FILED
NOV 2 2022
CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY

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

IDENTITY SECURITY LLC, PLAINTIFF,	§	
V.	§	CAUSE NO. 1:22-CV-58-LY
APPLE, INC., DEFENDANT.	§	

MEMORANDUM OPINION AND ORDER ON CLAIMS CONSTRUCTION

Before the court are the parties' Joint Claim Construction Statement filed January 7, 2022 (Doc. #50), Defendant Apple, Inc.'s ("Apple") Opening Claim Construction Brief (Doc. #32), Plaintiff Identity Security LLC's ("Identity") Responsive Claim Construction Brief (Doc. #33), Apple's Reply Claim Construction Brief (Doc. #41), Identity's Sur-Reply Claim Construction Brief (Doc. #44), Identity's Motion to Supplement Claim Construction Record (Doc. #67), and all related briefing.

The court held a claim-construction hearing on March 9, 2022. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). The court renders this memorandum opinion and order to construe certain terms of United States Patent Nos. 7,493,497 ("'497 Patent"), 8,020,008 ("'008 Patent"), 8,489,895 ("'895 Patent"), and 9,507,948 ("'948 Patent") (collectively, the "Patents-in-Suit"). Having considered the patents, prosecution history, applicable law, briefing, and arguments of counsel, the court renders the following claim-construction order.

I. Introduction

Identity sued Apple in the Waco Division of the United States District Court for the Western District of Texas, alleging that Apple infringes on the Patents-in-Suit through its "Secure

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

Enclave" system, which provides security and authentication measures in various Apple products such as iPhones, iPads, and MacBooks. The Patents-in-Suit share a common specification and describe a "digital identity device" that uses digital identity data and a microprocessor with a unique identifier to secure digital transactions. The Waco Division transferred the case to this court on January 20, 2022.

II. Legal Standard

Determining infringement is a two-step process. *See Markman*, 517 U.S. at 384 ("[There are] two elements of a simple patent case, construing the patent and determining whether infringement occurred . . . ."). First, the meaning and scope of the relevant claims must be ascertained. *Id.* Second, the properly construed claims must be compared to the accused device. *Id.* Step one, claim construction, is the issue before the court.

Claim construction is "'exclusively' for 'the court' to determine." *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 321 (2015). The court construes patent claims without the aid of a jury. *See Markman*, 517 U.S. at 391. The words of a claim "are generally given their ordinary and customary meaning." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). "[T]he ordinary and customary meaning of a claim 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 . . . ." *Id.* at 1313. The person of ordinary skill in the art is considered to have read the claim term in the context of the entire patent. *Id.* To ascertain the meaning of a claim, a court must look to the claim, the specification, and the patent's prosecution history. *Id.* at 1314–17.

Claim language guides the court's construction of a claim term. *Id.* at 1314. "[T]he context in which a term is used in the asserted claim can be highly instructive." *Id.* Other claims, asserted

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

and unasserted, can provide more instruction because "terms are normally used consistently throughout the patent . . . ." *Id.* Differences among claims, such as additional limitations in dependent claims, can provide more guidance. *Id.* at 1314–15.

Claims must also be read "in view of the specification, of which they are a part." *Forest Lab'ys, LLC v. Sigmapharm Lab'ys, LLC*, 918 F.3d 928, 933 (Fed. Cir. 2019). "[T]he specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.'" *Phillips*, 415 F.3d at 1315 (quoting *Vitronics*, 90 F.3d at 1582). In the specification, a patentee may define a term to have a meaning that differs from the meaning that the term would otherwise possess. *Id.* at 1316. In such a case, the patentee's lexicography governs. *Id.* The specification may also reveal a patentee's intent to disavow claim scope. *Id.* Such intention is dispositive of claim construction. *Id.* Although the specification may suggest that a certain embodiment is preferred, a particular embodiment appearing in the specification will not be read into the claim when the claim language is broader than the embodiment. *Electro Med. Sys., S.A. v. Cooper Life Scis., Inc.*, 34 F.3d 1048, 1054 (Fed. Cir. 1994).

The prosecution history is another tool to supply the proper context for claim construction because it shows how the inventor understood the invention. *Phillips*, 415 F.3d at 1317. A patentee may also serve as his own lexicographer and define a disputed term in prosecuting a patent. *Home Diagnostics, Inc. v. LifeScan, Inc.*, 381 F.3d 1352, 1356 (Fed. Cir. 2004). Similarly, distinguishing the claimed invention over the prior art during prosecution indicates what a claim does not cover. *Spectrum Int'l, Inc. v. Sterilite Corp.*, 164 F.3d 1372, 1378–79 (Fed. Cir. 1988). The doctrine of prosecution disclaimer precludes a patentee from recapturing a specific meaning that was previously disclaimed during prosecution. *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

1314, 1323 (Fed. Cir. 2003). A disclaimer of claim scope must be clear and unambiguous. *Middleton, Inc. v. Minnesota Mining & Mfg. Co.*, 311 F.3d 1384, 1388 (Fed. Cir. 2002).

Although "less significant than the intrinsic record in determining the legally operative meaning of claim language," the court may rely on extrinsic evidence to "shed useful light on the relevant art." *Phillips*, 415 F.3d at 1317 (internal quotations omitted). Technical dictionaries and treatises may help the court understand the technology and the way one skilled in the art might use a claim term, but such sources may also provide overly broad definitions or may not be indicative of how a term is used in the patent. *See id.* at 1318. Similarly, expert testimony may aid the court in determining the meaning of a term in the pertinent field, but "conclusory, unsupported assertions by experts as to the definition of a claim term are not useful to a court." *Id.* Generally, extrinsic evidence is "less reliable than the patent and its prosecution history in determining how to read claim terms . . . ." *Id.* Extrinsic evidence may be useful when considered in the context of the intrinsic evidence, but it cannot "alter a claim construction dictated by a proper analysis of the intrinsic evidence." *Id.* at 1319; *On-Line Techs., Inc. v. Bodenseewerk Perkin-Elmer GmbH*, 386 F.3d 1133, 1139 (Fed. Cir. 2004). To the extent the court "make[s] subsidiary factual findings about th[e] extrinsic evidence," the court construes the claims in light of those factual findings. *Teva Pharms.*, 574 U.S. at 320.

III. Analysis

The parties present two overarching disputes for the court's consideration. First, the parties dispute whether certain terms are drafted in a means-plus-function format. *See* 35 U.S.C. § 112, ¶ 6 ("Section 112 ¶ 6"); *Williamson v. Citrix Online*, LLC, 792 F.3d 1339, 1347–49 (Fed. Cir.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

2015).[1] The parties also dispute whether the claims are indefinite even if the court finds that Section 112 ¶ 6 does not apply. *See* 35 U.S.C. § 112, ¶ 2 ("Section 112 ¶ 2").[2] For the second set of terms, the parties dispute the construction of claim language that recites a "microprocessor identity" (or "microprocessor identity information") that "uniquely identifies" the microprocessor (or the "microprocessor identity device"). The court will address each dispute in turn.

A. First set of disputed terms

The parties first dispute whether Section 112 ¶ 6 applies to certain terms that describe binding the "digital identity data" to the "microprocessor," "microprocessor identity," or "microprocessor identity device," depending on the claim. Apple argues that Section 112 ¶ 6 applies and that the terms are indefinite because they fail to recite sufficient structure. Identity argues that Section 112 ¶ 6 does not apply and the terms should be given their plain and ordinary meaning. The parties also dispute whether the claims are indefinite even if the court finds that Section 112 ¶ 6 does not apply. The parties' proposed constructions are listed in the following table:

Claim Term	Identity's Construction	Apple's Construction
"the digital identity data is bound to the microprocessor identity by encrypting the digital identity data using an algorithm that uses the microprocessor identity" ('497 Patent, Claim 1)	Section 112 ¶ 6 does not apply; not indefinite under Section 112 ¶ 2; plain and ordinary meaning.	Section 112 ¶ 6 applies. Function: "binding the digital identity data to the microprocessor identity by encrypting the digital identity data using the microprocessor identity"

[1] The Leahy-Smith American Invents Act of 2011 (the "Act") changed the numbering of the relevant subsection from Section 112 ¶ 6 to Section 112(f). Because the substance of the subsection did not change, the court will refer to the relevant subsection as Section 112 ¶ 6 in line with the numeration at the time of the patent filing.

[2] *See supra* note 1. The Act changed the numbering of the relevant subsection to Section 112(b), but the court will refer to it as Section 112 ¶ 2.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.