

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

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

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

HID GLOBAL CORPORATION, etc., et
 al.,

Plaintiffs,

vs.

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

Defendants.

Case No. SACV 10-01954 JVS (RNBx)

**PLAINTIFFS' REPLY TO
 DEFENDANT'S OPENING CLAIM
 CONSTRUCTION BRIEF**

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

Plaintiffs HID GLOBAL CORPORATION ("HID"), ASSA ABLOY AB
 ("AAAB") and DESTRON FEARING CORPORATION ("Destron") (collectively,
 "Plaintiffs") submit this Reply to defendant FARPOINTE DATA, INC.'s
 ("Farpointe") Opening Claim Construction Brief for the Claim Construction hearing
 set for November 14, 2011, at 3:00 p.m.

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1 **I. INTRODUCTION**

2 In seeking to limit the scope of the patents at issue in this case, Farpointe
 3 violates several well established tenets of claim construction. Repeatedly, Farpointe
 4 seeks to read limitations into the claim language that are unwarranted. See, e.g.,
 5 *Leggett & Platt, Inc. v. Hickory Springs Mfg. Co.*, 285 F.3d 1353, 1357 (Fed. Cir.
 6 2002) (“the interpretative process may not import limitations from the specification
 7 into the defining language of the claims.”) For example, Farpointe routinely seeks
 8 to limit the scope of the claims to a particular embodiment discussed in the
 9 specification. See, e.g., *CCS Fitness, Inc. v. Brunswick Corporation*, 288 F.3d
 10 1359, 1368 (Fed. Cir. 2002) (“Mere inferences drawn from the description of an
 11 embodiment of the invention cannot serve to limit claim terms.”)(citing *Johnson*
 12 *Worldwide Assocs., Inc. v. Zebco Corp.*, 175 F.3d 985, 992 (Fed. Cir. 1999).)

13 In one instance, Farpointe completely ignores an explicit and unequivocal
 14 statement in the prosecution history that directly contradicts Farpointe’s proposed
 15 construction. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1317 (Fed. Cir. 2005) (en
 16 banc) (“the prosecution history can often inform the meaning of the claim language
 17 by demonstrating how the inventor understood the invention”); see also
 18 *Honeywell International, Inc. v. Universal Avionics Systems Corp.*, 493 F.3d 1358,
 19 1361 (Fed. Cir. 2007) (when a patentee defines a claim term, explicitly or implicitly,
 20 the patentee’s definition governs, even if it is contrary to the conventional meaning
 21 of the term). Farpointe also argues for complicated and ambiguous interpretations
 22 of simple claim language that needs no interpretation at all. See, e.g., *O2 Micro Int’l*
 23 *v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008).

24 Plaintiffs submit that the Court should adopt Plaintiffs’ proposed
 25 constructions, as discussed below.

II. PLAINTIFFS' CONSTRUCTION OF THE DISPUTED TERMS OF THE '935 PATENT

A. "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.

As explained in Plaintiffs' Opening Brief, 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.

The specification provides, for example:

- "[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." (Ex. 1 at pg. 14, col. 5:8-11.);
- "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.)

1 Claim 18 also supports Plaintiffs' position that the "programmable
 2 interrogator" is something more than simply "a reader based on a software
 3 program," as Farpointe suggests. Claim 18 provides: "The programmable
 4 interrogator of claim 17, wherein said programmer includes an EEPROM coupled to
 5 a microprocessor, said EEPROM being programmed by an external computer."
 6 Claim 18, which is dependent on claim 17, describes one way in which the
 7 programming of the "programmable interrogator" may be achieved (i.e., by way of
 8 an EEPROM coupled to a microprocessor, which EEPROM is programmed by an
 9 external computer.) Claim 18 would be nonsensical if the "programmable
 10 interrogator" in claim 17 was merely "a reader based on a software program," as
 11 Farpointe suggests.

12 Although Farpointe recognizes that the specification states that the reader can
 13 be reprogrammed onsite (Farpointe's Opening Brief, pg. 5, ll. 1-5), Farpointe's
 14 construction does not even address what it means for the reader to be
 15 "programmable." Instead, Farpointe simply states that "the term 'programmable
 16 interrogator' should be construed as 'a reader based on a software program.'"
 17 (Farpointe's Opening Brief, pg. 5, ll. 11-12.) But Farpointe does not stop there.

18 Farpointe goes on to add to its proposed construction of "programmable
 19 interrogator" characteristics of the *transponders*. Remarkably, Farpointe wishes to
 20 include: "The identification signal for each of the plurality of transponders has
 21 different frequencies, different methods of modulation, and different encoding from
 22 each other and at least an identification component" in its construction of
 23 "programmable interrogator." Farpointe simply cites the preamble of claim 17 and
 24 states that "[t]his language supports Farpointe's construction of a 'programmable
 25 interrogator' by describing the functions carried out by the microprocessor pursuant
 26 to the software program." (Farpointe's Opening Brief, pg. 5, ll. 22-25.)

27 Farpointe cites no authority or evidence to support its effort to include
 28 characteristics of the *transponders* in its proposed construction of "programmable

interrogator.” Moreover, Farpointe ignores that the parties separately ask the Court to construe the claim language that addresses these characteristics of the transponders. (See next section below.)¹ Therefore, there is no reason for the Court to include in any interpretation of “programmable interrogator” any characteristics of the *transponders*.

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

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.

To understand this claim language, it is necessary to understand the science of RFID interrogation systems. In support of their claim construction, Plaintiffs submitted a comprehensive Declaration from Dr. Richard Mihran, unquestionably an RFID expert (Mihran Dec. [Docket # 30] at ¶¶ 1-11 and Ex. 27), in which Dr. Mihran explains in great detail how RFID interrogation systems work, including how RFID readers communicate with RFID transponders. Dr. Mihran explained in great detail, among other things, the concepts of signal frequencies and methods of

¹ Plaintiffs address the substance of the second sentence of Farpointe’s proposed construction of “programmable interrogator” in the following section.

1 signal modulation used to facilitate the exchange of information between the reader
2 and transponders. (*Id.* ¶¶ 19-49.)

3 Dr. Mihran explained the concepts disclosed in the '935 patent, and provided
4 his opinion, as one of skill in the art, as to the proper interpretation of "*transmitting*
5 *an identification signal having different frequencies, different methods of*
6 *modulation, and at least an identification component.*" Plaintiffs' proposed
7 construction is consistent with the specification and prosecution history of the '935
8 patent and the understanding of a person of skill in the art at the time of the
9 invention.

10 The first part of Plaintiffs' construction, "*transmitting an identification signal*
11 *that (a) uses a frequency or frequencies distinct from the interrogation signal . . .*
12 *that are different from those used by another of the plurality of transponders,*" is
13 supported by the specification and prosecution history.

14 First, it is clear that the "frequency" in claim 17 refers to the frequency of the
15 transponder signal, not the frequency of the interrogator signal. This is supported by
16 Table 2 of the '935 patent and the associated discussion of Table 2. (Ex. 1, at
17 pgs. 14-15, col. 6, l. 64 – col. 7, l. 19; Mihran Dec. ¶¶ 54-55.) This is also supported
18 by the discussion of the frequencies used by the Destron, Datamars and Trovan
19 transponders discussed in the specification of the '935 patent. For example, the
20 specification states that the Destron transponders "are designed for optimum
21 performance at the frequency $f_0 = 125$ kHz" and further describes how such
22 transponders use frequencies including $f_0/10$ (i.e., 12.5) and $f_0/8$ (i.e., 15.625) in
23 transmitting the identification signal to the interrogator. (Ex. 1, at pg. 13, col. 4,
24 ll. 5-11; Mihran Dec. ¶¶ 56-57.)²

25 Based on these descriptions and Table 2 in the specification, it is clear that
26 "frequency" in claim 17 is a frequency of the transponder, which is distinct from the

27 ² Similar concepts are discussed with respect to the other transponders referenced
28 in the specification. (Ex. 1, at pg. 13, col. 4, ll. 18-20 and 35-38; Mihran Dec. ¶ 58;
Ex. 1, at pg. 15, col. 7, ll. 52-54; Mihran Dec. ¶ 59)

1 interrogation signal. It is also clear that claim 17's reference to "different
2 frequencies" refers to the different frequencies that are used by different
3 transponders, such as for example, the different frequencies shown in Table 2 of the
4 '935 patent.

5 The second part of Plaintiffs' construction, "*transmitting an identification*
6 *signal that (a) uses . . . a method or methods of modulation (defined as a method of*
7 *changing the amplitude, frequency, and/or phase of a carrier signal) that are*
8 *different from those used by another of the plurality of transponders,*" is also
9 supported by the intrinsic record and consistent with how one of skill in the art
10 would understand this term.

11 To begin with, the term "modulation" is widely understood by those of skill
12 in the art to refer to "changing the amplitude, frequency, and/or phase of a carrier
13 signal." (Mihran Dec. at ¶¶ 63-64 and Exs. 4, pg. 216 and 5, pg. 219.) As
14 Dr. Mihran notes, different types of modulation used in RFID systems include
15 "amplitude-shift keying" (ASK), "frequency shift keying" (FSK) and "phase shift
16 keying" (PSK). (Mihran Dec. at ¶¶ 27-44; 65.) It is also widely understood by
17 those of skill in the art that ASK, FSK and PSK are types of modulation. Indeed, in
18 support of their Opening Brief, Plaintiffs included numerous pieces of extrinsic
19 evidence that show that ASK, FSK and PSK are well known types of modulation.
20 (E.g., Ex. 8, pg. 231; Ex. 9, pg. 234; Ex. 11, pg. 240; Ex. 12, pg. 243[RFID
21 Handbook refers to and discusses "ASK modulation"]; Ex. 10, pg. 237; Ex. 11,
22 pg. 240; Ex. 12, pg. 243[RFID Handbook refers to and discusses "FSK
23 modulation"]; Ex. 11, pg. 240; Ex. 12, pg. 243 [RFID Handbook refers to and
24 discusses "PSK modulation"]; Ex. 13, pg. 248 ["Passive RFID Basics" paper
25 discusses PSK and FSK modulation])

26 Plaintiffs also noted in their Opening Brief that Farpointe marks the accused
27 products with US Patent nos. 6,411,199 and 6,611,198, both of which refer to and
28 discuss PSK modulation and FSK modulation. (Oines Dec. ¶¶ 17-18 and Exs. 15

1 [e.g., col. 1, ll. 51-62] and 16 [e.g., col. 2, ll. 2-13.) Among other things, those
 2 patents state “[i]n some systems, the transponder emits a signal modulated by
 3 frequency shift keying (FSK) . . .” and “[s]ystems using PSK modulation cannot
 4 read the cards which transmit FSK modulated information and systems which read
 5 FSK modulated information cannot read the cards which transmit PSK modulated
 6 information.” (*Id.*)

7 As Dr. Mihran also explains, an additional aspect of a particular “method of
 8 modulation” is the manner in which these types of modulation (e.g., FSK and PSK)
 9 are applied to encode or represent data. (Mihran Dec. ¶ 66.) Different encoding
 10 types, such as “Manchester,” “BP” or “NRZ,” may be implemented using FSK or
 11 PSK. (*Id.* ¶¶ 66-69.)

12 There can be no doubt that the inventors of the ‘935 patent intended that these
 13 types of encoding are part of and included within the definition of “methods of
 14 modulation.” As explained in Plaintiffs’ Opening Brief, during the prosecution of
 15 the ‘935 patent, the applicants explicitly referred to Manchester, NRZ and BP as
 16 examples of “methods of modulation.” In distinguishing the “Marsh” patent, the
 17 applicants stated that “. . . Marsh’s specification mentions only that the transponder
 18 response signals are Manchester encoded. See col. 8, lines 33-45; col. 9, lines 18-
 19 28. Marsh does not suggest that its interrogator is capable of reading transponder
 20 signals that are modulated **using different modulation methods (such as**
 21 **Manchester, [NRZ], [BP], or Modified [BP]) . . .**” (Ex. 3 at pg. 149; emphasis
 22 added.)

23 Moreover, including types of encoding within the definition of “methods of
 24 modulation” is not unique to the ‘935 patent. Indeed, as Dr. Mihran noted,
 25 manufacturer product data sheets from near the time of invention of the ‘935 patent
 26 show that others in the RFID industry included types of encoding within the
 27 definition of “methods of modulation.” (Mihran Dec. ¶¶ 88-98, Exs. 6, 7, 26.)
 28 These data sheets discuss four “modulation methods”: “FSK Modulation,” “PSK

1 Modulation,” “Manchester Modulation” and “Biphase Modulation.” (Ex. 6,
2 pg. 221.)

3 Thus, Plaintiffs’ proposed construction is consistent with the intrinsic record
4 and the understanding of a person of skill in the art. Farpointe’s construction, on the
5 other hand, is not, and is **directly and unequivocally contradicted by the**
6 **prosecution history** of the ‘935 patent. As explained in Plaintiffs’ Opening Brief
7 and above, the inventors explicitly stated during prosecution of the ‘935 patent that
8 Manchester, NRZ and BP are “methods of modulation.” Yet incredibly, Farpointe’s
9 proposed construction would explicitly exclude Manchester, NRZ and BP as
10 “methods of modulation.”

11 Moreover, Farpointe’s proposed construction also would explicitly exclude
12 FSK and PSK from the definition of “methods of modulation.” This ignores the
13 overwhelming evidence that FSK and PSK are, in fact, types of modulation, and one
14 of skill in the art would understand that these types of modulation along with the
15 types of encoding implemented with them are within the definition of “methods of
16 modulation.” Therefore, that portion of Farpointe’s proposed construction stating
17 what “methods of modulation” **does not** include is demonstrably wrong.

18 Moreover, Farpointe’s attempt to state what “methods of modulation” **does**
19 include is also wrong. Farpointe states merely that “[m]odulation methods include
20 methods such as amplitude or load modulation (“AM”)” Farpointe relies on
21 nothing more than Table 1 of the ‘935 patent, and ignores the rest of the ‘935 patent,
22 the prosecution history, and overwhelming extrinsic evidence.

23 Farpointe argues that because there is a heading in Table 1 entitled
24 “Modulation,” “methods of modulation” in claim 17 must refer only to the alleged
25 “methods of modulation” listed under that heading, i.e., “AM” (“Amplitude
26 Modulation”) or “None” (no modulation). Farpointe is wrong.

27 To begin with, the specification does not state or even imply that the headings
28 used in Table 1 correspond directly to the terms in claim 17. Moreover, it is clear

1 that such headings do not, in fact, correspond directly to such claim terms. For
 2 example, Table 1 also includes a heading entitled “TX Frequency” (i.e., “transmit
 3 frequency”). Under Farpointe’s reasoning, this “transmit frequency” must be the
 4 same as the “frequency” referred to in claim 17. However, even Farpointe
 5 recognizes that the frequency referred to in claim 17 is the *transponder* frequency,
 6 and the frequency referred to in Table 1 is the *interrogator* frequency. Thus, as
 7 Farpointe recognizes, “frequency” in Table 1 is not the same as “frequency” in
 8 claim 17.

9 Moreover, as explained in Plaintiffs’ Opening Brief, Farpointe’s proposed
 10 construction of what “methods of modulation” includes actually identifies only one
 11 “method of modulation,” i.e. “AM” of “Amplitude Modulation.” Farpointe states
 12 that “methods of modulation” includes merely “amplitude” modulation or “load”
 13 modulation. As Dr. Mihran explained, however, “load modulation” is never
 14 mentioned in the specification of the ‘935 patent, and would be understood by one
 15 of ordinary skill in the art to be the manner in which amplitude modulation is
 16 implemented. (Mihran Dec. ¶ 99, n. 8.) Indeed, in its Opening Brief, Farpointe
 17 does not even discuss “load modulation,” or how it purportedly is a “method of
 18 modulation.” Thus, under Farpointe’s definition of “methods of modulation,” there
 19 is only one possible method of modulation, i.e., amplitude modulation.

20 A fundamental aspect of the invention disclosed in the ‘935 patent is the
 21 ability of the interrogator to read transponders that use different methods of
 22 modulation. Farpointe’s flawed construction also highlights, again, why Farpointe’s
 23 blind reliance on Table 1 is misguided. In Table 1 of the ‘935 patent, all of the
 24 disclosed transponder types are shown to utilize either “AM” (Amplitude
 25 Modulation) or “none” (no modulation). However, it is nonsensical and
 26 unsupported by the specification to state that “no modulation” is a “method of
 27 modulation.” Yet Farpointe’s position apparently is just that. Farpointe’s proposed
 28 construction also is wrong because under Farpointe’s construction, claim 17 would

1 not read on the preferred embodiments discussed in the '935 patent. See *Vitronics*
 2 *Corporation v. Conceptronic, Inc.*, 90 F.3d 1576, 1583-1584 (Fed. Cir. 1996)
 3 ("Such an interpretation is rarely, if ever, correct and would require highly
 4 persuasive evidentiary support . . ."); *Hoechst Celanese Corp. v. BP Chems. Ltd.*,
 5 78 F.3d 1575, 1581 (Fed. Cir. 1996)("We share the district court's view that it is
 6 unlikely that an inventor would define the invention in a way that excluded the
 7 preferred embodiment, or that persons of skill in this field would read the
 8 specification in such a way.")

9 Finally, Farpointe's contention that "each type of transponder must have
 10 different frequencies" (Farpointe's Opening Brief, pg. 6, ll. 8-9) is unsupportable if,
 11 by this, Farpointe means every transponder read by the reader must have a different
 12 frequency from every other transponder. As explained in Plaintiffs' Opening Brief,
 13 this element merely requires that the interrogator is capable of reading any number
 14 of different types of transponders, at least two of which transmit their identification
 15 signals using different frequencies and different methods of modulation. (Ex. 1 at
 16 pg. 12, col. 1, ll. 17-19.) This was because the different companies' readers and
 17 transponders sometimes used different communication protocols. (*Id.* at pg. 13,
 18 col. 4:18-20.) An object of the invention of the '935 patent was to create a reader
 19 that could read the different transponders available, including the specific
 20 transponders discussed in the '935 patent.

21 Farpointe recognizes this and, therefore, it appears there may not be a dispute
 22 on this point. However, Farpointe's proposed claim language is problematic
 23 because it seems to require that each transponder must use a different frequency and
 24 different method of modulation from every other transponder.

25 For all of the foregoing reasons, Plaintiffs respectfully submit that the Court
 26 should adopt Plaintiffs' proposed construction.

1 **C. “a processor for processing said identification signal” . . .**
 2 **“and creating an output signal substantially corresponding**
 3 **to said identification component of said identification**
 4 **signal” (Claim 17)**

Plaintiffs’ Proposed Construction	Farpointe’s Proposed Construction
6 Plaintiffs believe “a processor for 7 processing said identification signal” 8 does not require construction. 9 Plaintiffs’ proposed construction of 10 “and creating an output signal 11 substantially corresponding to said 12 identification component of said 13 identification signal” is: 14 “converting the identification signal 15 into an identification number 16 substantially corresponding to said 17 identification component of said 18 identification signal”	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 signal.

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

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

21 Nothing in the ‘935 patent or prosecution history suggests that the
 22 “processor” in claim 17 should be limited at all, let alone severely limited as
 23 Farpointe suggests. Farpointe argues that the “processor” of claim 17 must be “a
 24 complete integrated circuit” and “a single integrated circuit including a control unit,
 25 an arithmetic and logic unit (ALU) and memory (registers, cache, RAM and ROM)
 26 as well as various temporary buffers and other logic that uses instructions to perform
 27 calculations or other manipulations of data” But there is nothing in the
 28 specification that indicates the inventor limited “processor” at all. *Leggett*, 285 F.3d

1 at 1357 (“the interpretive process may not import limitations from the specification
 2 into the defining language of the claims.”); *CCS Fitness*, 288 F.3d at 1368 (“Mere
 3 inferences drawn from the description of an embodiment of the invention cannot
 4 serve to limit claim terms.”)(citation omitted); see also *Fortinet, Inc. v. Palo Alto*
 5 *Networks, Inc.*, 753 F.Supp.2d 1024, 1030-31 (N.D. Cal. 2010) (Court rejected
 6 defendant’s effort to limit the claim term “the processor” to a single embodiment
 7 discussed in the patent, and held “the processor” need not be construed.)

8 Additionally, although Farpointe states in its Opening Brief that “[t]he term
 9 ‘processor’ is not readily found in the specification of the ‘935 patent other than in
 10 the claim language,” (Farpointe’s Opening Brief, pg. 12, ll. 3-4), Farpointe itself
 11 recognizes that the specification does, in fact, use the term “processor” several
 12 times. (*Id.* pg. 12, ll. 9-16.) And nothing in the specification’s references to a
 13 “processor” indicates that “processor” should be limited.

14 Moreover, Farpointe recognizes that “[t]he functions of processing the
 15 identification signal and creating an output signal are performed through various
 16 elements described in the specification. For example, the processing of the
 17 identification signal is routed to a **microprocessor** through an ASIC (application
 18 specific integrated circuit) chip.” (Farpointe’s Opening Brief, pg. 12, ll. 19-23;
 19 emphasis in original.) This is inconsistent with Farpointe’s own proposed
 20 construction, which would require that the “processor” be, among other things, “a
 21 complete integrated circuit such as the microprocessor 52.” As Farpointe
 22 recognizes, the microprocessor may be part of the “processor,” but it is not *the*
 23 processor.

24 Other portions of the ‘935 patent establish that the “processor” is more than
 25 merely the “microprocessor.” For example, claim 19, which is dependent on, and
 26 narrower than, claim 17,³ provides, in pertinent part, that the “processor includes a
 27 mixer for demodulating the identification signal . . .”

28 ³ Claim 19 is dependent on claim 18, which, in turn, is dependent on claim 17.

Despite the fact that the specification does discuss “the processor,” Farpointe also states in its Opening Brief that “the specification does not offer any useful reference to the term ‘processor.’” (Farpointe’s Opening Brief, pg. 13, ll. 13-15.) Farpointe seeks to ignore the specification’s use of the term “processor,” and instead seeks to rely on extrinsic evidence. However, Farpointe’s extrinsic evidence also does not help Farpointe. In fact, Farpointe’s alleged dictionary definition of “processor” is actually the dictionary definition of “central processing unit.” (Oines Dec. ¶ 19; Exs. 17-18.) And even the definition of central processing unit does not suggest that the elements of the central processing unit must be in a “single integrated circuit,” as Farpointe suggests in its proposed construction.

**“and creating an output signal substantially corresponding to said
identification component of said identification signal”**

As explained in Plaintiffs’ Opening Brief, this claim language refers to the processor and, in particular, the fact that it converts the identification signal from the transponder into an identification number that substantially corresponds to the identification component of the identification signal received from the transponder. Discussing one embodiment, the specification provides, among other things, that “the signal is then operated upon by software to convert the transponder signal into an identification number to display the tag identification data.” (Ex. 1, pg. 15, col. 8:15-17.)⁴

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

⁴ As explained in Plaintiffs’ Opening Brief, claim 17 does not include a “display for displaying said 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.

1 signal. Farpointe's proposed construction provides that the output is "the same" as
 2 the identification data of the identification signal. Farpointe cites to no evidence to
 3 support this construction.

4 **D. "a programmer connected to said processor for**
 5 **programming the specific types of identification signals of**
 6 **the different transponders to process" (Claim 17)**

7 Plaintiffs' Proposed Construction	8 Farpointe's Proposed Construction
9 Plaintiffs believe this language 10 does not require construction.	11 The programmer is a separate memory device 12 from any internal memory on the processor that 13 stores operating instructions that are loaded 14 under the instruction of a boot load function 15 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.

16
 17 Plaintiffs do not believe "a programmer connected to said processor for
 18 programming the specific types of identification signals of the different transponders
 19 to process" needs construction. *See, e.g., O2 Micro Int'l v. Beyond Innovation Tech.*
 20 *Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). And despite the fact that there is nothing
 21 in the '935 patent or prosecution history to suggest that this term should be limited,
 22 Farpointe, again, seeks to significantly limit the scope of this claim term. Farpointe
 23 asserts that "[t]he programmer is a separate memory device from any internal
 24 memory on the processor that stores operating instructions that are loaded under the
 25 instruction of a boot load function stored on internal memory on the processor," but
 26 cites to no evidence that would support such a limitation. In fact, the only portion of
 27 the '935 patent that Farpointe believes supports its position is dependent claim 18.
 28 But Farpointe's reliance on claim 18 is misplaced.

1 Claim 18 is dependent on, and more narrow than, claim 17. Claim 18
 2 provides: “The programmable interrogator of claim 17, wherein said programmer
 3 includes an EEPROM . . .” (Ex. 1, col. 14, ll. 59-60.) From this, Farpointe argues
 4 “[i]t is clear based on dependent claim 18, that the ‘programmer’ [of claim 17]
 5 includes a separate memory device such as an electrically erasable programmable
 6 memory (“EEPROM”) that store operating instructions.” (Farpointe’s Opening
 7 Brief, pg. 15, ll. 17-20.) Farpointe’s attempt to read into an independent claim a
 8 limitation that appears only in a dependent claim is unprecedented and has no
 9 foundation in the law. In fact, under well-established precedent, claim 17 should be
 10 interpreted **not** to require a separate memory device such as an EEPROM. See, e.g.,
 11 *AK Steel Corp. v. Sollac & Ugine*, 344 F.3d 1234, 1242 (Fed. Cir. 2003)
 12 (“[D]ependent claims are presumed to be of narrower scope than the independent
 13 claims from which they depend.”)

14 Farpointe also, once again, refers to discussions in the specification of an
 15 embodiment and, in violation of well-settled claim construction principles, argues
 16 that the claims must be limited in scope to that which is discussed as an
 17 embodiment. (Farpointe’s Opening Brief, pg. 16, l. 16 – pg. 17, l. 15.)

18 Farpointe’s position is not only unsupported by the intrinsic record or
 19 extrinsic evidence, it is internally inconsistent. In its proposed construction of
 20 claim 17, Farpointe states that “[t]he processor is a complete integrated circuit such
 21 as the microprocessor 52.” Thus, Farpointe appears to be saying **the “processor” is**
 22 **the “microprocessor.”** Yet, in its proposed construction of claim 18, Farpointe
 23 argues that the “programmer is an EEPROM and a microprocessor, both of which
 24 must be separate from the processor” Here, Farpointe is saying **the processor**
 25 **is separate from the microprocessor.** Farpointe cannot have it both ways.

26 In light of the foregoing, Plaintiffs believe the Court should not construe this
 27 claim language.
 28

1 **E. “said EEPROM being programmed by an external**
 2 **computer” (Claim 18)**

3 Plaintiffs’ Proposed Construction	4 Farpointe’s Proposed Construction
5 said EEPROM programmed 6 by a computer external to the 7 programmable interrogator	8 The programmer is an EEPROM and a 9 microprocessor, both of which must be separate 10 from the processor and programmed by a boot 11 load function through a serial programming port.

12 Claim 18, in full, provides: “The programmable interrogator of claim 17,
 13 wherein said programmer includes an EEPROM coupled to a microprocessor, said
 14 EEPROM being programmed by an external computer.” Plaintiffs’ proposed
 15 construction merely seeks to make it clear that the EEPROM is programmed by a
 16 computer that is external to the programmable interrogator.

17 Farpointe, on the other hand, once again, argues for a convoluted and
 18 inconsistent construction that also is not supported by the specification of the ‘935
 19 patent. Farpointe’s position here is that “[t]he programmer is an EEPROM and a
 20 microprocessor” This makes no sense.

21 Claim 17 discloses an interrogator that includes, among other things, a
 22 processor and a programmer connected to said processor. (Ex. 1, pg. 18, col. 14,
 23 ll. 51-57.) Pursuant to dependent claim 18, the programmer may *include* an
 24 EEPROM coupled to a microprocessor. (Ex. 1, pg. 18, col. 14, ll. 59-61.) With no
 25 support or legal authority, Farpointe seeks to change the language of claim 18 from
 26 “programmer *includes* an EEPROM *coupled to a* microprocessor” to “programmer
 27 *is* an EEPROM *and a* microprocessor.”

28 It is also nonsensical for Farpointe to state in its construction that the
 EEPROM and microprocessor, both “must be separate from the processor.” As
 noted above, elsewhere, Farpointe says the processor **is** the microprocessor.

 Additionally, once again, Farpointe seeks to use a discussion of an
 embodiment to further limit the claim such that the programmer must be

1 “programmed by a boot load function through a serial programming port.” Nothing
2 in the claim language or specification of the ‘935 patent suggests that claim 18
3 should be so limited.

4 Plaintiffs’ simple construction should be adopted.

5 **III. PLAINTIFFS’ CONSTRUCTION OF THE DISPUTED TERMS OF**
6 **THE ‘862 PATENT**

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

9 Plaintiffs’ Proposed Construction	Farpointe’s Proposed Construction
10 the first and second antennas are 11 oriented along longitudinal axes 12 substantially equidistant from each 13 other	14 The two antennas each have an axis of 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.

15 As explained in Plaintiffs’ Opening Brief, the difference between the parties’
16 proposed constructions is the direction of the axes referred to in this claim term.
17 Plaintiffs contend this term refers to a “longitudinal” axis, i.e., an axis that is
18 perpendicular to the plane that is defined by the loop of the antenna. Farpointe
19 contends this term refers to an axis that is “in the x-y plane defined by the antenna
20 loop.” The claim language itself does not state which is correct. However, the
21 specification shows that Plaintiffs’ construction is the correct one.

22 Farpointe’s interpretation would include the antenna orientation shown in
23 figure 5 of the ‘862 patent. That figure, however, shows the two antennas in a
24 “perpendicular orientation.” (Ex. 20 at pg. 303, col. 13:39-41.) Farpointe ignores
25 this and even misrepresents the specification’s characterization of figure 5.
26 Farpointe notes that the specification, in referring to figures 2A and 2B, states that
27 the reader antennas have a “parallel orientation.” (Farpointe’s Opening Brief,
28 pg. 19, ll. 11-15.) Farpointe then states “[t]his is similar for Figs. 3-6.” (*Id.*, pg. 19,

1 1. 16.) But Farpointe ignores the fact that the specification states that figure 5 shows
2 the antennas in a “perpendicular” not a parallel orientation.

3 Under Farpointe’s construction of this claim term, the axes of the antennas
4 shown in figures 2, 3, 4, and 6, **as well as 5**, would be parallel. This cannot be.
5 Because only Plaintiffs’ proposed construction is consistent with the specification,
6 Plaintiffs’ construction must be the correct one.

7 **B. “first and second antennas are arranged in at least a partially**
8 **overlapping arrangement on proximate adjacent planes” (Claim 5**
9 **and 17⁵)**

Plaintiffs’ Proposed Construction	Farpointe’s Proposed Construction
11 the first and second antennas arranged 12 so that one antenna may be brought 13 into contact with the other antenna at 14 some point of rotation if one (or both) 15 antenna (antennas) were rotated about 16 its (their) respective center (centers) of 17 mass, the antennas contained within 18 respective planes before rotation in 19 their fixed positions that are near, 20 close, or contiguous	The coil of the antennas are mounted in such a way that the loops 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 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

27 ⁵ 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.

1		that are separated from each other such
2		as that shown in Figs 4-6.

3 Plaintiffs' proposed construction of "overlapping arrangement" is supported
 4 by, and taken from, explicit statements in the specification. "In accordance with the
 5 overlapping arrangement, the two reader antennas 34, 38 are fixably mounted in
 6 such a way that one of the reader antennas 34 or 38 could be brought into contact
 7 with the other reader antenna 38 or 34 at some point of rotation if the reader antenna
 8 34 or 38 were to be rotated from its fixed position about its center of mass. The
 9 overlapping arrangement further encompasses the case, wherein the reader antennas
 10 34 and 38 could be brought into contact with one another at some point of rotation if
 11 both fixably mounted reader antennas 34 and 38 were to be rotated from their
 12 respective fixed positions about their respective centers of mass." (Ex. 20 at pg.
 13 302, col. 11:67-12:11.)

14 Farpointe's construction, on the other hand, seeks to add terms and concepts
 15 that are not supported by the specification. For example, neither the claim language
 16 nor the specification's description of "overlapping" refers to the "coil" of the
 17 antennas or "loops" formed by the antennas. Nor is there any support for
 18 Farpointe's proposed language that "[t]he center of mass must be within the loop
 19 formed by the antenna, the rotation may occur at any axis that intersects the center
 20 of mass." Farpointe does not even attempt to support its interpretation of
 21 "overlapping arrangement." Instead, Farpointe states, incorrectly, that "it appears
 22 the construction of the phrase 'a partially overlapping arrangement' is undisputed."
 23 (Farpointe's Opening Brief, pg. 21, ll. 12-13.) There is a dispute regarding the
 24 proper construction of this term, and again, only Plaintiffs' construction is supported
 25 by and consistent with the specification.

26 Farpointe's construction of "proximate, adjacent planes" is also flawed and
 27 overly limiting. As noted in Plaintiffs' Opening Brief, "proximate" means "close;
 28 very near." (Ex. 22 at pg. 513), and "adjacent" means "lying near, close, or

contiguous, adjoining, neighboring.” (Ex. 23 at pg. 516.) Thus, the ordinary meaning of “proximate, adjacent” includes not only “near” but also touching. Farpointe’s construction requires that the loops formed by the antennas define planes that are “separated from each other” and thus, would exclude an embodiment in which the antennas define planes that are touching. Neither the specification nor the ordinary meaning of “proximate, adjacent” supports such a limitation.

Although Farpointe argues that figures 4 through 6 support its interpretation, even Farpointe recognizes that the specification does not indicate that “proximate, adjacent” should be limited to what is shown in those figures. In any event, even if the specification stated that figures 4 through 6 are embodiments that show “proximate, adjacent” planes (it does not), it would be improper to limit this claim to one or more preferred embodiments disclosed in the specification. *CCS Fitness*, 288 F.3d at 1368.

Again, only Plaintiffs’ proposed construction is consistent with and supported by the specification and the ordinary meaning of “proximate, adjacent.”

C. “first and second antennas are arranged in an opposing magnetic flux arrangement” (Claim 9)

Plaintiffs’ Proposed Construction	Farpointe’s Proposed Construction
arrangement where the magnetic flux generated by one reader antenna passes through the other reader antenna in an opposing manner (i.e., both positive and negative magnetic flux from one reader antenna passes through the other reader antenna)	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

1		summing to essentially zero resulting in
2		essentially no self resonance effect on
3		the other reader antenna. Positive
4		magnetic flux is magnetic flux which
5		induces a positive voltage across an
6		antenna coil and negative magnetic flux
7		is magnetic flux which induces a
8		negative voltage across an antenna coil.

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

26 Once again, Farpointe seeks to read limitations into this claim term that are
 27 not warranted. For example, the entire first sentence of Farpointe's construction is
 28 unnecessary, and seeks to limit this claim term to that which is disclosed in one or
 more preferred embodiments.

Farpointe also seeks to include a limitation that the positive and negative fluxes from one reader antenna “cancel out summing to essentially zero resulting in essentially no self resonance effect on the other reader antenna.” (Farpointe’s Opening Brief, pg. 23, ll. 5-6; pg. 24, ll. 5-8.) Yet, even Farpointe recognizes that the section of the specification from which Farpointe would import this limitation is discussing only one embodiment of the invention. Farpointe acknowledges that it is relying on the discussion of “the embodiment in Figs. 6A-6B” (Farpointe’s Opening Brief, pg. 24, l. 9), but, contrary to established law, seeks to read that single embodiment into the claim as a limitation.

Moreover, the specification explicitly contradicts Farpointe’s construction. Among other things, the specification states that “the opposing magnetic flux arrangement does not require the positive and negative magnetic fluxes to be of equal magnitude.” (Ex. 20 at pg. 302, col. 12, ll. 30-32.)

Again, Farpointe’s attempt to limit the invention to certain embodiments is improper. Plaintiffs’ proposed construction should be adopted.

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

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

The parties apparently agree that the Court need not construe this term separately because this portion of claim 13 merely discloses the combination of two claim terms (“overlapping arrangement” and “opposing magnetic flux arrangement”) that are addressed in connection with claims 5 and 9.

E. “a portion of the first area in the first plane overlaps a portion of the second area in the second plane” (Claim 20)

Plaintiffs’ Proposed Construction	Farpointe’s Proposed Construction
a portion of the area enclosed by the first reader loop antenna covers or is covered by a portion of the area enclosed by the second reader loop 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.

Plaintiffs’ proposed construction is consistent with the specification of the patent, and merely seeks to simplify what seems to be obvious: that the “overlap” would be viewed from the vantage point of looking down on the antennas from above as they lay flat. This is shown, for example, in figure 6A of the ‘862 patent. “Referring to FIGS. 6A and 6B, . . . [t]he reader antennas 34, 38 are arranged relative to one another such that essentially half the total area of the reader low frequency antenna 34 aligns with essentially half the total area of the reader high frequency antenna 38.” (Ex. 20 at pg. 303, col. 13:61-14:2.)

Farpointe’s construction, on the other hand, again seeks to add limitations into the claim that are unnecessary and unsupportable. Farpointe seeks to require that the planes defined by the antennas be “separated from each other.” But, again, nothing in the specification supports such a requirement. Farpointe relies exclusively on its belief that in figures 3, 4 and 6, the planes of the two antennas are separated. (Farpointe’s Opening Brief, pg. 25, ll. 6-11.) Even if that is true, nothing in the specification supports Farpointe’s attempt to limit the scope of this claim to embodiments in which the planes defined by the antennas are separated from each other. *CCS Fitness*, 288 F.3d at 1368.

1 **IV. CONCLUSION**

2 Plaintiffs respectfully request that the Court issue an Order adopting the claim
3 constructions proposed by Plaintiffs.

4 Dated: October 28, 2011

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

By: /s/ Ronald P. Oines

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