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I. BACKGROUND

Fintiv asserts that PayPal infringes claims of United States Patent Nos. 9,892,386 (the “’386 Patent”), and 11,120,413 (the “’413 Patent”), 9,208,488 (the “’488 Patent”), and 10,438,196 (the “’196 Patent”) (collectively, the “Asserted Patents”). *See* ECF Nos. 71, 103. Fintiv asserted claims 1–3 of the ’386 patent; claims 1–2 of the ’413 patent, claims 1–4 of the ’488 patent, and 1–2, 4–5 and 7 of the ’196 patent. The ’386 and ’413 patents share a common specification, and the ’488 and ’196 patents share a common specification, though the disclosures are extremely similar between both families. The ’386 and ’413 patents claim priority to Provisional Application Nos. 61/493,064 (“’064 provisional”) and 61/522,099 (“’099 provisional”) filed June 3, 2011 and August 10, 2011. The ’488 and ’196 patents claim priority to Provisional Application No. 61/562,301 (“’301 provisional”) filed November 21, 2011.

The asserted patents describe a “cloud-based transaction system” that is “also referred to as a ‘monetary transaction system’, ‘mobile wallet platform’, ‘mobile wallet program’, ‘mobile wallet transaction system’, ‘mobile financial services platform (mFS)’ or ‘electronic payment system.’” ’488 patent, 6:30–35. The architecture of the mFS platform is described in purely functional terms using a generic block diagram, as shown below in Figure 1 of the ’488 patent, titled “Platform Functional Architecture”:

Platform Functional Architecture

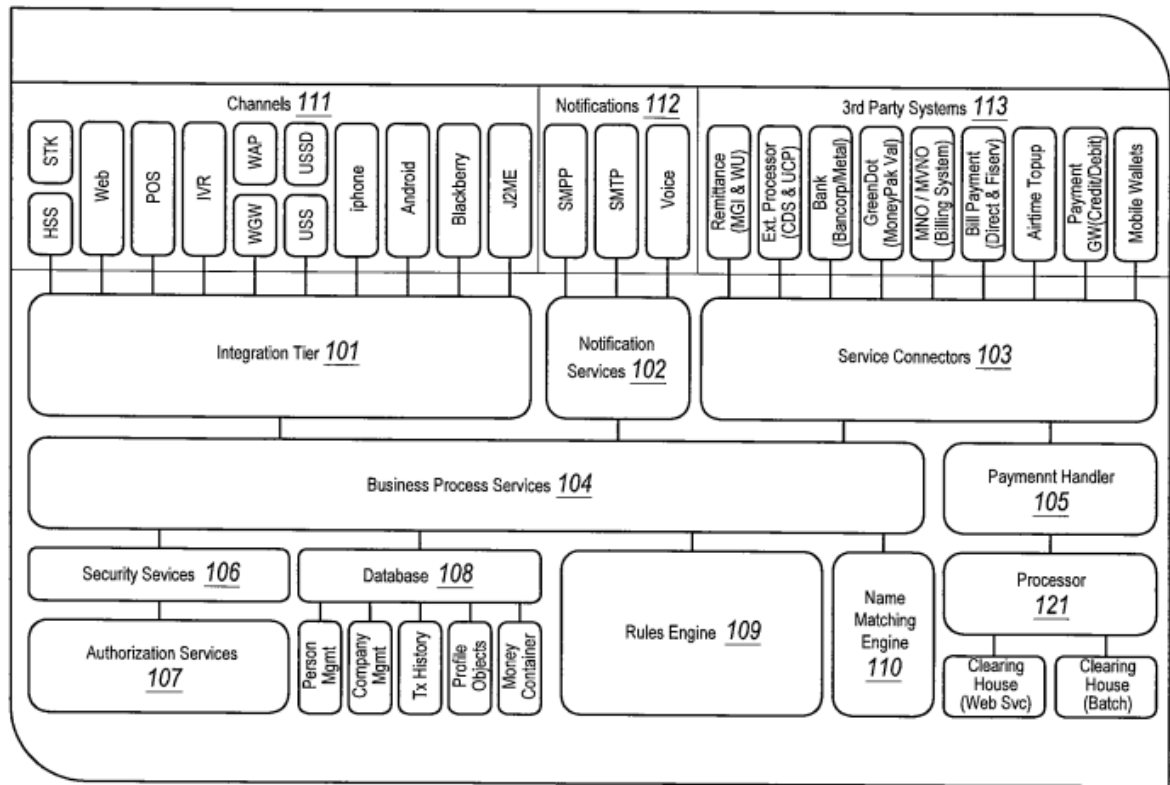


FIG. 1

ECF No. 1-8 at FIG 1.

II. LEGAL PRINCIPLES

A. Claim Construction

“It is a ‘bedrock principle’ of patent law that ‘the claims of a patent define the invention to which the patentee is entitled the right to exclude.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Innova/Pure Water Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). To determine the meaning of the claims, courts start by considering the intrinsic evidence. *Id.* at 1313; *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 861 (Fed. Cir. 2004); *Bell Atl. Network Servs., Inc. v. Covad Commc’ns Grp., Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). The intrinsic evidence includes the claims themselves, the

specification, and the prosecution history. *Phillips*, 415 F.3d at 1314; *C.R. Bard, Inc.*, 388 F.3d at 861. The general rule—subject to certain specific exceptions discussed *infra*—is that each claim term is construed according to its ordinary and accustomed meaning as understood by one of ordinary skill in the art at the time of the invention in the context of the patent. *Phillips*, 415 F.3d at 1312–13; *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003); *Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336, 1347 (Fed. Cir. 2014) (quotation marks omitted) (“There is a heavy presumption that claim terms carry their accustomed meaning in the relevant community at the relevant time.”) *cert. granted, judgment vacated*, 135 S. Ct. 1846 (2015).

“The claim construction inquiry . . . begins and ends in all cases with the actual words of the claim.” *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998). “[I]n all aspects of claim construction, ‘the name of the game is the claim.’” *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1298 (Fed. Cir. 2014) (quoting *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998)) *overruled on other grounds by Williamson v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015). First, a term’s context in the asserted claim can be instructive. *Phillips*, 415 F.3d at 1314. Other asserted or unasserted claims can also aid in determining the claim’s meaning, because claim terms are typically used consistently throughout the patent. *Id.* Differences among the claim terms can also assist in understanding a term’s meaning. *Id.* For example, when a dependent claim adds a limitation to an independent claim, it is presumed that the independent claim does not include the limitation. *Id.* at 1314–15.

“[C]laims ‘must be read in view of the specification, of which they are a part.’” *Id.* (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc)). “[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.’” *Id.* (quoting *Vitronics Corp. v.*

Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). This is true because a patentee may define his own terms, give a claim term a different meaning than the term would otherwise possess, or disclaim or disavow the claim scope. *Phillips*, 415 F.3d at 1316. In these situations, the inventor's lexicography governs. *Id.*

The specification may also resolve ambiguous claim terms “where the ordinary and accustomed meaning of the words used in the claims lack sufficient clarity to permit the scope of the claim to be ascertained from the words alone.” *Teleflex, Inc.*, 299 F.3d at 1325. But, “[a]lthough 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.” *Comark Commc'ns, Inc. v. Harris Corp.*, 156 F.3d 1182, 1187 (Fed. Cir. 1998) (quoting *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988)); *see also Phillips*, 415 F.3d at 1323. “[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).

The prosecution history is another tool to supply the proper context for claim construction because, like the specification, the prosecution history provides evidence of how the U.S. Patent and Trademark Office (“PTO”) and the inventor understood the patent. *Phillips*, 415 F.3d at 1317. Yet “because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes.” *Id.* at 1318; *see also Athletic*

Alts., Inc. v. Prince Mfg., 73 F.3d 1573, 1580 (Fed. Cir. 1996) (ambiguous prosecution history may be “unhelpful as an interpretive resource”).

Although extrinsic evidence can also 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.*, 388 F.3d at 862). Technical dictionaries and treatises may help a court understand the underlying technology and the manner in which one skilled in the art might use claim terms, but technical dictionaries and treatises may provide definitions that are too broad or may not be indicative of how the term is used in the patent. *Id.* at 1318. Similarly, expert testimony may aid a court in understanding the underlying technology and determining the particular meaning of a term in the pertinent field, but an expert’s conclusory, unsupported assertions as to a term’s definition are not helpful to a court. *Id.* Extrinsic evidence is “less reliable than the patent and its prosecution history in determining how to read claim terms.” *Id.* The Supreme Court has explained the role of extrinsic evidence in claim construction:

In some cases, however, the district court will need to look beyond the patent’s intrinsic evidence and to consult extrinsic evidence in order to understand, for example, the background science or the meaning of a term in the relevant art during the relevant time period. *See, e.g., Seymour v. Osborne*, 11 Wall. 516, 546 (1871) (a patent may be “so interspersed with technical terms and terms of art that the testimony of scientific witnesses is indispensable to a correct understanding of its meaning”). In cases where those subsidiary facts are in dispute, courts will need to make subsidiary factual findings about that extrinsic evidence. These are the “evidentiary underpinnings” of claim construction that we discussed in *Markman*, and this subsidiary factfinding must be reviewed for clear error on appeal.

Teva Pharm. USA, Inc. v. Sandoz, Inc., 574 U.S. 318, 331–32 (2015).

B. Departing from the Ordinary Meaning of a Claim Term

There are “only two exceptions to [the] general rule” that claim terms are construed according to their plain and ordinary meaning: “1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of the claim term either

in the specification or during prosecution.”¹ *Golden Bridge Tech., Inc. v. Apple Inc.*, 758 F.3d 1362, 1365 (Fed. Cir. 2014) (quoting *Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012)); *see also GE Lighting Sols., LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014) (“[T]he specification and prosecution history only compel departure from the plain meaning in two instances: lexicography and disavowal.”). The standards for finding lexicography or disavowal are “exacting.” *GE Lighting Sols.*, 750 F.3d at 1309.

To act as his own lexicographer, the patentee must “clearly set forth a definition of the disputed claim term,” and “clearly express an intent to define the term.” *Id.* (quoting *Thorner*, 669 F.3d at 1365); *see also Renishaw*, 158 F.3d at 1249. The patentee’s lexicography must appear “with reasonable clarity, deliberateness, and precision.” *Renishaw*, 158 F.3d at 1249.

To disavow or disclaim the full scope of a claim term, the patentee’s statements in the specification or prosecution history must amount to a “clear and unmistakable” surrender. *Cordis Corp. v. Bos. Sci. Corp.*, 561 F.3d 1319, 1329 (Fed. Cir. 2009); *see also Thorner*, 669 F.3d at 1366 (“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.”). “Where 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).

C. Indefiniteness

“[I]ndefiniteness is a question of law and in effect part of claim construction.” *ePlus, Inc. v. Lawson Software, Inc.*, 700 F.3d 509, 517 (Fed. Cir. 2012). Patent claims must particularly point

¹ Some cases have characterized other principles of claim construction as “exceptions” to the general rule, such as the statutory requirement that a means-plus-function term is construed to cover the corresponding structure disclosed in the specification. *See, e.g., CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1367 (Fed. Cir. 2002).

out and distinctly claim the subject matter regarded as the invention. 35 U.S.C. § 112, ¶ 2. A claim, when viewed in light of the intrinsic evidence, must “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 910 (2014). If it does not, the claim fails § 112, ¶ 2 and is therefore invalid as indefinite. *Id.* at 901. Whether a claim is indefinite is determined from the perspective of one of ordinary skill in the art as of the time the application was filed. *Id.* at 911.

In the context of a claim governed by § 112, ¶ 6, the claim is indefinite if the claim fails to disclose adequate corresponding structure to perform the claimed functions. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1351–52 (Fed. Cir. 2015). The disclosure is inadequate when one of ordinary skill in the art “would be unable to recognize the structure in the specification and associate it with the corresponding function in the claim.” *Id.* at 1352. Computer-implemented means-plus-function claims are indefinite unless the specification discloses an algorithm to perform the function associated with the limitation. *Noah Sys., Inc. v. Intuit Inc.*, 675 F.3d 1302, 1319 (Fed. Cir. 2012).

III. LEVEL OF ORDINARY SKILL IN THE ART

It is well established that patents are interpreted from the perspective of one of ordinary skill in the art (“POSITA”). *See Phillips*, 415 F.3d at 1313 (“[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, i.e., as of the effective filing date of the patent application.”). The Federal Circuit has advised that the “[f]actors that may be considered in determining the level of skill in the art include: (1) the educational level of the inventors; (2) the type of problems encountered in the art; (3) prior art solutions to those problems; (4) the rapidity with which innovations are made; (5) sophistication of the technology; and (6) education level of

active workers in the field.” *Env’tl Designs, Ltd. v. Union Oil Co. of California*, 713 F.2d 693, 696 (Fed. Cir. 1983). “These factors are not exhaustive but are merely a guide to determining the level of ordinary skill in the art.” *Daiichi Sankyo Co. Ltd. v. Apotex, Inc.*, 501 F.3d 1254, 1256 (Fed. Cir. 2007).

The parties do not dispute the qualifications of a POSITA, at least not at this stage in the case. *See generally* ECF No. 35, 38. Given that the parties do not dispute the qualifications of a POSITA at this time, and considering the factors that may be considered in determining the level of skill in the art, the Court finds that a person of ordinary skill in the art is someone with a bachelor’s degree in electrical engineering, computer science, or equivalent training, and approximately two years of work experience in software development in the field of mobile payment systems. Lack of work experience can be remedied by additional education, and vice versa.

IV. CONSTRUCTION OF DISPUTED TERM

For the purposes of this order, the parties’ dispute the meaning and scope of one term or phrase in the Asserted Patents. The dispute is addressed below.

“payment handler” / “payment handler service” (’386 patent claims 1–3, ’413 patent claims 1–2, ’488 patent claim 1, ’196 patent claim 1)

Claim Term	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction	Court’s Final Construction
“payment handler” / “payment handler service” (’386 patent claims 1–3, ’413 patent claims 1–2, ’488 patent claim 1, ’196 patent claim 1)	Plain and ordinary meaning	This is a means-plus-function limitation. Function: “use APIs of different payment processors including one or more APIs of banks, credit and debit cards processors, bill payment processors” (’386, ’413)	This is a means-plus-function limitation. Function: “use APIs of different payment processors including one or more APIs of banks, credit and Debit cards processors, bill payment processors” (’386, ’413) “expose a common API for interacting with different

	Function: “expose a common API for interacting with different payment processors” (’488, ’196) Structure: None, and therefore indefinite under 112(f)	payment processors” (’196) Structure: None, and therefore indefinite under 112, ¶ 6
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The terms “payment handler” and “payment handler service” appear in claims 1–3 of the ’386 patent, claims 1–2 of the ’413 patent, claim 1 of the ’488 patent, and claim 1 of the ’196 patent. The following table depicts how the terms “payment handler” and “payment handler service” appear in the claims Asserted Patents:

’386 patent claims 1–3	“[the] <i>payment handler service operable to</i> use APIs of different payment processors including one or more APIs of banks, credit and debit cards processors, bill payment processors.”
’413 patent claims 1–2	“[initiating] a <i>payment handler configured to</i> use APIs of different payment processors including one or more APIs of banks, credit and debit cards processors, and bill payment processors”
’488 patent claim 1, ’196 patent claim 1	“a <i>payment handler that exposes</i> a common API for interacting with different payment processors.”

For the payment handler component of the mFS platform depicted above and recited in the claims, the specifications of the asserted patents merely repeat—nearly verbatim—the language of the claims. *Compare, e.g.,* ’386 patent, claim 1 (below left) *with* 13:29–34 of the specification (below right):

’386 patent, claim:	’386 patent, specification:
“[the] payment handler service operable to use APIs of different payment processors	Payment handler 105 is configured to wrap APIs of different payment processors, such as,

including one or more APIs of banks, credit and debit cards processors, bill payment processors.”	for example, banking accounts, credit/debit cards or processor 121. Payment handler 105 exposes a common API to facilitate interactions with many different kinds of payment processors.
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a. The Parties’ Positions

i. PayPal’s Position

PayPal contends that this term is a means-plus-function term governed by 35 U.S.C. 112, ¶ 6 lacking sufficient structure and is therefore indefinite. ECF No. 35 at 18. According to PayPal, “[a]s with the claims in *Williamson*, each of the claims in which these terms appear ‘is drafted in a format consistent with traditional means-plus function limitations,’ and ‘merely replaces the term “means” with’ the term ‘payment handler’ or ‘payment handler service.’” *Id.* PayPal explains that the “connecting terms, ‘that,’ ‘operable to,’ and ‘configured to’ are used to describe the function performed by the ‘payment handler’ and ‘payment handler service.’” *Id.* PayPal therefore argues that these terms are consistently used by terms found to invoke section 112, ¶ 6, and do not themselves, impart structure. *Id.*

PayPal then explains that other courts have “found the term ‘handler’ fails to connote any particular structure to a person of ordinary skill.” *Id.* at 19 (citing *Cypress Lake Software, Inc. v. Samsung Elecs. Am., Inc.*, 382 F. Supp. 3d 586, 622–23 (E.D. Tex. 2019) (holding “handler ... fail[s] to impart structure into the term ‘component,’” and noting that “[t]he ordinary meanings of [handler does] not connote structure.”)) PayPal also relies on extrinsic evidence, including technical dictionaries, that demonstrate that the term “handler” does not impart any structure. *See id.* PayPal thus asserts that the term “handler” or “handler service” are analogous to other “nonce” terms found to have invoked Section 112, ¶ 6. *Id.*

Because it contends the “payment handler” terms are subject to 112, ¶ 6, PayPal next contends that the specification does not disclose sufficient structure. *Id.* at 20. Specifically, Fintiv contends that the Asserted Patents fail to disclose sufficient structure to perform the functions of “us[ing] APIs of different payment processors including one or more APIs of banks, credit and debit cards processors, bill payment processors” and “expos[ing] a common API for interacting with different payment processors.” *See id.*; *see also e.g.*, ’386 Patent claim 1; ’488 Patent claim 1. PayPal explains that the sole description in each of the asserted patents relating to the “payment handler” is connection with Fig. 1, which depicts the payment handler (reference numeral 105) as a blank box. *Id.* at 20–21. And the specifications state only that the “[p]ayment handler 105 is configured to wrap APIs of different payment processors, such as, for example, banking accounts, credit/debit cards or processor 121” and that “[p]ayment handler 105 exposes a common API to facilitate interactions with many different kinds of payment processors.” *Id.* at 21 (citing ’386 patent at 13:29–34; ’196 patent at 10:21–26).

According to PayPal, the specifications of the asserted patents do not disclose any algorithm to perform the recited functions. *Id.* PayPal argues that specification’s description of “wrap[ping] APIs of different payment processors” merely refers to the generic process of translating APIs. *Id.* Thus, PayPal contends a POSITA would not understand whether the “wrapping” of APIs occurs on the mFS side; i.e., that banks communicate with the payment handler using their own APIs, and the payment handler wraps those APIs into a common API for access by other applications, or that the mFS system exposes a common API for banks to use. *Id.* Accordingly, because the specification does not recite sufficient structure, PayPal asserts that the terms are indefinite.

ii. *Fintiv's Position*

Fintiv responds that the “payment handler” terms should be construed according to their plain and ordinary meaning and urges the Court to “reject PayPal’s means-plus-function/indefiniteness argument.” ECF No. 38 at 12. Fintiv first responds that “[b]ecause this claim term does not contain the word ‘means,’ the Court must give effect to the presumption against applying § 112, ¶ 6, rebuttable only ‘if the challenger demonstrates that the claim term fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function.’” *Id.* According to Fintiv, the “claims themselves connote sufficient structure by describing how the ‘payment handler’ / ‘payment handler service’ component achieves its operation and objectives.” *Id.* Fintiv contends that the “payment handler service” component would be understood by a POSITA to describe a component of the “monetary transaction system.” *Id.* Fintiv explains that “the Payment Handler component 105 is shown clearly in Figure 1, which illustrates a monetary transaction system architecture.” *Id.* Fintiv then points to the “dataflows” in figures 20A through 22J that allegedly “show numerous examples of how the Payment Handler 105 interacts with other services in the mFS sufficient for a POSITA to find structure. *Id.* at 14.

Fintiv also contends that the claim terms connote sufficient structure based on the use of the term “payment handler” in IETF RFC 2935. *See* ECF No. 41 ¶ 51. RFC 2935 is the “HTTP supplement” to a larger standard, the Internet Open Trading Protocol (IOPT). ECF No. 48-3 at 1. Fintiv’s expert, Kai Johnson, opines that “[a]t the time, the term was so well understood that the IETF RFC did not provide a specific definition beyond the plain and ordinary meaning.” ECF No. 41 ¶ 51.

Fintiv then contends that “[e]ven to the extent, arguendo, the ‘payment handler’ terms are

governed by § 112, ¶ 6, they are not indefinite.” ECF No. 38 at 16 According to Fintiv, “the data flows provided in the 61/493,064 provisional application and dataflows in the patent specifications are sufficient procedures for accomplishing the given result, which provides sufficient structure.” *Id.*

b. The Court’s Analysis

Consistent with the Court’s oral ruling on the record, the Court finds that the “payment handler” terms invoke 112, ¶ 6, and because the specification does not disclose sufficient corresponding structure, the Court finds that these terms are indefinite.

i. The “payment handler” terms invoke 112, ¶ 6

If a claim limitation does not use the word “means,” a presumption exists that the limitation does not invoke 35 U.S.C. § 112, ¶ 6. *Williamson*, 792 F.3d at 1349. A party may overcome the presumption by showing that the claim limitation recites “function without reciting sufficient structure for performing that function.” *Id.* (citation omitted). As with the claims in *Williamson*, each of the claims in which these terms appear “is drafted in a format consistent with traditional means-plus function limitations,” and “merely replaces the term ‘means’ with” the term “payment handler” or “payment handler service.” *Id.* at 1350. The connecting terms, “that,” “operable to,” and “configured to” are used to describe the function performed by the “payment handler” and “payment handler service.” These terms are consistently used by terms found to invoke section 112, ¶ 6, and do not themselves, impart structure. *See, e.g., Transocean Offshore Deepwater Drilling, Inc. v. Pac. Drilling, Inc.*, No. CIV.A. H-13-1088, 2015 WL 3422410, at *29 (S.D. Tex. May 27, 2015); *see also In re Fuetterer*, 319 F.2d 259, 265 (CCPA 1963).

Of special note here, other courts have found the term “handler” fails to connote any particular structure to a person of ordinary skill. *See, e.g., Cypress Lake Software*, 382 F. Supp. 3d

at 622–23 (E.D. Tex. 2019) (holding “handler . . . fail[s] to impart structure into the term ‘component,’” and noting that “[t]he ordinary meanings of [handler does] not connote structure.”). Likewise, PayPal presented evidence that technical dictionaries also demonstrate that the term “handler” does not impart any structure. *See* ECF No. 35 at 19. The Court finds that Fintiv’s reliance on IETF RFC 2935 is misplaced. As discussed above, RFC 2935 is the “HTTP supplement” to a larger standard, the Internet Open Trading Protocol (IOPT). *See* ECF No. 48-4 at 1. The IOPT is described in a separate document, RFC 2801, which defines the term “payment handler” as “the entity that physically receives the payment from the Consumer on behalf of the Merchant” (ECF No. 48-3 at 17)—i.e., the payment processor. Contrary to Fintiv’s argument that the term connotes structure, the IOTP protocol evidences the opposite: “payment handler” can refer to many different entities in a payment system with different structures.

Thus, the term “handler” or “handler service” are analogous to other “nonce” terms found to have invoked Section 112, ¶ 6, such as “module” that the Federal Circuit noted was “simply a generic description of software or hardware that performs a specified function.” *Williamson*, 792 F.3d at 1350 (“‘Module’ is a well-known nonce word that can operate as a substitute for ‘means’”) And the prefix “payment” does not impart structure onto the terms “handler” or “handler services.” It merely “describes the function of the “handler” or “handler service,” which is to perform payment functions. *Rain Computing, Inc. v. Samsung Elecs. Am., Inc.*, 989 F.3d 1002, 1006 (Fed. Cir. 2021) (“Nor does the prefix ‘user identification’ impart structure because it merely describes the function of the module: to identify a user.”). This is confirmed by the further purely functional recitations of the term “payment handler” used in the claims.

The Court will also briefly address Fintiv’s arguments made in its motion for reconsideration (ECF No. 62) on this point, which the Court denied on May 13, 2023. ECF No.

96. Of import here, Fintiv raises in its motion for reconsideration an argument that “payment handler” refers to software, and therefore connotes the same class of structures as “code / applications.” See ECF No. 62 at 4–5. To advance this argument, Fintiv cites PayPal’s expert’s declaration (*id.*) and *Dyfan, LLC v. Target Corp.*, 28 F.4th 1360 (Fed. Cir. Mar. 24, 2022). Fintiv appears to argue that § 112, ¶ 6 should not apply under *Dyfan* because: (1) certain dictionary definitions cited by Dr. Chatterjee for “handler” and “service” relate to software, 6 and (2) the *Dyfan* court held the terms “code / applications” connote a class of structures to a POSA. ECF No. 62 at 5.

The Court, however, finds that Fintiv’s reliance on *Dyfan* is wrong for at least two reasons: (1) the claims in *Dyfan* expressly recited “code configured to be executed by at least one of the plurality of mobile devices, the code, when executed, configured to” perform a series of method steps involving the operation of definitive structural components: a server and a mobile device (*see Dyfan*, 28 F.4th at 1363); and (2) in reaching its decision, the Federal Circuit credited the patentee’s un rebutted expert testimony supporting its position that the “code / application” limitations described software instructions (*id.* at 1368). Unlike in *Dyfan*, there is simply no testimony from either party’s expert that the “payment handler” terms would have connoted structure of software code to perform the recited function. Dr. Chatterjee provided testimony that the term provides no structure beyond a blank box (ECF No. 35-1 ¶¶ 55, 5), and critically, that a POSA would not have understood how to implement the recited functions. *Id.* ¶ 58 (“a POSA would not have understood whether the ‘wrapping’ of APIs occurs on the [server side or the client side] . . . a POSA would not have understood [to] what entity the payment handler’s ‘common API’ is exposed.”). And as discussed above, Fintiv’s expert merely cited a standard that functionally defines the term “payment handler” as “the entity that physically receives the payment

from the Consumer.” ECF No. 48-3 at 17. In other words, whereas in *Dyfan* the patentee’s expert testimony that the term “code/application” connoted software structure to a POSA was unrebutted, here both parties’ experts rebut the position Fintiv now advances.

The Court has considered Fintiv’s remaining arguments for why the “payment handler” terms are not subject to 112 ¶ 6 and finds them unpersuasive. The Court therefore finds that PayPal has overcome the presumption that the “payment handler” terms are not subject to 112 ¶ 6 because the “payment handler” terms recite “function without reciting sufficient structure for performing that function.” *Williamson*, 792 F.3d at 1349. Given that the Court finds these terms subject to 112 ¶ 6, the Court proceeds to consider whether the specification discloses sufficient corresponding structure to render it not indefinite.

ii. The specification does not disclose sufficient corresponding structure

Consistent with the Court’s oral ruling on the record, the Asserted Patents fail to disclose sufficient structure to perform the functions of “us[ing] APIs of different payment processors including one or more APIs of banks, credit and debit cards processors, bill payment processors” and “expos[ing] a common API for interacting with different payment processors.” *E.g.*, ’386 Patent claim 1; ’488 Patent claim 1. When addressing a “computer-implemented means-plus-function limitation,” the Federal Circuit “consistently require[s] that the structure disclosed in the specification be more than simply a general purpose computer or microprocessor.” *Noah Sys.*, 675 F.3d at 1312 (citation omitted). Rather, the specification must “disclose an algorithm for performing the claimed function.” *Id.*

Here, the Court finds that the specifications of the asserted patents disclose no structure at all, much less an algorithm for performing the recited functions. The sole description in each of the Asserted Patents relating to the “payment handler” is connection with Fig. 1, which depicts the

payment handler (reference numeral 105) as a blank box. The specifications state only that the “[p]ayment handler 105 is configured to wrap APIs of different payment processors, such as, for example, banking accounts, credit/debit cards or processor 121” and that “[p]ayment handler 105 exposes a common API to facilitate interactions with many different kinds of payment processors.”’386 patent at 13:29–34; ’196 patent at 10:21–26.

The specifications of the asserted patents do not disclose any algorithm to perform the recited functions. ECF No. 35-1 ¶¶ 57–60. The specification’s description of “wrap[ping] APIs of different payment processors” merely refers to the generic process of translating APIs. *Id.* ¶ 58. A POSA would not understand whether the “wrapping” of APIs occurs on the mFS side, i.e., that banks communicate with the payment handler using their own APIs, and the payment handler wraps those APIs into a common API for access by other applications, or that the mFS system exposes a common API for banks to use. Indeed, there is significant ambiguity in the specification—a POSA would not understand to what entity the payment handler’s “common API” is exposed. *Id.* “That one of skill in the art could program a computer to perform the recited functions cannot create structure where none otherwise is disclosed.” *Williamson*, 792 F.3d at 1351 (Fed. Cir. 2015).

Fintiv cites to two portions of the specification as allegedly providing structure for this term. The first, ’386 patent col. 13:29–34, merely parrots the claim language, and does not provide any structure. The second, ’386 patent col. 4:65 to 7:3, is an 11-paragraph range that merely describes general computing structures, any of which could be used to implement any component of the system. None of these generic structures are linked or associated with the claimed function. “Structure disclosed in the specification qualifies as ‘corresponding structure’ if the intrinsic evidence clearly links or associates that structure to the function recited in the claim.” *Diebold*

Nixdorf, Inc. v. Int’l Trade Comm’n, 899 F.3d 1291, 1303 (Fed. Cir. 2018); *Default Proof Credit Card Sys. v. Home Depot U.S.A., Inc.*, 412 F.3d 1291, 1298 (Fed. Cir. 2005) (“[C]orresponding structure ... must include all structure that actually performs the recited function.”) Here, there is nothing in the range cited by Fintiv that even mentions the payment handler, interacting with payment processors, or APIs. Accordingly, the Court finds that the specification recites insufficient corresponding structure under section 112 ¶ 6 and is thus indefinite.

In sum, for at least the reasons identified above, the reasons stated in PayPal’s briefing, and the reasons identified in the Court’s oral ruling on the record at the Markman hearing and during the motion for reconsideration, the Court finds that this term is indefinite.

V. CONCLUSION

The Court adopts the constructions listed in the Claim Construction Order concurrent with this memorandum. Furthermore, the Parties should ensure that all testimony that relates to the terms addressed in this memorandum is constrained by the Court’s reasoning. But in the presence of the jury, the Parties should not expressly or implicitly refer to each other’s claim construction positions and should not expressly refer to any portion of this memorandum that is not an actual construction adopted by the Court. The references to the claim construction process should be limited to informing the jury of the constructions adopted by the Court.

The Court further **ORDERS** that Fintiv’s Motion for Reconsideration (ECF No. 62) is **DENIED**.

SIGNED this 21st day of July, 2023.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE