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 SUR-REPLY CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Plaintiff Fintiv, Inc. ("Fintiv"), submits this Sur-Reply Claim Construction 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

A. "Mobile Wallet" – All Asserted Claims

Claim Term	Fintiv's Proposed Construction	PayPal's Proposed Construction
"mobile wallet"	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" ***PayPal's Revised Construction*** **(Reply Br. 11/29 at 2)** "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.~~ that allows the owner (or 'subscriber') to pay for goods and services of the mFS platform from his or her mobile wallet account.

PayPal begins its Reply by dropping part of its original construction that sought to construe the term "mobile wallet" based on purported IPR estoppel. PayPal argues that its new revision to its construction is due to an institution decision in an IPR petition filed by Apple Inc. (to which PayPal is not party to). PayPal argues that this IPR institution decision somehow serves to moot

PayPal's prior construction. (Reply at 2 ("…mooting the issue of disclaimer altogether.")). In any case, the sole remaining issue is whether the term "mobile wallet" should be limited to a stored value account or prepaid access account and other extraneous limitations imported into the term based on PayPal's argument that the patentee acted as its own lexicographer.[1] (*Id*.)

PayPal argues that Fintiv's expert, Kai Johnson, testified that the term "mobile wallet" has multiple meanings and this renders the term inadequate since the term has more than one ordinary meaning. *See* Reply at n. 4 (citing Reply Ex. 1 at 180:8-22.) But, PayPal misconstrues the holding of *O2 Micro Int'l Ltd. V. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008) ("*O2 Micro*"). Unlike *O2 Micro,* Fintiv's proposed plain and ordinary meaning construction resolves the claim construction dispute since PayPal is seeking a narrow construction based on a purported lexicographer definition that PayPal argues is present in the specification. Fintiv's proposed plain and ordinary meaning construction is sufficient since both experts agree that the term mobile wallet is broad and examples were well known to a POSITA. *Compare* Ex. A[2], Transcript of the November 17, 2022 Deposition of Kai Johnson ("Johnson Tr.") at 179:16-180:6 *with* Ex. B, Transcript of the November 29, 2022 Deposition of Sandeep Chatterjee, Ph.D. ("Chatterjee Tr.") at 159:3-160:3 (noting that there were mobile wallets available prior to the Asserted Patents and that mobile wallets were not limited to stored value accounts).

PayPal's expert having acknowledged that the plain meaning of the term of "mobile wallet" would not limit the term to a particular type of mobile wallet (i.e. one that had a stored value account), PayPal next focuses on its argument that the patentee served as its own lexicographer.

[1]PayPal wrongly argues that Fintiv's expert Mr. Johnson agrees that a definition is present. (Reply at 3.) However, Mr. Johnson clearly states his position that "the claims and patent specification do not support Dr. Chatterjee's opinion of an explicit definition." Dkt. 41, Corrected Johnson Decl. at ¶ 26.

[2] "Ex. __" refers to the exhibits to the Declaration of Jonathan K. Waldrop filed concurrently herewith.

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See Reply at 3. No such lexicography is present - since even the full paragraph that PayPal references confirms a mobile wallet could include, for example, payments from debit and bank accounts.

> 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. **When the mFS eMoney transaction processor is used, the mobile wallet balance is maintained by the mFS platform and value is exchanged within the mFS program as eMoney. When the mPS platform is integrated to an external card processor, the mobile wallet utilizes funds from the Subscriber's prepaid debit card and bank account to exchange value on the mFS platform.**

'845 Patent at 11:32-42. The *Shire Development, LLC v. Teva Pharmaceuticals USA, Inc.* decision involved the same argument – where the Defendant argued that only the first sentence should be considered a lexicographic definition since the first portion of the paragraph included "hallmarks of lexicography." No. 1:17-CV-01696-RGA, 2019 WL 969638, at *10 (D. Del. Feb. 28, 2019). The Court disagreed and found that there was additional important information in the paragraph to consider apart from the first sentence. *Id.*

Courts have stressed that a lexicography must appear with reasonable clarity, deliberateness, and precision before it can affect the claim, and no such clarity and precision is present here. *Abbott Laboratories v. Syntron Bioresearch, Inc.*, 334 F.3d 1343, 1354 (Fed. Cir. 2003); *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995), aff'd, 517 U.S. 370 (1996) ("As we have often stated, a patentee is free to be his own lexicographer. The caveat is that any special definition given to a word must be clearly defined in the specification.") (internal citations omitted). *Pfizer, Inc. v. Teva Pharm., USA, Inc.*, 429 F.3d 1364, 1373 (Fed. Cir. 2005) (refusing to narrow definition when i.e. used when other portions of the specification disclosed broader meaning). As explained in Fintiv's opening brief, the patent claims themselves refer to

the limitations "stored value," "prepaid," and refer to "account" limitations in only some claims and these terms should not be imported into the term mobile wallet. Response at 2 (citing *see e.g.*, '413 Patent, Claim 2 ("***stored value*** into a ***subscriber's account***"); '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").

Moreover, the Asserted Patent specification is replete with embodiments and optional language that evidence that the patentee was not limiting the term mobile wallet to stored value accounts or PPA accounts. *See* Response at 3-4 (*see* 61/493,064 (broadly using mobile wallets including third-party mobile wallets; '845 Patent at 1:56-67 (describing optional language for adding stored value account); 6:4-7 (describing monetary transaction system as "mobile wallet platform"); 9:64-10:16 (describing cash-in process and eMoney); 13:47-61 (describing optional language for adding bank accounts, credit union accounts, add credit card, add debit card, deposit funds in mobile wallet, pay bills, top up prepaid mobile account, transfer funds nationally or internationally, make in store purchases) 28:51-53 (finding embodiments should not be limiting); 29:23-30 (embodiments should be illustrative and not restrictive). Thus, PayPal's purported lexicography is not reasonably clear, deliberate, and lacks precision. Fintiv's Response goes on to identify many other portions of the specification that provide examples of the usage of the term mobile wallet outside of the stored value and prepaid access account that PayPal seeks to limit the term to.

PayPal argues that its construction encompasses stored value accounts hosted by third parties and would include adding a bank or credit card account because these accounts are "stored value accounts." (Reply at 4). But PayPal fails to identify portions of the specification that

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describe debit cards, credit cards, and financial institution accounts as stored value accounts/PPA accounts. Moreover, PayPal's new proposed construction introduces additional limitations such as the term "mobile wallet account," which is another claim limitation used in some, but not all of the claims. PayPal's proposed constructions just seeks to import limitations that are not part of the meaning of the term are confusing and unhelpful to a jury.

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's argument that the term "agent" should be limited to human individuals is wrong. As with the term "mobile wallet" there is no portion of the specification that restricts the term "agent" to only human individuals with reasonable clarity and deliberateness required for lexicography. *Markman*, 52 F.3d at 980. PayPal argues that there is a plethora of instances where "agents" are humans. (Reply at 5). But claim constructions are not based on "instances." Patent claims are not restricted to even preferred embodiments let alone certain disclosed embodiment instances. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1370 (Fed. Cir. 2002) ("In the course of construing the disputed claim terms, a court should not ordinarily rely on the preferred embodiments alone as representing the entire scope of the claimed invention.") PayPal is, therefore, wrong that the Asserted Patents are limited to human individuals only. As explained in Fintiv's opening brief, the language "human agent" or "individual" is not used in the claims. Response at 7. Indeed, for example, the '386 Patent, Claim 1 uses the term "agent" to refer to an entity, not a human. Thus, the claims themselves are not narrowed such that the terms entity or "agent" requires an individual human being. (Dkt. 41, Corrected Johnson Decl. at ¶ 32.). The

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Asserted Patent specifications use the term "agent (e.g. entity)" and "as a retail store or agent company (e.g. entity)." *Id.* (citing '845 Patent at 6:4-20.) These portions of the specification show that the term "agent" is used broadly enough to include individuals and other entities such as a kiosk or other places of business. '845 Patent at 6:17-20 ("Agents may be found in every facet of a typical economy, and may include large retailers, mobile network operators (MNO) airtime sales agents, gas stations, kiosks, or other places of business.") Mr. Chatterjee, PayPal's expert, was asked during his deposition about the '845 Patent at 14:27-32, and he testified that the term "e.g." as used above means example. *See* Ex. B, Chatterjee Tr. at 219:14-21.

The Asserted Patents provide other examples that are not restricted to human individuals. For example, the '196 specification discusses an "agent communication" from an agent terminal that indicates that a customer desires to perform a mobile wallet transaction using their third-party mobile wallet. *See* '196 Patent at 1:56-62. This "agent communication" is not referring to a "human" communication since the specification refers to a cloud-based transaction.

Thus, while PayPal identifies embodiments that could include human individuals as agents, there is nothing in the claims or the specification that would limit the term in this manner to this particular embodiment based on lexicography. Indeed, PayPal's expert, Dr. Chatterjee, admitted that his only experience working with mobile payment system prior to the Asserted Patents was a system he invented called RTS that could be used without a human agent through a kiosk. Ex. B, Chatterjee Tr. at 80:14- 81:11 (RTS kiosk did not require a human agent); 74:18-75:10 (RTS system features allowed users to access their loans); and 78:12-23 (RTS system was used with micro finance institutions). When asked whether "software agents" were known to a POSITA, Dr. Chatterjee initially testified that he never heard of them. *Id.* at 110:19-22 (testifying was not familiar with the term software agent), but when pressed, he later admitted that the term "agent"

outside of the patents can include "things like software that does things on its own…That's the concept of software agents." 237:17-238:9 (acknowledging term software agent concept known); Ex. C, Chatterjee Depo Ex. 10 at 12 ("software agent is a computing entity that performs user delegated tasks autonomously"). Thus, Dr. Chatterjee simply ignores the fact that mobile payment systems existed such as kiosks that did not require individual human agents to receive a physical payment from a subscriber. A POSITA would understand the same.

PayPal next takes issue with the lack of extrinsic evidence cited in Fintiv's brief; however, as explained above, there is support for a broader usage of the term "agent" in the intrinsic record, and even Mr. Chatterjee above admits that one skilled in the art knew about extrinsic evidence through his RTS program and software agents prior to the Asserted Patents when shown extrinsic evidence at his deposition. Moreover, Mr. Johnson's corrected declaration also provides extrinsic evidence that confirms that agents can be large retailers and organizations. *See* Dkt. 41, Corrected Johnson Decl. at ¶ 43. This includes, for example, welfare payment and government direct deposit transactions described in the patent specification. *See id*. at 41-42 (citing '845 Patent at 21:36-41 and 21:60-64).

PayPal's Reply again attempts to limit the term "agent" to require a human individual and other extraneous limitations. (Reply at 5.) Although an "agent" can be a human individual, the Asserted Patents use the term more broadly so the term includes other entities. *See e.g.*, '845 Patent at 14:27-32.

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."

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PayPal's argument for the term "agent branch" is largely based off its argument for the term "agent." Response at 8. The '845 Patent, for example, explains in column 6:54-60 that an example of an "agent branch" can be a retail location, but explains that functionality relating to mFS transactions such as transferring funds can be made available on a website for easier access in discussing the term "agent branch." *See* '845 Patent at 6:64-7:2. Thus, the '845 Patent indicates that the "agent branch" does not *require* a physical location as PayPal argues. Moreover, PayPal's construction does not even use the term "physical location." PayPal's Reply goes as far as providing additional proposed constructions for the term "agent branch" apart from its proposed construction which PayPal argues also requires the functions to be performed by, or related to, subscribers. (Reply at 8 (citing Ex. 1 at 316:12-317:10).) The Asserted Patents, however, do not require such constructions and PayPal's citation to Mr. Johnson's expert deposition does not support its position. PayPal argues that Fintiv ignores eight figures that use the term "agent branch" and depicts it as a building, which is nonsensical. Figures 20A -22J, which are also disclosed in the provisional applications and that are incorporated by reference are software data flows. The Asserted Patents and incorporated Provisionals explain that they show communications between specific components during the deposit of funds, the withdrawal of funds, and during the transfer of funds in financial accounts. *See e.g.*, '386 Patent at 3:28-39. These data flows confirm that embodiments of the invention are agnostic to particular physical locations consistent with references in the specification that the functionality can be implemented without having a physical location (described above). Of note, when asked at his deposition about the term "agent branch," Dr. Chatterjee explained that the term had an express definition based on the claims and specification (Ex. B, Chatterjee Tr. at 243:7-18), but when asked to identify where in his declaration he disclosed where the definition was located in the intrinsic record, Dr. Chatterjee

testified that his opinions were "understood" and that he "should have added a sentence saying it's expressly defined." Ex. B, Chatterjee Tr. at 243:2-21. *SkinMedica, Inc. v. Histogen Inc.*, 727 F.3d 1187, 1210 (Fed. Cir. 2013) (finding conclusory testimony that lacked substantive explanation tied to the intrinsic record). To the contrary, Mr. Johnson provides references to the Figs 11A and 11B that disclose, for example, direct deposit or welfare payment embodiments and Mr. Johnson explains that a POSITA would understand that the location of the employer or government office would not be important in performing transactions related to direct deposit or welfare payments to a POSITA, which are further described in the Asserted Patents as example features in the mobile financial services platform. *See* Dkt. 41, Corrected Johnson Decl. at ¶ 46 (citing Figs 11A and 11B). *See also* '845 Patent at 21:6-64 (describing Figures 11A and 11B embodiments and "are to be credited directly from the employer (or bank)" and "[t]he eMoney accounts that are to be credited from the government."). Thus, the Court should not restrict the term "agent branch" to a particular physical location since the intrinsic record does not require it.

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 argues that construing the term "unbanked subscriber" so that the subscriber has access to and may use a bank account is nonsensical. (Reply at 8.) But PayPal's construction of the term "unbanked subscriber" that excludes financial institution accounts ignores the language of the purported lexicographic definition PayPal advances. PayPal's own purported explicit lexicographic definition makes it clear that an "unbanked subscriber" can have a financial institution account. As explained in Fintiv's Response, PayPal simply ignores the language in the '845 Patent at 12:25-27 (as illustrated below) so that part of the purported explicit definition is

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not present - "An "unbanked subscriber" is a subscriber that does not have (~~or does not have access to~~) a bank account or credit union account. PayPal should not be allowed to rewrite the Asserted Patent specification. PayPal also ignores other portions of the specification in the '845 Patent at 14:19-25 that uses the term "unbanked subscriber's profile" with parenthetical that explains that data is used in the unbanked subscriber's profile to see if the subscriber has enough EMoney or has enough money in his or her bank account. Response at 10. Incredibly, Dr. Chatterjee testified that he did not place any significance on the fact that the parenthetical comes after the "unbanked subscriber profile" language in this sentence. Ex. B Chatterjee Tr. at 260:17-261:5. Dr. Chatterjee's opinion, again, seeks to redraft the specification into two different sentences. The specification cites identified above, confirm that the term "unbanked" is used to include either the lack of any financial account or the inability to access financial accounts. By way of further example, the '845 Patent describes the ability to "top up" a prepaid mobile account by a specified amount using a specified payment method from the unbanked subscriber's mobile wallet. *Id*. at 18:65-19:3. The patent uses the term "specified payment method" as expansive and not limiting to exclude financial accounts.

PayPal is again wrong that Fintiv failed to address extrinsic evidence. Mr. Johnson's declaration explains that Kang Decl. Ex. 14, for example, does not restrict services based on whether or not individuals have bank accounts since such restrictions would be counter to improve financial inclusion, which the article discusses. *See* Dkt. 41, Corrected Johnson Decl. at ¶ 49. This extrinsic evidence merely shows that "unbanked subscribers" are using the mobile payment system because they may not always have access to financial accounts. Dr. Chatterjee testified that he worked on a RTS system that allowed people who are unbanked, who don't have access to a bank, and who don't have a bank account to perform financial transactions since banks were hundreds

of miles away. Ex. B, Chatterjee Tr. at 53:17-54:10. He testified that this mobile payment system could be used with financial service companies such as micro finance companies. *Id*. at 76:14-77:2. (RTS system was used with micro finance institutions). Thus, PayPal's own expert used the term "unbanked" himself during his deposition to describe systems that were linked with the micro finance companies and their software systems. *Id.* PayPal's argument that the term "unbanked" excludes a financial institution account is further contradicted by PayPal's own expert.

E. Purported Means-Plus-Function Claim Terms

1. *PayPal has Not Met Its Burden to Show that § 112, ¶ 6 Applies*

None of the Asserted Claims contain means-plus-function limitations, and PayPal has not come close to meeting its burden to show otherwise. Initially, PayPal's Opening Brief and attached declaration make a serious and flawed analysis by failing to consider critical portions of the claims and specifications. Indeed, PayPal's expert relied on the same basic flawed argument that assumed that all of the purported means plus function terms disclose no structure at all and consist of nothing more than a black box type disclosure shown by Figure 1. For example, for the terms "payment handler" / "payment handler service," PayPal's Opening brief argues that a POSITA would not understand to convey any definite structure with regards to the claims and specification. (Op. Br. at 20-21.) PayPal argues that the claims do not disclose any structure at all, much less an algorithm for performing the recited function and that the payment handler is nothing more than a "black box." Op. Br. at 20-21. PayPal's expert Dr. Chatterjee mirrored this argument stating that "***the sole description*** in each of the Asserted Patents relating to the "payment handler" or "payment handler service" is in connection with Fig. 1. *See* Dkt. 35-1, Chatterjee Decl. at ¶ 57. The same repeated arguments are made for the two other purported means-plus-claim terms. *See e.g., id*. at ¶¶ 65 and 69. This analysis introduces a critical error, since all of the Asserted Patents contain detailed data flows that provide context above and beyond the purported black box of Figure 1.

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PayPal acknowledges that the data flows are contained in at least the '386 and the '413 Patents. Reply at 12. The data flows are also included in all of the provisional applications which are incorporated by reference. PayPal's expert's failure to address at all the dataflows is a failure to meet PayPal's burden. PayPal argues that the data flows cannot be used as structure even though they are incorporated by reference. But even if correct, a POSITA would understand all of the intrinsic record when understanding claim terms. Moreover, PayPal's position that some of the patents do not include the purported dataflows is contradicted by its expert Dr. Chatterjee who testified that he applied the June 3, 2011, priority date for his analysis and that it was his opinion that there is not a substantial difference between the disclosures in the patents between June and November 2011. Ex. B, Chatterjee Tr. at 141:9-14 and 142:16-143:11

A POSITA would have considered these data flows and the other portions of the specification and sufficiently understood what the purported means-plus-function claims terms meant and what their structures were. *Mad Dogg Athletics, Inc. v. Peloton Interactive, Inc*., No. 2:20-CV-00382-JRG, 2021 WL 3200994, at *5 (E.D. Tex. July 28, 2021) ("The presumption stands or falls according to whether one of ordinary skill in the art would understand the claim with the functional language, in the context of the entire specification, to denote sufficiently definite structure or acts for performing the function.").

2. *The Claims Themselves Connote Sufficient Structure*

Even if the Court were to ignore some or all of the dataflows, the claim terms do not have to conjure an explicit mechanism for carrying out the claimed means to avoid the application of § 112, ¶ 6. *See Personalized Media Commc'ns, LLC v. Int'l Trade Com'n,* 161 F.3d 696, 705 (Fed. Cir. 1998). Moreover, *Williamson* was concerned with the absence of how the distributed learning control module" interacted with other components that would inform the structural character of the limitation in question. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1351 (Fed. Cir. 2015).

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Indeed, *Williamson* was also concerned about expert testimony that merely claimed that it was possible to program a computer to perform the structure where none is disclosed. *Id.* PayPal's own argument that Figure 1 is merely a blank box ignores information in the figure that explains how the platform architecture relates to different components in the mobile payment platform and how they interact.

For example, PayPal's expert argues that a POSITA would not have understood from the terms payment handler / payment handler need to be implemented in any particular fashion beyond a generic processor. Dkt. 35-1, Chatterjee Decl. at ¶ 55. He makes the same general conclusion for the two additional purported means-plus-function terms. *See id.* at ¶¶ 61 and 66. However, as explained above, the claims themselves disclose how the purported means-plus-function terms interact with other components. *See* Response at 15 (claims describing payment handler with regards to APIs and payment processors of banks, credit, and debit cards, and bill payment processors as well as other agent and subscriber accounts); Response at 21 and 26-27 (claims describing interaction with other components in system including integration tier, business process services, rules engine, access control list, storage system, *etc.*). These disclosures, therefore, provide details regarding what these terms mean and disclose additional structure when considered with the teachings of the specifications above and apart from just the data flows. *See e.g.*, '386 Patent at 13:29-34 (describing payment handler that can wrap APIs of different payment processors and that can expose common API's to facilitate interactions with many different kinds of payment processors); 4:65-7:3 (disclosing Payment handler APIs); '386 Patent 13:39-5 (describing databased embodiment); '386 Patent at 4:65-7:3 (disclosing storage and databased functionality known in art); 13:25-34 (describing business process services). Thus, PayPal's argument that there is no link to the claimed function in the claims is wrong. (Reply at 14.)

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With regards to the structure for the term Payment Handler, PayPal's expert Dr. Chatterjee admitted that the term API (application programming interface) is a broad term that has many different ways that it can be used and implemented. Ex. B, Chatterjee Tr. at 42:3-9. The '845 Patent also discloses that processors' other computing resources and hardware logic components can be used to contribute to the functionality of the system. '845 Patent at 5:23-6:3. Thus, even if *arguendo* the data flows for some of the patents cannot constitute structure, the '845 Patent makes it clear that a POSITA would understand how to implement APIs and processors disclosed in the claims, which are structures, because these were components one knowledgeable in the art would know of a variety of structures to use. *See Personalized Media*, 161 F.3d at 705.

PayPal argues that Fintiv provides a single function for all claims and improperly broadens the function. (Reply at 9). But in reality, as described above, the claim terms in dispute are used so often in the claims, that it is difficult to capture a single function that addresses all the purported claim language and requirements, which is another reason why the Court should reject PayPal's argument that these terms are means terms.

PayPal does not address "database services" / "storage system" or "business services" in its Reply substantively except in passing, and its response does not substantively address arguments made in Fintiv's Response. This includes that the claims, specification and case law support Fintiv's position that the claims recite sufficient structure or alternatively that the specification discloses sufficient structure. Fintiv's position that other portions of the specification apply to these terms does not provide a sufficient response.

F. "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"

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PayPal argues that the term "presented to" does not rise and fall with the agent construction. (Reply at 15.) PayPal references its Opening brief for its argument that the claims purportedly specify that the communication occurs over one of the plurality of channels. *Id.* PayPal next argues that the terms providing, returning, and presenting have different meanings and that the term "presented to" suggests physical proximity. *Id.* PayPal also argues that Fintiv does not identify anything in the intrinsic record to support its position. *Id.* However, none of the intrinsic record cited by PayPal whether the claims or the specification in any of PayPal's briefs include any lexicography or disclaimer that would restrict the plain language to require the imported terms displayed to or placed near. Indeed, PayPal's Reply is devoid of any mention of these terms or why the term "presented to" should be used to modify the meaning of the plain term "presented to" and require visual and proximity limitations. PayPal's arguments are another iteration of PayPal's argument that the claim language should be restricted to require a human agent and should be rejected for the reasons addressed for the agent term.

III. CONCLUSION

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

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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 6th day of December, 2022, via the Court's CM/ECF system.

/s/ Jonathan K. Waldrop
Jonathan K. Waldrop

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