

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION

APPLE INC.

Petitioners,

v.

PROXENSE, LLC

Patent Owner

IPR2024-00573

IPR2024-01398

U.S. Patent No. 8,646,042 B1

PATENT OWNER SUR-REPLY

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EXHIBIT LIST

No.	Exhibit Description
2001	Claim Construction Order in <i>Proxense, LLC v. Samsung Electronics, Co., Ltd. et al.</i> , Case No. 6:21-CV-00210-ADA
2002	Memo In Support of Claim Construction Order in <i>Proxense, LLC v. Samsung Electronics, Co., Ltd. et al.</i> , Case No. 6:21-CV-00210-ADA
2003	Markman Transcript from <i>Proxense, LLC v. Samsung Electronics, Co., Ltd. et al.</i> , Case No. 6:21-CV-00210-ADA
2004	Claim Construction Order in <i>Proxense, LLC v., Google LLC</i> , Case No. 6:23-cv-00320-ADA
2005	Opening Claim Construction Brief in <i>Proxense, LLC v. Microsoft Corporation</i> , Case No. 6:23-cv-00319-ADA
2006	Responsive Claim Construction Brief in <i>Proxense, LLC v. Microsoft Corporation</i>
2007	Reply Claim Construction Brief in <i>Proxense, LLC v. Microsoft Corporation</i>
2008	Sur-reply Claim Construction Brief in <i>Proxense, LLC v. Microsoft Corporation</i>
2009	Opening Claim Construction Brief in <i>Proxense, LLC v. Samsung Electronics, Co., Ltd. et al.</i>
2010	Reply Claim Construction Brief in <i>Proxense, LLC v. Samsung Electronics, Co., Ltd. et al.</i>
2011	Joint Claim Construction Statement, <i>Proxense, LLC v. Microsoft Corp.</i> , Case No. 6:23-cv-00319-ADA
2012	Claim Construction Order in <i>Proxense, LLC v. Microsoft Corp.</i> , CaseNo. 6:23-cv 00319-ADA
2013	Declaration of David L. Hecht in Support of Motion
2014	Plaintiff's Preliminary Claim Construction in <i>Proxense, LLC v. Apple, Inc.</i> , Case No. 6:24-cv-00143-ADA
2015	Defendant's Preliminary Claim Construction in <i>Proxense, LLC v. Apple, Inc.</i> , Case No. 6:24-cv-00143-ADA
2016	Declaration of Markus Jakobsson
2017	Plaintiff's Final Infringement Contentions, <i>Proxense, LLC v. Microsoft Corp.</i> , Case No. 6:23-cv-00319-ADA
2018	Ex. E, Plaintiff's Final Infringement Contentions, <i>Proxense, LLC v. Microsoft Corp.</i> , Case No. 6:23-cv-00319-ADA
2019	Ex. D, Plaintiff's Final Infringement Contentions <i>Proxense, LLC v. Microsoft Corp.</i> , Case No. 6:23-cv-00319-ADA
2020	Ex. G, Plaintiff's Final Infringement Contentions, <i>Proxense, LLC v. Microsoft Corp.</i> , No. 6:23-cv-00319-ADA
2021	Plaintiff's Preliminary Infringement Contentions, <i>Proxense, LLC v. Apple, Inc.</i> , Case No. 6:24-cv-00143-ADA
2022	Ex. D, Plaintiff's Preliminary Infringement Contentions, <i>Proxense, LLC v. Apple, Inc.</i> , Case No. 6:24-cv-00143-ADA

I. INTRODUCTION

The Reply is mistaken in its assertion that Patent Owner for the first time in these proceedings advances certain constructions that are inconsistent with the co-pending litigations. The constructions advanced here were presented before the District Court, and not challenged.

The Reply also fails to give adequate weight to the interplay between indefiniteness and a means-plus-function analysis. As is well established, for a computer implemented inventions the claims must disclose an algorithm for performing the claimed specific computer function, otherwise the claims are indefinite. Such an algorithm is present here, as detailed in Patent Owner's Response.

Additionally, the Reply fails to address the established principle that for a special purpose computer-implemented means-plus-function limitation, the structure must be more than a ***general purpose computer or microprocessor*** and that the specification must disclose an algorithm for performing the claimed function. The Reply ignores this by focusing on the unrecited physical operation of elements (and the potential operation of unrecited elements), rather than the logical operation recited in the claims.

II. PROXENSE'S CONSTRUCTION WAS EXPESSLY STATED IN ITS INFRINGEMENT CONENTIONS

The Reply is flat wrong in its that Patent Owner's position deviates from that position adopted in the co-pending *Proxense v. Microsoft* and *Proxense v. Apple* litigations.

The Final Infringement Contentions filed July 24, 2024 in the *Microsoft* litigation (submitted herewith as Exhibits 2017, 2018, 2019, and 2020), and those filed June 15, 2024, in the *Apple* litigation (submitted here as Exhibits 2021 and 2022), detailed the alleged infringement of the 042 Patent by Microsoft and Apple. With regards to the asserted infringement by Microsoft Patent Owner stated:

The 042 Patent defines a PDK as including “an antenna and a transceiver for communicating with an RDC (not shown) and a controller and memory for storing information particular to a user”. 042 Patent, 13: 46-49. A component of the integrated PDK of the hybrid device, accordingly, is “a controller and memory for storing information particular to a user”. ***The 042 defines the operation of the controller and memory for storing information particular to the user as entailing the receipt of an access key from an external application that is used to access a specific service block.*** 042 Patent, 6:23-39 (“Regardless of how created, once created, external applications (such as applications 120 in FIG. 1) can gain access to specific service block 112 by providing the corresponding access key 118. In FIG. 2., this is shown conceptually by control logic 250.”) ***The integrated PDK of the hybrid device, therefore, includes a controller placed within memory information that can only be accessed by a corresponding access key provided by an external application.***

Ex. 2020, at 2-3 (emphasis added).

During a WebAuthn authentication ceremony, an authenticator receives an ‘***authenticatorGetAssertion***’ request to provide cryptographic proof of user authentication. The ***authenticatorGetAssertion*** request contains a relying party identifier (RP ID). The ***authenticatorGetAssertion*** is called in response to get request issued by the relying party attempting authentication. When get() is called by the relying party, ‘The RP ID defaults to being the caller’s origin’s effective domain unless the caller has explicitly set options.rpId when calling get().’ The RP ID, therefore, is provided by the by the relying party attempting authentication external authenticator. As an ***authenticator will only return credentials corresponding to the RP ID access key*** provided by the external relying party, the authenticator has ***the controller and memory necessary for minimal embodiment of a PDK.***

Ex. 2019, at 5-6 (emphasis added and citation omitted).

An enablement signal is the message comprising information received from a PDK in exchange for the access key provided by the application, function, or service to be enabled that permits the application, function, or service to operate.

Ex. 2018, at 10.

During a WebAuthn authentication ceremony, an external authenticator (Android or iOS device running the Microsoft Authenticator app) receives an *‘authenticatorGetAssertion’* request to provide cryptographic proof of user authentication. PROX_MSFT_002849, Client to Authenticator Protocol... When successfully invoked, the *authenticatorGetAssertion* causes the authenticator to return a response including *‘the credential identifier* whose private key was used to generate the assertion.’ As noted above, *a credential can only be accessed* when an authenticator *is applied by the appropriate relying party identifier*, such that the relying party identifier is an *access key*... As the proper credential ID is needed for Microsoft’s FIDO server to authenticate a user, and the credential ID is included within a response to a get request having the appropriate relying party ID received from Microsoft’s FIDO server, *the response to the authenticatorGetAssertion request* generated by the device running the Microsoft Authenticator *is an enablement signal* enabling authentication by Microsoft’s FIDO server.

Ex. 2020, at 6-7, and Ex. 2019, at 10-11 (emphasis added and citation omitted).

With regards to the asserted infringement of claim 1 by Apple, Patent Owner stated:

The 042 Patent defines a PDK as including “an antenna and a transceiver for communicating with an R[eciever] D[ecoder] C[ircuit] (not shown) and a controller and memory for storing information particular to a user.” 042 Patent, 13: 46-49. A component of the integrated PDK of the hybrid device, accordingly, is “a controller and memory for storing information particular to a user.” *The 042 Patent defines the operation of the controller and memory for storing information particular to the user as entailing the receipt of an access key from an external application that is used to access a specific service block.* 042 Patent, 6:23-27 (“Regardless of how created, once created, external applications (such as applications 120 in FIG.

1) can gain access to specific service block 112 by providing the corresponding access key 118. In FIG. 2., this is shown conceptually by control logic 250.”) ***The integrated PDK of the hybrid device, therefore, includes a controller placing within memory information that can only be accessed by a corresponding access key provided by an external application.***

Ex. 2022, at 2 (emphasis added).

Authentication is a service provided by the relying party, and ***the credential ID is necessary*** for the relying party to perform the authentication function. Upon receiving the response, the relying party will ***use the credential ID to locate the appropriate public key*** to verify a signature generated with the private key held by the authenticator. ‘If an authenticator returns the wrong credential ID, or if an attacker intercepts and manipulates the credential ID, is that the WebAuthn Relying Party would not look up the correct credential public key with which to verify the returned signed authenticator data (a.k.a., assertion), and thus ***the interaction would end in an error.***’ ***As the proper credential ID is needed for relying party to authenticate a user, and the credential ID held within the PDK of the iPhone is included within a response to the authenticatorGetAssertion request generated by the iPhone, the PDK of the iPhone is enabling authentication by relying party.*** The PDK of the iPhone, accordingly, enables one or more of an application, a function, and a service.

Ex. 2022, at 8-9 (emphasis added and internal citations omitted).

Accordingly, in both the *Microsoft* and *Apple* litigations, Patent Owner asserted verbatim the same construction it presents in these proceedings. Neither Microsoft nor Apple challenged that construction before the District Court. Rather, they waited until these proceedings to do so. If anyone is deviating from the position advanced in the co-pending litigation, it is Petitioners.

More disturbing, Petitioners are taking advantage of the estoppel effect of the District Court’s construction of “hybrid device” on Patent Owner:

Claims 1 and 10 of the 188 Patent and claims 1 and 11 of the 700 Patent state, ‘one or more of *the integrated RDC* and *integrated PDK enabling one or more an application, a function and a service.*’ An application, function, or service is ‘enabled’ by a PDK when it *receives information from a PDK in exchange for an access key*. Similarly, *an RDC ‘enables* one or more of an application, a function, and a service’ *when it forwards such a message to the application, function, or service*. The claimed “hybrid device” carries out these functions.

Ex. 2002, at 26.

Abiding by the District Court’s prior construction, Patent Owner asserted infringement allegations fully adopting and limited to the above construction. Instead of challenging the construction before the District Court, Petitioners waited until these proceedings by asserting constructions broader than the District Court’s, to invalidate the 042 Patent. If Patent Owner had attempted the same with its infringement allegations, Petitioners would have asserted that Patent Owner was collaterally estopped. Accordingly, Petitioners take shelter behind the above construction before the District Court, while disregarding it here to invalidate the 042 Patent. The Board should not allow Microsoft to take such an inconsistent position before it.

III. THE CLAIMS INVOKE § 112(F) BECAUSE THEY RECITE GENERAL PURPOSE COMPUTERS PERFORMING A CLAIMED FUNCTION

The law has been consistent and clear: to claim a means for performing a specific computer-implemented function, and then to disclose only a *general purpose computer* as the structure designed to perform that function, amounts to pure functional claiming. *Aristocrat*, 521 F.3d 1328 at 1333 (Fed. Cir. 2008). In this instance, the structure corresponding to a 35 U.S.C. § 112(f) claim limitation for a computer-implemented function must include the algorithm needed to transform the *general purpose* computer disclosed in the specification. *Aristocrat*, 521 F.3d at 1333; *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1340 (Fed. Cir. 2008); *WMS Gaming, Inc. v. Int’l*

Game Tech., 184 F.3d 1339, 1349 (Fed. Cir. 1999); *Rain Computing, Inc. v. Samsung Electronics America Co.*, 989 F.3d 1002, 1007-8 (Fed. Cir. 2021). Petitioners have cited nothing challenging this well settled law.

Rather, Microsoft goes to great lengths to detract from the logical operation recited in the claims. First Microsoft states the “the ultimate decision to enable or disable the application, function, or service is not performed by the “PDK” and/or “RDC” -- but rather is performed by one or more distinct, connected elements/components that authenticate the access information received from the “PDK” and/or “RDC.” Papper 18, at 12. But Microsoft’s long-winded folly forgets one critical fact: the “distinct, connected elements/components” are not recited in the claims, nor even identified by Microsoft. Rather, the claims recite “one or more of the integrated RDC and integrated PDK enabling one or more of an application, a function, and a service” (Claim 1) and “an enablement signal enabling one or more of an application, a function and a service” (Claim 10). Accordingly, the claims recite specific elements that perform the logical operation, not some unidentified “distinct, connected elements/components.”

A. PDK Has Been Construed as a General-Purpose Computer

Microsoft wrongly asserts treatment under §112(f) is inconsistent with the District Court’s construction orders. Microsoft forgets that the District Court interpreted a PDK as a collection of components amounting to nothing more than general purpose computer, and that disclosing only a *general-purpose computer* as the structure designed to perform a function, amounts to pure functional claiming. *Aristocrat*, 521 F.3d 1328 at 1333 (Fed. Cir. 2008).

As an initial matter, Microsoft acknowledged that “‘PDK’ was coined by the inventor and not a term of art.” Ex. 2005, at 11. “Generic terms such as ‘mechanism,’ ‘element,’ ‘device,’ and *other nonce words that reflect nothing more than verbal constructs* may be used in a claim in a manner that is tantamount to using the word “means” because they *typically do not connote*

sufficiently definite structure’ and therefore may invoke § 112, para. 6.” *Williamson v. Citrix Online, LLC*, 792 F. 3d 1339, 1350 (Fed. Cir. 2015). Accordingly, by Microsoft’s own admission, “PDK” is not a term of art connoting sufficiently definite structure and thus a nonce word.

Moreover, as Microsoft acknowledges, the District Court construed a PDK as “an operably connect collection of components *including an antenna and a transceiver* for communicating with a RDC and *a controller and memory* for storing information particular to a user.” Paper 18, at 6 (emphasis added). Such a collection of elements is nothing more than general purpose computer, and Microsoft is asking the Board to repeat errors of the district courts in *HTC CORP. v. IPCom GmbH & Co., KG* and *Rain Computing, Inc. v. Samsung Electronics America Co.*,

In *HTC Corp.*, the district court erred by assuming the combination of a processor and transceiver was a sufficiently definite structure:

The district court misstated the law, however, when it stated that disclosure of a processor and transceiver alone was sufficient to provide structure to these claims. The processor and transceiver amount to nothing more than a general-purpose computer. We have consistently required that the structure disclosed in the specification be more than simply a general purpose computer or microprocessor.

667 F. 3d 1270, 1280 (Fed. Cir. 2012) (emphasis added and citation omitted).

In *Rain Computing*, the district court erred by assuming memory was a sufficiently definite structure:

The district court erred, however, in concluding that the disclosure of computer-readable media or storage devices provided sufficient structure for the ‘control access’ function. These computer-readable media or storage devices amount to nothing more than a general-purpose computer. And ‘controlling access to one or more software application packages to which the user has a subscription’ requires more ‘than merely plugging in a general purpose computer.’ Rather, some special

programming, *i.e.*, an algorithm, would be required to control access to the software application packages.

989 F.3d 1002, 1007-1008 (Fed. Cir. 2021) (citations omitted and emphasis added).

The District Court’s orders define a PDK as nothing more than general purpose computer – *i.e.*, a combination of a receiver, controller (processor), and memory. Just because PDK has been constructed as a combination of concrete structures does not make it more than a general-purpose computer. As such, a PDK absent an algorithm cannot provide the requisite structure for the claimed function of “enabling one or more of an application, a function, and a service.”

B. The Claims Recite the RDC Performs a Logical Operation, Not a Physical Operation

Petitioner next tries to misdirect the Board by focusing on the physical operation of receivers. To this end, it cites *EnOcean GmbH v. Face Int’l Corp.*, 742 F.3d 955 (Fed. Cir. 2014). But, as replicated in the Reply, the claims at issue in *EnOcean* recited the *physical operation* of receivers for “receiving a first electromagnetic signal,” “receiving a first radiofrequency signal,” and “receiving a radiofrequency telegram.”. Paper 18, at 21-22. The claims of the 042 Patent, however, do not recite the RDC performs any physical operation but, rather, the *logical operation* of “enabling one or more of an application, a function, and a service.” Thus, *EnOcean* is inapplicable.

Again, Petitioner invites the PTAB to repeat errors made by district courts:

The district court misstated the law, however, when it stated that disclosure of a processor and ***transceiver*** alone was sufficient to provide structure to these claims. The processor and transceiver amount to nothing more than a general-purpose computer. We have ‘consistently required that the structure disclosed in the specification be more than simply a general purpose computer or microprocessor.’ *Aristocrat Techs. Austl. Pty Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1333 (Fed.Cir. 2008). General-purpose ‘computers’ or ‘processors’ can be

‘programmed to perform very different tasks in very different ways.’ *Id.* Accordingly, ‘simply disclosing a computer as the structure designated to perform a particular function does not limit the scope of the claim to ‘the corresponding structure, material, or acts’ that perform the function, as required by section 112 paragraph 6.’ *Id.*

HTC CORP. v. IPCom GmbH & Co., KG, 667 F.3d 1270, 1280 (Fed. Cir. 2012). Though a receiver may be a structure with known physical operations, without an algorithm it is insufficient to enable a logical operation, such as the function of “enabling one or more of an application, a function, and a service” as recited in the claims.

C. Enablement Signal Cannot Be Sidestepped with Step Plus Function

Petitioner next attempts to side-step the issue by asserting that step-plus-function analysis somehow is different than a means-plus-function analysis. Paper 18, at 25-27. Yet, it only cites cases predating *Williamson v. Citrix*, without offering any reasoning why step-plus function claims are any different. In fact, Petitioner’s primary case, *Masco Corp. v. United States*, 303 F.3d 1316, (Fed. Cir. 2002). was explicitly overruled in *Williamson*. *Williamson*, 792 F.3d at 1349 (“A few years later, we reiterated *Lighting World*’s characterization of the presumption as a ‘strong one that is not readily overcome’ in *Inventio AG v. ThyssenKrupp Elevator Americas Corp.*, 649 F.3d 1350, 1358 (Fed. Cir.2011). In *Flo Healthcare Solutions, LLC v. Kappos*, 697 F.3d 1367, 1374 (Fed. Cir.2012), decided just a year after *Inventio*, we raised the bar even further, declaring that ‘[w]hen the claim drafter has not signaled his intent to invoke § 112, ¶ 6 by using the term ‘means,’ we are unwilling to apply that provision *without a showing that the limitation essentially is devoid of anything that can be construed as structure*’ (emphasis added), citing *Masco Corp. v. United States*, 303 F.3d 1316, 1327 (Fed. Cir. 2002), a case involving the different term ‘step for’ and the unusual circumstances in which § 112, para. 6 relates to the functional language of a method

claim.... Our consideration of this case has led us to conclude that such a heightened burden is unjustified and that we should abandon characterizing as ‘strong’ the presumption that a limitation lacking the word "means" is not subject to § 112, para. 6.”) (emphasis added). Accordingly, Petitioner’s position that means and step plus functions limitations should be treated differently was specifically refuted by *Williamson*.

Regardless, Patent Owner’s Response provided a step-plus-function analysis, which Microsoft ignores. *See* Paper 15, at 20-25.

Microsoft further contends that an “enabling signal” is known in the art as “a signal that starts a process or allows one to take place.” Paper 18, at 23. However, as noted in Patent Owner’s Response, the citation to claim 10 is insufficient. The first element of claim 10 is “creating a first wireless link,” which is followed by “receiving a first signal.” But the link and the first signal do not “enable one or more of an application, a function and service.” Claim 10, rather, recites “generating an enablement signal enabling one or more of an application, a function and service.” Accordingly, by the express language of claim 10, the mere receipt of a signal starting a process or receipt of a signal via a wireless link is insufficient to perform the function of “enabling one or more of an application, a function and service.”

IV. DR. JAKOBSSON’ S DECLARATION SHOULD NOT BE DISREGARDED

Petitioner takes issue with Dr. Jakobsson’s deposition testimony regarding the term “hybrid device” as used in the specification of the challenged patent family. However, Petitioner overlooks the fact that Dr. Jakobsson did not opine on the general meaning of that term; rather, he addressed its specific meaning within the claims at issue. The term “hybrid device” is explicitly defined in the claims. For example, claim 1 of the 042 Patent recites: “A hybrid device comprising: an integrated personal digital key (PDK or storing information and capable of communicating

wirelessly with at least one external receiver-decoder circuit (RDC); and an integrated RDC for communicating wirelessly with at least one external PDK within a proximity zone.” Similarly, claim 10 defines the hybrid device as including “an integrated PDK and the integrated RDC.” Dr. Jakobsson’s testimony focused on these constituent elements, not the broader meaning of the term within the patent’s specification (which is what he was asked at deposition). MS-1030, 30:11-47:10. Indeed, both parties appear to rely on the District Court’s construction of “hybrid device,” which Petitioner has not challenged in that proceeding. *See* Section II, *supra*.

Petitioner’s attempt to elicit testimony about the general meaning of the term exceeded the scope of Dr. Jakobsson’s declaration as reflected in the objections timely lodged during questioning. The same is true for Petitioner’s other examples of allegedly “evasive” testimony.

Regarding “integrated RDC,” Dr. Jakobsson provided testimony on the meaning of the term but was then pressed for definitions of each individual constituent terms—an inquiry beyond the scope of his declaration. MS-1030 59:18-63:23. Similarly, with respect to “function,” he provided answers within the context of the claims, but Petitioner sought broader opinions on its general meaning of “functions,” which were likewise outside the declaration’s scope. MS-1030 90:16-93:4.

Additionally, when asked about “general-purpose computer,” a legal term relevant to claim construction, Petitioner appeared dissatisfied with the response. MS-1030 64:4-23. Petitioner then pressed Dr. Jakobsson with argumentative questioning, asking whether he conducted an independent analysis of the legal term—an irrelevant inquiry. *Id.* at 64:24-69:18.

Ultimately, Petitioner’s repeated attempts to extract broader meanings of claim terms, outside the scope of both the claims and Dr. Jakobsson’s declaration, do not diminish the weight of his testimony. Instead, they underscore the shortcomings of Petitioner’s own line of questioning.

V. CONCLUSION

When properly construed, claims 1 and 10 are computer implemented inventions invoking 35 U.S.C. § 112(6) and thus include the algorithm disclosed in the specification. Petitioner does not even attempt to show performance or disclosure of the algorithm by the asserted references. Accordingly, Petitioner has not established the invalidity of the 042 Patent.

Dated: March 11, 2025

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CERTIFICATION OF WORD COUNT UNDER 37 C.F.R. § 42.24

Under the provisions of 37 C.F.R. § 42.24(d), the undersigned hereby certifies that the word count for the foregoing Patent Owner Response (excluding the table of contents, certificate of service, word count, or listing of exhibits) total 3,519 words, which is less than the 5,600 words allowed under 37 C.F.R. § 42.24(c)(4).

Dated: March 11, 2025

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CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6(e)

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that the following document was served on March 11, 2025 by e-mailing copies to the e-mail addresses as provided in Petitioner's Petition.

Dated: March 11, 2025

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