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

FINTIV, INC.,	§	
	§	Civil Action No.: 6:18-CV-372-ADA
	§	
Plaintiff,	§	
	§	**JURY TRIAL DEMANDED**
v.	§	
	§	
APPLE INC.,	§	
	§	
Defendant.	§	
	§	

<u>PLAINTIFF FINTIV, INC.'S REPLY CLAIM CONSTRUCTION BRIEF</u>

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I. **INTRODUCTION**

Plaintiff Fintiv, Inc. ("Fintiv") submits this Reply Claim Construction Brief in support of its Opening Claim Construction Brief (D.I. 72) regarding U.S. Patent No. 8,843,125 ("the '125 Patent" or "Patent-in-Suit").[1]

As discussed below and in Fintiv's Opening Claim Construction Brief (D.I. 72) and Responsive Claim Construction Brief (D.I. 75), Apple ignores the plain claim language and intrinsic evidence, and attempts to improperly construe the claim terms in dispute to suit its non-infringement arguments while claiming that claim construction is necessary for the jury's understanding. Citing to *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, Apple also attempts to advance the argument that the Court would commit a legal error if it does not provide a construction for each proposed claim term. (D.I. 74 at 1-4 (citing 521 F.3d 1351, 1361 (Fed. Cir. 2008).) However, in *O2 Micro*, the Federal Circuit found that a court should construe a term when the parties dispute the proper scope of that term, not its meaning. *See* 521 F.3d at 1360-62 ("We, however, recognize that district courts are not (and should not be) required to construe *every* limitation present in a patent's asserted claims."). Here, *O2 Micro* is inapposite because the meaning of the disputed terms is clear and unambiguous to begin with. In fact, this Court has found, in the past, that claim terms do not need to be construed and should have their plain and ordinary meaning. *See*, *e.g.*, *MV3 Partners LLC v. Roku, Inc.*, No. 6:18-cv-00308 (W.D. Tex.), D.I. 90 (Claim Construction Order dated Oct. 2, 2019).

Apple also attempts to fault Fintiv for not considering the provisional applications related to the '125 Patent. However, that is meritless. Just as Apple attempts to read the various

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[1] For clarification, Fintiv asserts that Apple infringes claims 11, 13, 14, 16, 17, 18, 20, 21, 22, 23, 24, and 25 of the '125 Patent.

embodiments described in the specification of the issued patent into the claims, it also attempts to do the same with the embodiments described in the related provisional applications. This is improper as explained in Fintiv's Opening and Responsive Claim Construction Briefs. The claims in dispute cannot be limited by the description of exemplary embodiments, regardless of whether they are disclosed in the related provisional applications and the '125 Patent.

II. THE DISPUTED CLAIM TERMS

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

Fintiv's Construction	Apple's 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"

1. "Wallet management applet (WMA)" is not a "coined" term and should have its plain and ordinary meaning

Contrary to Apple's and its expert's assertions, the "wallet management applet (WMA)" term is not a coined term. (D.I. 75 at 9-10.) As Fintiv explained in its Responsive Brief, a careful and thorough reading of the *Iridescent Networks, Inc. v. AT&T Mobility, LLC* and *Interval Licensing LLC v. AOL, Inc.* cases cited by Apple for its "coined term" arguments shows that their facts are distinguishable from the facts at bar. (*Id.* (citing 933 F.3d 1345, 1350-53 (Fed. Cir. 2019); 766 F.3d 1364, 1371 (Fed. Cir. 2014)). These two cases involved the construction of phrases that are of a term of degree and highly subjective—"high quality of service connection" and "unobtrusive manner." *Id.* Given the uncertainty as to the boundaries of these terms that are highly subjective, the Federal Circuit first looked at the claims for guidance and then turned to the intrinsic evidence. *Id.*

Here, since the term "wallet management applet" does not contain a term of degree and is

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