

**UNITED STATES DISTRICT COURT FOR
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LIBERTY ACCESS TECHNOLOGIES
LICENSING LLC,

Plaintiff,

v.

MARRIOTT INTERNATIONAL, INC.,

Defendant.

Civil Action No. 2:22-cv-00318-JRG

JURY TRIAL DEMANDED

PLAINTIFF’S OPENING CLAIM CONSTRUCTION BRIEF

Pursuant to this Court’s Order Regarding Claim Construction (Dkt. No. 83) and Local Patent Rule 4-5(a), Plaintiff Liberty Access Technologies Licensing LLC (“Liberty Access”) provides its Opening Claim Construction Brief, addressing disputed terms identified in the Joint Notice Regarding Claim Construction (Dkt. No. 82).

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I. INTRODUCTION

The Asserted Claims contain terms that are easily understood by those of ordinary skill in the art, are straightforward, and are accessible even to jurors. Courts are not obligated to construe terms with plain and ordinary meanings, lest they inject unnecessary limitations into the claims. Indeed, the procedural history of the present claim construction “dispute” largely reflects this. During the Local Patent Rule exchanges, Defendant Marriott proposed for everyone of its “terms for construction” that “[n]o construction [was] necessary – apply the plain and ordinary meaning as understood by a person having ordinary skill in the art.” *See* Dkt. No. 79 at 1. But then the gamesmanship began. Marriott never disclosed a proposed construction, but instead insisted during the meet and confer process that, despite its “no construction necessary” position, a claim construction hearing was still needed. *See id.* at 2-3. Confused by Marriott’s proposal, Liberty Access asked that same date for an explanation of what “plain and ordinary meaning” Marriott intended to propose at the hearing. *Id.* at 3. Marriott remained silent. *Id.* But then, on the day before Liberty Access’s opening brief was originally due in this case, Marriott informed Liberty Access for the first time of Marriott’s understanding of the plain and ordinary meaning of certain terms. *Id.* Liberty Access explained these circumstances in its opening brief on August 22, 2023, resulting in Judge Gilstrap issuing an Order for the parties to further meet and confer and report to the Court regarding a proposal for moving forward with the claim construction process. *See* Dkt. No. 81. Even during that process Marriott struggled to provide any support or disclosures supporting its positions as required by the Local Patent Rules. Judge Gilstrap conducted a status conference on September 15, 2023, and subsequently entered the present briefing schedule. *See* Dkt. No. 83.

The Court’s previously expressed concerns regarding an *O2 Micro* dispute (*see* Dkt. No. 81 at 2) is well placed as evidenced by Marriott’s approach to claim construction in this case.

Notwithstanding, for the reasons set forth below, there is no reason to unnecessarily construe claim terms simply because Marriott has used the Local Patent Rules to manufacture an unreasonable “dispute” as to what the plain meaning of the terms is. The only three terms that remain in “dispute” are clear on the face and require no construction. To the extent the Court believes it must construe the terms, however, it should adopt Liberty Access’s proposals because they are consistent with the plain meaning of the terms as understood by a person of skill in the art and are entirely consistent with the specifications and claim language as a whole.

The Court should reject Marriott’s proposed constructions. Marriott’s proposals (and its entire approach to claim construction in this case) reflect its fundamental misunderstanding of the Court’s role in construing claims. It is not hard to see that Marriott sees the claim construction process as a chance to create noninfringement positions that otherwise do not exist through faux claims of ambiguity and under the auspices of *O2 Micro*. There is no *O2 Micro* dispute here. *O2 Micro* applies in a very specific situation: “when a term has more than one ‘ordinary’ meaning or when reliance on a term’s ordinary meaning does not resolve the parties’ dispute.” *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008). The claim construction process is a means to resolve **real disputes** as to the meaning of claim terms in light of claim disavowal by the patentee or the patentee’s use of lexicography in defining terminology governing the claimed subject matter. There is no such dispute here. Marriott’s proposals are not tied to the plain meaning of the terms as drafted and instead ask this Court to redraft simple claim language with new limitations. Marriott’s constructions would improperly limit the meaning of the claims in a scenario where lexicography and/or prosecution history estoppel are clearly not an issue. Marriott’s proposals would also be inconsistent with the disclosures in the specification as a whole. The Court should reject Marriott’s attempt to improperly change the claim scope under the cover

of *O2 Micro*.

II. THE ASSERTED PATENTS AND BACKGROUND

The three “Asserted Patents” are: U.S. Patent Nos. 9,373,205 (“’205 patent”) (Dkt. No. 1-1), 10,657,747 (“’747 patent”) (Dkt. No. 1-2), and 11,373,474 (“’474 patent”) (Dkt. No. 1-3). As set forth below, the Asserted Patents are directed to a computer-system architecture associated with the claimed access device, complete with specialized features, including a specially configured processor, an integrated communication module, a reservation certificate containing specific types of information (which varies depending on the claim), and a variety of features for encryption, security, and authentication.

A. The ’205 Patent

The ’205 patent issued on June 21, 2016 and is titled, “Access Control System and Method for Use by an Access Device.” *See* Dkt. No. 1-1 (’205 patent), at 1. A supplemental examination request (No. 96/000,367) was made on August 4, 2021. *See id.* at 19. On February 25, 2022, an *Ex Parte* Reexamination Certificate issued. *Id.* As stated therein, claims 1-14 and 16-18 of the ’205 patent “are determined to be patentable *as amended*.” *Id.* (*emphasis* added). Reexamined claim 1 of the ’205 patent is exemplary and reads:

1. An access device for use in an access control system, 20
the access device comprising:
a processor (16) having control of a door lock (11); and a
communication module (17) connected to the proces-
sor, the processor [able to] *is configured to* receive a
reservation certificate (5) presented by a portable ter- 25
minal (4) through the communication module;
wherein, *when a current reservation certificate that com-
prises an interval of a reservation is presented by the
portable terminal, the processor [activates] is config-*
ured to compare the interval of the reservation of the 30
current reservation certificate to a current time acces-
sible to the processor, determine the current time is
within the interval of the reservation, and activate the
door lock [when a current reservation certificate has
been presented] to allow the portable terminal to 35
unlock the door lock during the interval of the reser-
vation.

Id. at 21.

As discussed therein, the '205 patent is directed to systems and methods for using an access device in a computer-implemented system to enable a portable device, such as a smartphone, to wirelessly transmit, *via* a communication module, a digital certificate that provides information to a door lock needed to activate a lock. Dkt. No. 1-1 ('205 patent), at Abstract. The '205 patent teaches a computer-system architecture associated with the claimed access device, integral to which are a specific processor, communication module, and digital certificate (in the example of claim 1, a “reservation certificate”) configured for specific tasks. *Id.*

The processor, for example, is coupled with a communication module and is configured not only to receive a reservation certificate, but also to compare the interval of the reservation certificate to a current time, determine whether the certificate is current, and control a door lock and unlock the door if certain criteria are met (*e.g.*, the reservation is current). *Id.* at Abstract, 6:6-24, Claim 1.

As shown in FIG. 4, the systems disclosed by the '205 patent can include “an Internet capable access device 11, in this example a hotel room lock, having connection 10 to Internet”:

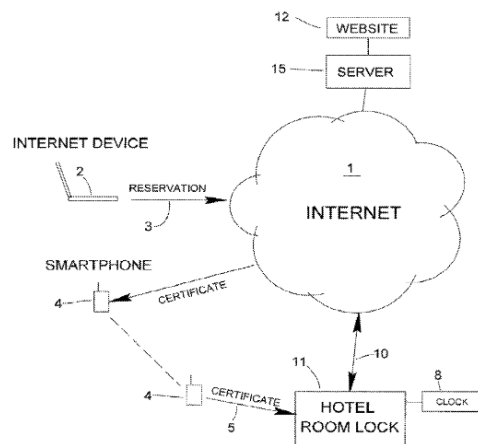


FIG. 4

Id. at FIG. 4, 5:54-57. The '205 patent specification further confirms that the claimed systems and devices include a particular type of communication module that enables the transfer of the digital

certificate and/or information associated with the certificate (*see id.*, 6:6-24, FIGs. 4-6), and a reservation certificate configured for a specific role in the system. *See id.*, 4:1-6, 8:19-25.

The '205 patent describes various embodiments enabling encryption of the certificate, including with use of public or private keys, as well as embodiments containing specific identification information for both the certificate as well as the device or user of the system, and information about a reservation timeline. *See id.*, 2:5-17, 2:61-66, 4:26-33, 5:7-9, 5:20-26, FIG. 2. The '205 patent reflects these features, setting forth other embodiments in which the reservation certificate enables additional security through the use of digital signatures, data representative of the identification made by the separate processor, and single use IDs to prevent hacking and spoofing, as illustrated in Figure 2, below:

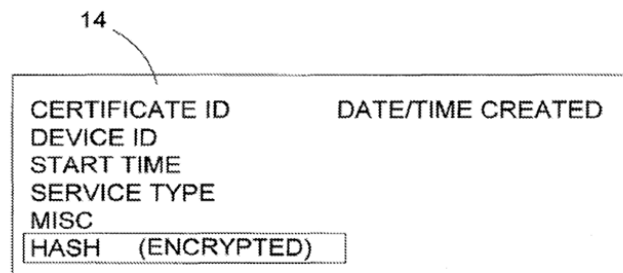


FIG. 2

Id. at FIG. 2, 2:7-3:6.

Other claims include further limitations such as the processor evaluating a reservation interval and predetermined duration information (claims 2-3), modifying the reservation certificate to include additional information and further configuring the processor to activate the door lock *via* a portable terminal in specific circumstances (claims 4-6), configuring the memory within the computer system architecture to include specific information associated with encryption, authorization, validation, and identification tasks (claims 7-11). *See id.*

B. The '747 and '474 Patent

The remaining Asserted Patents, the '747 patent and the '474 patent, are related to, and share the same specification and priority date as, the '205 patent. *See* Dkt. No. 1-2 ('747 patent) at 1; Dkt. No. 1-3 ('474 patent) at 1. The claims of the '747 and '474 patents add even more detail and structure to the overall system architecture, components therein, and specific tasks performed within the architecture. *Id.*

The '747 patent and '474 patent teach a computer-system architecture associated with the claimed access control systems including concrete elements, such as an access device, secure reservation interface to receive location and duration information, a coupled reservation server that processes the reservation request, issues reservation certificates, the ability to transmit to a second device within the system (distinct from the first device) a communication setting and a reservation certificate, a specific application on a second device to receive this information and process commands relating to a door lock, incorporation of encryption techniques at various stages of the system, delineated tasks of a separate door lock upon receipt the decrypted and/or authenticated reservation certificate, and utilization of various communication protocols and network identifiers for the devices residing in the system architecture. *See* Dkt. No. 1-2 ('747 patent), at Abstract and Claim 1; Dkt. No. 1-3 ('474 patent), at Abstract and Claim 1.

Other claims include further limitations that add even more detail and structure to the overall system architecture, components therein, and specific tasks performed within the architecture. Dkt. No. 1-2 ('747 patent) at claims 2, 5, 6, 13; Dkt. No. 1-3 ('474 patent) at claims 3, 4, 5, 6, 15.

III. LEGAL STANDARD

A. Claim Construction

Claim terms are generally given their plain-and-ordinary meaning. *Phillips v. AWH Corp.*,

415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*). There are only two exceptions to this general rule: 1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution. *Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). Moreover, the Federal Circuit has repeatedly advised district courts that they are not obligated to construe terms with ordinary meanings, lest they be inundated with requests to parse the meaning of every word in the asserted claims. *O2 Micro*, 521 F. 3d at 1360-62 (recognizing that “district courts are not (and should not be) required to construe every limitation present in a patent’s asserted claims.”) (citing *Biotec Biologische Naturverpackungen GmbH & Co. KG v. Biocorp, Inc.*, 249 F.3d 1341, 1349 (Fed. Cir. 2001)); *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997) (claim construction “is not an obligatory exercise in redundancy.”). In addition, where a claim term with a “plain and ordinary meaning” is disputed, a district court may satisfy its obligation to resolve the parties’ dispute by adopting the plain meaning without additional construction, thereby declining to adopt a proposed construction that is “confusing, unhelpful, adds no clarity to the claim language itself, and is erroneous to the extent it attempts to narrow the claims by adding . . . limitations.” *ActiveVideo Networks, Inc. v. Verizon Commc’ns, Inc.*, 694 F.3d 1312, 1325-26 (Fed. Cir. 2012).

IV. ARGUMENT

As demonstrated below, Liberty Access believes that each of the “disputed” terms should be given their plain and ordinary meaning because there is no *O2 Micro* dispute. Marriott has manufactured a “dispute” about the plain and ordinary meaning of these terms in order to argue infringement issues at claim construction. This is not only improper, but it is contrary to the standards for construing claim terms. *See Eon Corp. IP Holdings LLC v. Silver Spring Networks*,

Inc., 815 F.3d 1314, 1319 (Fed. Cir. 2016) (“[T]here are limits to the court's duties at the claim construction stage. For example, courts should not resolve questions that do not go to claim scope, but instead go to infringement.”); see *Lazare Kaplan Int'l, Inc. v. Photoscribe Techs., Inc.*, 628 F.3d 1359, 1375 (Fed. Cir. 2010) (“[Plaintiff] contends that a new trial is necessary because the district court erred by failing to further construe the [claim] limitation. [Plaintiff] argues that the parties disputed the scope of the limitation, and, despite recognizing the nature of the dispute, the court failed to resolve the issue, effectively leaving the jury to determine the meaning of the limitation....This court agrees with the Defendants that the parties’ dispute concerns factual questions relating to the test for infringement.”).

The “disputed” terms now before this Court require no construction. Although Marriott asserts that its constructions are the plain and ordinary meaning, Marriott repeatedly commits the “cardinal sin” by reading into the claims limitations that are examples from the specifications. See *Phillips*, 415 F.3d at 1320. But “[a]n accused infringer cannot overcome the ‘heavy presumption’ that a claim term takes on its ordinary meaning simply by pointing to the preferred embodiment or structures or steps disclosed in the specification.” *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1327 (Fed. Cir. 2002). Instead, “claim terms take on their ordinary and accustomed meanings unless the patentee demonstrated an intent to deviate from the ordinary and accustomed meaning of a claim term [a] by redefining the term or [b] by characterizing the invention in the intrinsic record using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.” *Id.* “Absent such clear statements of scope, [the court is] constrained to follow the language of the claims, rather than that of the written description.” *Id.* at 1328.

Marriott’s constructions are exactly that – an attempt to depart from the plain meaning of the claim terms, while sidestepping the exacting standards for lexicography and disclaimer. See

Thorner, 669 F.3d at 1365 (“To act as its own lexicographer, a patentee must ‘clearly set forth a definition of the disputed claim term’ other than its plain and ordinary meaning.”); *id.* at 1366 (“The standard for disavowal of claim scope is similarly exacting.”). The Court should not indulge Marriott in any of its flawed claim construction positions. Instead, this Court should leave the claim terms as they are, using the language in which the patentee chose to articulate the claimed subject matter. But, in the event the Court finds an actual dispute as the scope of the claims exists, and thus, construction is necessary, Liberty Access has proffered proposed constructions which it believes may be helpful to jurors.

A. “Reservation Certificate” (’205 patent: Claims 1, 2, 4, 6-11, 13, 16-17; ’747 patent: Claims 1-5, 7, 13; ’474 patent: Claims 1, 7, 8, 14, 15, 24-26, 35-36)

Liberty Access’s Position	Defendant’s Position
No construction necessary In the alternative, and to the extent a construction is necessary: “Digital token or certificate corresponding to a reservation”	“Certificate comprising reservation data”

The term “reservation certificate” is unambiguous, easily understood on its face, and does not require construction. The term “reservation certificate” is largely defined by the language of the claim itself. For example, Claim 1 of the ’205 patent recites, in relevant part, “wherein, when a current *reservation certificate that comprises an interval of a reservation* is presented by the portable terminal....” Dkt. No. 1-1 (’205 patent), at claim 1 (*emphasis added*). Thus, the claims themselves describes what the “reservation certificate” contains and what it does. *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1237 (Fed. Cir. 2016) (“Construing a claim term to include features of that term already recited in the claims would make those expressly recited features redundant.”). This is consistent with both the specification and how one of skill in the art would understanding the phrase “reservation certificate.” The specification states, “[a]fter all of the information is

gathered, the website causes the server 15 to send *a particular digital token or certificate (a “reservation certificate 5)* to a particular portable terminal All or part of the digital certificate may be encrypted” *See* Dkt. No. 1-1 (’205 patent) at 4:1-8. The reservation certificate acts as a typical authentication tool—a digital certificate—as one of skill in the art would easily understand and as is consistent with the usage in the claim term. No definition or construction of the term is necessary because the meaning of the term is clear on its face, but to the extent the Court finds an *O2 Micro* situation to exist, the plain meaning of the term is a “digital token or certificate corresponding to a reservation.”

Marriott’s manufactured “dispute” as to the plain meaning of this term is simply an attempt to add additional limitations into the claim because it requires the reservation certificate to “compris[e] reservation data.” Marriott’s “plain meaning” asks the Court to improperly limit the scope of thirty different claims across all three Asserted Patents, and in such a way that there will be a dispute as to whether a digital certificate corresponding to a reservation (as described in the claims) does or does not satisfy the plain language of the claims as drafted. Marriott does not cite, nor can it show either lexicography or disclaimer so as to depart from the plain and easily understood claim language. Dkt. No. 82. The best Marriott can do is ask the Court to improperly insert cherry-picked citations from the specification referring to various embodiments of the reservation certificate. *See* Dkt. No. 82, at p. 2 (citing ’205 patent, at 2:7-8, 5:7-9, 7:59-61, FIG. 2). Marriott’s citation to Figure 2, for example, only “shows a sample certificate 14 (one embodiment of certificate 5).” Dkt. No. 1-1 (’205 patent), at 5:7-9. Likewise, Marriott’s citation to column seven, lines 59 to 61 of the ’205 patent intentionally omitted the preceding clause, explicitly identifying it as an embodiment. *Id.* at 7:59-62 (“*For instance, in one embodiment, reservation certificate 5 comprises data representative of the reservation encrypted with the server’s*

private key.”) (*emphasis* added); *cf.* Dkt. No. 82 at 2 (omitting *emphasized* language). Neither the law nor the specification support limiting the claims to a single preferred embodiment. *See Phillips*, 415 F.3d at 1320; *Linear Tech. Corp. v. ITC*, 566 F.3d 1049, 1058 (Fed. Cir. 2009) (“We have repeatedly held that, even in situations when only one embodiment is disclosed, the claims generally should not be narrowed to cover only the disclosed embodiments or examples in the specification.”).

Marriott’s proposal also contradicts other aspects of the written description. The same paragraph on which Marriott relies in attempting to limit the term, for example, also teaches that the reservation certificate may be a “digital token.” Dkt. No. 1-1 (’205 patent), at 2:7-8 (“The server, or another server, can then transfer a *digital token* or certificate....”) (*emphasis* added). “It is beyond debate that the entire specification must be consulted in construing the claims.” *Sinorgchem Co., Shandong v. Int’l Trade Comm’n*, 511 F.3d 1132, 1145 (Fed. Cir. 2007); *Pfizer, Inc. v. Teva Pharms. USA, Inc.*, 429 F.3d 1364, 1373 (Fed. Cir. 2005) (“It is necessary to consider the specification as a whole, and to read all portions of the written description, if possible, in a manner that renders the patent internally consistent.”).

Another example of Marriott’s identified “evidence” further illustrates Marriott’s error, stating “[t]he server, or another server, can then transfer *a digital token or certificate*.” Dkt. No. 82, at p. 12 (citing ’205 patent, at 2:7-8). Marriott’s proposed construction would completely read out this other embodiment disclosed within the specification. *See also* Dkt. No. 1-1 (’205 patent), at FIG 2 and 3:26-27 (“FIG. 2 shows an embodiment of a digital token or certificate.”); *cf. Globetrotter Software, Inc. v. Elam Computer Grp. Inc.*, 362 F.3d 1367, 1381 (Fed. Cir. 2004) (“A claim interpretation that excludes a preferred embodiment from the scope of the claim ‘is rarely, if ever, correct.’”) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir.

1996)).

Therefore, Liberty Access respectfully requests that the Court reject Marriott's proposed construction because this term does not require construction.

B. “Interval of [a/the] reservation” (’205 patent: Claims 1-4, 6, 13, 14, 16, 18; ’747 patent: Claims 1, 7, 13; ’474 patent: Claims 1, 8, 15, 26).

Libert Access’s Position	Defendant’s Position
No construction necessary In the alternative, and to the extent a construction is necessary: “A time or duration of [a/the] reservation”	“A time interval of a reservation”

Marriott's proposed construction departs from plain and ordinary meaning, and the term should not be rewritten to include limitations from the specification. As discussed above, district courts are not obligated to construe terms with ordinary meanings. *O2 Micro*, 521 F. 3d at 1360-62; *Ethicon*, 103 F.3d at 1568; *see also Mentor H/S, Inc. v. Med. Device Alliance, Inc.*, 244 F.3d 1365, 1380 (Fed. Cir. 2001) (finding no error in court's refusal to construe “irrigating” and “frictional heat”). The terms “interval of [a/the] reservation” use language that is readily understandable on its face and as used in the claims themselves. There is simply no need to “parse” language and engage in an “exercise in redundancy.” Liberty Access respectfully submits that this should end the claim construction exercise with respect to these terms.

Marriott's proposed construction departs from the plain and ordinary meaning because it attempts to limit the claim language to a time interval—a blatant attempt to improperly add limitations from one-off references in the specification. *Phillips*, 415 F.3d at 1323. Marriott's inclusion of “time” simply narrows the claim language and, ironically, renders the claims more ambiguous. For example, Claim 6 of the ’205 patent recites, “[t]he access device of claim 5 wherein the interval is specified by a start time and of an end time and a duration.” Dkt. No. 1-1

(’205 patent), at claim 6. Likewise, the specification teaches that “[t]he certificate generally has a start time and duration (or end time), describing the interval during which the final access device has been reserved.” Dkt. No. 1-1 (’205 patent), at 2:17-19. However, Marriott’s proposed construction improperly limits these claims to a “time interval.” In actuality, the specification disclosures (and plain meaning of the term) are clear that the interval covers both a time or duration. Dkt. No. 1-1 (’205 patent), at claim 6, 2:17-19, and 7:33-37 (“The spots shown may be only ones having the stated amenities and that are available to be reserved for the interval entered such as beginning from the start-time and available for the duration or until the end-time.”).

In sum, Marriott proposes to construe commonly understood words just for the sake of construction and to further restrict the claims. But the Federal Circuit has cautioned that “we do not change the words of the claims” just for the purpose of rewriting claim language. *Thorner*, 669 F.3d at 1365. As such, the claim language is entitled to its full meaning, and Marriott’s proposal should be rejected.

C. “Communication Setting” (’747 patent: Claims 1, 2, 13; ’474 patent: Claims 1, 2, 5-9, 12-15, 26).

Liberty Access’s Position Construction	Defendant’s Position
No construction necessary. In the alternative, and to the extent a construction is necessary: “A setting for enabling communication”	“A setting used for communication”

The term “communication setting” is clear and unambiguous on its face, and it requires no construction. *See O2 Micro*, 521 F.3d at 1360-1362; *Ethicon*, 103 F.3d at 1568; *Mentor H/S*, 244 F.3d at 1380. A person of ordinary skill would understand what a “communication setting” is without further construction or explanation. And even if there were some reasonable dispute as to the plain meaning of the term, one of skill in the art would understand from the term and the context

of the specification that the term means “a setting for enabling communication.” The ’747 patent teaches, for example:

The charger may use these wireless techniques in a manner that does not advertise its presence, for instance, the BLUE-TOOTH service may not announce itself. In such cases as these, *the application on the smart phone* uses a predetermined communication setting, *or obtains the appropriate communications settings (such as the network SSID, passcodes, IP addresses, Bluetooth ID, etc.) needed to contact the charger.* In fact, with certain information (e.g., the Bluetooth ID) will allow the application to identify and communicate with a specific one of many chargers in proximity.

Dkt. No. 1-2 (’747 patent), at 4:60-5:3 (*emphasis* added). These disclosures relate to the device using the communication setting to enable communications and is consistent with Liberty Access’ proposal. *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998) (“The construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be, in the end, the correct construction.”). It is also consistent with how a person of skill in the art understanding communications settings. For example, the Microsoft Computer Dictionary defines the analogous term “communications parameter” as “any of several *settings* required to enable computers to communicate.”¹ See Exhibit 1, Microsoft Computer Dictionary, Fifth Edition (2002) at 3 (“communications parameter”) (*emphasis* added). In the example provided by the dictionary, it notes that various parameters “must be set correctly to establish communication between two modems.” *Id.* And herein lies the rub with Marriott’s proposal—Marriott has manufactured a “dispute” as to the plain meaning in an attempt to add the requirement that the setting must be “used for communication.” Marriott’s proposal would thus eliminate from the claim scope settings or parameters that are used to enable communication because they are arguably not “used” for each and every communication packet (e.g., once the

¹ While dictionary definitions alone are not controlling as to the plain and ordinary meaning of a particular claim term, they are “useful to assist in understanding the commonly understood meaning of words.” *Phillips*, 415 F.3d at 1322.

communication protocols have been enabled).

Put another way, Marriot's proposed construction moves away from the plain meaning and improperly injects unnecessary limitations into the Asserted Claims. *Phillips*, 415 F.3d at 1323. Indeed, language of the claim does not necessarily require that the "communication setting" be used at all. Instead, the "communication setting" merely has to enable communication. *See supra* (quoting disclosure of '747 patent at 4:60-5:3). Marriott's proposed "used" limitation has been improperly added by Marriott without any showing of disclaimer or lexicography, and while of course the Court is permitted to depart from the plain meaning of a claim term upon a showing of either disclaimer or lexicography, Marriott can show neither. *Thorner*, 669 F.3d at 1365. Thus, Marriott's proposal should be rejected.

V. CONCLUSION

Based on the foregoing, Liberty Access respectfully requests that the Court reject the proposed constructions advanced by Marriott, and find that no construction is necessary for the subject terms, or in the alternative, adopt Liberty Access's proposed constructions reflecting the plain meaning of the terms.

Dated: September 22, 2023

Respectfully submitted,

By: /s/ Jonathan L. Hardt

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CERTIFICATE OF SERVICE

I hereby certify that on this day a true and correct copy of the foregoing document was filed electronically with the Clerk of Court using the Court's CM/ECF system. As such, this document was served on all counsel who are deemed to have consented to electronic service.

Dated: September 22, 2023

By: /s/ Jonathan L. Hardt

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