IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

FINTIV, INC.,	***Plaintiff***	§	
		§	**W-18-CV-00372-ADA**
v.		§	
APPLE INC.,	***Defendant***	§	

CLAIM CONSTRUCTION ORDER

Before the Court are the Parties' claim construction briefs: Plaintiff Fintiv's opening, responsive, and reply briefs (ECF No. 72, 75, and 77, respectively) and Defendant Apple's opening, responsive, and reply briefs (ECF No. 71, 74, and 76, respectively). The Court held the Markman hearing on November 7, 2019. ECF No. 82. During that hearing, the Court informed the Parties of the constructions it intended to provide for all terms except one. This Order does not alter any of those constructions.

I. Background

Fintiv filed this lawsuit on December 21, 2018 alleging that Apple infringed at least claims 11, 18, and 23 of U.S. Patent No. 8,843,125. ECF No. 1. The '125 Patent is entitled "System and Method for Managing Mobile Wallet and its Related Credentials." The '125 Patent is directed towards the management of virtual cards stored on mobile devices. '125 Patent at 1:25-26.

The '125 Patent purports to solve several problems that were present in the prior art. First, the user had limited ability to manage payment applets. *Id.* at 2:6-8. Second, the user may be unable to view any account specific information in the secure element or manage payment

applications. *Id.* at 2:26-29. Third, the user may be "bombarded" with applications that are not compatible with his/her mobile device. *Id.* at 2:42-44.

The invention in the '125 Patent is based on a client-server architecture. *See, e.g.*, '125 Patent at Fig. 1. On the server side are, *inter alia*, the Mobile Wallet Management System ("WMS") and the Trusted Service Manager ("TSM"). The former stores and manages mobile wallet account information. *Id.* at 3:31-33. The WMS comprises other components, including a wallet client management component (to store and manage a mobile wallet application), the widget management component (to store and to manage widgets), a device profile management component (to store mobile device information), and a rule engine (to filter a widget based on the mobile device information). *Id.* at 3:33-39. The TSM acts as an "integration point for all of the external parties the mobile device may deal with, providing for a seamless and more efficient operation of mobile services." *Id.* at 5:42-46. The WMS may reside within the TSM. *Id.* at 5:28-29.

On the client side is the user's mobile device. The mobile device comprises, *inter alia*, a mobile wallet application, over-the-air ("OTA") proxy, secure element ("SE"), contactless card applet ("CCA"), and wallet management applet. *See, e.g.*, *id.* at Fig. 2. The mobile wallet application "may have the same composition as a conventional wallet, which may contain payment cards, member cards, transportation cards, and loyalty cards." *Id.* at 1:43-46. One of the OTA proxy's functions is to operate as a transceiver for the mobile device to the server. *See, e.g., id.* at 6:34-37, 6:63-64, and 8:5-10. The secure element is memory component that securely stores account specific sensitive information. *Id.* at 7:38-43. The contactless card applet corresponds to a conventional card. *See id.* at 8:60-63. The WMA may store account specific information of the CCA which may be viewed by the user. *Id.* at 2:8-10 and 8:66-9:5. The WMA "may include both

a WMA 21 container and one or more WMA 21 applets. WMA 21 container may manage the information stored in the WMA 21 applets." *Id.* at 7:8-11.

II. Legal Principles

The general rule is that claim terms are generally given their plain-and-ordinary meaning. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*); *Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336, 1347 (Fed. Cir. 2014), *vacated on other grounds by* 135 S. Ct. 1846, 1846 (2015) ("There is a heavy presumption that claim terms carry their accustomed meaning in the relevant community at the relevant time."). The plain and ordinary meaning of a term is the "meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Philips*, 415 F.3d at 1313.

"'Although the specification may aid the court in interpreting the meaning of disputed claim language, particular embodiments and examples appearing in the specification will not generally be read into the claims.'" *Comark Commc'ns, Inc. v. Harris Corp.*, 156 F.3d 1182, 1187 (Fed. Cir. 1998) (quoting *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988)). "[I]t is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited." *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004).

Although extrinsic evidence can also be useful, it is "'less significant than the intrinsic record in determining the legally operative meaning of claim language.'" *Phillips*, 415 F.3d at 1317 (quoting *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862 (Fed. Cir. 2004)). Technical dictionaries may be helpful, but they may also provide definitions that are too broad or not indicative of how the term is used in the patent. *Id.* at 1318. Expert testimony also may be

helpful, but an expert's conclusory or unsupported assertions as to the meaning of a term are not. *Id.*

The "only two exceptions to [the] general rule" that claim terms are construed according to their plain and ordinary meaning are when the patentee (1) acts as his/her own lexicographer or (2) disavows the full scope of the claim term either in the specification or during prosecution. *Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). To act as his/her own lexicographer, the patentee must "clearly set forth a definition of the disputed claim term," and "clearly express an intent to define the term." *Id.* To disavow the full scope of a claim term, the patentee's statements in the specification or prosecution history must represent "a clear disavowal of claim scope." *Id.* at 1366. Accordingly, when "an applicant's statements are amenable to multiple reasonable interpretations, they cannot be deemed clear and unmistakable." *3M Innovative Props. Co. v. Tredegar Corp.*, 725 F.3d 1315, 1326 (Fed. Cir. 2013).

Under the doctrine of claim differentiation, a court presumes that each claim in a patent has a different scope. *Phillips*, 415 F.3d at 1314-15. The presumption is rebutted when, for example, the "construction of an independent claim leads to a clear conclusion inconsistent with a dependent claim." *Id.* The presumption is also rebutted when there is a "contrary construction dictated by the written description or prosecution history." *Seachange Int'l., Inc. v. C-COR, Inc.*, 413 F.3d 1361, 1369 (Fed. Cir. 2005). The presumption does not apply if it serves to broaden the claims beyond their meaning in light of the specification. *Intellectual Ventures I LLC v. Motorola Mobility LLC*, 870 F.3d 1320, 1326 (Fed. Cir. 2017).

III. Legal Analysis

A. "wallet management applet (WMA)" (claims 11 and 23)

Fintiv's Proposed Construction	Apple's Proposed Construction
Plain and ordinary meaning. To the extent the Court requires construction the plain and ordinary meaning is "integrated functionality that enables management of a wallet related applet."	"software application for storing duplicate account specific information accessible to the mobile wallet application"

Fintiv contends that "wallet management applet" should bear its plain-and-ordinary meaning because a POSITA "would have reasonable certainty about the meaning and scope of the term from its context in the claims and specification." ECF No. 72 at 5. Fintiv further contends that the plain-and-ordinary meaning of this term is "integrated functionality that enables management of a wallet related applet." *Id.* at 9. Fintiv contends that this proposed construction is consistent with the claims and specification, and does not exclude any embodiments. *Id.*

Apple contends that "wallet management applet" does not have a plain-and-ordinary meaning because it is a "coined term." ECF No. 71 at 11. Apple further contends even if "wallet management applet" were not a coined term, the Court should still construe it because the jury should not "guess" what the meaning of a highly technical term is. *Id.* Apple contends that its proposed construction "follows from the intrinsic evidence, including numerous references and explanations in the specification." *Id.*

i. "Wallet management applet" is a coined term and does not have a plain-and-ordinary meaning

The first question before the Court is whether "wallet management applet" is a coined term. Apple contends that it is a coined term whereas Fintiv does not appear to argue otherwise. ECF No. 71 at 11. Because there is no evidence that "wallet management applet" was a well-known term at the time of the '125 Patent's filing, the Court agrees with Apple that this is a coined term.

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