

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

RFCYBER CORP.,

Plaintiff,

v.

APPLE INC.,

Defendant.

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Case No. 6:21-cv-00916-ADA

JURY TRIAL DEMANDED

**PLAINTIFF RFCYBER CORP.'S
SUR-REPLY CLAIM CONSTRUCTION BRIEF**

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I. DISPUTED TERMS

A. “e-purse” / “electronic purse” (identified by both parties)

Term	RFCyber’s Construction	Apple’s Construction
“e-purse” “electronic purse”	“software that stores electronic financial information in a local device”	“software that stores electronic financial information, including electronic value, in a local portable device”

On its face, Apple’s construction potentially requires that an e-purse always store electronic value. Apple now backs away from that position to insist it only seeks to impose a requirement that an e-purse must be *capable* of storing electronic value. (Reply at 1.) But as explained in RFCyber’s Responsive Brief, neither the definition of “e-purse” nor the intrinsic evidence compel such a requirement.

Apple misreads the prosecution history as requiring the capability of storing electronic value. (Reply at 2.) As RFCyber explained in its Responsive Brief, during prosecution, the applicants distinguished the e-purse of the invention from an e-wallet that stored financial information “at the backend.” (Resp. at 8.) By contrast, the e-purse of the invention “describes about electronic money in a local portable device.” (*Id.*, quoting Ex. 1 at 9.) According to Apple, however, “the applicant characterized the e-purse ‘in the instant application’ as one that holds ‘electronic money’—that is, value—in a local portable device.” (Reply at 2.)

The applicants never stated that the e-purse “holds” any “value.” Instead, the applicants explained that the e-purse “describes about electronic money in a local portable device.” (Ex. 1 at 9.) In other words, the e-purse stores *information* about electronic money locally. Further, “electronic money” is not synonymous with “electronic value.” Instead, “electronic money” is a “generic name for the exchange of money through the internet.” (Ex. D at 188, 191.) Thus,

financial information stored locally meets the applicants’ description of an e-purse as “describ[ing] about electronic money in a local portable device.” There has been no disclaimer of e-purses that cannot store electronic value. *Cordis Corp. v. Boston Sci. Corp.*, 561 F.3d 1319, 1329 (Fed. Cir. 2009) (“A disclaimer must be ‘clear and unmistakable,’ and unclear prosecution history cannot be used to limit claims.”); *RF Cyber Corp. v. Google LLC*, No. 2:20-CV-274-RG, 2021 WL 5357465, at *8 (E.D. Tex. Nov. 17, 2021) (“This prosecution history therefore does not amount to a definitive statement by the patentee that the term ‘e-purse’ requires *money* stored locally.”).

Apple misunderstands RF Cyber’s explanation that *some* e-purses can store electronic value as an admission that *all* e-purses must have the capability of storing such value. (Reply at 2.) RF Cyber is not arguing here (or anywhere else) that an e-purse *must lack* the capability to store value; however, that capability is not required.

The extrinsic evidence is consistent with RF Cyber’s construction. As explained in RF Cyber’s Responsive Brief, the definition of e-purse is a “piece of personalised software . . . that contains, in coded form, such items as credit card information, digital cash. . . .” (Resp. at 7 (quoting Ex. A).) Apple takes that exemplary list of items that may be contained in an e-purse as a *mandatory* list of items that *must be storeable* in an e-purse. (Reply at 2-3.) By Apple’s logic, an e-purse of the Asserted Patents could not be an e-purse unless it also included “a digital identity certificate, and standardised shipping information,” as these are also included as possible contents of an e-purse. (Ex. A at 101.) There is no evidence that one of skill in the art would understand “e-purse” to be so limited. Indeed, as explained in RF Cyber’s Responsive Brief, the ’046 Patent contains specific claim elements that include a “balance” relating to electronic value. (Resp. at 10.) If every e-purse had such a requirement, there would be no need to recite those limitations in the ’046 Patent.

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