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

RFCYBER CORP., *Plaintiff,*	§	
	§	
v.	§	**W-22-CV-00697-ADA**
	§	
VISA U.S.A, INC., *Defendant.*	§	

CLAIM CONSTRUCTION ORDER AND MEMORANDUM

Before the Court are the Parties' claim construction briefs: Defendant Visa U.S.A. Inc.'s ("Visa") Opening Claim Construction Brief (ECF No. 41), Plaintiff RFCyber Corp.'s (RFCyber) Reply Claim Construction Brief (ECF No. 43), Visa's Reply Claim Construction Brief (ECF No. 44), RFCyber's Sur-Reply Brief (ECF No. 45), and the Parties Joint Claim Construction Statement (ECF No. 46). The Court held a *Markman* hearing on October 25, 2023 when it informed the parties that the Court would maintain the preliminary constructions it had emailed the parties prior to the hearing.

I. Description of the Asserted Patents

The Asserted Patents are U.S. Patent Nos. 8,448,855 ("the '855 patent") and 9,189,787 ("the '787 patent"). The '855, and '787 Patents share a common specification and are directed to aspects of a mobile payment system focusing on inventions for "portable devices, functioning as an electronic purse." Before the *Markman* Hearing, the Court severed and stayed all litigation of U.S. Patent No. 9,240,009 due to the Patent Trial and Appeal Board finding all claims unpatentable under 35 U.S.C. § 103(a). ECF No. 48. Furthermore, many of the claim construction disputes first raised in Visa's Opening Claim Construction Brief were resolved by RFCyber's withdrawal of its

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

infringement assertions against Visa as to all claims of U.S. Patent 8,118,218 and claim 1 of the '787 Patent. *See* ECF No. 45 at 1. With those contentions resolved, the only disputed terms before the Court are "fund" "fund stored in the emulator" "funded" and "funding" as used in claim 9 of the '855 Patent and claims 1 and 11 of the '787 Patent. *Id.* at 2–5.

II. Legal Standard

a. General Principles

The general rule is that claim terms are generally given their plain-and-ordinary meaning. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*); *Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336, 1347 (Fed. Cir. 2014), *vacated on other grounds*, 575 U.S. 959, 959 (2015) ("There is a heavy presumption that claim terms carry their accustomed meaning in the relevant community at the relevant time.") (internal quotation omitted). The plain-and-ordinary meaning of a 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." *Phillips*, 415 F.3d at 1313.

The "only two exceptions to [the] general rule" that claim terms are construed according to their plain-and-ordinary meaning are when the patentee (1) acts as his/her own lexicographer or (2) disavows the full scope of the claim term either in the specification or during prosecution. *Thorner v. Sony Comput. Ent. Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). The Federal Circuit has counseled that "[t]he standards for finding lexicography and disavowal are exacting." *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014). To act as his/her own lexicographer, the patentee must "clearly set forth a definition of the disputed claim term" and "'clearly express an intent' to [define] the term." *Thorner*, 669 F.3d at 1365.

"Like the specification, the prosecution history provides evidence of how the PTO and the inventor understood the patent." *Phillips*, 415 F.3d at 1317. "[D]istinguishing the claimed

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

invention over the prior art, an applicant is indicating what a claim does not cover." *Spectrum Int'l, Inc. v. Sterilite Corp.*, 164 F.3d 1372, 1379 (Fed. Cir. 1998). 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 1314, 1323 (Fed. Cir. 2003). "[F]or prosecution disclaimer to attach, our precedent requires that the alleged disavowing actions or statements made during prosecution be both clear and unmistakable." *Id*. at 1325–26. Accordingly, when "an applicant's statements are amenable to multiple reasonable interpretations, they cannot be deemed clear and unmistakable." *3M Innovative Props. Co. v. Tredegar Corp.*, 725 F.3d 1315, 1326 (Fed. Cir. 2013)

. A construction of "plain and ordinary meaning" may be inadequate when a term has more than one "ordinary" meaning or when reliance on a term's "ordinary" meaning does not resolve the parties' dispute. *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008). In that case, the Court must describe what the plain-and-ordinary meaning is. *Id*. "Although the specification may aid the court in interpreting the meaning of disputed claim language . . ., particular embodiments and examples appearing in the specification will not generally be read into the claims." *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988). "[I]t is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited." *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004).

Although extrinsic evidence can be useful, it is "less significant than the intrinsic record in determining 'the legally operative meaning of claim language.'" *Phillips*, 415 F.3d at 1317 (quoting *C.R. Bard, Inc. v. United States Surgical Corp.*, 388 F.3d 858, 862 (Fed. Cir. 2004)).

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

Technical dictionaries may be helpful, but they may also provide definitions that are too broad or not indicative of how the term is used in the patent. *Id*. at 1318. Expert testimony may also be helpful, but an expert's conclusory or unsupported assertions as to the meaning of a term are not. *Id*.

III. Agreed Constructions

Below are constructions of certain claim terms from the asserted patents that the Parties have agreed to. ECF No. 46 at 1–2. The Court adopts the Parties' agreed constructions in their entirety.

Term	**Patent(s) and Claims**	**Agreed Construction**
"PIN"	'855 Patent, All Claims	"personal identification number"
"e-purse" / "electronic purse"	'855 Patent, All Claims '787 Patent, All Claims	"software that stores electronic financial information in a local device"
"e-purse applet"	'855 Patent, All Claims '787 Patent, All Claims	"applet for use with an e-purse"
"smart card preloaded with an emulator" / "a SmartMX (SMX) module pre-loaded with the emulator"	'855 Patent, Claims 2 and 11	"smart card with an emulator loaded prior to the smart card being provided" / "a SmartMX (SMX) module with an emulator loaded prior to the SMX being provided"
"security authentication module" and "SAM"	'855 Patent, All Claims '787 Patent, Claim 16	"hardware or software module containing data necessary to authenticate transactions"
"emulator"	'855 Patent, All Claims '787 Patent, All Claims	"a hardware device or a program that pretends to be another particular device or program that other components expect to interact with"

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

IV. Legal Analysis

The Parties' Positions

Term	Patent(s) 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"	'855 Patent, Claim 1, 4, and 13	Plain and ordinary meaning	"add / added / adding money balance to"

ECF No. 46 at 2.

The chart above demonstrates that the Parties disagree on the meaning and scope of the claim terms reflecting both verb and noun forms of "fund" (the "fund" terms). Visa argues that the RFCyber's infringement contentions reflect a construction of the above terms that exceed their plain and ordinary meanings. ECF No. 41 at 9. The essence of the dispute is whether "consumable keys and tokens" can constitute a "fund" as the term is used in the'855 and '787 Patents.

Visa's Position:

Visa requests that the court construe the "fund" terms as "money balance" or "add / added / adding money balance to." ECF No. 41 at 9. Visa's chief concern is rooted in RFCyber's infringement contention which may require the term "fund" to include tokens, consumable keys, or other objects which allow a user to make purchases. ECF No. 44 at 2. Visa sees the "fund" terms as distinct from the term "purchase" as it is used in the two patents at issue. ECF No. 41 at 10.

Visa argues that their construction is "necessary to avoid allowing RFCyber to "construe claim language to be inconsistent with the clear language of the specification" to support RFCyber's infringement positions." *Id.* (citing *ERBE Elektromedizin GmbH & ERBE USA, Inc. v. ITC*, 566 F.3d 1028, 1034 (Fed. Cir. 2009); *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*,

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.

WHAT WILL YOU BUILD? | sales@docketalarm.com | 1-866-77-FASTCASE

fastcase® Smarter legal research.