

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

FINTIV, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

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Civil Action No.: 6:18-CV-372-ADA

JURY TRIAL DEMANDED

PLAINTIFF FINTIV, INC.'S OPENING CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Plaintiff Fintiv, Inc. (“Fintiv”) asserts U.S. Patent No. 8,843,125 (the “’125 Patent” or “Patent-in-Suit”) against Defendant Apple Inc. (“Apple”). Fintiv contends that Apple’s iPhone and Watch devices utilizing Apple’s mobile wallet application infringe the ’125 Patent.

Fintiv does not believe that any terms of the ’125 Patent require construction. Nonetheless, to the extent the Court deems constructions necessary, Fintiv has proposed constructions that rely principally on the claim language and the specifications. In contrast, Apple sets out proposed constructions that: (a) read the preferred embodiments out of the claims of the ’125 Patent, (b) import limitations from the specification without providing evidence of a clear intent to limit the claims, and (c) make claim limitations superfluous. This is never a proper approach to construing claims. For these reasons and as set forth more fully below, this Court should reject Apple’s proposed constructions and adopt those of Fintiv. Each of the disputed terms should be afforded their plain and ordinary meaning. To the extent the Court determines that any constructions are necessary, Fintiv’s proposed constructions should be adopted.

II. BACKGROUND

A. The ’125 Patent

The ’125 Patent relates to management of virtual cards stored on mobile devices and discloses provisioning a contactless card in a mobile device with a mobile wallet application. The specification of the ’125 Patent identifies technical problems in the prior art and claims improvement to these problems. For instance, the specification explains that prior art lacked “an effective means to manage various payment applets residing within the mobile device.” (’125 Patent at 1:63-67.) Moreover, prior art implementations did not enable a user to “view any account specific information stored within the SE [Secure Element] or manage such applications with or without the use of POS [Point of Sale] equipment.” *Id.* at 2:19-29. The specification further

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