

1 Michael T. Hornak (State Bar No. 81936)
 email: mhornak@rutan.com
 2 Ronald P. Oines (State Bar No. 145016)
 email: roines@rutan.com
 3 Bradley A. Chapin (State Bar No. 232885)
 email: bchapin@rutan.com
 4 Kari Barnes (State Bar No. 253640)
 kbarnes@rutan.com
 5 Timothy Spivey (State Bar No. 269084)
 tspivey@rutan.com
 6 RUTAN & TUCKER, LLP
 611 Anton Boulevard, Fourteenth Floor
 7 Costa Mesa, California 92626-1931
 Telephone: 714-641-5100
 8 Facsimile: 714-546-9035

9 Attorneys for Plaintiffs HID GLOBAL
 CORPORATION, ASSA ABLOY AB and
 10 DESTRON FEARING CORPORATION

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA
 13 SOUTHERN DIVISION

14 HID GLOBAL CORPORATION, etc., et
 al.,

15 Plaintiffs,

16 vs.

17 FARPOINTE DATA, INC., etc., et al.,

18 Defendants.

Case No. SACV 10-01954 JVS (RNBx)

**PLAINTIFFS' OPENING CLAIM
 CONSTRUCTION BRIEF**

**[Declarations of Richard T. Mihran,
 Ph.D. and Ronald P. Oines, and
 Appendix of Exhibits Filed Herewith]**

**Date: November 14, 2011
 Time: 3:00 p.m.
 Courtroom: 10C
 Honorable James V. Selna**

21 Plaintiffs HID GLOBAL CORPORATION ("HID"), ASSA ABLOY AB
 22 ("AAAB") and DESTRON FEARING CORPORATION ("Destron") (collectively,
 23 "Plaintiffs")¹ submit this Opening Claim Construction Brief for the Claim
 24 Construction hearing set for November 14, 2011, at 3:00 p.m.

25
 26 ¹ AAAB, based in Stockholm, Sweden, is HID's parent. AAAB is a plaintiff in
 27 this lawsuit because it is the owner of the '862 patent discussed below, to which
 28 HID has a license. Destron, based in St. Paul, Minnesota, is not related to HID or
 AAAB, and is only a plaintiff in this action because it is the owner of the '935
 patent discussed below, to which HID has an exclusive limited license.

TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3	I. INTRODUCTION	1
4	II. THE LAW OF CLAIM CONSTRUCTION	2
5	III. PLAINTIFFS' CONSTRUCTION OF THE DISPUTED	
6	TERMS OF THE '935 PATENT	3
7	A. Background of the '935 Patent	3
8	B. Plaintiff's Construction of the Disputed Terms of the '935	
9	Patent.....	4
10	1. "programmable interrogator" (Claim 17)	4
11	2. "transmitting an identification signal having	
12	different frequencies, different methods of	
13	modulation, and at least an identification	
14	component" (Claim 17)	5
15	3. "a processor for processing said identification	
16	signal"	12
17	4. "a programmer connected to said processor for	
18	programming the specific types of identification	
19	signals of the different transponders to process"	
20	(Claim 17)	15
21	5. "said EEPROM being programmed by an external	
22	computer" (Claim 18)	16
23	IV. PLAINTIFFS' CONSTRUCTION OF THE DISPUTED	
24	TERMS OF THE '862 PATENT	18
25	A. Background of the '862 Patent	18
26	B. Plaintiff's Construction of the Disputed Terms of the '862	
27	Patent.....	18
28	1. "first and second antennas are oriented along axes	
	that are substantially parallel to one another"	
	(Claims 1 and 14).....	18
	2. "first and second antennas are arranged in at least a	
	partially overlapping arrangement on proximate	
	adjacent planes" (Claim 5 and 17).....	20
	3. "first and second antennas are arranged in an	
	opposing magnetic flux arrangement" (Claim 9)	22

1		<u>Page</u>
2	4.	“said first and second reader antennas are arranged
3		in an overlapping arrangement simultaneous with
4		said opposing magnetic flux arrangement” (Claim
5		13) 24
6	5.	“a portion of the first area in the first plane overlaps
7		a portion of the second area in the second plane”
8		(Claim 20) 24
9	C.	Construction Of Claim Term From The ‘862 Patent On
10		Which The Parties Agree 25
11	1.	“a . . . plane defined by the . . . area is substantially
12		orthogonal to a direction of magnetic flux created
13		through the . . . antenna” (Claim 20) 25
14	V.	CONCLUSION 25

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES**Page(s)****FEDERAL CASES**

<i>Bell Atl. Network Servs., Inc. v. Covad Commc'ns Group, Inc.</i> , 262 F.3d 1258 (Fed. Cir. 2001)	2
<i>Comark Communications, Inc. v. Harris Corp.</i> , 156 F.3d 1182 (Fed. Cir. 1998)	3
<i>Honeywell International, Inc. v. Universal Avionics Systems Corp.</i> , 493 F.3d 1358 (Fed. Cir. 2007)	2
<i>Kegel Co. v. AMF Bowling, Inc.</i> , 127 F.3d 1420 (Fed. Cir. 1997)	3
<i>Kopykake Enterprises, Inc. v. Lucks Co.</i> , 264 F.3d 1377 (Fed. Cir. 2001)	2
<i>Leggett & Platt, Inc. v. Hickory Springs Mfg. Co.</i> , 285 F.3d 1353 (Fed. Cir. 2002)	3, 13, 16
<i>Markman v. Westview Instruments, Inc.</i> , 517 U.S. 370, 116 S. Ct. 1384, 134 L. Ed. 2d 577 (1996)	2
<i>Markman v. Westview Instruments, Inc.</i> , 52 F.3d 967 (Fed. Cir. 1995) (en banc)	2
<i>O2 Micro Int'l v. Beyond Innovation Tech. Co.</i> , 521 F.3d 1351 (Fed. Cir. 2008)	2, 13, 15
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005) (en banc)	2, 3, 5
<i>Pitney Bowes, Inc. v. Hewlett-Packard Co.</i> , 182 F.3d 1298 (Fed. Cir. 1999)	3
<i>Serio-US Industries, Inc. v. Plastic Recovery Technologies Corp.</i> , 459 F.3d 1311 (Fed. Cir. 2006)	3
<i>Terlep v. Brinkman Corp.</i> , 418 F.3d 1379 (Fed. Cir. 2005)	2
<i>Vitronics Corp. v. Conceptronic, Inc.</i> , 90 F.3d 1576 (Fed. Cir. 1996)	2

1 **I. INTRODUCTION**

2 HID, based in Irvine, California, is a worldwide leader in the field of access
 3 security products and systems, and tracking systems that use radio frequency
 4 identification (“RFID”) technology. Many people throughout the world encounter
 5 one or more RFID systems on a daily basis. The basics of RFID technology are
 6 well known. For example, many people use access cards to enter secure buildings
 7 or secure areas of buildings at their places of employment. In this example, an
 8 RFID reader, or “interrogator,” may be placed near a locking door and connected to
 9 a computer. (Declaration of Richard T. Mihran [“Mihran Dec.”], ¶ 15.) When the
 10 access card² is placed sufficiently close to the reader, data stored in the card is
 11 transmitted to and read by the reader. (*Id.*) If the data on the card is associated with
 12 an employee or other authorized person, the door is unlocked and access is
 13 permitted. (*Id.*)³

14 In this case, Plaintiffs allege defendant Farpointe Data, Inc. (“Farpointe”)
 15 infringes certain claims of two patents, US Patent no. 5,952,935, entitled
 16 “Reprogrammable Channel Search Reader” (the “‘935 Patent”), and US Patent no.
 17 7,439,862, entitled “Antenna Array For an RFID Reader Compatible With
 18 Transponders Operating At Different Carrier Frequencies” (the “‘862 Patent”).

19 Generally speaking, the pertinent claims of the ‘935 Patent disclose an RFID
 20 reader that is capable of reading credentials that use different frequencies and
 21 different methods of modulation to communicate with the reader. The ‘862 Patent
 22 generally covers an RFID reader that includes a high frequency reader antenna and a
 23 low frequency reader antenna arranged in certain configurations. The asserted
 24 claims of the patents are discussed in more detail below.

25
 26 ² The access security “card” is a type of “credential” used in RFID systems. The
 27 credential may take other forms, and may also be referred to as a “tag” or
 “transponder.” (Mihran Dec. ¶ 15.)

28 ³ Other well known uses of RFID technology include animal and asset tracking
 and automated toll road systems. (Mihran Dec. ¶ 14.)

1 II. THE LAW OF CLAIM CONSTRUCTION

2 Claim construction is a question of law for the Court to decide. *Markman v.*
 3 *Westview Instruments, Inc.*, 517 U.S. 370, 390, 116 S. Ct. 1384, 134 L. Ed. 2d 577
 4 (1996). However, not all claim terms require construction. “The construction of
 5 claims is simply a way of elaborating the normally terse claim language in order to
 6 understand and explain, but not to change, the scope of the claims.” *Terlep v.*
 7 *Brinkman Corp.*, 418 F.3d 1379, 1382 (Fed. Cir. 2005). Where the language is
 8 clear, the Court need not – and should not – construe the claims. *See, e.g., O2*
 9 *Micro Int’l v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008).

10 To construe a claim, the Court should consider the claim language, the
 11 specification of the patent and the prosecution history. *Phillips v. AWH Corp.*, 415
 12 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc). The Court should interpret the words in
 13 a claim as one of skill in the art at the time of invention would have understood
 14 them. *Kopykake Enterprises, Inc. v. Lucks Co.*, 264 F.3d 1377, 1383 (Fed. Cir.
 15 2001).

16 Claim construction begins with an examination of the words of the claim,
 17 which are generally given their ordinary and customary meaning. *Vitronics Corp. v.*
 18 *Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). However, because persons
 19 of ordinary skill in the art view claim terms in light of the entire intrinsic record, the
 20 claims “must be read in view of the specification, of which they are a part.”
 21 *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en
 22 banc). Moreover, when a patentee defines a claim term, explicitly or implicitly, the
 23 patentee’s definition governs, even if it is contrary to the conventional meaning of
 24 the term. *See, e.g., Honeywell International, Inc. v. Universal Avionics Systems*
 25 *Corp.*, 493 F.3d 1358, 1361 (Fed. Cir. 2007). The patentee may define a claim term
 26 in a particular manner even ““without an explicit statement of redefinition.”” *Id.* at
 27 1362; quoting *Bell Atl. NetworkSrvs., Inc. v. Covad Commc’ns Group, Inc.*, 262
 28 F.3d 1258, 1268 (Fed. Cir. 2001).

1 In addition to the specification, “the prosecution history can often inform the
 2 meaning of the claim language by demonstrating how the inventor understood the
 3 invention and whether the inventor limited the invention in the course of
 4 prosecution, making the claim scope narrower than it would otherwise be.” *Phillips*,
 5 415 F.3d at 1317. Note, though, that “there is sometimes a fine line between
 6 reading a claim in light of the specification, and reading a limitation into the claim
 7 from the specification,” *Comark Communications, Inc. v. Harris Corp.*, 156 F.3d
 8 1182, 1186 (Fed. Cir. 1998), and care must be taken in consulting the specification
 9 as “the interpretative process may not import limitations from the specification into
 10 the defining language of the claims.” *Leggett & Platt, Inc. v. Hickory Springs Mfg.*
 11 *Co.*, 285 F.3d 1353, 1357 (Fed. Cir. 2002).

12 A court may also consider extrinsic evidence (e.g., expert testimony,
 13 dictionaries, treatises) to resolve the scope and meaning of a claim term. *Kegel Co.*
 14 *v. AMF Bowling, Inc.*, 127 F.3d 1420, 1426 (Fed. Cir. 1997). Extrinsic evidence
 15 may be employed to ensure that the claim construction based on intrinsic evidence is
 16 not inconsistent with how a person skilled in the art would understand a claim term.
 17 *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1308-09 (Fed. Cir.
 18 1999). The Federal Circuit has noted that trial courts have the discretion to rely
 19 upon expert testimony to interpret claim language, provided it is not clearly at odds
 20 with the claims, specification and prosecution history. *See, e.g., Serio-US*
 21 *Industries, Inc. v. Plastic Recovery Technologies Corp.*, 459 F.3d 1311, 1319 (Fed.
 22 Cir. 2006).

23 **III. PLAINTIFFS’ CONSTRUCTION OF THE DISPUTED TERMS OF** 24 **THE ‘935 PATENT**

25 **A. Background of the ‘935 Patent**

26 Historically, RFID readers and transponders were unique unto themselves,
 27 i.e., a transponder manufactured by Company A could be read only by a reader
 28 manufactured by Company A. (‘935 Patent, attached as Ex. 1 to the Appendix of

Exhibits,⁴ at pg. 12, col. 1, ll. 17 to 20.) With the growth of different manufacturers using different RFID communication technologies, it became increasingly desirable to have a reader that could communicate with transponders that use different communication protocols. (*Id.* at pg. 12, col. 1, ll. 20 to 24.)

The '935 patent generally discloses an RFID reader (or "interrogator") that is capable of reading identification signals from transponders that use different frequencies, different methods of modulation, and/or different methods of encoding to communicate with the reader. (*Id.* at pg. 12, col. 1, l. 66 to col. 2, l. 2.) Another key aspect of the invention disclosed in the '935 patent provides that the reader is programmable.

B. Plaintiff's Construction of the Disputed Terms of the '935 Patent

1. "programmable interrogator" (Claim 17)

Plaintiffs' Proposed Construction	Farpointe's Proposed Construction
an interrogator capable of being reprogrammed on site by reprogramming the interrogator software	A reader based on a software program that is capable of transmitting an interrogation signal for interrogating one of a plurality of transponders that respond to an interrogation signal by transmitting an identification signal. The identification signal for each of the plurality of transponders has different frequencies, different methods of modulation, and different encoding from each other and at least an identification component.

The specification of the '935 patent makes it clear that "programmable interrogator" simply means that the interrogator may be reprogrammed onsite by reprogramming the interrogator software.

⁴ All Exhibit references herein are to the exhibits attached to the Appendix of Exhibits filed herewith.

For example, the specification provides that “[r]eader 10 further includes a field programmable serial port 18, which may be linked to a computer by either hardware, RF or the like to edit or enhance the software of reader 10.” (*Id.* at pg. 14, col. 5:8-11.) The specification further provides that “the present reader is capable of being reprogrammed on site by reprogramming the operating instructions for the microprocessor which are stored in the EEPROM 74” (*Id.* at pg. 17, col. 11:23-28) and “[r]eader 10 is programmable by the inclusion of a re-programmable EEPROM member 74 coupled to microprocessor 52.” (*Id.* at pg. 17, col. 11:40-42.)⁵

Despite the straightforward claim term and discussion in the specification, Farpointe seeks a construction that does not even address what it means for the “interrogator” to be “programmable.” Instead, Farpointe simply states that the “programmable interrogator” is “[a] reader based on a software program” and then goes on in its proposed construction of “programmable interrogator” to construe much more of the language of the ‘935 patent by including, for example, characteristics of the *transponders*.

Plaintiffs submit their proposed construction is true to the ordinary meaning of “programmable interrogator,” and is consistent with the written description of the ‘935 patent. See *Philips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) (“the construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be, in the end, the correct construction.”) (citation omitted).

2. “transmitting an identification signal having different frequencies, different methods of modulation, and at least an identification component” (Claim 17)

⁵ EEPROM is an “[a]bbreviation of electrically erasable programmable read-only memory. A programmable read-only memory chip which is erasable by an electrical signal. As with other types of programmable read-only memory chips, it retains its content without power, but is slower than RAM.” (Ex. 19 at pg. 291.)

Plaintiffs' Proposed Construction	Farpointe's Proposed Construction
transmitting an identification signal that (a) uses a frequency or frequencies distinct from the interrogation signal and a method or methods of modulation (defined as a method of changing the amplitude, frequency, and/or phase of a carrier signal) that are different from those used by another of the plurality of transponders, and (b) has at least an identification component	Multiple transponders transmit an identification signal that has a different transmission frequency as well as a different method of modulation from each other with an encoded identification component in response to a single interrogation signal from the interrogator. Modulation methods include methods such as amplitude or load modulation ("AM") and are distinct from encoding methods such as FSK, PSK, Manchester, NRZ or BP.

(a) **Plaintiffs Propose A Construction That Is Slightly Modified From The Construction Set Forth In The Parties' Joint Claim Construction And Prehearing Statement**

Plaintiffs wish to inform the Court that they are proposing a slight modification to the proposed construction of "methods of modulation" in this claim term.

In the Joint Claim Construction and Prehearing Statement (Docket # 25), Plaintiffs proposed that the term "methods of modulation" (which is part of the longer term for which the parties seek construction) be defined as "a method of changing the amplitude, frequency, and/or phase of *the interrogation* signal." (*Id.* at pg. 9; emphasis added.) However, Plaintiffs and their expert, Dr. Richard Mihran, believe a more accurate and complete definition of "methods of modulation" is "a method of changing the amplitude, frequency, and/or phase of *a carrier* signal." (Mihran Dec. ¶ 51 and n. 15.)⁶

⁶ On September 19, 2011, three days before the deposition of Dr. Mihran, Plaintiffs informed counsel for Farpointe of Plaintiffs' slightly modified proposed construction. (Ex. 2.) On September 22, 2011, Farpointe took Dr. Mihran's deposition and had an opportunity to question him – and did question him -- about

Although it is not incorrect to describe “methods of modulation” in the context of the *interrogation signal* acting as a carrier, it is a less complete construction than the proposed construction referring to “a carrier signal” because it would exclude the operation of half-duplex or “HDX” transponders. (Mihran Dec. ¶ 51, n. 15.) As described in detail in the overview section of Dr. Mihran’s Declaration, full-duplex transponders such as Destron, Trovan, Datamars, Avid, and FDX-B devices discussed in the ‘935 patent employ multi-level modulation of the interrogation signal received by the transponder, and thus the interrogation signal itself may act as a carrier signal. The HDX transponders discussed in the ‘935 patent, on the other hand, accumulate energy from the interrogation signal, but do not modulate the received signal. (*Id.*) Rather, HDX transponders disclosed in the ‘935 patent transmit data using FSK modulation of a carrier signal that the transponder itself generates by drawing on the energy it has accumulated from the interrogation signal only after it has ceased. (*Id.*) Thus, the portion of claim 17 reciting “different methods of modulation” would be understood by one of ordinary skill in the art to encompass “methods of modulation” employed in such half-duplex or HDX transponders, in addition to those utilized in the various other full duplex transponders described in the embodiment of the interrogator claimed in the ‘935 patent. (*Id.*) For this reason, defining modulation in the context of a general *carrier signal* – which may or may not be the interrogation signal – is a more appropriate construction. (*Id.*)

(b) Plaintiffs’ Proposed Construction

This language relates to the identification signal transmitted by the

the slightly modified construction. (Oines Dec. ¶ 4.) Plaintiffs immediately notified Farpointe when it determined it wished to slightly modify its claim construction, and Farpointe has not suffered, and will not suffer, any prejudice as a result of Plaintiffs’ slight modification to its proposed construction. As a result, Plaintiffs have asked Farpointe to stipulate that Plaintiffs may make the slight modification to their proposed construction. To date, Farpointe has not indicated whether it will so stipulate. If Farpointe does not stipulate, Plaintiffs intend to file a Motion to formally amend Plaintiffs’ proposed claim construction.

PLAINTIFFS’ OPENING CLAIM
CONSTRUCTION BRIEF

1 transponders to the reader. To the extent Plaintiffs fully understand Farpointe's
2 proposed construction, it appears that Plaintiffs' and Farpointe's proposed
3 constructions are similar, with two exceptions. As to the similarities, it appears the
4 parties agree that this language does not refer to the frequency of the interrogation
5 signal. Plaintiffs' proposed construction of this part of claim 17 is the only
6 construction supported by the specification and prosecution history of the '935
7 patent, and is consistent with what one of skill in the art would understand. (Mihran
8 Dec. ¶¶ 51-78.)

9 As to the parties' disagreement about this claim term, Plaintiffs submit their
10 proposed construction is supported by the intrinsic record and is consistent with the
11 understanding of a person of skill in the art, while Farpointe's proposed construction
12 is inconsistent with the intrinsic record and the understanding of a person of skill in
13 the art.

14 **First**, to the extent Farpointe's construction is intended to require that every
15 single transponder that is used with the interrogator must use a different frequency
16 and a different method of modulation from every single other transponder used with
17 the interrogator, such a construction would be wrong. There is absolutely no
18 support in the '935 patent for such a construction. This element merely requires that
19 the interrogator is capable of reading any number of transponders, at least two of
20 which transmit their identification signals using different frequencies and different
21 methods of modulation.

22 Historically, readers and transponders were unique unto themselves. In other
23 words, company A's transponder could be read only by company A's reader,
24 company B's transponder could be read only by company B's reader, and so on.
25 (Ex. 1 at pg. 12, col. 1, ll. 17-19.) This was because the different companies'
26 readers and transponders sometimes used different communication protocols. For
27 example the '935 patent discusses certain Destron transponders that use FSK (i.e.
28 frequency shift keying) (*id.* at pg. 13, col. 4:6-15), and certain Datamars

1 transponders that use PSK (i.e., phase shift keying). (*Id.* at pg. 13, col. 4:18-20.)
 2 An object of the invention of the ‘935 patent was to create a reader that could read
 3 both the Destron transponders and the Datamars transponders (as well as other types
 4 of transponders).

5 The prosecution history further makes this clear. “. . . [T]he interrogator
 6 produces an interrogation signal ‘for interrogating one of the plurality of
 7 transponders’, each of which may use different frequencies and different methods of
 8 modulation to transmit an identification signal in response to the interrogation
 9 signal.” (Ex. 3 at pg. 147.) The idea behind the invention in the ‘935 patent was to
 10 provide a reader that is capable of reading different transponders that use different
 11 technologies, such as, for example, the Destron, Datamars and Trovan transponders
 12 discussed in the specification. (Ex. 1, at pg. 13, col. 4, ll. 6-46.) Farpointe’s
 13 interpretation seems to require that every single transponder must be different from
 14 every other transponder. In other words, according to Farpointe, if a reader read two
 15 different Destron transponders that use the same technology, that reader does not
 16 infringe the ‘935 patent, even if the reader also reads Datamars and Trovan
 17 transponders. Farpointe’s proposed construction is nonsensical, and finds no
 18 support in the intrinsic record or elsewhere.

19 Moreover, to the extent Farpointe intends “*multiple transponders* transmit an
 20 identification signal...in response to *a single interrogation signal*...” (emphasis
 21 added) to require that the claimed interrogator must *simultaneously* interrogate
 22 “multiple transponders” with the “single interrogator signal,” such an interpretation
 23 is neither consistent with the specification of the ‘935 patent, nor the claim language
 24 itself. Nor would it be consistent with the understanding of a person of skill in the
 25 art. (Mihran Dec. ¶¶ 81-82.)

26 While the claimed interrogator is “programmable” and capable of being used
 27 “with a plurality of transponders,” the phrase being construed is in the context of
 28 “the interrogator transmitting an interrogation signal for interrogating one of the

1 transponders...” Thus, Farpointe’s proposed construction requiring that “*multiple*
 2 transponders transmit an identification signal...in response to *a single* interrogation
 3 signal...” is contradicted by the claim language itself. (Mihran Dec. ¶ 82.)

4 **Second**, the parties have a fundamental disagreement as to the claim term
 5 “methods of modulation.” Plaintiffs’ expert, Dr. Mihran, is, and was at the time of
 6 the invention of the ‘935 patent, a person of ordinary skill in the art. (Mihran Dec.
 7 ¶¶ 1-11; 50.) A person of ordinary skill in the art would understand that the
 8 interpretation proposed by Plaintiffs, including the definition of “methods of
 9 modulation” is the correct interpretation.

10 As Dr. Mihran explains, to understand the term “methods of modulation” in
 11 the ‘935 patent, it is helpful to consider an overview of key concepts associated with
 12 signal modulation and the manner or method in which modulation of a carrier signal
 13 may be applied to encode identification data. (Mihran Dec. ¶¶ 19-49.)

14 The term “modulation” is widely understood by those of skill in the art to
 15 refer to “changing the amplitude, frequency, and/or phase of a carrier signal.” (*Id.* at
 16 ¶¶ 63-64 and Exs. 4, pg. 216 and 5, pg. 219.)

17 Moreover, the ‘935 patent describes a number of commercially available
 18 transponders that use different combinations of AM, FSK and PSK modulation, as
 19 well as different methods of applying the modulation to realize different data
 20 encoding. (Mihran Dec. ¶¶ 70-77.)

21 Farpointe’s attempt to define “methods of modulation” as “amplitude or load
 22 modulation (AM)” and to specifically *exclude* FSK, PSK, Manchester, NRZ and BP
 23 is inconsistent with the ‘935 patent and prosecution history, and what a person of
 24 skill in the art would understand “methods of modulation” to mean.

25 Indeed, Farpointe’s proposed construction is wrong for a number of reasons.
 26 **First, it is directly contradicted by the intrinsic record.** During the prosecution of
 27 the ‘935 patent, the applicants explicitly referred to Manchester, NRZ and BP as
 28 examples of “methods of modulation.” In responding to the Examiner’s reliance on

1 the “Marsh” prior art, the applicants stated: “In fact, Marsh’s specification mentions
 2 only that the transponder response signals are Manchester encoded. See col. 8, lines
 3 33-45; col. 9, lines 18-28. Marsh does not suggest that its interrogator is capable of
 4 reading transponder signals that are *modulated using different modulation methods*
 5 *(such as Manchester, no-return-to-zero, Biphase, or Modified Biphase)*, and does
 6 not describe a structure or circuit to do so.” (Ex. 3 at pg. 149; emphasis added) In
 7 view of this unequivocal statement, anyone, including a person of ordinary skill in
 8 the art, would understand that the inventors intended encoding techniques such as
 9 “Manchester, NRZ [no-return-to-zero], or BP [Biphase]” to represent examples of
 10 “different modulation methods.” (Mihran Dec. ¶ 86.) Farpointe’s attempt to
 11 *exclude* these from “methods of modulation” must therefore be incorrect for at least
 12 this reason. Additionally, extrinsic evidence supports Dr. Mihran’s opinion that one
 13 of skill in the art would understand “methods of modulation” in the context of the
 14 ‘935 patent to include encoding techniques such as Manchester, NRZ or BP.
 15 (Mihran Dec. ¶¶ 89-98 and Exs. 6-7.)

16 Additionally, one of skill in the art would also understand that “FSK” and
 17 “PSK” are “methods of modulation.” (Mihran Dec. ¶¶ 27-44; 63-65.) Indeed,
 18 numerous materials cited by Dr. Mihran support his opinion that FSK and PSK are
 19 well known types of modulation. (*Id.* ¶¶ 28-48 and Exs. 8-14.)

20 Farpointe itself must recognize that FSK and PSK are known to be methods
 21 of modulation because Farpointe marks the accused products with US Patent nos.
 22 6,411,199 and 6,611,198, both of which recognize that PSK and FSK are methods of
 23 modulation. (Oines Dec. ¶¶ 17-18 and Exs. 15 [e.g., col. 1, ll. 51-62] and 16 [e.g.,
 24 col. 2, ll. 2-13.]

25 Finally, Farpointe’s proposed construction of what “modulation method”
 26 would include identifies only a *single type* of modulation, i.e. “AM.”⁷ Thus, if

27 ⁷ Farpointe identifies “amplitude or load modulation (‘AM’)” in their proposed
 28 construction. “Load modulation” is never mentioned in the specification of the ‘935
 patent, but would be understood by one of ordinary skill in the art to be the way that

Farpointe's construction were to be adopted, then the claims of the '935 patent would fail to read on the preferred embodiment. (Mihran Dec. ¶¶ 99-100.)

This can be understood in the context of Table 1 of the '935 patent, where all of the disclosed transponder types are shown to utilize either "AM" or "none" under the column labeled "modulation." In its proposed construction, Farpointe attempts to re-write the claim such that "different methods of modulation" simply means either "AM" or nothing – i.e. only a single method of modulation. This is inconsistent with the claim language, the rest of the intrinsic record, and the understanding of a person of skill in the art. (Mihran Dec. ¶ 100.)

**3. "a processor for processing said identification signal" . . .
"and creating an output signal substantially corresponding to
said identification component of said identification signal"
(Claim 17)**

Plaintiffs' Proposed Construction	Farpointe's Proposed Construction
Plaintiffs believe "a processor for processing said identification signal" does not require construction.	The processor is a complete integrated circuit such as the microprocessor 52. A processor is a single integrated circuit including a control unit, an arithmetic and logic unit (ALU) and memory (registers, cache, RAM and ROM) as well as various temporary buffers and other logic that uses instructions to perform calculations or other manipulations of data for the purpose of processing the identification signal and creating an output that is the same as the identification data of the identification
Plaintiffs' proposed construction of "and creating an output signal substantially corresponding to said identification component of said identification signal" is: "converting the identification signal into an identification number substantially corresponding to said identification component of said	

amplitude modulation (AM) of the interrogation signal is implemented by the circuitry within the identified transponders – i.e. by switching an electrical load that appears across the transponder coil. (Mihran Dec. ¶ 99, n. 8.) Thus, "AM" as used in the patent and "load modulation" as appearing in Farpointe's proposed construction is not an example of two different "methods of modulation." Farpointe's proposed construction identifies only a *single* "modulation method," i.e. "AM." (*Id.*)

PLAINTIFFS' OPENING CLAIM
CONSTRUCTION BRIEF

1 identification signal”

signal.

2 **“a processor for processing said identification signal”**

3 Plaintiffs do not believe “a processor for processing said identification signal”
4 needs construction. Simple, unambiguous terms need not be construed. *See, e.g., O2*
5 *Micro Int’l v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008).

6 There is nothing in the ‘935 patent or prosecution history to suggest that this
7 term should be limited, as Farpointe suggests. Nor does Farpointe’s extrinsic
8 evidence support severely limiting the scope of this term as Farpointe suggests.

9 Farpointe asserts that the “processor” of claim 17 must be “a single integrated
10 circuit including a control unit, an arithmetic and logic unit (ALU) and memory
11 (Registers, cache, RAM and ROM) as well as various temporary buffers and other
12 logic that uses instructions to perform calculations or other manipulations of data for
13 the purpose of processing the identification signal and creating an output that is the
14 same as the identification data of the identification signal.” Nothing in the portions of
15 the specification Farpointe relies upon supports Farpointe’s position. Farpointe’s
16 attempt to rely on a discussion of a preferred embodiment to insert limitations into the
17 claims is improper and should be rejected. *See Leggett & Platt, Inc. v. Hickory*
18 *Springs Mfg. Co.*, 285 F.3d 1353, 1357 (Fed. Cir. 2002) (“the interpretive process may
19 not import limitations from the specification into the defining language of the
20 claims.”)

21 Additionally, Farpointe relies on an alleged computer dictionary definition of
22 “processor” to support its position. However, the online computer dictionary from
23 which Farpointe took its definition does not even have a definition for “processor.”
24 Rather, when one searches “processor” in that dictionary, a link to the definition of
25 “central processing unit” is displayed. (Oines Dec. ¶ 19; Exs. 17-18.) Thus, the
26 definition Farpointe relies upon is actually the definition of a “central processing
27 unit” of a computer. Moreover, even Farpointe’s definition does not suggest that the
28 elements of the CPU must be in a “single integrated circuit,” as Farpointe suggests

PLAINTIFFS’ OPENING CLAIM
CONSTRUCTION BRIEF

1 in its proposed construction. Nothing in the '935 patent or prosecution history, nor
 2 in the extrinsic evidence submitted by Farpointe suggests a person of skill in the art
 3 would understand "processor" in the '935 patent as Farpointe suggests in its
 4 proposed construction.

5 **"and creating an output signal substantially corresponding to said**
 6 **identification component of said identification signal"**

7 The Court should construe "and creating an output signal substantially
 8 corresponding to said identification component of said identification signal" as
 9 "converting the identification signal into an identification number substantially
 10 corresponding to said identification component of said identification signal." This
 11 claim language refers to the processor and, in particular, the fact that it converts the
 12 identification signal from the transponder into an identification number that
 13 substantially corresponds to the identification component of the identification signal
 14 received from the transponder.

15 The specification addresses this point. "As is known in the art ..., an
 16 identification signal may include a preamble and data formed as a string of ones and
 17 zeros." (Ex. 1 at pg. 13, col. 4:3-5.) "The frequency discriminator, which forms a
 18 part of ASIC 72, determines the frequency of the signal at each channel input by
 19 measuring one cycle of the squared-off signal using the ASIC's magnitude
 20 comparators. Based on this measurement, the frequency and the transponder's
 21 manufacturer can be identified using a microprocessor containing the information
 22 set forth in Table 2 which will be described below in greater detail. Dependent on
 23 the identity of the transponder the signal is then operated upon by software to
 24 convert the transponder signal into an identification number to display the tag
 25 identification data." (*Id.* at pg. 15, col. 8:7-17.)⁸

26
 27 ⁸ It should be noted that claim 17 does not include a "display for displaying said
 28 output signal," which is found in some of the unasserted claims, e.g., claim 1. Thus,
 neither Plaintiffs nor Farpointe proposes that the construction of this part of claim
 17 should include a display for displaying the output signal.

As discussed above, Farpointe’s proposed construction with respect to “the processor” and the “processing of the identification signal” seeks to read limitations into the claim that are not supported by the specification or any other evidence. Additionally, Farpointe ignores the fact that claim 17 explicitly states that the output signal “substantially correspond[s]” to the identification component of the identification signal. Farpointe’s proposed construction provides that the output is “the same” as the identification data of the identification signal. Farpointe cites to no evidence to support this construction.

4. “a programmer connected to said processor for programming the specific types of identification signals of the different transponders to process” (Claim 17)

Plaintiffs’ Proposed Construction	Farpointe’s Proposed Construction
Plaintiffs believe this language does not require construction.	The programmer is a separate memory device from any internal memory on the processor that stores operating instructions that are loaded under the instruction of a boot load function stored on internal memory on the processor. The operating instructions define how to process the specific types of identification signals of different transponders operating at different frequencies and different modulations but exclude configuration setting commands.

Plaintiffs do not believe “a programmer connected to said processor for programming the specific types of identification signals of the different transponders to process” needs construction. *See, e.g., O2 Micro Int’l v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). Again, there is nothing in the ‘935 patent or prosecution history to suggest that this term should be limited, as Farpointe suggests. The specification discusses certain embodiments, including a programmer in particular embodiments, but the specification does not limit the scope of the “programmer.” Farpointe asserts that “[t]he programmer is a separate memory

1 device from any internal memory on the processor that stores operating instructions
 2 that are loaded under the instruction of a boot load function stored on internal
 3 memory on the processor,” but cites to no evidence that would support such a
 4 limitation. Farpointe also asserts that “[t]he operating instructions define how to
 5 process the specific types of identification signals of different transponders
 6 operating at different frequencies and different modulations but exclude
 7 configuration setting commands,” but again cites to no evidence that would support
 8 such a limitation. See *Leggett & Platt, Inc. v. Hickory Springs Mfg. Co.*, 285 F.3d
 9 1353, 1357 (Fed. Cir. 2002) (“the interpretive process may not import limitations
 10 from the specification into the defining language of the claims.”)

11 It should also be noted that Farpointe itself is inconsistent. In its proposed
 12 construction of claim 17, Farpointe states that the “programmer is a separate
 13 memory device from any internal memory on the processor” Yet, in its
 14 proposed construction of claim 18, Farpointe argues that the “programmer is an
 15 EEPROM and a microprocessor, both of which must be separate from the
 16 processor”

17 In light of the foregoing, Plaintiffs believe the Court should not construe this
 18 claim language.

19 **5. “said EEPROM being programmed by an external**
 20 **computer” (Claim 18)**

Plaintiffs’ Proposed Construction	Farpointe’s Proposed Construction
said EEPROM programmed by a computer external to the programmable interrogator	The programmer is an EEPROM and a microprocessor, both of which must be separate from the processor and programmed by a boot load function through a serial programming port.

26 Once again, Farpointe seeks to import limitations into the claim language that
 27 are not supported by the evidence. Plaintiffs’ proposed construction simply seeks to
 28 make it clear – to the extent it is not already clear -- that the EEPROM is

1 programmed by a computer that is external to the interrogator. Claim 18, in its
2 entirety, provides: “The programmable interrogator of claim 17, wherein said
3 programmer includes an EEPROM coupled to a microprocessor, said EEPROM
4 being programmed by an external computer.” (Ex. 1 at pg. 18, col. 14, ll. 59-62.)

5 The specification provides, for example, that the “EEPROM memory 74 may
6 be programmed by any external computer or specialized digital equipment that
7 communicates with reader’s 10 internal microprocessor 52 through serial
8 programming port 18 as described below with reference to FIG. 9.” (*Id.* at pg. 17,
9 col. 11:42-46.) Nothing in the specification supports Farpointe’s assertion that the
10 “[t]he programmer is an EEPROM and a microprocessor, both of which must be
11 separate from the processor and programmed by a boot load function through a
12 serial programming port.”

13 Farpointe uses the following excerpt to support its contention that the
14 programmer must include both an EEPROM and a microprocessor: “Reader 10 is
15 programmable by the inclusion of a re-programmable EEPROM memory 74
16 coupled to microprocessor 52.” (Ex. 1 at pg. __, col. 11:40-42.) However, within
17 the construction of “a processor for processing said identification signal,” previously
18 construed with respect to claim 17, Farpointe indicates that “[t]he processor is a
19 complete integrated circuit such as the microprocessor 52.” (Joint Claim
20 Construction, Docket # 25, pgs. 7-8.) Thus Farpointe identifies microprocessor 52
21 as the processor of claim 17 that is connected to the programmer, but also contends
22 that microprocessor 52 is a separate component required in the programmer that is
23 coupled to the processor. Essentially, Farpointe is duplicating the reference to
24 microprocessor 52 to require separate components within both the definition of
25 processor and programmer where each is connected to each other. This is
26 inconsistent with the disclosure of a single microprocessor 52.

IV. PLAINTIFFS' CONSTRUCTION OF THE DISPUTED TERMS OF THE '862 PATENT

A. Background of the '862 Patent

The '862 patent generally discloses, among other things, an RFID reader that includes of at least two reader antennas that operate at different carrier frequencies. (Ex. 20 at pg. 297, col. 2, ll. 62 to 66.) The reader antennas are arranged in a configuration that optimizes performance of the RFID system, while maintaining a compact size. (*Id.* at pg. 301, col. 10:51-58.)

“The present invention provides a reader or array of antennas that can operate at two different carrier frequencies. ... The present invention provides a solution that allows both of these antennas to be operated in close proximity while minimizing the interference between the two antennas. More specifically, certain independent claims highlighted above recite embodiments of the invention which manage the interference between antennas operating at different carrier frequencies but which are positioned in close proximity. Moreover, if the antennas are located in a common reader housing, the ability to manage the interference between antennas becomes even more important. By managing the interference between antennas the size of the reader housing containing two such antennas can be kept to a relatively small size, thus increasing its appeal and value.”

(Ex. 21 at pg. 445.)

B. Plaintiff's Construction of the Disputed Terms of the '862 Patent

1. “first and second antennas are oriented along axes that are substantially parallel to one another” (Claims 1 and 14)

Plaintiffs' Proposed Construction	Farpointe's Proposed Construction
the first and second antennas are	The two antennas each have an axis of

PLAINTIFFS' OPENING CLAIM
CONSTRUCTION BRIEF

oriented along longitudinal axes
substantially equidistant from each
other

orientation that are separated from each
other and do not intersect. As shown in
the Figs 2-6, the axis for each antenna
are in the x-y plane defined by the
antenna loop.

The essential difference between the parties' proposed constructions is the direction of the axes referred to in this claim term. Plaintiffs contend this term refers to a "longitudinal" axis, i.e., an axis that is perpendicular to the plane that is defined by the loop of the antenna. Farpointe contends this term refers to an axis that is "in the x-y plane defined by the antenna loop." However, the specification of the patent shows that Plaintiffs' construction is the correct one.

"The reader antennas 34, 38 are conceptually depicted in FIG. 1 as being arranged in parallel adjacent to one another." (Ex. 20 at pg. 301, col. 10:25-27.) Referring to Fig 1, it is clear that the longitudinal axis of the antennas is used to orient the antennas as parallel.

In contrast, Figures 2, 3, 4 and 6 of the '862 patent show embodiments with a "parallel orientation." (Ex. 20 at pgs. 302, 303, col. 11, ll. 46-49; col. 12, ll. 36-39; col. 13, ll. 3-6; col. 13, ll. 61-65.) However, Figure 5 of the '862 patent shows an embodiment with a "perpendicular orientation." (*Id.* at pg. 303, col. 13, ll. 38-41.) The reference to these sections is directed toward "first and second loops [that] have parallel orientation," as recited by dependent claim 22. Claim 1, on the other hand, recites "first and second antennas are oriented along axes that are substantially parallel to one another." Accordingly, the reference to the axes being substantially parallel is more in line with the description of Figure 1. Farpointe's construction ignores Figure 1.

Farpointe's proposed construction is inconsistent with the specification, because under Farpointe's proposed construction, the axes of the antennas shown in figures 2, 3, 4, and 6, **as well as 5**, would be parallel. In an apparent oversight,

1 Farpointe wants to include in its construction “[a]s shown in the Figs 2-6, the axis
 2 for each antenna are in the x-y plane defined by the antenna loop.” However, in its
 3 citation to the intrinsic record, Farpointe omits the part of the specification that
 4 discusses figure 5 and states that that figure shows the antennas in a “perpendicular
 5 orientation.” (Ex. 20 at pg. 303, col. 13:39-41.) Specifically, Farpointe’s
 6 construction is broad enough so that Figure 5, described in the specification as
 7 perpendicular, may be considered perpendicular and parallel, depending on the axis
 8 chosen in the x-y plane defined by the antenna loop. Thus, if Farpointe is relying on
 9 the specification to support its contention, the only axis of the antennas depicted in
 10 Figure 5 that orient the axis in a perpendicular configuration, is the longitudinal axis
 11 of the antennas as proposed by Plaintiff.

12 Therefore, Plaintiffs’ construction is supported by the specification.
 13 Farpointe’s construction, on the other hand, is inconsistent with the specification.

14 **2. “first and second antennas are arranged in at least a**
 15 **partially overlapping arrangement on proximate adjacent**
 16 **planes” (Claim 5 and 17⁹)**

17 Plaintiffs’ Proposed Construction	Farpointe’s Proposed Construction
18 the first and second antennas arranged 19 so that one antenna may be brought 20 into contact with the other antenna at 21 some point of rotation if one (or both) 22 antenna (antennas) were rotated about 23 its (their) respective center (centers) of 24 mass, the antennas contained within 25 respective planes before rotation in 26 their fixed positions that are near, close, or contiguous	The coil of the antennas are mounted in such a way that the looped formed by one of the reader antennas could be brought into contact with the loop formed by the other reader antenna at some point of rotation if the reader antenna were to be rotated from its fixed position about its center of mass. The overlapping arrangement also includes the case where the loops of the antennas could be brought into contact with one

27 ⁹ The pertinent claim language in claims 5 and 17 is slightly different. Claim 5
 28 includes “on proximate adjacent planes” and claim 17 includes “along proximate
 adjacent planes.” Plaintiffs believe this difference in claim language is insignificant
 for purposes of construing the claim language.

another at some point of rotation if both fixably mounted reader antennas were to be rotated from their respective fixed positions about their respective centers of mass. The center of mass must be within the loop formed by the antenna, the rotation may occur at any axis that intersects the center of mass. The loops formed by the antennas define planes that are separated from each other such as that shown in Figs 4-6.

Plaintiffs' proposed construction is consistent with the explanation of "overlapping arrangement" in the specification of the '862 patent, and the ordinary meaning of "proximate adjacent planes." The specification describes the overlapping arrangement: "In accordance with the overlapping arrangement, the two reader antennas 34, 38 are fixably mounted in such a way that one of the reader antennas 34 or 38 could be brought into contact with the other reader antenna 38 or 34 at some point of rotation if the reader antenna 34 or 38 were to be rotated from its fixed position about its center of mass. The overlapping arrangement further encompasses the case, wherein the reader antennas 34 and 38 could be brought into contact with one another at some point of rotation if both fixably mounted reader antennas 34 and 38 were to be rotated from their respective fixed positions about their respective centers of mass." (Ex. 20 at pg. 302, col. 11:67-12:11.)

Plaintiffs' proposed construction essentially restates this description from the specification, and adds the ordinary meaning of "proximate adjacent planes" as "planes . . . that are near, close or contiguous." "Proximate" means "close; very near." (Ex. 22 at pg. 513). "Adjacent" means "lying near, close, or contiguous, adjoining, neighboring." (Ex. 23 at pg. 516.)

Farpointe's construction seems to be essentially the same as Plaintiffs' construction, except for the last two sentences in Farpointe's proposed construction,

1 which are unnecessary. Moreover, the last sentence of Farpointe's construction (i.e.,
 2 "The loops formed by the antennas define planes that are separated from each other
 3 such as that shown in Figs 4-6) seeks to read a limitation into the claims that is not
 4 warranted. Nothing in the specification states or implies that the loops formed by
 5 the antennas have to be on "separated" planes. Moreover Farpointe's proposed
 6 construction ignores that the ordinary definition of "adjacent" includes "contiguous"
 7 and "adjoining." Thus, the scope of this claim term includes not only planes that are
 8 "near" or "close," but also planes that are touching.

9 **3. "first and second antennas are arranged in an opposing**
 10 **magnetic flux arrangement" (Claim 9)**

11 Plaintiffs' Proposed Construction	11 Farpointe's Proposed Construction
12 arrangement where the magnetic flux 13 generated by one reader antenna passes 14 through the other reader antenna in an 15 opposing manner (i.e., both positive 16 and negative magnetic flux from one 17 reader antenna passes through the other 18 reader antenna) 19 20 21 22 23 24 25 26 27 28	The antennas must be fixably mounted in non-contacting or contacting in an asymmetric or an overlapping relation to one another and on separate planes such as the arrangements shown in Figs. 3A- 3B and 6A-6B. Significant magnetic flux generated by one reader antenna passes through the other reader antenna so both positive and negative magnetic flux from one reader antenna passes through the other reader antenna such that the positive and negative fluxes from the one reader antenna cancel out summing to essentially zero resulting in essentially no self resonance effect on the other reader antenna. Positive magnetic flux is magnetic flux which induces a positive voltage across an antenna coil and negative magnetic flux is magnetic flux which induces a negative voltage across an antenna coil.

1 Plaintiffs' proposed construction is consistent with the specification of the
 2 '862 patent. In describing the "opposing magnetic flux arrangement, the
 3 specification provides: "In accordance with the opposing magnetic flux
 4 arrangement, the two reader antennas 34, 38 are fixably mounted in a non-
 5 contacting or contacting relation to one another, such that significant magnetic flux
 6 generated by one reader antenna 34 or 38 passes through the other reader antenna 38
 7 or 34 in an opposing manner (i.e., both positive and negative magnetic flux from
 8 one reader antenna 34 or 38 passes through the other reader antenna 38 or 34)."
 9 (Ex. 20 at pg. 302, col. 12:18-26.) The opposing magnetic flux arrangement is
 10 shown, for example, in Figures 3A and 3B of the '862 patent. The specification
 11 provides: "Referring to FIGS. 3A and 3B, ... [t]he magnetic flux generated by the
 12 reader high frequency antenna 38 in the negative direction (i.e., the magnetic flux
 13 emanating from the exterior of the reader high frequency antenna 38) passes through
 14 the reader low frequency antenna 34 and the magnetic flux generated by the reader
 15 high frequency antenna 38 in the positive direction (i.e., the magnetic flux
 16 emanating from the interior of the reader high frequency antenna 38) also passes
 17 through the reader low frequency antenna 34." (*Id.* at pg. 302, col. 12:36-52.)

18 Again, Farpointe seeks to read limitations into this claim term that are not
 19 warranted. For example, Farpointe's proposed construction requires: "Significant
 20 magnetic flux generated by one reader antenna passes through the other reader
 21 antenna so both positive and negative magnetic flux from one reader antenna passes
 22 through the other reader antenna such that the positive and negative fluxes from the
 23 one reader antenna cancel out summing to essentially zero resulting in essentially no
 24 self resonance effect on the other reader antenna." The specification actually states:
 25 "Significant magnetic flux generated by one reader antenna 34 or 38 passes through
 26 the other reader antenna 38 or 34 in an opposing manner (i.e., both positive and
 27 negative magnetic flux from one reader antenna 34 or 38 passes through the other
 28 reader antenna 38 or 34)." (*Id.* at pg. 302, col. 12:21-25.) The specification goes on

1 to specifically contradict the requirement that the opposing magnetic flux must be
 2 cancelled out summing to essentially zero, as proposed by Farpointe. “It is noted
 3 that the opposing magnetic flux arrangement does not require the positive and
 4 negative magnetic fluxes to be of equal magnitude.” (*Id.* at pg. 302, col. 12:30-32.)

5 **4. “said first and second reader antennas are arranged in an**
 6 **overlapping arrangement simultaneous with said opposing**
 7 **magnetic flux arrangement” (Claim 13)**

8 Plaintiffs’ Proposed Construction	Farpointe’s Proposed Construction
9 Same as Claims 5 and 9.	Same as Claims 5 and 9.

10
 11 This term from claim 13 merely discloses that the antennas are arranged in an
 12 *overlapping* and an *opposing magnetic flux* arrangement. Because both such
 13 arrangements are addressed above in claims 5 and 9, the parties do not believe this
 14 term needs to be separately construed.

15 **5. “a portion of the first area in the first plane overlaps a**
 16 **portion of the second area in the second plane” (Claim 20)**

17 Plaintiffs’ Proposed Construction	Farpointe’s Proposed Construction
18 a portion of the area enclosed by the 19 first reader loop antenna covers or is 20 covered by a portion of the area 21 enclosed by the second reader loop 22 antenna as viewed along the longitudinal axis	The loops of the first and second antenna are arranged so the planes defined by the antenna loops are separated from each other and at least a portion of the area overlaps the portion of the second area.

23
 24 Plaintiffs’ proposed construction merely makes it clear that the “overlap”
 25 would be viewed along the longitudinal axis, i.e., from the vantage point of looking
 26 down on the antennas from above as they lay flat. For example, as shown in figure
 27 6A of the ‘862 patent. “Referring to FIGS. 6A and 6B, the reader antennas 34, 38
 28 ... each has essentially the same total area. The reader antennas 34, 38 are arranged

1 relative to one another such that essentially half the total area of the reader low
 2 frequency antenna 34 aligns with essentially half the total area of the reader high
 3 frequency antenna 38.” (Ex. 20 at pg. 303, col. 13:61-14:2.)

4 Farpointe, once again seeks to add into the claim term that the planes defined
 5 by the loops must be “separated” from each other. As stated above, however,
 6 nothing in the specification supports reading such a limitation into this claim term,
 7 or any other claim term.

8 **C. Construction Of Claim Term From The ‘862 Patent On Which The**
 9 **Parties Agree**

10 **1. “a . . . plane defined by the . . . area is substantially**
 11 **orthogonal to a direction of magnetic flux created**
 12 **through the . . . antenna” (Claim 20)**

13 The parties agree that this term should be construed as “a plane defined by the
 14 area formed by the antenna is substantially orthogonal to the direction of the
 15 magnetic flux created through the antenna.” (Docket # 25, pg. 1.) In light of the
 16 foregoing, Plaintiffs request that the Court construe this claim term as the parties
 17 have agreed.

18 **V. CONCLUSION**

19 Plaintiffs respectfully request that the Court issue an Order adopting the claim
 20 constructions proposed by Plaintiffs above.

21 Dated: September 30, 2011

RUTAN & TUCKER, LLP
 MICHAEL T. HORNAK
 RONALD P. OINES
 BRADLEY A. CHAPIN
 KARI BARNES
 TIMOTHY SPIVEY

22 By: /s/ Ronald P. Oines

Ronald P. Oines
 Attorneys for Plaintiffs HID GLOBAL
 CORPORATION, ASSA ABLOY
 AB, and DESTRON FEARING
 CORPORATION

23
 24
 25
 26
 27
 28
 PLAINTIFFS’ OPENING CLAIM
 CONSTRUCTION BRIEF