.3d at 677; *Talley*, 2019 WL 2605589, at *1. Thus, reargument may be appropriate where a court “has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the [c]ourt by the parties, or has made an error not of reasoning but of apprehension.” *Dupree v. Corr. Med. Servs.*, Civ. No. 10-351-LPS, 2015 WL 7194438, at *1 (D. Del. Nov. 16, 2015) (internal quotation marks and citations omitted); *see also Folks v. Danberg*, Civ. Action No. 09–103–GMS, 2012 WL 37228, at *1 (D. Del. Jan. 6, 2012).

7. Importantly, however, a motion for reargument may not be used to argue that a court rethink a decision already made, nor may it be used to argue new facts or issues that were inexcusably not presented to the court in the matter previously decided. *Talley*, 2019 WL 2605589, at *1; *Dupree*, 2015 WL 7194438, at *2; *see also Stairmaster Sports/Med. Prods., Inc. v. Groupe Procycle, Inc.*, 25 F. Supp.2d 270, 292 (D. Del. 1998) (noting that a motion for reargument should “not be abused to allow a never ending polemic between litigants and the Court” and “may not be used to supplement or enlarge the record provided to the Court on which it made its merits decision”) (internal quotation marks and citations omitted). In light of this

rigorous standard, one can easily see why our Court’s Local Rules note that “[m]otions for reargument shall be sparingly granted.” D. Del. LR 7.1.5(a).

III. DISCUSSION

8. With its Motion, Plaintiff is not arguing that there has been an intervening change in the relevant controlling law since the Memorandum Opinion. Nor in bringing the Motion is it relying on new evidence that was not previously available to it. Instead, Plaintiff is asserting that there is a need to correct a clear error of law or fact or to prevent manifest injustice—and more specifically, it is claiming that in issuing the Memorandum Opinion, the Court “patently misunderstood” its arguments and “made an error not of reasoning but of apprehension[.]” (D.I. 462 at 2-3) How did the Court purportedly do so? According to Plaintiff, in the Memorandum Opinion, the Court “misunderstood and misapprehended Plaintiff’s arguments regarding how the accused products function and misapprehended the claim language, the patent specification, the ‘561 patent, and the technological solution taught by the patent.” (*Id.* at 3)

9. In further explaining why and how the Court made these alleged mistakes, Plaintiff breaks down its arguments into two buckets: one relating to non-infringement, the other relating to claim construction. The Court will address these two buckets of arguments in turn below.

10. Plaintiff’s initial argument relates to non-infringement. There, Plaintiff asserts that after the Court determined its construction for “modifying a content”—wherein the Court agreed with Defendant that “modifying” meant only that the file in question is edited, not that it is also saved—the Court “misapprehended Plaintiff as conceding [from there] . . . that editing alone is not an *initial* triggering event[.]” (D.I. 462 at 3; *id.* at 3-7) More specifically, Plaintiff argues that the Memorandum Opinion erroneously concluded that: (1) “Plaintiff does not

dispute that all of the evidence shows that the accused products do not trigger synchronization until at least ‘when changes to the content of the file are saved[]’ and that (2) this “‘admission ends the infringement inquiry.’” (*Id.* at 3 (quoting D.I. 458 at 18)) In point of fact, Plaintiff says now, “[t]hese findings do not reflect Plaintiff’s position or the record evidence.” (*Id.*) To that end, Plaintiff asserts that, although it had always argued that the accused products infringed under its understanding of “modifying a content” (i.e., where “modifying” includes both editing and saving a file), the Court “misunderstood” it to be conceding that *if* the construction of the term simply required *editing* a file, then “the accused products do not infringe[.]” (*Id.* at 5) Plaintiff states that its view is and always has been that if Defendant’s construction of “modifying a content” was correct, then Defendant *still* infringed. (*Id.*)

11. For three reasons, the Court finds Plaintiff’s argument on this front to be unavailing.

12. First, one of Plaintiff’s themes in making this argument seems to be that it didn’t have a fair opportunity to develop and present evidence in support of its theories of infringement in the event that the Court were to adopt Defendant’s construction of “modifying a content.” On that score, Plaintiff says in its brief that it has “consistently maintained that ‘modifying a content’ of a file stored on a client device encompasses both editing and saving the file” and yet “Defendant never challenged Plaintiff’s interpretation [of ‘modifying’] until [Defendant] filed its [Non-Infringement Motion.]” (D.I. 462 at 4 (internal citations omitted)) As a result, Plaintiff contends that “[i]t was only after the claim construction hearing [on April 9, 2025, as part of the hearing on the Non-Infringement Motion,] that the [Memorandum] Opinion determined there was a claim construction dispute regarding whether ‘modifying’ included saving[.]” (*Id.* at 5) But if that is what Plaintiff is suggesting, it is wrong. Back at the initial *Markman* hearing held

on September 13, 2023—nearly two years prior to the filing of the Non-Infringement Motion—Plaintiff’s counsel, in addressing the related claim term “when the user modifies a content of the [] file,” first made the argument that “modifies” in that context meant “saves.” (D.I. 160 at 22) At that same hearing, Defendant’s counsel disagreed with Plaintiff’s interpretation—explaining its contrary view that modifying a content did not “mean[] you have to save” the file. (*Id.* at 50-51) In its March 27, 2024 claim construction decision regarding this term, the Court pointedly noted that this dispute had been broached; therein, the Court explained that the issue had not been well briefed, and it indicated that if the dispute lingered thereafter and was material, the parties should be prepared to address it later in the case. (D.I. 243; *see also* D.I. 465 at 4-5 (Defendant’s answering brief on the Motion, noting the same)) So as of September 2023, Plaintiff should have been on notice that the parties had a dispute over what the word “modifying” meant in the asserted claims. Thereafter, had it felt the need to, Plaintiff could have developed a further record showing that *even under Defendant’s construction*, the accused products infringe. And in any event, Plaintiff certainly should not have been surprised to see Defendant then raise this same issue again in its summary judgment briefing. (D.I. 352 at 13-15; D.I. 423 at 7-8)

13. Second, with its Motion, Plaintiff appears to be making a *new* non-infringement argument—one that it could have, but did not, offer previously. To recap, recall again that pursuant to the Court’s prior claim construction ruling, for a first file to be received “responsive to the user modifying a content” of that file, the modification at issue must be “*an initial triggering event* for a corresponding recited action” (e.g., one that starts the automatic process of transferring a copy of the first file to a second device). (D.I. 259 (emphasis added); *see also* D.I. 462 at 5) And then in light of the Court’s further construction of “modifying a content” set out

in the Memorandum Opinion, that initial triggering event must be “*editing* content of the file, which *does not involve saving* the file.” (D.I. 458 at 17 (emphasis added); *see also* D.I. 462 at 5) So, putting these two constructions together, when a user *edits* the file, that act must serve in some way as at least an initial *trigger* for the file transfer process to begin. Now with its Motion, Plaintiff is arguing that when Defendant’s system evaluates whether the file content was edited, this does in fact act as an “initial trigger” for the synchronization process; that is, Plaintiff asserts that “if editing and saving are considered separately, then editing is the *initial* triggering event and saving is *another* triggering event.” (D.I. 462 at 4-6 (emphasis added); *see also id.* at 5 (Plaintiff further explaining its position that the Court’s construction does not “preclude a save operation, *e.g.*, as in [the accused] products, as an *additional* trigger for automatic transfer of the updated file”))⁴ However, as Defendant notes, Plaintiff’s “additional trigger theory” is a “new argument that [Plaintiff] could have but failed to present” during the summary judgment phase of the case. (D.I. 465 at 2) In its summary judgment briefing, Plaintiff was perfectly capable of making this argument. But Plaintiff didn’t do that. (*Id.*) Instead, in its answering brief regarding the Non-Infringement Motion, Plaintiff put all of its eggs in one basket—i.e., the one in which it argued that “[a] modified file is only generated when information in a file is edited *and* saved to persistent storage” and that “[t]esting has revealed that the [a]ccused [p]roducts, in fact, synchronize a copy of the modified file to a second client device when the changes to the content of the file *are saved*[.]” (D.I. 403 at 7-8, 10-11 (emphasis altered)) Put simply,

⁴ In further support of its view that a genuine dispute of fact precluded grant of summary judgment here, Plaintiff then: (a) argues that since the Court’s claim construction stated that “modifying a content” must be simply “an” “initial” triggering event, the construction suggests that there can be more than one event involved in triggering synchronization (and perhaps more than one “initial” triggering event too); and (b) makes a “confusing and circular” argument about how the language of claim 1 of the '561 patent somehow supports its non-infringement position. (D.I. 462 at 5-6; D.I. 465 at 6)

Plaintiff’s “additional trigger theory” could have, and should have, been in its prior summary judgment briefing. But it wasn’t. Plaintiff cannot now rely on this new theory in seeking reargument. (D.I. 465 at 6); *see e.g., Scale Biosciences, Inc. v. Parse Biosciences, Inc.*, Civil Action No. 22-1597-CJB, D.I. 552 (D. Del. June 30, 2026) (“Importantly, ‘[a] motion for [reargument] may not be used to argue that a court rethink a decision already made, nor may it be used to argue new facts or issues that were inexcusably not presented to the court in the matter previously decided.’ . . . With its Motion, [movant] does just this—it makes arguments it could have (but did not) make in an earlier summary judgment proceeding, and it essentially asks the Court for a re-do of the invalidity decision the Court issued via its [prior opinion].”) (citing cases).

14. Third, in a paragraph on page five of its brief, Plaintiff makes one additional argument about what the “factual record” here shows. There, Plaintiff states that “the factual record—including testimony from Defendant’s engineers—demonstrates that the accused products *detect and respond to file edits* to carry out synchronization”—in that “Defendant’s system evaluates whether the file content was edited (an initial trigger) and whether the edited file was saved (another trigger)” and that “[b]oth are required to trigger synchronization.” (D.I. 462 at 5 (emphasis added)) Now, for its part, Defendant responds that this assertion is “untrue[.]” In that regard, Defendant argues to the contrary that “[a]ll the evidence in the case . . . proves that the accused products do *not* start or initiate the sync process when a user modifies or edits a file.” (D.I. 465 at 9 n.4 (emphasis added)) But true or untrue isn’t even the main issue here. The bigger problem for Plaintiff is that when it makes this assertion on page five about what the “factual record” shows (i.e., about the accused products’ initiation of the synchronization process), it cites in support to . . . nothing. (D.I. 462 at 5) That is, at the end of

all four sentences in this paragraph of its brief, Plaintiff fails to cite to *any actual record evidence at all*; each and every sentence ends with a period, followed by absolutely no citation of any kind. (*Id.*) This certainly does not demonstrate that the Court misperceived a real, factual dispute regarding infringement.⁵ And that is especially so in light of all of the evidence that the Memorandum Opinion relies on in concluding that the accused products undisputedly “do not trigger synchronization until at least ‘when changes to the content of the file are *saved*[.]’” (D.I. 458 at 18 (citing Tr. at 158-59; D.I. 363, ex. 10 at ¶¶ 145-55; *id.*, ex. 19 at 160-61, 164, 185-86, 193; *id.*, ex. 20 at 155-58, 164; *id.*, ex. 24 at 145; D.I. 405, ex. 52)) Indeed, included among that cited evidence were multiple statements from *Plaintiff’s own infringement expert*, Dr. Prashant Shenoy, to the effect that the accused products only initiate file transfer of a modified file “upon saving the file” and that if a file is not saved “[Defendant’s] system will not do anything.” (D.I. 363, ex. 20 at 156; D.I. 405, ex. 52 at ¶ 5)

15. Plaintiff’s other argument has to do with the Court’s claim construction of “modifying a content.” Here, Plaintiff is simply saying that the construction was wrong. (D.I. 462 at 7-10) On this front, Plaintiff asserts that the Court “erred” in three different ways by: (a) not considering all of the relevant asserted claim language; (b) misconstruing the language of claim 1 of the '561 patent, and (c) adopting a construction that ignores the preferred embodiments and the problems addressed by the invention. (*Id.* at 7) Below, the Court addresses each of these three purported errors in turn.

16. First, Plaintiff argues that the Memorandum Opinion failed to apprehend how the Court’s construction is inconsistent with other language found in claim 1 of the '607 patent (a

⁵ If here Plaintiff was somehow referring to portions of the record that were cited elsewhere earlier in its brief, Plaintiff failed to indicate that clearly, and it failed to make clear what *exact* words of testimony from Defendant’s engineers Plaintiff was talking about.

claim that the Court treated as representative of all other asserted claims for purposes of its analysis). (*Id.* at 7-8; *see also* D.I. 458 at 4) Plaintiff notes that in this claim, the “first file” that is received “responsive to the user modifying a content” of that file is one that is “*stored on the first client device[.]*” (‘607 patent, col. 10:65-67 (emphasis added) (*cited in* D.I. 462 at 7)) Plaintiff then argues, citing in part to the report of Dr. Shenoy, that the Court’s construction must be incorrect, because it would “not be possible” to edit a first file stored on the device without also thereafter storing or saving that (now edited) file. (D.I. 462 at 7-8 & n.3 (citing D.I. 364, ex. 20 at ¶¶ 55-61)) But Plaintiff raised essentially this same point in its summary judgment briefing on the Non-Infringement Motion—and when it did so there, it also cited to the very same portion of Dr. Shenoy’s expert report. (D.I. 403 at 8 (citing D.I. 364, ex. 20 at ¶ 56)) And then during oral argument on the Non-Infringement Motion, Plaintiff’s counsel raised this very issue—including by making reference to the import of the “stored on” language found in claim 1 of the ‘607 patent. During argument, the Court took up that issue with Plaintiff’s counsel, and explained why it felt Plaintiff’s view was not particularly persuasive:

[Plaintiff’s Counsel] MR. LYTLE: That’s why I highlighted really the full term has not been highlighted. It is modifying the content of the first file *stored on* the first client device. So the claim language itself is telling us that is what is being modified, the thing that is stored on the client device.

THE COURT: Wouldn’t that just mean that there is a file. There is file on the first client device. It’s stored there. Now something is going to happen. . . . The user modifying a content of the first file—first file, a file that’s stored on a first client device. Doesn’t that just tell me that the first file is already on the first client device? It’s stored there? It’s saved there?

(Tr. at 179-80 (emphasis added) (*cited in* D.I. 465 at 7)) In other words, during that portion of the argument, the Court was expressing its view that the literal language of claim 1 simply seems to require that a file, previously stored, is then thereafter “modif[ied]” (or edited)—and that this

further modifying/editing process itself, separate and apart from any further save function, is what causes the file at issue to be transferred. (D.I. 465 at 7 (“As correctly determined by the Court and stated during the hearing, this claim language relates to the file being stored on the first client device *before* the user accesses the file and modifies.”)) Thereafter, in the Memorandum Opinion, the Court *again* addressed Plaintiff’s “modification must include saving the file” argument head on (including the portion of Dr. Shenoy’s expert report that Plaintiff had cited in support thereof)—explaining in real detail all of the additional reasons why the argument was ultimately unpersuasive. (D.I. 458 at 15-17 & n.8 (citing D.I. 364, ex. 20 at ¶¶ 55-56))⁶ In sum, the Court understood Plaintiff’s argument about the “stored on” claim language and understood Plaintiff’s view that editing a file must always be accompanied by storing and saving that same file. It just disagreed with it. A disagreement like this cannot be the basis for a successful motion for reargument.

17. Second, Plaintiff argues that the Court misapprehended the impact of claim 1 of the '561 patent in construing “modifying a content[.]” (D.I. 462 at 6, 8-9) Here, Plaintiff points out that claim 1 of the '561 patent uses the phraseology “upon *determining* that a save operation has been performed on the modified first electronic file[;]” in Plaintiff’s view, this claim language indicates that: (a) “modifying” a file occurs when a user edits and saves that file to storage; and (b) the “determining” step in the claim is in alignment with Plaintiff’s proposed construction, in that it simply speaks to how the software determines, *after the save operation occurs* (as part of the “modifying” step), that “a save has been performed.” (*Id.* at 8-9 (citing

⁶ Included among those reasons was that Plaintiff’s summary judgment briefing contained inaccurate citations, including inaccurate citations to a dictionary definition of the word “file.” (D.I. 458 at 15-16 & n.8) In its brief on the instant Motion, Plaintiff acknowledges this error. (D.I. 462 at 7 n.2)

'561 patent, col. 11:8-9)) But in its answering brief on the Non-Infringement Motion, Plaintiff made a nearly identical argument about the import of this exact same language from claim 1 of the '561 patent. (D.I. 403 at 11-12) The Court considered that argument. And in its Memorandum Opinion, the Court explained (again, in great detail), why it disagreed with Plaintiff's position, and why instead it believed that the text of this claim strongly supported Defendant's contrary claim construction proposal. (D.I. 458 at 12) Therein, the Court noted that because claim 1 of the '561 patent references a determination that a "save operation" has been performed on the (already) "modified first electronic file," this indicates that a file is already "modified" prior to being saved (or prior to having a "save operation" performed on it)—and that if "'modifying' a file necessarily included the concept of saving that file (as Plaintiff suggests here), then claim 1 of the '561 patent wouldn't make much sense." (*Id.*) And so again, Plaintiff is using a motion for reargument in the wrong way—i.e., to rehash an argument already considered and rejected by the Court. (*See* D.I. 465 at 6)

18. Third, Plaintiff notes that in its Memorandum Opinion, the Court cited to certain portions of the shared specification—particularly including column 8, lines 29-41 of the '607 patent—in support of its claim construction decision. (D.I. 462 at 9-10 (citing D.I. 458 at 13)) But Plaintiff argues that these parts of the written description actually support *its* construction instead. (*Id.*) Yet again, however, this is a circumstance in which nobody *misapprehended* anything. Plaintiff simply *disagrees* with the Court's prior decision about the meaning of these portions of the written description. The Court discussed the meaning of column 8, lines 29-41 with Plaintiff's counsel during oral argument on the Non-Infringement Motion—after Plaintiff raised this very excerpt from the specification in its summary judgment hearing slides. (Tr. at 181-82; D.I. 458 at 13) And the Court cited to that very discussion in its Memorandum Opinion,

wherein it explained why it disagreed with Plaintiff about what this specification excerpt tells us. (Tr. at 181-82 (*cited in* D.I. 458 at 13); *see also* D.I. 465 at 8) Indeed, to this day, the Court *still* disagrees with Plaintiff’s assertion that this particular paragraph “does not dictate the Court’s interpretation or preclude Plaintiff’s interpretation.” (D.I. 462 at 9)⁷ But right or wrong, a party is not supposed to be using a motion for reargument to engage in a “never ending polemic between [it] and the Court.” *Stairmaster Sports/Med. Prods., Inc.*, 25 F. Supp.2d at 292. Thus, Plaintiff’s Motion fails in this regard as well.

19. In further reliance on the specification, Plaintiff makes the broader point that the claimed invention was meant to address problems in file management and not file editing. (D.I. 462 at 10 (citing '607 patent, cols. 1:32-34, 2:42-43)) To Plaintiff, this assertion supports “[i]nterpreting ‘modifying’ to include saving [in order to] align[] with the inventors’ efforts to reduce user burden by ensuring synchronization occurs at appropriate, user-configurable events—such as saving—rather than on every edit.” (D.I. 462 at 10) And Plaintiff baldly asserts—citing to absolutely no record evidence of any type in support—that its construction of “modifying” is consistent with these purposes of the claimed invention, in that Plaintiff says that synchronizing a file only after saving avoids problems like the need for constant connectivity, files getting out of synchronization, and loss of power before saving. (*Id.*; *see also* D.I. 465 at 8

⁷ Not to belabor the point, but this paragraph speaks about how upon a “triggering event[,]” the transfer client “transfers the modified file”—and says that the “triggering event” can include “the user saving the file[.]” ('607 patent, col. 8:29-41) The Court’s point was that as a matter of linguistics, this portion of the specification seems to be suggesting that the file at issue is *already* a “modified” file *at the point in which the triggering event occurs*. And so if that triggering event *is the act of saving the file*, then this indicates that this act has occurred *after* “modif[ication]” has happened. And that, in turn, suggests that “modif[ication]” does not include “saving the file.”

(Defendant noting that Plaintiff supports these statements with “only attorney argument”)⁸ The problem with Plaintiff’s position here is twofold. On the one hand, Plaintiff *already made* certain flavors of this argument in its briefing and at argument regarding the Non-Infringement Motion. (*See, e.g.*, D.I. 403 at 7-8 (“Under [Defendant’s] theory of ‘modifying a file,’ a synchronization would occur every time a user typed a letter into a Word document. This absurd concept is found nowhere in the [a]sserted [p]atents, would be unworkable, and if workable would lead to hundreds and thousands of versions of a file based on simply drafting a short letter.”); Tr. at 178 (Plaintiff’s counsel arguing that if “modifying the file means just simply editing the file[,] . . . it would lead to just absurd results. Every time you typed in a letter in the file you would have the synchronization process being triggered. So that can’t be what it means.”)) In the Memorandum Opinion, by choosing not to credit these inefficiency and impracticality arguments, the Court necessarily determined that they were insufficient to overcome the weight of the significant additional intrinsic evidence that favored Defendant’s position. On the other hand, to the extent Plaintiff is here raising *new and different* flavors of this argument for the first time (i.e., about impact on the need for constant connectivity, or the likelihood that files would get out of synchronization, or the ramifications of a power loss), (D.I. 462 at 10), those aren’t permitted on a motion for reargument. They could have been raised previously but were not.

⁸ *See also Sound View Innovations, LLC v. Facebook, Inc.*, No. 16-cv-116 (RGA), 2017 WL 2221177, at *11 (D. Del. May 19, 2017) (“Attorney argument alone is an insufficient basis to make a technical ruling in a claim construction.”); *cf. Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005) (“Attorney argument is no substitute for evidence.”)).

IV. CONCLUSION

20. The Court, having considered and found each of the grounds raised by Plaintiff in support of its Motion unpersuasive, hereby ORDERS that Plaintiff's Motion is DENIED for all of the foregoing reasons.⁹

Dated: September 4, 2026


Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE

⁹ As was previously noted, in connection with this Motion, Defendant filed a notice of subsequent authority. That notice, in turn, makes reference to a claim construction order issued by United States District Judge Jacqueline Scott Corely of the United States District Court for the Northern District of California; in the order, Judge Corely: (a) adopted constructions of the terms “responsive to the user modifying a content” and “modifying a content” that were consistent with the constructions adopted by the Court in the Memorandum Opinion; and (b) rejected many of the same arguments Plaintiff makes in this Motion. (D.I. 466 at 1; *id.*, ex. 1); *see also Topia Tech., Inc. v. Box, Inc.*, Case No. 23-cv-00063-JSC, 2025 WL 2842059, at *4-11 (N.D. Cal. Oct. 7, 2025), *reconsideration denied*, 2026 WL 327972 (N.D. Cal. Feb. 5, 2026). In response to this notice, Plaintiff asked that if the Court were to consider Defendant's arguments therein, it be offered the opportunity to respond substantively to them. (D.I. 467 at 1) But the Court need not rely on this claim construction order to resolve the instant Motion, and thus no further process is warranted.