EXHIBIT A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

FINJAN, INC., Plaintiff, v. BITDEFENDER INC., et al., Defendants.	Case No. 17-cv-04790-HSG **CLAIM CONSTRUCTION ORDER**

On August 16, 2017, Plaintiff Finjan Inc. ("Finjan") filed this patent infringement action against Defendants Bitdefender Inc. and Bitdefender S.R.L. (collectively, "Bitdefender"). Dkt. No. 1 ("Compl."). The parties now seek construction of ten terms found in four patents: Patent Nos. 6,804,780 ("the '780 Patent"), 7,930,299 ("the '299 Patent"), 8,141,154 ("the '154 Patent"), and 8,677,494 ("the '494 Patent") (collectively, "the Asserted Patents"). *See* Dkt. No. 73 ("JCCS"). This order follows claim construction briefing and a claim construction hearing. *See* Dkt. Nos. 76 ("Op. Br."), 81 ("Resp. Br."), 84 ("Reply Br."). The parties subsequently submitted several requests for judicial notice regarding recently filed orders interpreting the Asserted Patents. *See* Dkt. Nos. 90, 92–94.[1]

I. LEGAL STANDARD

Claim construction is a question of law to be determined by the Court. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 384 (1996). "The purpose of claim construction is to determine the meaning and scope of the patent claims asserted to be infringed." *O2 Micro Int'l*

[1] The Court **GRANTS** the requests for judicial notice. The existence and contents of those orders are "not subject to reasonable dispute" because they "can be accurately and readily determined

Ltd. v. Beyond Innovation Tech. Co., 521 F.3d 1351, 1360 (Fed. Cir. 2008) (quotation omitted).

Generally, claim terms should be "given their ordinary and customary meaning"—in other words, "the meaning that the term[s] would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc) (quotation omitted). There are only two circumstances where a claim is not entitled to its plain and ordinary meaning: "1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution." *Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012).

When construing claim terms, the Federal Circuit emphasizes the importance of intrinsic evidence such as the language of the claims themselves, the specification, and the prosecution history. *Phillips*, 415 F.3d at 1312–17. The claim language can "provide substantial guidance as to the meaning of particular claim terms," both through the context in which the claim terms are used and by considering other claims in the same patent. *Id.* at 1314. The specification is likewise a crucial source of information. *Id.* at 1315–17. Although it is improper to read limitations from the specification into the claims, the specification is "the single best guide to the meaning of a disputed term." *Id.* at 1315 (noting that "the specification is always highly relevant to the claim construction analysis," and that "[u]sually, it is dispositive" (quotation omitted)); *see also Merck & Co. v. Teva Pharm. USA, Inc.*, 347 F.3d 1367, 1371 (Fed. Cir. 2003) (explaining that "claims must be construed so as to be consistent with the specification").

Despite the importance of intrinsic evidence, courts may also consider extrinsic evidence—technical dictionaries, learned treatises, expert and inventor testimony, and the like—to help construe the claims. *Phillips*, 415 F.3d at 1317–18. For example, dictionaries may reveal what the ordinary and customary meaning of a term would have been to a person of ordinary skill in the art at the time of the invention. *Frans Nooren Afdichtingssystemen B.V. v. Stopaq Amcorr Inc.*, 744 F.3d 715, 722 (Fed. Cir. 2014) ("Terms generally carry their ordinary and customary meaning in the relevant field at the relevant time, as shown by reliable sources such as dictionaries, but they always must be understood in the context of the whole document—in

particular, the specification (along with the prosecution history, if pertinent).”). Expert testimony can also help “to ensure that the court’s understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field.” *Phillips*, 415 F.3d at 1318. Extrinsic evidence is, however, “less significant than the intrinsic record in determining the legally operative meaning of claim language.” *Id.* at 1317 (quotation omitted).

II. AGREED TERMS

The parties agree on the construction of three terms. JCCS at 1. In light of the parties’ agreement, the Court adopts the construction of these terms as set forth in the following table:

Patent	Claim Term	Agreed Construction
’494 Patent	“downloadable” [claims 1, 2, 5, 6, 7, 10, 11, 14, 15, and 16]	“an executable application program, which is downloaded from a source computer and run on the destination computer”
’494 Patent	“database” [claims 1, 2, 10, and 11]	“a collection of interrelated data organized according to a database schema to serve one or more applications”
’780 Patent	“downloadable” [claims 1, 2, 5, 6, 9, 13, 14, and 18]	“an executable application program, which is downloaded from a source computer and run on the destination computer”

III. DISPUTED TERMS

A. “suspicious computer operations” (’494 Patent)

Finjan’s Construction	Bitdefender’s Construction
No construction necessary – Plain and ordinary meaning. Plain and ordinary meaning of “suspicious” is “hostile or potentially hostile.”	Indefinite Alternatively, “a subset of all possible computer operations that have been deemed suspicious prior to their inclusion in the list”

The Court adopts Finjan’s construction, finds the plain and ordinary meaning of

"suspicious computer operations" as "hostile or potentially hostile computer operations."

The disputed term appears in independent claims 1 and 10, and dependent claims 6 and 15 of the '494 Patent. JCCS at 1. Claim 1 is representative of how the term is used in the claim language:

Claim 1
1. A computer-based method, comprising the steps of: receiving an incoming Downloadable; deriving security profile data for the Downloadable, including a list of **suspicious computer operations** that may be attempted by the Downloadable; and storing the Downloadable security profile data in a database.

Finjan asks the Court to give "suspicious computer operations" its plain and ordinary meaning, arguing that the plain meaning of "suspicious" in the context of the '494 Patent is "hostile or potentially hostile." Op. Br. at 3–5; Reply Br. at 1–3. Starting with the specification, Finjan notes that the '494 Patent incorporates the '780 Patent, which describes "suspicious" computer operations as "Operations Deemed Potentially Hostile." *See* Op. Br. at 3; *see also* '494 Patent, 1:28–33 (incorporating the '780 Patent by reference); '780 Patent, 3:25–28 ("It is to be understood that the term 'suspicious' includes hostile, potentially hostile, undesirable, potentially undesirable, etc."). Finjan further notes that the '780 Patent discloses several examples of potentially hostile computer operations. *See* Op. Br. at 3; *see also* '780 Patent, 5:55–60 ("DSP data 310 includes the list of all potentially hostile or suspicious computer operations that may be attempted by a specific Downloadable 307, and may also include the respective arguments of these operations. For example, DSP data 310 may include a READ from a specific file, a SEND to an unresolved host, etc."), 6:1–14 (providing "An Example list of Operations Deemed Potentially Hostile"). According to Finjan's expert, a person of ordinary skill in the art would, after reading the patentee's specification, understand the term to possess its plain meaning: "as computer operations that are hostile or potentially hostile." Dkt. No. 76-1 ("Medvidovic Decl.") ¶¶ 12–14.

Bitdefender and its expert argue the term is indefinite because whether a computer

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