

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CPC PATENT TECHNOLOGIES PTY LTD., )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 6:21-cv-00165-ADA  
 )  
 APPLE INC., ) **JURY TRIAL DEMANDED**  
 )  
 Defendant. )

**PLAINTIFF CPC PATENT TECHNOLOGIES PTY LTD.'S  
RESPONSE TO DEFENDANT APPLE INC.'S CLAIM CONSTRUCTION BRIEF**

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Plaintiff CPC Patent Technologies Pty Ltd. (“CPC”) asserts three patents (“the Asserted Patents”)<sup>1</sup> in this case against Apple Inc. (“Apple”). The parties dispute the following terms.

## I. INTRODUCTION

Consistent across the terms to be construed is the absence in the Asserted Patents of any specialized definitions therefor. Accordingly, CPC urges that such terms be afforded their plain and ordinary meanings per governing precedent. *See, e.g., Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). Apple ignores that precedent more than once, and violates a variety of other canons of claim construction in offering definitions that are not supported by the evidence intrinsic to the subject patents. As set forth herein, CPC’s constructions of the disputed limitations are the correct ones, and those proposed by Apple should be rejected.

## II. ARGUMENT

### A. ’039 Patent

#### 1. “biometric card pointer system”/“biometric card pointer enrolment system”

CPC proposes that these “system” limitations from the preambles of the various independent claims of the ’039 Patent be afforded their plain and ordinary meaning, as the specification of such patent does not clearly ascribe a specialized meaning to that term. The words of a claim are generally given their ordinary and customary meaning as understood by a person of ordinary skill in the art when read in the context of the specification and prosecution history. *See Phillips*, 415 F.3d at 1313. There are only two exceptions to this general rule: 1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee

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<sup>1</sup> The Asserted Patents are U.S. Patent Nos. 8,620,039 (“the ’039 Patent”), 9,269,208 (“the ’208 Patent”), and 9,665,705 (“the ’705 Patent”).

disavows the full scope of a claim term either in the specification or during prosecution. *Vitronics Corp. v. Conceptor, Inc.*, 90 F.3d 1576, 1580 (Fed. Cir. 1996).

To act as a lexicographer, a patentee must “clearly set forth a definition of the disputed claim term” other than its plain and ordinary meaning. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). Disavowal of claim scope occurs “[w]here the specification makes clear that the invention does not include a particular feature, that feature is deemed to be outside the reach of the claims of the patent, even though the language of the claims, read without reference to the specification, might be considered broad enough to encompass the feature in question.” *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1341 (Fed. Cir. 2001). “The patentee may demonstrate intent to deviate from the ordinary and accustomed meaning of a claim term by including in the specification expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.” *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002).

Apple does not point to any actual instance of lexicography for these limitations, pointing rather to the patentee’s “clear and concise *description* of the ‘biometric pointer card system.’” Apple Br. at 8 (emphasis added). However, it is not enough for a patentee to simply disclose a single embodiment or use a word in the same manner in all embodiments - the patentee must “clearly express an intent” to redefine the term. *Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527 F.3d 1379, 1381 (Fed. Cir. 2008). And, in any event, embodiments from the specification are not to be read into a claim as limitations. *Liebel-Flarsheim v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004). Apple attempts to violate this prohibition by seeking to have a specification “description” read into the subject claims.

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