

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

FINTIV, INC.,

Plaintiff,

v.

PAYPAL HOLDINGS, INC.,

Defendant.

Civil Action No. 6:22-cv-00288-ADA

JURY TRIAL DEMANDED

PLAINTIFF FINTIV, INC.'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Plaintiff Fintiv, Inc. (“Fintiv”), submits this Responsive Claim Construction Brief (“Resp. Brief”) in support of Fintiv’s proposed claim constructions and phrases identified for construction from the claims of U.S. Patent Nos. 8,538,845 (the “’845 Patent”), 9,892,386 (the “’386 Patent”), 11,120,413 (the “’413 Patent”), 9,208,488 (the “’488 Patent”), and the 10,438,196 (the “’196 Patent”) (collectively, the “Asserted Patents” or “Patents-in-Suit”) and in response to Defendant PayPal Holdings, Inc.’s (“PayPal”) Opening Claim Construction Brief (Dkt. 35).

II. CONSTRUCTION OF THE DISPUTED TERMS IN THE ’386 PATENT

A. “Mobile Wallet” – All Asserted Claims

Fintiv’s Proposed Construction	PayPal’s Proposed Construction
Plain and ordinary meaning	“A stored value account or prepaid access account (PPA) residing on a subscriber mobile device and that is not maintained by other devices”

The Court should reject PayPal’s proposed construction of the term “mobile wallet” – to require a stored value account or prepaid access account (PPA), residing on a subscriber mobile device, and that is not maintained by other devices.” PayPal’s proposed construction is intended to incorporate PayPal’s non-infringement arguments and is not helpful to assist the jury with a genuine dispute regarding claim scope. PayPal relies solely on two separate disclaimer arguments to supports its proposed construction, one from the Asserted Patents specification and the other based on arguments in an IPR. However, it is clear from these materials that no disclaimers were intended.

1. There is no Clear and Unequivocal Disclaimer to Limit “Mobile Wallet” to “a Stored Value Account or Prepaid Access Account (PPA)”

The claims themselves show that the patentee did not intend to limit the term “mobile wallet” to “a stored value account or prepaid access account (PPA).” Only the ’413 Patent, Claim 2 includes claim language “stored value.” See *e.g.*, ’413 Patent, Claim 2 (“indicating that a

subscriber desires to deposit a specified amount of stored value into a subscriber's account" ... holding stored value from an agent account" ... loading the stored value to the subscriber's account" ... updating ... a pending transaction to reflect the stored value.")). Moreover, Claim 3 of the '845 Patent includes the limitation "wherein the monetary transaction system is provided on a prepaid or postpaid phone." See *e.g.*, '825 Patent, Claim 3. Thus, the patentee knew how to use claim language to include limitations, such as "stored value" and "prepaid," but chose not to utilize this language in the patent claim themselves. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582, 39 U.S.P.Q.2d 1573 (Fed. Cir. 1996) ("First, we look to the words of the claims themselves, both asserted and nonasserted, to define the scope of the patented invention.")). Moreover, the patentee also used the term "mobile wallet account," "subscriber's account," and "agent account" when it intended to describe account limitations in the asserted claims. See *e.g.*, '845 Patent, Claim 1 ("specified amount of funds into the unbanked subscriber's mobile wallet account") and '386 Patent, Claim 1 ("to deposit a specified amount of funds into the subscriber's account" ... "agent account balance"). Thus, PayPal's proposed construction that imports unnecessary additional limitations based on the type of account limitations, *i.e.*, "stored value account or prepaid access account" improperly imports limitations into the claims.

Second, there is no clear and unmistakable disclaimer that was intended from the Asserted Patents specification. PayPal's disclaimer argument is based on the following excerpt:

The term "mobile wallet" or "mobile wallet account" refers to a stored value account or prepaid access account (PPA) that allows the owner (or "subscriber") to pay for goods and services on the mFS platform from his or her mobile wallet account.

See Motion at 4 (citing '845 Patent at 11:32-36 and '488 Patent at 9:9-13). However, this language does not seek to define the term "mobile wallet" and is not a clear and unmistakable disavowal. *Unwired Planet, LLC v. Apple Inc.*, 829 F.3d 1353, 1358, (Fed. Cir. 2016) ("A disclaimer or

disavowal of claim scope must be clear and unmistakable, requiring 'words or expressions of manifest exclusion or restriction' in the intrinsic record.”). Indeed, the patent includes many *other* discussions of the term “mobile wallet.” For example, the ’845 Patent includes permissive language when discussing the term “monetary transaction system” (e.g. mobile wallet platform) when discussing stored value account and prepaid mobile accounts showing the patentee did not intend to limit the term mobile wallet in this manner.

*The monetary transaction system may be used for many different tasks including enrolling a customer for a mobile wallet, **adding a stored value account** (either hosted by a mobile wallet platform or a third party), adding a bank or credit union account to a mobile wallet, adding a debit or credit card account to a mobile wallet, depositing funds in a mobile wallet, withdrawing funds from a mobile wallet, paying bills from a mobile wallet, **topping up a prepaid mobile account through a mobile wallet**, transferring funds through a mobile wallet (nationally or internationally), making in-store purchases using a mobile wallet, **and various other tasks as described herein below.***

’845 Patent at 1:56-67, *see also* 6:4-7 (“Various terminology will be used herein to describe the monetary transaction system (also referred to as a “mobile wallet platform,” “mobile wallet program,” or “mobile wallet transaction system.”). The ’845 Patent, for example, also uses permissive language when discussing these embodiments - “in some embodiments it may be beneficial to use program—issued pre-paid debit cards, **pre-paid access accounts, stored value accounts** or gift cards to conduct business along with the added convenience of card processing networks ...” *See also* ’845 Patent at 9:64-10:16 (using permissive language for “cash-in” and “pre-paid mobile wallet accounts.”). This optional language is not sufficient for a clear and unmistakable disavowal. *Luminara Worldwide, LLC v. Liown Elecs. Co.*, 814 F.3d 1343, 1353 (Fed. Cir. 2016) (“Thus, the specification teaches that non-rotational motion is optional. We have been shown no prosecution history that is to the contrary”).

Moreover, the provisional application 61/493,064 (“’064 provisional application”) incorporated by reference in the ’845 Patent (’845 Patent at 1:6-13) describes the term mobile wallet without any indication that it required only stored value or a PPA account.

With respect to the entire description of Figure 13, the term ‘mobile wallet’ encompasses not only mobile wallets owned or managed by the mobile wallet platform, but also third-party mobile wallets owned by third party mobile wallet providers or managed by third party mobile wallet platforms.

See ’064 provisional application at [032]. Indeed, the word “account” is not used at all to describe the term “mobile wallet.” The term “mobile wallet” is used in the Asserted Patents specification to describe an application or web interface that “allows the user to interact with the mFS platform using their mobile device” (’845 Patent at 6:23-24). The ’845 specification also references embodiments that do not discuss stored value or PPA accounts at all. The ’845 Patent discloses embodiments of the “monetary transaction system” (*i.e.*, mobile wallet platform) that allow users to add a bank or credit union account to a mobile wallet and a debit or credit card account. See ’845 Patent at 13:13-53. The ’845 Patent specification explains that “[i]t should be noted that many other transactions can take place over the monetary transaction system [e.g. mobile wallet platform], and that the embodiments described herein should not be read as limiting,” leaving no doubt that the patentee did not intend to limit the type of mobile wallet. *Id.* at 28:51-53, *see also* 29:23-30 (“The present invention may be embodied in other specific forms without departing from its spirit or essential character. The described embodiments are to be considered in all respects only as illustrative and not restrictive.”). Thus, the Court should reject PayPal’s attempt to define the terms through a disclaimer that was not intended.

2. There was No Disclaimer in the Apple IPR for the term “Mobile Wallet”

The Court should further reject PayPal’s second disclaimer argument related to purported IPR arguments made in response to IPR2022-00976, filed by Apple Inc, which PayPal uses to

support its proposed language “residing on a subscriber mobile device and that is not maintained by other devices.” (Motion at 6.) PayPal argues that statements made by Fintiv’s IPR response “make it clear that the mobile wallet *itself* must be located on the subscriber device, rather than an application or web interface to a mobile wallet managed on a remote server or by a mobile network operator.” (Motion at 6.) But nothing in PayPal’s Opening brief suggests a clear and unmistakable disavowal. Indeed, PayPal references, without much explanation, two paragraphs in Dr. Shamos’s supporting declaration on pages 16 and 26, respectively.

The reference to page 26 of Dr. Shamos’s declaration involves limitation 1.1.1 “an integration tier operable to manage mobile wallet sessions.” (Motion at 6 (citing Kang Decl. Ex. 12.) There are no other references to the IPR cited by PayPal that involve any other asserted claim limitations and PayPal cites to no case law and provides no explanation regarding why this portion of the IPR is that would serve to limit other terms. As Dr. Shamos states in his declaration, “[t]he ‘*mobile wallet sessions*’ of the claims, per the specification, involve mobile wallets on subscriber devices.” Dkt. 35-15, Shamos Decl. at 26. Dr. Shamos goes on to explain that (1) Petitioner’s expert, Dr. House fails to support his position that Dill taught the limitation, (2) the Money Transfer Facilitator 140 of Dill involved visiting web sites and entering transaction information and “not by interacting with any sort of mobile wallet,” and (3) even if Dill could be found to include a mobile wallet session, it did not manage, but only responded to commands. *Id.* at 26-27. Thus, Dr. Shamos’s declaration was limited to the limitation “an integration tier operable to manage mobile wallet sessions” there is no disclaimer that limited the term “mobile wallet.”

PayPal next references page 16 of Dr. Shamos’s declaration which contains a general description of Dill, but does not address any particular limitation (e.g. whether he was referring to mobile wallet application or mobile sessions etc). Dkt. 35-15, Shamos Decl. at 16. Thus, there is

no clear and unmistakable disavowal of all wallets, especially in context when only the term “mobile wallet sessions was discussed. The Court should not allow PayPal to manufacture a disclaimer.

B. “Agent” - (’386 Patent claims 1-3; ’196 patent claim 1)

Claim Term	Fintiv’s Proposed Construction	PayPal’s Proposed Construction
Agent	Plain and ordinary meaning	“an individual with mobile financial services (mFS) transaction system tools and training to support specific MFS functions

PayPal next looks to limit the term “agent” to require an individual, which PayPal’s opening brief confirms is a **human being**. (Motion at 7.) PayPal’s construction is not correct since the Asserted Patents use the term “agent” to encompass mean more than just a human. First, looking at the claims themselves, the Asserted Patents do not define the term Agent as a human being. For example, the ’386 Patent, Claim 1 uses the language “entity,” not “human” to limit the term agent:

at least one entity that is to be involved in the specified transaction, ***the at least one entity*** having a profile with the monetary transaction system: ***wherein the at least one entity is the agent***;

’386 Patent, Claim 1. The Asserted Patents specification further describes the term “agent” to encompass other entities such as businesses. For example, the ’845 Patent specification refers to the term “agent” as an entity. *See e.g.* ’845 Patent at 14:27-32 (“Then, if funds are available, and the transaction is otherwise permissible, **the monetary transaction system can transfer money or eMoney to or from an entity such as a user or agent (e.g. entity)** to or from an establishment such as a retail store or agent company (e.g. entity).”). The ’845 Patent explains that the term is much broader and can be found in “every facet of a typical economy” and “may include large retailers, *mobile network operators*, and other places of business. *See* ’845 Patent at 6:4-20. Thus,

the term “agent” is not limited to a human being, as PayPal proposes. PayPal references many portions of the patent specification, but nowhere is the word human used and nowhere does the patent explain that a human is required to accept cash.

PayPal next argues that its proposed construction is warranted due to file history estoppel. (Motion at 7.) PayPal, however, offers little analysis, likely because the claims that were amended included the language - “at least one agent entity that accepts cash from the subscriber in exchange for transmitting information to the computing system that is adequate to credit the mobile wallet account of the subscriber.” Dkt 14-7 at Claim 1. Thus, the file history addresses claims that include language that is not before the Court. Thus, there is no prosecution history disclaimer based on the language “agent” as PayPal suggests.

PayPal next argues that the terms “subscriber [depositing funds] at the agent branch” and “providing a perishable withdrawal code to the consumer, which is presented at the agent terminal” cannot consist of software because there must purportedly be some distinction between software operating on a server or at a particular location. (Motion at 12.) However, there are no requirements in the patent claim limitation that require software to be located at a particular location. Although the term “agent” may well indeed be an individual, “agents” may also be “other companies and organizations,” such as MNOs as described above.

Specific use cases described in the patents make it clear that organizations may act as “agents.” Fig. 11A in the ‘845 Patent depicts an employer making a direct deposit to a subscriber’s eMoney account. The ‘845 Patent describes this figure with the employer acting as an “agent” and directly initiating the direct deposit transactions in an automated batch process. See ‘845 Patent at 21:36-41 (“The monetary transaction system receives a list of eMoney accounts that are to be credited directly from the employer (or bank), processes the list and requests to establish a direct

deposit, updates Subscriber's eMoney balance, log the transaction, and sends transaction details to the mFS platform bank.”)

Fig. 11B in ‘845 Patent provides an additional example, it depicts a welfare payment from a government account to a subscriber’s eMoney balance. As with the employer’s direct deposit, the ‘845 Patent describes this figure with the government acting as an “agent” and directly initiating the welfare payment transactions in an automated batch process. See ‘845 Patent at 21:60-64 (“The mFS platform receives an indication of eMoney accounts that are to be credited from the government, processes the welfare payments, updates the subscriber's eMoney balance, logs the transactions, and sends transaction details to the mFS platform bank.”)

Lastly, PayPal’s apparent argument that tasks that can be performed by humans cannot be achieved through hardware or software is not correct. PayPal’s extrinsic evidence should be ignored since it contradicts the intrinsic evidence above. There is no reason an “agent” could not automate tasks using software and/or hardware and a POSITA would understand the same.

C. Agent branch (‘845 patent claim 1, ‘386 patent claims 1-2)

Claim Term	Fintiv’s Proposed Construction	PayPal’s Proposed Construction
Agent Branch	Plain and ordinary meaning	“any location where an agent provides support for subscriber services of the mFS platform.”

PayPal’s proposed construction of the term “agent branch” merely incorporates its prior argument of agent as a human along with the requirement of a location. Fintiv therefore incorporates its arguments for the term “agent” above. With regards to the term “agent branches,” the ‘845 Patent specification provides examples such as “(e.g. retail locations)” but it also makes it clear that this “functionality can also be made available on a website for easier access.” ‘845 Patent at 6:54:60. Thus, PayPal is wrong that an agent branch must be a physical location, and PayPal’s proposed construction does not even require a physical location in its proposed claim

language. (Motion at 14.) Moreover, the '845 Patent discloses an embodiment that does not require a physical location. See '845 Patent at 20:7-32 (explaining that “monetary transaction system receives a subsequent agent branch communication over a channel indicating that the purchase code has been presented to an agent (branch).” Thus, PayPal is wrong that a disclaimer was intended.

PayPal largely references portions of the specification with optional language to support its proposed construction and language that includes additional modifiers. (Motion at 14.) For example, PayPal identifies the '845 Patent at 7:61-62 which use the language “in some cases.” *Id.* PayPal also references the '845 Patent at 8:54-56, 10:30-31, and 15:50-54, but these all use the language “agent branch location” and not “agent branch.” *Id.*

As with the term “agent,” in the use cases depicted in Figs. 11A and 11B, a POSITA would not presume that the physical location of the employer or of the government office would be of any importance in performing the direct deposit or welfare payment. Declaration of Kai Johnson (“Johnson Decl.”) at ¶¶ 35-36. And there is nothing in the description of these use cases in the patent that implies that the subscriber must be present at any particular location for these transactions to take place. The patent is agnostic to where the agent branch is located, whether it is at a physical location or whether the branch is accessible over the internet. PayPal’s reference to page 13 of Dr. Shamos’s Declaration (Motion at 14) does not support PayPal’s arguments. It merely indicates that “an unbanked subscriber can bring cash to an agent branch and add funds to the eMoney Balance - in providing a general description of the '386 Patent. See Dkt. 35-15, Shamos Decl. at 36-40. Dr. Shamos does not support the disclaimer constructions that PayPal has advanced and a POSITA would not understand that a disclaimer was made.

The provisional applications do not support PayPal's proposed disclaimer. (Motion at 15.) As shown above for the term "agent," the provisional application, like the data flow Figures in the Asserted Patents include flow diagrams that are agnostic to any purported locations. Moreover, since a MNO can be an agent, a POSITA would not understand that a MNO would have specific location. PayPal's reference to extrinsic evidence cannot overcome the intrinsic evidence described above. PayPal's reference to extrinsic evidence is unavailing and conflicts with the intrinsic record.

D. Unbanked Subscriber ('845 patent claims 1 and 5)

Claim Term	Fintiv's Proposed Construction	PayPal's Proposed Construction
unbanked subscriber	Plain and ordinary meaning	"a subscriber that does not have a financial institution account."

PayPal next argues that the term "unbanked subscriber" should be construed to mean a subscriber that does not have a financial institution account. (Motion at 16.) However, this construction of the term "unbanked" is directly contradicted by the '845 Patent specification since the '845 Patent uses the language - '845 Patent at 12:25- ("An 'unbanked subscriber' is a subscriber that does not have (or does not have access to) a bank account or credit union account."). Thus, the '845 Patent makes it clear that the term "unbanked subscriber" does not exclude a subscriber that has a bank account. Indeed, the '845 Patent explains that performing a specified transaction "may include communicating with the monetary transaction database 225 to determine whether the transaction is permissible based on data indicated in the unbanked subscriber's profile (for instance, whether the subscriber has enough eMoney in his or her stored value account, *or has enough money in his or her bank account*)."' '845 Patent at 14:19-15 (emphasis added). Thus, PayPal's proposed construction is in direct conflict with the specification.

PayPal's argument that Fintiv admitted the term "unbanked subscriber" cannot have access to a bank account is wrong. (Motion at 16.) Both the Patent Owner's Preliminary Response and Dr. Shamos's declaration state that "in the '386 Patent, neither sender nor recipient **is required** to have an account at the financial institution." Dkt. 35-15, Shamos Decl. at 52. This language does not exclude having a bank account at all. PayPal cannot ignore the plain language of the specification. The Court should reject PayPal's proposed construction.

E. "payment handler" / "payment handler service" ('386 patent claims 1-3, '413 patent claims 1-2, '488 patent claim 1, '196 patent claim 1)

Claim Term	Fintiv's Proposed Construction	PayPal's Proposed Construction
"Payment handler" / "Payment handler service"	Plain and ordinary meaning Alternatively, if means-plus-function: Function: operable to interact with payment processors. Structure: '386 patent claims 1-3 '413 patent claims 1-2 '488 patent claim 1 '196 patent claim 1 '386 Patent Figure 1 Corresponding '386 Patent Figures '386 Patent Figure 20A-J (data flow) '386 Patent Figure 21A-J (data flow) '386 Patent Figure 22A-J (data flow) '386 Patent Figure 22A-J (data flow) Provisional Application 61/493064 ("PA") (Figure 1) PA Figures 2A-E (Registration and Activation) PA Figures 7A-E (Deposit Cash) PA Figures 8A-8I (Withdraw Cash) PA Figures 9A-9G (Bill Payment) PA Figures 11A-11J (Money Transfer) PA Figures 1-11 '386 Patent 13:29-34 '386 patent 4:65-7:3	This is a means-plus-function limitation. Function: "use APIs of different payment processors including one or more APIs of banks, credit and debit cards processors, bill payment processors" ('386, '413) Function: "expose a common API for interacting with different payment processors" ('488, '196) Structure: None, and therefore indefinite under 112(f)

The Court should adopt this claim term’s plain and ordinary meaning and reject PayPal’s means-plus-function/indefiniteness argument. Because this claim term does not contain the word “means,” the Court must give effect to the presumption against applying § 112, ¶ 6, rebuttable only “if the challenger demonstrates that the claim term fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function.” *Zeroclick, LLC v. Apple Inc.*, 891 F.3d 1003, 1007 (Fed. Cir. 2018)

PayPal is wrong that the disputed claim language is purely functional and invoked § 112, ¶ 6 since the claims themselves connote sufficient structure by describing how the “payment handler” / “payment handler service” component achieves its operation and objectives. In this case the “payment handler service” component would be understood by a POSITA to describe a component of the “monetary transaction system.” Johnson Decl. at ¶ 51. Payment Handler component 105 is shown clearly in Figure 1, which illustrates a monetary transaction system architecture. See ’386 Patent at 2:35-36.

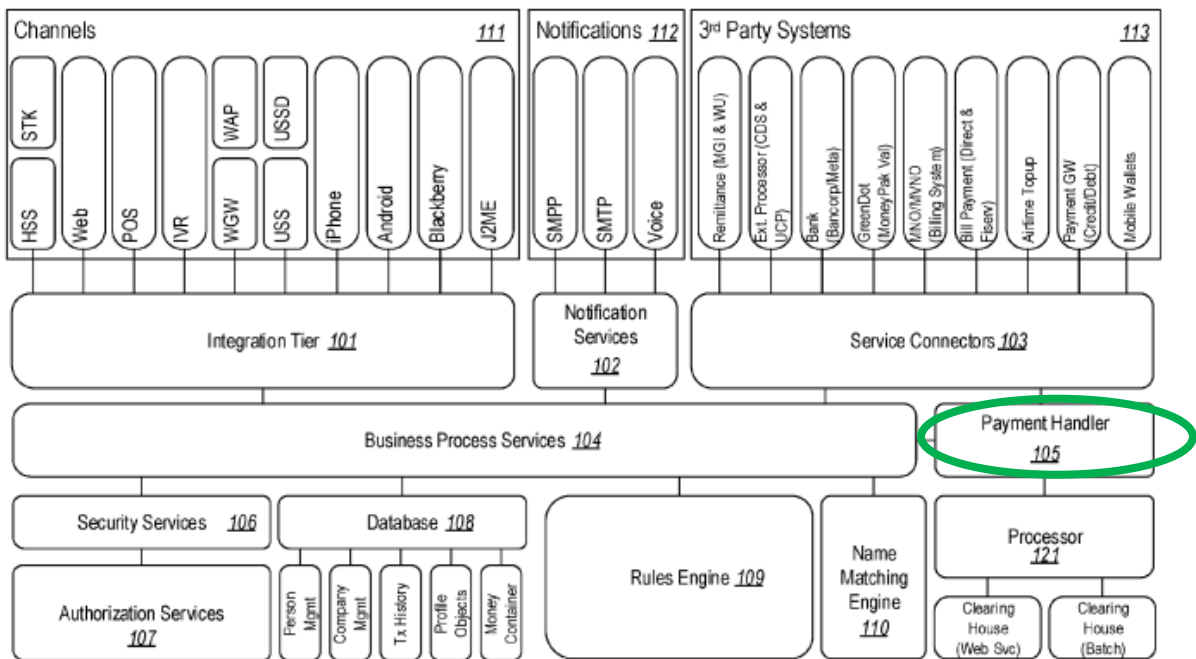


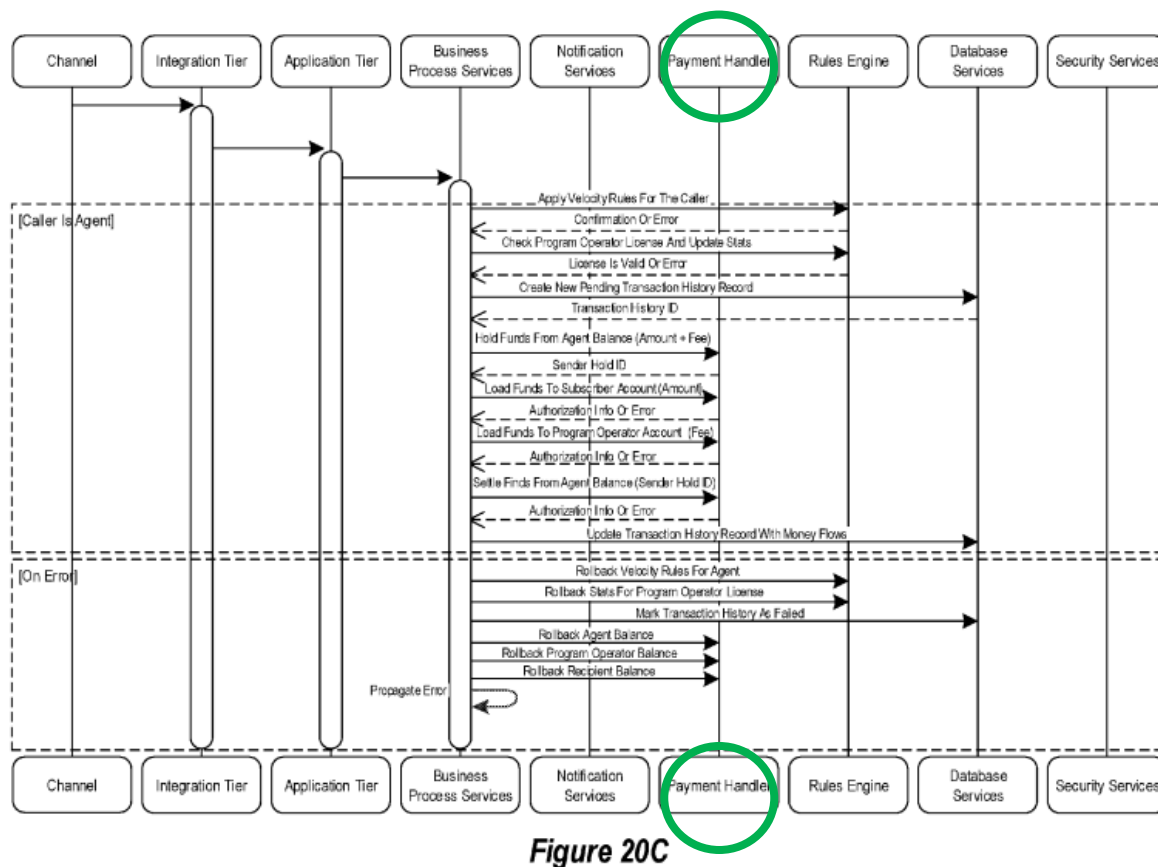
Figure 1

The architectural style in Figure 1 is known as service-oriented architecture, which uses software components called services to create business applications where each service provides a business capability and can communicate with each other across platforms and languages. Johnson Decl. at ¶¶ 52 and 65. The '386 Patent, Claim 1 identifies these services, for example “notification services,” “business services,” “security service,” and “database services” are a few examples. See '386 Patent, Claim 1. According to Figure 1, Payment Handler Service 105 is connected to Processor 121, Business Process Services 104 and Service Connectors 103. The Payment Handler 105 is configured to wrap APIs of different payment processors, such as, for example, banking accounts, credit/debit cards or processor 121. Payment handler 105 exposes a common API to facilitate interactions with many different kinds of payment processors. See '386 Patent at 13:29-34.

The Asserted Patents provide numerous data flows in the provisional applications and in the patent specifications including Figs. 20A through 22J of the '386 Patent. See also '386 Patent at 4:65-7:3 (describing network details). These data flows provide the actual communications to and from the payment handler and other service components. In view of these numerous disclosures and specific data flows, it is difficult to understand PayPal's argument **that references only Figure 1** to support its position that the Asserted Patents disclose only a black box. (Motion at 20.) Moreover, PayPal's purported argument that Fintiv merely discloses software without any detail about the means to accomplish it (Motion at 20) ignores these numerous detailed dataflows in the specification. PayPal's position that the specifications only provide generic black box recitation (Motion at 20) is not only false, but the failure to even acknowledge the data flows constitutes a failure by PayPal to meet its burden to show that this term is a means plus function claim. This failure is enough in itself for the Court to reject PayPal's means arguments. Moreover,

PayPal's reference to *Cypres Lake* and *Rain Computing* are unavailing. Except for the use of some of the claim terms, PayPal makes no effort to compare the disclosures or to explain why the specific materials in the Asserted Patents are not sufficient for a POSITA to find structure in the limitation. This Court has found that § 112 means issues are case and context specific. *Sonrai Memory Ltd. v. Oracle Corp.*, No. 1:22-CV-94-LY, 2022 WL 800730, at *9 (W.D. Tex. Mar. 16, 2022).

The dataflows (*e.g.* Figs. 20A through 22J) in fact, show numerous examples of how the Payment Handler 105 interacts with other services in the mFS sufficient for a POSITA to find structure. For example, Figure 20C (shown below) discloses data flows between the Payment Handler and Business Process Service. See Figure 20C and '386 Patent at 3:29-31. This is only one of many dataflows that show that a POSITA would understand that Payment Handler Service / Payment Handler discloses structure. Indeed, when describing Figures 20A through 20F, 21A through 21I, and 22A through 22J, for example, the '386 Patent explains that they “depict relationships between embodiments of various components within the monetary transaction system.” See *e.g.* '386 Patent at 30:14-44.



Thus, a POSITA would understand when the limitation is read in view of the remaining claim language, including the other claimed components and specification provides sufficient structural meaning to a POSITA since the claims themselves describe how the Payment Handler operates within the claimed invention to achieve its objectives. *Sonrai*, 2022 WL 800730, at *8. For example, Claim 1 discloses additional claim limitations that describe what the payment handler does. See '413 Patent, Claim 1:

- a **payment handler service** operable to use APIs of different payment processors including one or more APIs of banks, credit and debit cards processors, bill payment processors;
- holding funds from the agent account balance using the **payment handler**;
- loading the funds to the subscriber account using the **payment handler**.

Similar claims are present in the other patents, but these show clear structure. Thus, the claim terms show that the payment handler utilize APIs of different payment processors and holds and loads funds. Thus, like *Sonrai*, the claims themselves connote sufficient structure by describing how the payment handler achieves its objective. Indeed, courts have found similar claim terms to have sufficiently definite structure when coupled with operational context. *See, e.g., Samsung Elecs. Am., Inc. v. Prisia Eng'g Corp.*, 948 F.3d 1342, 1353-54 (Fed. Cir. 2020) (“digital processing unit” not governed by § 112, ¶ 6 and not indefinite); *ZeroClick*, 891 F.3d at 1008 (“program that can [perform function]” found to have sufficiently definite structure in part because the claims provided operational context for the program); *Huawei Techs. Co. v. Verizon Commc'ns, Inc.*, No. 2:20-CV-30, 2021 WL 150442, at *32-33, *54-55 (E.D. Tex. Jan. 15, 2021) (“processing unit” and “processing module” not governed by § 112, ¶ 6 and not indefinite); *CXT Sys., Inc. v. Acad., Ltd.*, No. 2:18-CV-171, 2019 WL 4253841, at *11 (E.D. Tex. Sept. 6, 2019) (“processing module for processing” not governed by § 112, ¶ 6 and not indefinite).

A POSITA would understand the claimed payment handler service / payment handler component to refer to computer circuitry and programming for processing data to perform operations. Even to the extent, *arguendo*, the “payment handler” terms are governed by § 112, ¶ 6, they are not indefinite. Unlike *Uniloc USA* and *Cloud Farm*, cited by PayPal, the '386 and '413 Patents disclosure reasonably informs a POSITA about the structure of the claimed payment handler and the operations and algorithm involved in performing the recited functions. Johnson Decl at ¶ 55. Indeed, the data flows provided in the 61/493,064 provisional application and dataflows in the patent specifications are sufficient procedures for accomplishing the given result, which provides sufficient structure. *See Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1385 (Fed. Cir. 2011)) (“Precedent and practice permit a patentee to express that procedural

algorithm ‘in any understandable terms including as a mathematical formula, in prose, or as a flow chart, or in any other manner that provides sufficient structure.’”) (citing *Finisar Corp. v. DirecTV Grp.*, 523 F.3d 1323, 1340 (Fed. Cir. 2008).)

F. “database services” / “storage system” (’386 patent claims 1-3, ’413 patent claims 1-2)

Claim Term	Fintiv’s Proposed Construction	PayPal’s Proposed Construction
“database services” / “storage system”	Plain and ordinary meaning Alternatively, if means-plus –function: Function: operable to store at least financial transaction details, store customer profiles, and manage money containers Structure: ’386 patent claims 1-3 ’413 patent claims 1-2 ’386 Patent Figure 1 Corresponding ’386 Patent Figures ’386 Patent Figure 20A-J (data flow) ’386 Patent Figure 21A-J (data flow) ’386 Patent Figure 22A-J (data flow) ’386 Patent Figure 22A-J (data flow) Provisional Application 61/493064 (“PA”) (Figure 1) PA Figures 2A-E (Registration and Activation) PA Figures 7A-E (Deposit Cash) PA Figures 8A-8I (Withdraw Cash) PA Figures 9A-9G (Bill Payment) PA Figures 11A-11J (Money Transfer) PA Figures 1-11 ’386 Patent 13:39-51 ’386 patent 4:65-7:3	This is a means-plus-function limitation Function: storing financial transaction details, store customer profiles, and manage money containers. Structure: None, and therefore indefinite under 112(f)

PayPal makes the same general argument for the next term database services / storage system. Like payment handler, the Court should adopt this claim term’s plain and ordinary meaning and reject PayPal’s means-plus-function/indefiniteness argument. Because this claim

term does not contain the word “means,” the Court must give effect to the presumption against applying § 112, ¶ 6, rebuttable only “if the challenger demonstrates that the claim term fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function.” *Zeroclick*, 891 F.3d at 1007.

PayPal is wrong that the disputed claim language is purely functional and invoked § 112, ¶ 6 since the claims themselves connote sufficient structure by describing how the “database services” component and the “storage system” component achieve its operation and objectives. Johnson Decl. at ¶ 57. The “database services” / “storage system” components would be understood by a POSITA to describe a component of the “monetary transaction system.” Database services / storage system component 108 is shown clearly in Figure 1, which illustrates a monetary transaction system architecture. ’386:35-36.

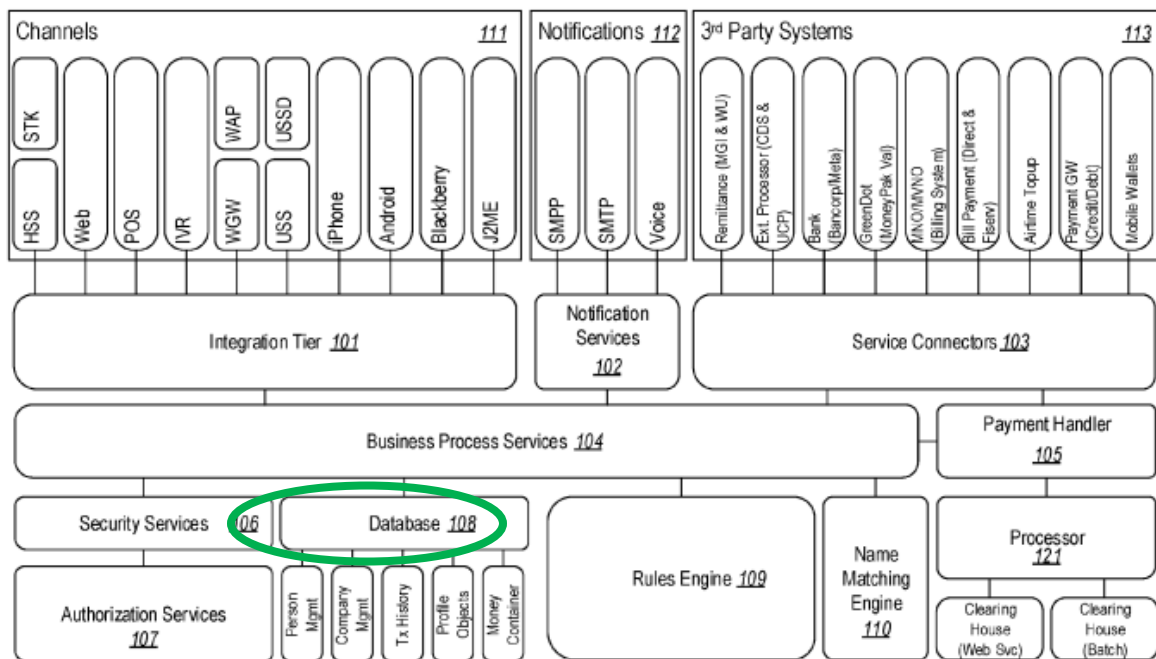


Figure 1

The architectural style in Figure 1 is known as service-oriented architecture, which uses software components called services to create business applications where each service provides

a business capability and can communicate with each other across platforms and languages. Johnson Decl. at ¶¶ 52 and 65. The '386 Patent, Claim 1 identifies these services, for example “notification services,” “business services,” “security service,” and “database services” are a few examples. *See* '386 Patent, Claim 1. Database 106 is connected to Business Process Services 104 and connected to additional services Payment Management, Company Management, Tx history, Profile Objectives, and Money Container components. The database services / storage system is configured to manage customer accounts (e.g. storing customer accounts and properties), manage company accounts (e.g. storing company accounts and properties), manage transaction histories (e.g. storing financial transaction details), store customer profiles, storing dictionaries used by the mobile wallet platform, such as, for example, countries, currencies, etc., and managing money containers. *See* '386 Patent at 11:39-46.

The '386 and '413 Patents provide numerous data flows in the provisional applications and in the patent specifications including Figs. 20A through 22J of the '386 Patent. *See also* '386 Patent at 4:65-7:3 (describing network details). Like Payment Handler (above), in view of these numerous disclosures and specific data flows, it is difficult to understand PayPal's argument referencing only Figure 1 that the Asserted Patents disclose only a black box. (Motion at 25.) PayPal's position that the '386 and '413 Patents provide only a black box recitation of structure (Motion at 25) and that the claims merely parrot the claimed function in the specification (Motion at 24) is not only wrong, but this misunderstanding of key disclosure in the intrinsic record is grounds alone to reject PayPal's arguments since they were never considered. These dataflows (Figs. 20A through 22J) in fact, show numerous examples of how the database 106 interacts with other services in the mFS. For example, Figure 21I (shown below) discloses data flows between the Database Services and the Business Process Services and Integration Tier. *See* Figure 21I and

3:32-35. When describing Figures 20A through 20F, 21A through 21I, and 22A through 22J, for example, the '386 Patent explains that they “depict relationships between embodiments of various components within the monetary transaction system.” See *e.g.* '386 Patent at 30:14-44.

Withdraw Cash (9 of 9)

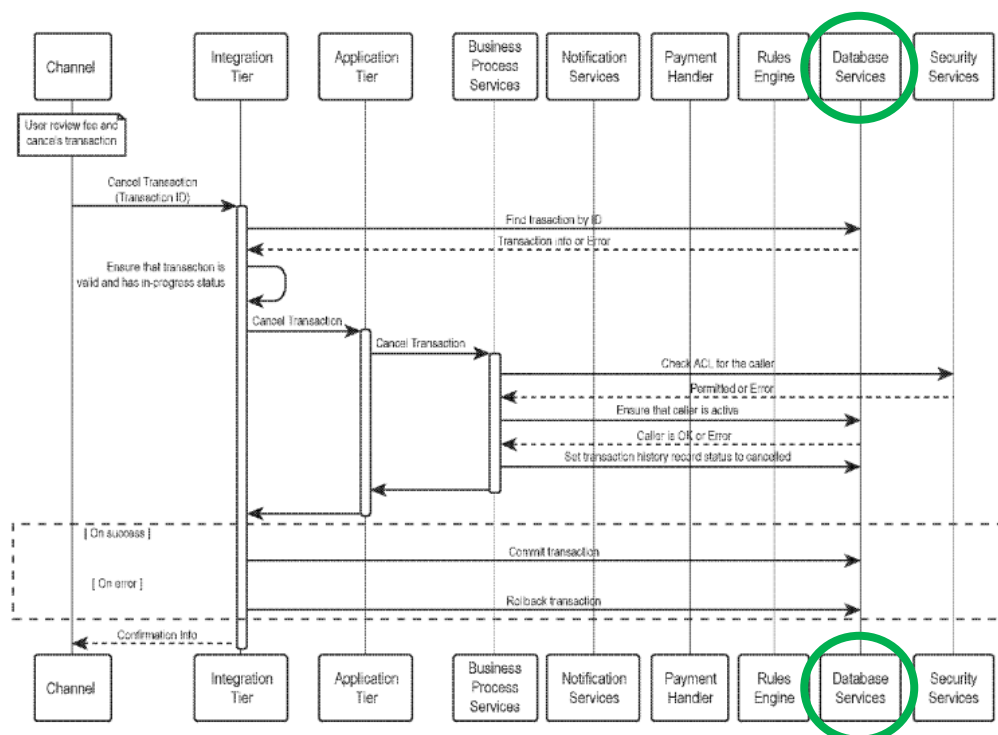


Figure 21I

Thus, a POSITA would understand when the limitation is read in view of the remaining claim language, including the other claimed components and specification provides sufficient structural meaning to a POSITA since the claims themselves describe how the Database Services / storage system component operate within the claimed invention to achieve its objectives. *Sonrai*, 2022 WL 800730, at *8. For example, Claim 1 discloses additional claim limitations that describe what the storage system does” See '413 Patent, Claim 1:

- ensuring, via the **storage system**, that the subscriber has an active account;

- validating, through communication with the security service, one or more of a PIN number and an access control list;
- creating with the storage system a new pending transaction history record;
- updating, using the storage system, a pending transaction history record to reflect the funds.

Likewise, the '386 Patent, Claim 1 further provides additional description regarding how the database services operate within the claimed invention.

- validating the status of the subscriber's account, wherein validating the status of the subscriber's account comprises communicating from the integration tier to the database services to query attributes of the subscriber's account;
- upon receiving a confirmation of commitment from the business process services, committing the pending transaction to the database services; and
- ensuring, via the database services, that the subscriber has an active account;
- creating with the database services a new pending transaction history record;
- updating, using the database services, a pending transaction history record to reflect the funds.

Thus, like *Sonrai*, the claims themselves connote sufficient structure by describing how the it achieves its objective. *See also* '386 Patent, Claim 1 (including similar wherein clause). Indeed, courts have found similar claim terms to have sufficiently definite structure when coupled with operational context. *See, e.g., Samsung Elecs.*, 948 F.3d at 1353-54 (“digital processing unit” not governed by § 112, ¶ 6 and not indefinite); *Zeroclick*, 891 F.3d at 1008 (“program that can [perform function]” found to have sufficiently definite structure in part because the claims provided operational context for the program); *Huawei Techs.*, 2021 WL 150442, at *32-33, *54-55

(“processing unit” and “processing module” not governed by § 112, ¶ 6 and not indefinite); *CXT Sys.*, 2019 WL 4253841, at *11 (“processing module for processing” not governed by § 112, ¶ 6 and not indefinite).

A POSITA would understand the claimed database services /s storage system component refer to computer circuitry and programming for processing data to perform operations. Even to the extent, arguendo, the “database services / storage system are governed by § 112, ¶ 6, they are not indefinite. Unlike *Uniloc USA* and *Cloud Farm*, cited by PayPal, the ’386 and ’413 Patents disclosure reasonably informs a POSITA about the structure of the claimed “business process services component and the operations and algorithm involved in performing the recited functions. Johnson Decl. at ¶ 55. Indeed, the data flows provided in the 61/493,064 provisional application and dataflows in the patent specifications are sufficient procedures for accomplishing the given result, which provides sufficient structure. See *Typhoon*, 659 F.3d at 1385 (“Precedent and practice permit a patentee to express that procedural algorithm “in any understandable terms including as a mathematical formula, in prose, or as a flow chart, or in any other manner that provides sufficient structure.”) (citing *Finisar Corp. v. DirecTV Grp.*, 523 F.3d 1323, 1340 (Fed. Cir. 2008).)

G. “business process services” (’386 patent claims 1-3, ’413 patent claims 1-2)

Claim Term	Fintiv’s Proposed Construction	PayPal’s Proposed Construction
business process services (’386 patent claims 1-3)	Plain and ordinary meaning, not means plus function Alternatively, if means-plus –function: Function: implementing business workflows, including at least one of executing financial transactions, auditing financial transactions, invoking third-party services, handling errors, and logging platform objects.	This is a means-plus-function limitation. Function: implement business workflows, including at least one of executing financial transactions, auditing financial transactions, invoking third-party

Claim Term	Fintiv's Proposed Construction	PayPal's Proposed Construction
	Structure: '386 patent claims 1-3 '413 patent claims 1-2 '386 Patent Figure 1 Corresponding '386 Patent Figures '386 Patent Figure 20A-J (data flow) '386 Patent Figure 21A-J (data flow) '386 Patent Figure 22A-J (data flow) '386 Patent Figure 22A-J (data flow) Provisional Application 61/493064 ("PA") (Figure 1) PA Figures 2A-E (Registration and Activation) PA Figures 7A-E (Deposit Cash) PA Figures 8A-8I (Withdraw Cash) PA Figures 9A-9G (Bill Payment) PA Figures 11A-11J (Money Transfer) PA Figures 1-11 '386 Patent 13:25-34 '386 patent 4:65-7:3	services, handling errors, and logging platform objects Structure: None, and therefore indefinite under 112(f)

The arguments for this term are similar to the two means terms above. The Court should adopt this claim term's plain and ordinary meaning and reject PayPal's means-plus-function/indefiniteness argument. Because this claim term does not contain the word "means," the Court must give effect to the presumption against applying § 112, ¶ 6, rebuttable only "if the Court must give effect to the presumption against applying § 112, ¶ 6, rebuttable only "if the challenger demonstrates that the claim term fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function." *Zeroclick*, 891 F.3d at 1007.

PayPal is wrong that the disputed claim language is purely functional and invoked § 112, ¶ 6 since the claims themselves connote sufficient structure by describing how the "business process services" achieve the operation and objectives. Johnson Decl. at ¶ 64. In this case the term "business process services" would be understood by a POSITA to describe a component of the

“monetary transaction system.” This component is shown clearly in Figure 1 as 104, which illustrates a monetary transaction system architecture. ’386 Patent at :35-36.

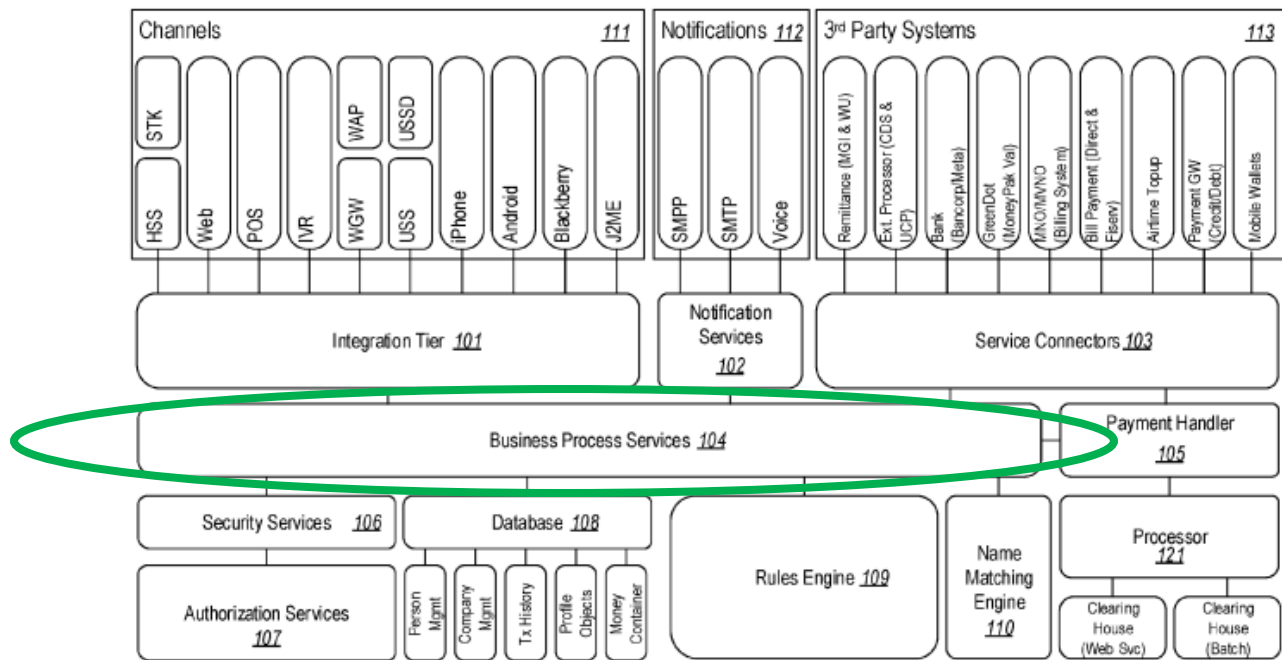


Figure 1

The architectural style in Figure 1 is known as service-oriented architecture, which uses software components called services to create business applications and where each service provides a business capability and can communicate with each other across platforms and languages. Johnson Decl. at ¶¶ 52 and 65. The ’386 Patent, Claim 1 identifies many services, for example “notification services,” “business services,” “security service,” and “database services” are a few examples. See ’386 Patent, Claim 1. The business services component is responsible for “orchestrating” (i.e. coordinating) the interactions among other components in the mobile financial services (“mfs”) to complete specific business “workflows” (i.e. processes). The ’386 Patent uses terminology from service orientated architecture to describe the “business process services” component at Col. 13:25-29: “Business process services 104 are configured to implement

business workflows, including executing financial transactions, auditing financial transactions, invoking third-party services, handling errors, and logging platform objects.”

The ’386 and ’413 Patents provide numerous data flows in the provisional applications including Figs. 20A through 22J of the ’386 Patent. *See also* ’386 Patent at 4:65-7:3. In view of these numerous specific data flows, it is difficult to understand PayPal’s position that the ’386 Patent provides only “generic black box recitation of structure.” (Motion at 20.) PayPal’s position that the ’386 and ’413 Patents provide merely black box recitation of structure is grounds alone to reject PayPal’s arguments as a failure to meet its burden to overcome the presumption. These dataflows (Figs. 20A through 22J provide example data flows showing numerous examples of how the business process services interacts with other services in the mFS. For example, Figure 20A (shown below) discloses data flows between the business process services and the Rule Engine, Application Tier, Database Services, and Security Services components. *See* Figure 20A and 3:35-36. When describing Figures 20A through 20F, 21A through 21I, and 22A through 22J, for example, the ’386 Patent explains that they “depict relationships between embodiments of various components within the monetary transaction system.” *See e.g.* ’386 Patent at 30:58-31:20.

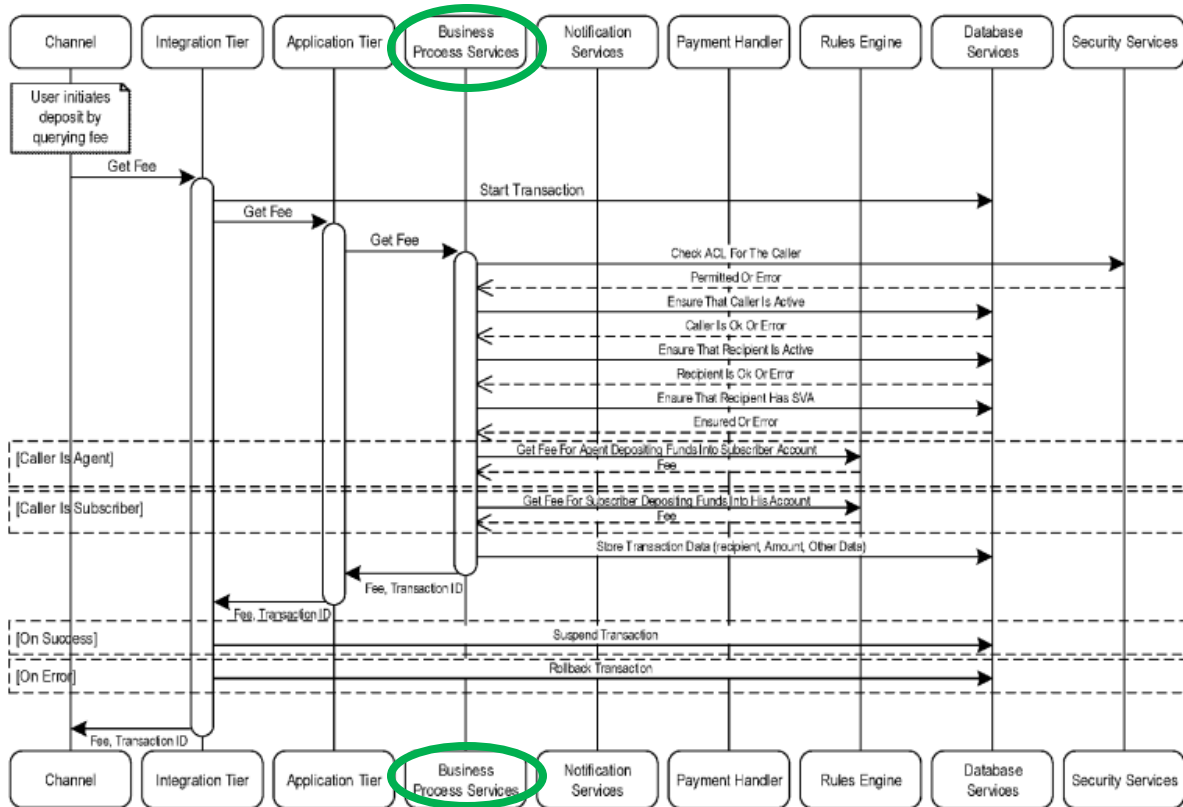


Figure 20A

Thus, a POSITA would understand when the limitation is read in view of the remaining claim language, including the other claimed components and specification provides sufficient structural meaning to a POSITA since the claims themselves describe how the “business process services” component operate within the claimed invention to achieve its objectives. *Sonrai*, 2022 WL 800730, at *8. For example, Claim 1 discloses a wherein clause that states “wherein saving the pending transaction further comprises the following steps *as orchestrated by the business process services:*” See ’413 Patent, Claim 1:

- ensuring, via the storage system, that the subscriber has an active account;
- validating, through communication with the security service, one or more of a PIN number and an access control list;
- applying with the rules engine, velocity rules;

- creating with the storage system a new pending transaction history record;
- holding funds from an agent account using the payment handler;
- loading the funds to the subscriber's account using the payment handler; and
- updating, using the storage system, a pending transaction history record to reflect the funds.

Likewise, the '386 Patent, Claim 1 further provides additional description regarding how the business process services operate within the claimed invention.

- committing a pending transaction through the business process services, wherein the integration tier communicates a transaction commitment request to the business process services;
- receiving a confirmation from the business process services that the pending transaction has been committed;
- sending, through the notification services, a receipt notification to the mobile device; and
- upon receiving a confirmation of commitment from the business process services, committing the pending transaction to the database services; and
- wherein committing the pending transaction further comprises the following steps as orchestrated by the business process services:
 - ensuring, via the database services, that the subscriber has an active account;
 - validating, through communication with the security services, one or more of a PIN number and an access control list;
 - applying with the rules engine, velocity rules;
 - creating with the database services a new pending transaction history record;

- holding funds from the agent account balance using the payment handler,
- loading the funds to the subscriber account using the payment handler; and updating, using the database services, a pending transaction history record to reflect the funds.

Thus, like *Sonrai*, the claims themselves connote sufficient structure by describing how the business process services achieve its objective. *See also* '386 Patent, Claim 1 (including similar wherein clause). Indeed, courts have found similar claim terms to have sufficiently definite structure when coupled with operational context. *See, e.g., Samsung Elecs.*, 948 F.3d at 1353-54 (“digital processing unit” not governed by § 112, ¶ 6 and not indefinite); *Zeroclick*, 891 F.3d at 1008 (“program that can [perform function]” found to have sufficiently definite structure in part because the claims provided operational context for the program); *Huawei Techs.*, 2021 WL 150442, at *32-33, *54-55 (“processing unit” and “processing module” not governed by § 112, ¶ 6 and not indefinite); *CXT Sys.*, 2019 WL 4253841, at *11 (“processing module for processing” not governed by § 112, ¶ 6 and not indefinite).

A POSITA would understand the claimed “business process services” component to refer to computer circuitry and programming for processing data to perform operations.

Even to the extent, *arguendo*, the “processing component” terms are governed by § 112, ¶ 6, they are not indefinite. The '386 and '413 Patents disclosure reasonably informs a POSITA about the structure of the claimed business process services component and the operations and algorithm involved in performing the recited functions. Johnson Decl. at ¶ 70. Indeed, the data flows provided in the 61/493,064 provisional application and dataflows are procedures for accomplishing the given result, which provides sufficient structure. *See Typhoon*, 659 F.3d at 1385 (“Precedent and practice permit a patentee to express that procedural algorithm in any

understandable terms including as a mathematical formula, in prose, or as a flow chart, or in any other manner that provides sufficient structure.”) (citing *Finisar Corp. v. DirecTV Grp.*, 523 F.3d 1323, 1340 (Fed. Cir. 2008).)

Unlike in *Uniloc and Clous Farm Associates*, cited by PayPal, the Patents-in-Suit reasonably inform a POSITA about the structure of the claimed “business process services” and the operations involved in performing the recited functions. See *Typhoon*, 659 F.3d at 1385. Because the Asserted Patents provide numerous dataflows (e.g. Fig. 20A), its claims are not indefinite.

H. “Presented to” (’488 Patent claim 1, ’196 patent claim 1)

Claim Term	Fintiv’s Proposed Construction	PayPal’s Proposed Construction
“presented to”	Plain and ordinary meaning	“displayed to or placed near”

PayPal’s construction of the term “presented to” makes the same arguments raised for the term “agent” where a human being is required. (Motion at 27.) As a result, PayPal has argued that the term “presented to” requires a visual display. (Motion at 28.) These arguments are wrong for the same reasons described above, namely there is no definition or clear and unmistakable disclaimer that would justify limiting the term to displaying. Johnson Decl. at ¶ 71. Leaving no doubt, the ’488 and ’196 specifications do not include the words “displayed to” or “placed near” anywhere in the specification. PayPal argues that the term “presented to” in the claims connotes a physical proximity (Motion at 27), but the claims do not include any such limitations. PayPal resorts to making an attorney argument regarding what the patentee intended, namely PayPal argues that Fintiv “nearly always specified the transmission used.” (Motion at 27.) PayPal’s arguments are not proper grounds to construe the claims nor is the standard of “nearly always” proper to use when determining whether a clear and unmistakable disclaimer was intended.

The “code” described in the Fintiv patents is merely informative and is not intended to be described as having a fixed form. The “code” is not required to have a visual representation nor a physical form when it is communicated from the mFS to the subscriber.

Although the provisional application to the ’488 and ’196 Patents mention using QR codes or NFC as a means of communicating the code to the agent, there are no such restrictions in the patents. The examples of QR codes and NFC are merely conveniences to facilitate the communication of this code from the subscriber to the agent. Given that the patents remain silent on the means of communicating the code from the subscriber to the agent, a POSITA would understand that many means of communicating the code may be possible or suitable, including having the subscriber verbally communicate the code to the agent or having the subscriber manually enter the code on the agent terminal or even on an agent’s web site. Johnson Decl. at ¶ 74.

PayPal’s proposed construction of “presented to” implies that the code must be represented in a visual form or embodied in a physical form where there are no such restrictions in the patents. As such, PayPal’s proposed construction is inappropriate.

III. CONCLUSION

For the foregoing reasons, the Court should adopt Fintiv’s proposed constructions.

Dated: October 27, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served or delivered electronically to all counsel of record, on this 27th day of October, 2022, via the Court's CM/ECF system.

/s/ Jonathan K. Waldrop
Jonathan K. Waldrop