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

RFCyber CORP.,	§ § §	Case No. 6:22-cv-00697-ADA
Plaintiff,	§ §	**JURY TRIAL DEMANDED**
v.	§ § §	
VISA U.S.A. INC.,	§ § §	
Defendant.	§ §	

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

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I.   INTRODUCTION

Visa's construction of "fund" improperly limits the term to a "money balance." RFCyber's Opening Brief explained that there was no such definition within the specifications of the Asserted Patents, and that Visa has failed to show that the Court should so limit the term.

As all other disputes have been obviated, the Court should reject Visa's construction of fund and afford the term its plain and ordinary meaning.

II.   TERMS NO LONGER IN DISPUTE

To streamline the issues before the Court, RFCyber withdrew its infringement assertions against Visa as to all claims of the '218 Patent, as well as claim 1 of the '787 Patent and its dependent claims. As a result, the following terms and indefiniteness positions are no longer in dispute:

- Alleged indefiniteness of the asserted system claims of the '218 and '787 Patents;

- "contactless interface that facilitates communication between the e-purse applet in the smart card and the payment server over a wired network,"; and

- "the agent sends commands or receives responses thereto through the RFID reader to/from the e-purse applet, and on the other hand, the agent composes network requests and receives responses thereto from the network server."

Accordingly, the only terms left in dispute are the "fund" terms discussed below.

III.   DISPUTED TERMS

A.   "fund" / "funded" / "funding" / "fund stored in an emulator"

Term and Claims	RFCyber's Construction	Visa's Construction
"fund" / "fund stored in the emulator" '855 Patent, Claim 9, '787 Patent, Claim 11	Plain and ordinary meaning except for "emulator"	"money balance" / "money balance stored in the emulator"
"fund" / "funded" / "funding"	Plain and ordinary meaning	"add / added / adding money balance to"

As explained in RFCyber's Responsive Brief, Visa seeks to import a "balance" requirement, despite the term appearing only once in the specification. RFCyber Br. at 4-7. The Court should reject Visa's attempt to manufacture a non-infringement position by requiring a specific number (a "money balance") stored on a device.

In Reply, Visa first argues that the Court is required to provide a construction for the term to resolve the dispute. Reply at 2. But the Court can resolve the dispute by rejecting Visa's redefinition of "fund" to "money balance" and simply allow the jury to apply the easily understandable term "fund."

The parties agree that the fund recited in the claims is not *actual* currency but a representation of currency stored elsewhere. Visa Br. at 5; RFCyber Br. at 5-6. Instead, the dispute is whether the representation on the device must be some "money balance" or a representation of the money stored elsewhere. The intrinsic and extrinsic evidence makes clear that it is the latter.

Visa's cited intrinsic evidence is dependent on the specification's description of "funding an e-purse." Reply at 3-5. But "funding an e-purse" is not a claimed element of any Asserted Claim. Those specific words are found only in Claims 1, 4, 9, and 13 of the '855 Patent. As explained in RFCyber's Responsive Brief, and further clarified below, "funding an e-purse" is a

non-limiting preamble to claims 1 and 9 of the '855 Patent. Moreover, the language in claims 4

and 13 is a reference back to claims 1 and 9.

RFCyber provided intrinsic evidence that the other "fund" terms ("fund transfer request"

and "fund stored in the emulator"), read in light of the specification, expansively allow the fund

stored in the emulator to refer to representations of the source of the money in the transaction, such

as tokens, keys, or other objects. RFCyber Resp. Br. at 5-6. Similarly, the "fund transfer request"

merely requires funds to be transferred from a financial institution. *Id.* Visa's further requirement

that the funds be transferred ***to*** a balance stored on the device is, at best, an attempt to limit the

claim to an embodiment.

The extrinsic evidence further confirms that Visa's construction is improperly narrow.

Indeed, the cited evidence says nothing about a "money balance." Instead, Exhibit 1 defines

"fund" as "1: store; 2: sum of money intended for a special purpose." Ex. 1 at

VISA_USA_00009148. A bank account, for example, is certainly a store of money, as is a credit

card account or payment token. In each case, the representation on the mobile device is directly

tied to the money stored. Moreover, Visa makes no effort to show that the second definition ("sum

of money intended for a specific purpose")[1] applies to these patents (or that a person of ordinary

skill in the art would understand that to be the "fund" as recited). Visa Br. at 13. But even if it

did, a token or other representation would still be linked to the sum of money. Exhibit 2 is even

clearer. It defines "fund" as "a supply of money or monetary resources." A credit card number,

bank account number, or payment token stored in the emulator is clearly a representation of a

supply of money or monetary resources.

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[1] Visa's Opening Brief omits "intended for a specific purpose" from its quotation and discussion.
Visa Br. at 13.

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