

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SMITH INTERFACE TECHNOLOGIES,
LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No.: 23-CV-1187 TWR (DTF)

CLAIM CONSTRUCTION ORDER

Presently before the Court are Plaintiff Smith Interface Technologies, LLC and Defendant Apple Inc.’s Opening Claim Construction Briefs, (*see* ECF Nos. 163, 164), and Responsive Claim Construction Briefs. (*See* ECF Nos. 169, 170.) On September 23, 2025, the Court issued a tentative claim construction order, (*see* ECF No. 188), and the Court held a claim construction hearing on September 24, 2025. (*See* ECF No. 190.) After considering the Parties’ briefing and the arguments presented at the hearing, the Court **ISSUES** the following Claim Construction Order.

BACKGROUND

I. Procedural History

Inventor Michael Smith “developed new advanced input and output techniques for mobile user interfaces[, (“UIs”)]” such as “multi-part gestures, where users can take successive actions, such as by touching, tapping, long-pressing, or sliding, and receive

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1 feedback at each step, whether visual or tactile (or both).” (*See* ECF No. 66 (“TAC”) ¶ 19.)
2 “These mobile UI advances resulted in numerous patents, including U.S. Patent Nos.
3 10,642,413 (the “’413 Patent”); 10,649,578 (the “’578 Patent”); 10,649,580 (the “’580
4 Patent”); 10,656,754 (the “’754 Patent”); 10,656,755 (the “’755 Patent”); 10,656,758 (the
5 “’758 Patent”); 10,671,212 (the “’212 Patent”); 10,725,581 (the “’581 Patent”); 10,936,114
6 (the “’114 Patent”); and 11,740,727 (the “’727 Patent”) (collectively, the “Asserted
7 Patents”).” (*Id.* ¶ 17.) The Asserted Patents are all “continuation[s] of and claim[] priority
8 to numerous patents, patent applications, and provisional patent applications dating back
9 to U.S. Provisional Application No. 61/515,835, filed August 5, 2011.” (*See id.* ¶¶ 21–30.)
10 Smith is the sole named inventor of the Asserted Patents, all of which are assigned solely
11 to Plaintiff Smith Interface. (*See id.*)

12 On June 27, 2023, Smith Interface filed the instant action against Apple, asserting
13 nine claims of patent infringement as to each of the ’413, ’578, ’580, ’754, ’755, ’758,
14 ’212, ’581, and ’114 Patents (the “Original Asserted Patents”), (*see generally* ECF No. 1
15 (“Compl.”)), which was subsequently reassigned to the undersigned. (*See* ECF No. 4.)
16 The ’727 Patent issued on August 29, 2023, (*see* TAC ¶ 30), before Apple’s responsive
17 pleading deadline. (*See* ECF No. 21.) Accordingly, on the same day it had issued, Smith
18 Interface amended its Complaint pursuant to Federal Rule of Civil Procedure 15(a)(1) to
19 add a claim for infringement of the ’727 Patent. (*See generally* ECF No. 22 (“FAC”).)
20 Apple moved to dismiss the First Amended Complaint’s claims for willful and indirect
21 infringement on October 3, 2023. (*See generally* ECF No. 36.)

22 On October 25, 2023, Smith Interface requested leave to file an amended complaint
23 pursuant to Rule 15(a)(2). (*See generally* ECF No. 42.) The following day, the Court
24 granted Smith Interface’s request and denied as moot Apple’s original motion to dismiss,
25 (*see generally* ECF No. 43), and Smith Interface filed its Second Amended Complaint.
26 (*See generally* ECF No. 44). Apple then moved to dismiss the Second Amended
27 Complaint’s claims for willful and indirect infringement on November 9, 2023. (*See*
28 *generally* ECF No. 46.)

1 On March 5, 2024, the Court granted in part and denied in part Apple’s motion to
2 dismiss and granted Smith Interface leave to file an amended complaint. (ECF No. 63.)
3 On March 19, 2024, Smith Interface filed the operative Third Amended Complaint. (*See*
4 *generally* TAC.)

5 Between June 26, 2024, and August 1, 2024, Apple filed *inter partes* review (“IPR”)
6 petitions with the Patent Trial and Appeal Board (“PTAB”), challenging the validity of all
7 the asserted claims from the Asserted Patents except for certain asserted claims from the
8 ’754 Patent. (*See* ECF No. 105; ECF No. 110-1 at 3–4.) On August 5, 2024, the Court
9 granted Apple’s partial motion to dismiss Smith Interface’s Third Amended Complaint and
10 dismissed with prejudice Smith Interface’s claims for pre-suit willful and induced patent
11 infringement. (*See* ECF No. 112 at 13.) On August 19, 2024, Apple filed an answer to the
12 operative complaint. (ECF No. 116.) On September 5, 2024, Apple filed a petition for *ex*
13 *parte* reexamination with the U.S. Patent and Trademark Office (“PTO”), challenging the
14 validity of the remaining asserted claims from the ’754 Patent. (*See* ECF No. 119.) On
15 October 2, 2024, the Court stayed the action pending issuance of the PTAB’s institution
16 decisions on Apple’s pending IPR petitions as to the Asserted Patents. (ECF No. 127.)

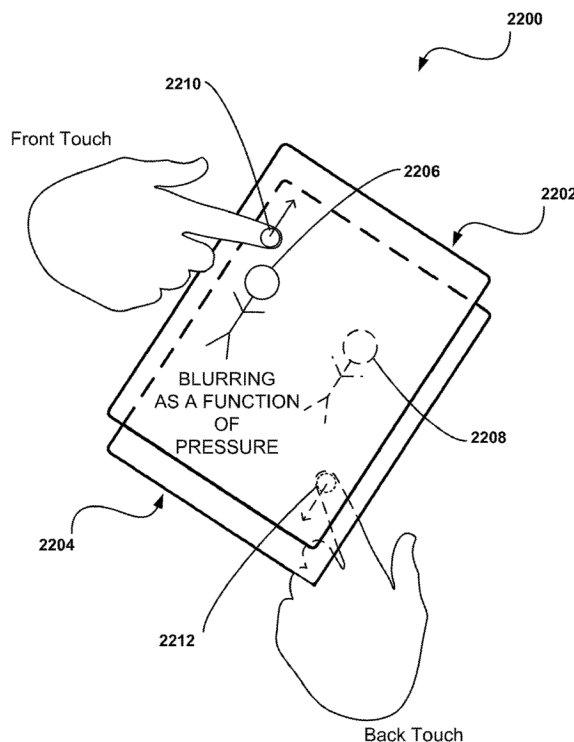
17 In the subsequent reexamination proceedings as to the ’754 Patent, the PTO
18 Examiner confirmed the patentability of 81 claims from the ’754 Patent. (*See* ECF No.
19 140 at 1.) On May 5, 2025, the Court lifted the stay on the condition that Smith Interface
20 elect to proceed in this action only on twenty or fewer claims from the ’754 Patent that had
21 been confirmed during the reexamination proceedings. (*See* ECF No. 141.) On May 14,
22 2025, Smith Interface filed its initial notice of claim election, electing to proceed on claims
23 83, 111, 125, 134, 136, 142, 144, 152, 162, 163, 165, 188, 193, 196, 205, 217, 218, 219,
24 and 221 from the ’754 Patent. (*See* ECF No. 143.) In the filing, Smith Interface also
25 requested that the Court dismiss all of its other previously asserted claims of patent
26 infringement without prejudice. (*See id.*) On May 21, 2025, the Court granted Smith
27 Interface’s motion and dismissed without prejudice all of Smith Interface’s other
28 previously asserted claims of patent infringement from the action. (*See* ECF No. 145.)

On May 21, 2025, the Court issued an amended scheduling order. (*See* ECF No. 144.) On August 19, 2025, Smith Interface filed a second notice of claim election, electing to proceed on only claims 111, 125, 142, 152, 162, 165, 188, 193, 218, and 219 from the '754 Patent. (*See* ECF No. 172.)

II. The '754 Patent

The '754 Patent is now the only asserted patent in this action, and the following claims from the '754 Patent are the only asserted claims in this action: claims 111, 125, 142, 152, 162, 165, 188, 193, 218, and 219. (*See* ECF No. 172.) The '754 Patent is entitled “devices and methods for navigating between user interfaces,” and was issued on May 19, 2020. U.S. Patent No. 10,656,754, at [45], [54] (filed May 19, 2020). The inventions claimed in the '754 Patent related generally to touch screens on electronic devices, specifically touch screens that display and blur objects based on gestures by the device user. *See id.* at col. 1 ll. 35–55, fig. 22.

Figure 22 from the specification of the '754 Patent is depicted below and depicts a 3D layered user interface where displayed objects exist in one of a plurality of layers and a portion of the objects can be blurred based on gestures by the device user:



1 *Id.* fig. 22, col. 68 ll. 7–10.

2 As an example of an asserted claim, dependent claim 193 (which depends from
3 dependent claim 186 which depends from independent claim 2) recites:

4 **2.** An apparatus, comprising:

5 at least one non-transitory memory;

6 a touch screen; and

7 one or more processors in communication with the at least one non-transitory
8 memory, and the touch screen, wherein the one or more processors execute
9 instructions in the at least one non-transitory memory, to cause the apparatus
to:

10 display an object and at least one other object;

11 detect at least part of a gesture on the touch screen; and

12 during detection of at least a portion of the gesture before a completion
13 thereof is detected, blur, based on a change in a magnitude of the
14 gesture being detected on the touch screen, at least a portion of the at
least one other object.

15 **186.** The apparatus of claim 2, wherein the apparatus is configured such that:
16 the at least part of the gesture is detected on the touch screen on an edge of
the touch screen;

17 the magnitude of the gesture includes a distance magnitude;

18 the gesture includes a swipe gesture;

19 a magnitude of the blurring is continuously increased as a continuous function
20 of an increase in the magnitude of the gesture being detected on the touch
21 screen;

22 a magnitude of the blurring is continuously decreased as a continuous function
of another change; and

23 when the magnitude of the gesture detected on the touch screen is detected to
24 increase above a distance threshold, a menu is displayed with at least one
option, such that:

25 the at least one other object is displayed via a first virtual display layer,

26 the menu is displayed in a second virtual display layer that appears
27 above the first virtual display layer, and

28 the menu remains displayed after a completion of the gesture.

1 193. The apparatus of claim **186**, wherein the apparatus is configured such
2 that:

3 the at least part of the gesture is detected on the touch screen adjacent to the
4 object;

5 the object is displayed to move with at least some of the gesture;

6 the object includes a battery-related icon;

7 when a first duration of touch being applied to the touch screen on at least one
8 option of the menu and a subsequent cessation of the first duration of touch
9 being applied to the touch screen on the at least one option are detected: an
10 action associated with the at least one option is performed; and

11 when a second duration of touch, that is greater than the first duration, being
12 applied to the touch screen on the at least one option is detected: another menu
13 including at least one other option is displayed.

14 '754 Patent col. 95 ll. 35–49, col. 109 l. 64 to col. 110 l. 19, col. 110 ll. 44–60.

15 **LEGAL STANDARD**

16 Claim construction “is exclusively within the province of the court [to decide],” not
17 the jury. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 373 (1996) (en banc); *see*
18 *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 326 (2015) (holding claim
19 construction is an issue of law for the court to decide). Although claim construction is
20 ultimately a question of law, “subsidiary factfinding is sometimes necessary.” *Teva*, 574
21 U.S. at 326.

22 “It is a ‘bedrock principle’ of patent law that the ‘claims of a patent define the
23 invention to which the patentee is entitled the right to exclude.’” *Phillips v. AWH Corp.*,
24 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (citations omitted). “The purpose of claim
25 construction is to ‘determin[e] the meaning and scope of the patent claims asserted to be
26 infringed.’” *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360
27 (Fed. Cir. 2008) (quoting *Markman*, 52 F.3d at 976); *accord Kaufman v. Microsoft Corp.*,
28 34 F.4th 1360, 1369 (Fed. Cir. 2022).

Claim terms “are generally given their ordinary and customary meaning[,]” which
“is the meaning that the term would have to a person of ordinary skill in the art

1 [(“POSITA”)] in question at the time of the invention.” *Phillips*, 415 F.3d at 1312–13. “In
2 some cases, the ordinary meaning of claim language as understood by a [POSITA] may be
3 readily apparent even to lay judges, and claim construction in such cases involves little
4 more than the application of the widely accepted meaning of commonly understood
5 words.” *Id.* at 1314. “However, in many cases, the meaning of a claim term as understood
6 by persons of skill in the art is not readily apparent.” *O2 Micro*, 521 F.3d at 1360. If the
7 meaning of the term is not readily apparent, the court must look to ““those sources available
8 to the public that show what a person of skill in the art would have understood disputed
9 claim language to mean.”” *Phillips*, 415 F.3d at 1314 (quoting *Innova/Pure Water, Inc. v.*
10 *Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004)). “Those sources
11 include ‘the words of the claims themselves, the remainder of the specification, the
12 prosecution history, and extrinsic evidence.’” *Id.* (quoting *Innova*, 381 F.3d at 1116); *see*
13 *also Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1217–18 (Fed. Cir. 2014).

14 In determining the proper construction of a claim, a court should first look to the
15 language of the claims. *See Allergan Sales, LLC v. Sandoz, Inc.*, 935 F.3d 1370, 1373 (Fed.
16 Cir. 2019) (“[C]laim construction must begin with the words of the claims themselves.”);
17 *Source Vagabond Sys. Ltd. v. Hydrapak, Inc.*, 753 F.3d 1291, 1299 (Fed. Cir. 2014) (“[A]
18 claim construction analysis must begin and remain centered on the claim language
19 itself.”). The context in which a disputed term is used in the asserted claims may provide
20 substantial guidance as to the meaning of the term. *See Phillips*, 415 F.3d at 1314.

21 A court must also read claims “in view of the specification, of which they are a part.”
22 *Markman*, 52 F.3d at 979; *see also* 35 U.S.C. § 112(b) (“The specification shall conclude
23 with one or more claims particularly pointing out and distinctly claiming the subject matter
24 which the inventor or a joint inventor regards as the invention.”). ““Apart from the claim
25 language itself, the specification is the single best guide to the meaning of a claim term.””
26 *Vederi, LLC v. Google, Inc.*, 744 F.3d 1376, 1382 (Fed. Cir. 2014) (quoting *AIA Eng’g Ltd.*
27 *v. Magotteaux Int’l S/A*, 657 F.3d 1264, 1272 (Fed. Cir. 2011)).

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1 But “[t]he written description part of the specification does not delimit the right to
2 exclude. That is the function and purpose of claims.” *Markman*, 52 F.3d at 980. Therefore,
3 “it is improper to read limitations from a preferred embodiment described in the
4 specification—even if it is the only embodiment—into the claims absent a clear indication
5 in the intrinsic record that the patentee intended the claims to be so limited.” *Dealertrack,*
6 *Inc. v. Huber*, 674 F.3d 1315, 1327 (Fed. Cir. 2012); *accord Openwave Sys., Inc. v. Apple*
7 *Inc.*, 808 F.3d 509, 514 (Fed. Cir. 2015).

8 In addition to the claim language and the specification, the patent’s prosecution
9 history may be considered if it is in evidence. *Phillips*, 415 F.3d at 1317. The prosecution
10 history “consists of the complete record of the proceedings before the PTO and includes
11 the prior art cited during the examination of the patent.” *Id.* “Like the specification, the
12 prosecution history provides evidence of how the PTO and the inventor understood the
13 patent.” *Id.* “Yet because the prosecution history represents an ongoing negotiation
14 between the PTO and the applicant, rather than the final product of that negotiation, it often
15 lacks the clarity of the specification and thus is less useful for claim construction purposes.”
16 *Id.* In addition, a court should also consult the prosecution history “so that the court can
17 exclude any interpretation that was disclaimed during prosecution.” *Sorensen v. Int’l*
18 *Trade Comm’n*, 427 F.3d 1375, 1378 (Fed. Cir. 2005) (citing *Phillips*, 415 F.3d at 1317).

19 In most situations, analysis of the intrinsic evidence will resolve claim construction
20 disputes. *See Vitronics*, 90 F.3d at 1583; *see also Teva*, 574 U.S. at 331; *Seabed*
21 *Geosolutions (US) Inc. v. Magseis FF LLC*, 8 F.4th 1285, 1287 (Fed. Cir. 2021) (“If the
22 meaning of a claim term is clear from the intrinsic evidence, there is no reason to resort to
23 extrinsic evidence.”). However, “[w]here the intrinsic record is ambiguous, and when
24 necessary,” district courts may “rely on extrinsic evidence, which ‘consists of all evidence
25 external to the patent and prosecution history, including expert and inventor testimony,
26 dictionaries, and learned treatises.’” *Power Integrations, Inc. v. Fairchild Semiconductor*
27 *Int’l, Inc.*, 711 F.3d 1348, 1360 (Fed. Cir. 2013) (quoting *Phillips*, 415 F.3d at 1317). A
28 court must evaluate all extrinsic evidence in light of the intrinsic evidence. *Phillips*, 415

1 F.3d at 1319. “[E]xtrinsic evidence is to be used for the court’s understanding of the
2 patent, not for the purpose of varying or contradicting the terms of the claims.” *Genuine*
3 *Enabling Tech. LLC v. Nintendo Co.*, 29 F.4th 1365, 1373 (Fed. Cir. 2022); *see also Summit*
4 *6, LLC v. Samsung Elecs. Co.*, 802 F.3d 1283, 1290 (Fed. Cir. 2015) (“Extrinsic evidence
5 may not be used ‘to contradict claim meaning that is unambiguous in light of the intrinsic
6 evidence.’”). In cases where subsidiary facts contained in the extrinsic evidence “are in
7 dispute, courts will need to make subsidiary factual findings about that extrinsic evidence.”
8 *Teva*, 574 U.S. at 332.

9 “[D]istrict courts are not (and should not be) required to construe every limitation
10 present in a patent’s asserted claims.” *O2 Micro*, 521 F.3d at 1362; *see also Eon Corp. IP*
11 *Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1318–19 (Fed. Cir. 2016) (“[O]nly
12 those terms need be construed that are in controversy, and only to the extent necessary to
13 resolve the controversy.”). In certain situations, it is appropriate for a court to determine
14 that a claim term needs no construction and its plain and ordinary meaning applies. *O2*
15 *Micro*, 521 F.3d at 1360; *Phillips*, 415 F.3d at 1314. But “[a] determination that a claim
16 term ‘needs no construction’ or has the ‘plain and ordinary meaning’ may be inadequate
17 when a term has more than one ‘ordinary’ meaning or when reliance on a term’s ‘ordinary’
18 meaning does not resolve the parties’ dispute.” *O2 Micro*, 521 F.3d at 1361. If the parties
19 dispute the scope of a certain claim term, it is the court’s duty to resolve the dispute. *Id.* at
20 1362; *see also Eon*, 815 F.3d at 1319.

21 ANALYSIS

22 In the present claim construction briefs, the Parties agree upon the construction of
23 the claim term “virtual display layer”¹ and dispute the proper construction of three claim
24 terms from the ’754 Patent, namely, “adjacent,” “distance magnitude [of the gesture],” and
25

26
27 ¹ Specifically, the Parties agree that the term “virtual display layer” should be construed as “one or
28 more display elements that appear at the same apparent depth of display,” (*see* ECF No. 163 at 7), which
is consistent with the ’754 Patent’s specification. *See* ’754 Patent col. 68 ll. 41–42.

1 “blur”/“blurred”/“blurring.” (*See generally* ECF Nos. 163, 164.) After reviewing the
2 Court’s Tentative Claim Construction Order, (*see generally* ECF No. 188), the Parties
3 informed the Court at the beginning of the claim construction hearing that they had reached
4 an agreement to submit on the papers regarding the construction of the terms
5 “blur”/“blurred”/“blurring” and, with certain modifications, “distance magnitude [of the
6 gesture].” Consequently, for the reasons discussed at the hearing, (*see* ECF No. 190), and
7 specified in the Court’s Tentative Claim Construction Order, (*see* ECF No. 188 at 17–21),
8 the Court construes the term “a distance magnitude” as “an amount of distance” and gives
9 the claim terms “blur,” “blurred,” and “blurring” their plain and ordinary meaning.
10 Through the instant Order, the Court therefore needs to address only the claim term
11 “adjacent,” which Apple asserts is indefinite, (*see* ECF No. 163 at 7), and Smith Interface
12 contends does not need to be construed and instead should be given its plain and ordinary
13 meaning. (*See* ECF No. 164 at 6.)

14 “Definiteness is a statutory requirement for patentability.” *Niazi*, 30 F.4th at 1346.
15 Under 35 U.S.C. § 112(b), a patent must “conclude with one or more claims particularly
16 pointing out and distinctly claiming the subject matter which the applicant regards as the
17 invention.” 35 U.S.C. § 112(b).

18 “A claim fails to satisfy this statutory requirement and is thus invalid for
19 indefiniteness if its language, when read in light of the specification and the prosecution
20 history, ‘fail[s] to inform, with reasonable certainty, those skilled in the art about the scope
21 of the invention.’” *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1369–70 (Fed.
22 Cir. 2014) (quoting *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014));
23 *see Infinity Comput. Prod., Inc. v. Oki Data Ams., Inc.*, 987 F.3d 1053, 1059 (Fed. Cir.
24 2021) (“[W]e look to the patent record—the claims, specification, and prosecution
25 history—to ascertain if they convey to one of skill in the art with reasonable certainty the
26 scope of the invention claimed.” (quoting *Teva Pharms.*, 789 F.3d at 1341)). This
27 “reasonable certainty” standard “reflects a ‘delicate balance’ between ‘the inherent
28 limitations of language’ and providing ‘clear notice of what is claimed.’” *Guangdong*

1 *Alison Hi-Tech Co. v. Int’l Trade Comm’n*, 936 F.3d 1353, 1359 (Fed. Cir. 2019). “Th[e]
2 standard ‘mandates clarity, while recognizing that absolute precision is unattainable.’”
3 *Nevro Corp. v. Bos. Sci. Corp.*, 955 F.3d 35, 39 (Fed. Cir. 2020) (quoting *Nautilus*, 572
4 U.S. at 910); *see also BASF Corp. v. Johnson Matthey Inc.*, 875 F.3d 1360, 1365 (Fed. Cir.
5 2017) (“‘Reasonable certainty’ does not require ‘absolute or mathematical precision.’”).

6 “General principles of claim construction apply to indefiniteness allegations.”
7 *HZNP Medicines LLC v. Actavis Lab’ys UT, Inc.*, 940 F.3d 680, 688 (Fed. Cir. 2019). The
8 party asserting indefiniteness bears “the burden of proving indefiniteness by clear and
9 convincing evidence.” *BASF*, 875 F.3d at 1365 (citing *Biosig Instruments, Inc. v. Nautilus*,
10 *Inc.*, 783 F.3d 1374, 1377 (Fed. Cir. 2015)); *see also Microsoft Corp. v. i4i Ltd. P’ship*,
11 564 U.S. 91, 95 (2011) (holding that 35 U.S.C. § 282 “requires an invalidity defense to be
12 proved by clear and convincing evidence”).

13 The claim term “adjacent” is contained in dependent claim 193. Dependent claim
14 193 recites an apparatus containing a touch screen, at least one non-transitory memory, and
15 one or more processors, causing the apparatus to, among other things, “display an object
16 and at least one other object” and “detect at least part of a gesture on the touch screen”
17 where “at least part of the gesture is detected on the touch screen adjacent to the object.”
18 ’754 Patent col. 95 ll. 36–38, col. 110 ll. 46–47. The word “adjacent” is a common word
19 with the widely accepted meaning of “[n]ext to or very near something else; neighbouring;
20 bordering, contiguous; adjoining.” OXFORD ENGLISH DICTIONARY, [https://www.oed.](https://www.oed.com/dictionary/adjacent_adj?tl=true#12665125)
21 [com/dictionary/adjacent_adj?tl=true#12665125](https://www.oed.com/dictionary/adjacent_adj?tl=true#12665125); CAMBRIDGE DICTIONARY, [https://](https://dictionary.cambridge.org/us/dictionary/english/adjacent)
22 dictionary.cambridge.org/us/dictionary/english/adjacent (defining “adjacent” as “very
23 near, next to, or touching”); MERRIAM-WEBSTER DICTIONARY, [https://www.merriam-](https://www.merriam-webster.com/dictionary/adjacent)
24 [webster.com/dictionary/adjacent](https://www.merriam-webster.com/dictionary/adjacent) (defining “adjacent” as “not distant : nearby”); *see also*
25 *Phillips*, 415 F.3d at 1314 (“In some cases, the ordinary meaning of claim language as
26 understood by a [POSITA] may be readily apparent even to lay judges, and claim
27 construction in such cases involves little more than the application of the widely accepted
28 meaning of commonly understood words.”); *Extremity Med., LLC v. Fusion Orthopedics*,

1 *LLC*, No. CV-22-00723-PHX-GMS, 2023 WL 4408270, at *11 (D. Ariz. July 7, 2023)
2 (“[C]ourts routinely decline to construe ‘adjacent’ in patent claims and afford the word its
3 conventional definition.”). Thus, in the context of the claim language, the claim term
4 “adjacent” has a clear meaning, and it means that the claimed gesture is detected next to or
5 very near the displayed object. (*See also* ECF No. 170 at 2 (“The parties agree that the
6 term ‘adjacent’ in each asserted claim refers to a spatial relationship between a detected
7 gesture and a displayed object”).)

8 Apple argues that the claim term “adjacent” is indefinite because in this context it is
9 a subjective term of degree that does not provide any objective guidance to a POSITA
10 regarding the scope of its boundaries. (*See* ECF No. 163 at 7.) “[T]erms of degree are not
11 ‘inherently indefinite.’” *Liberty Ammunition, Inc. v. United States*, 835 F.3d 1388, 1396
12 (Fed. Cir. 2016) (quoting *Interval Licensing*, 766 F.3d at 1370); *see also Berkheimer v. HP*
13 *Inc.*, 881 F.3d 1360, 1364 (Fed. Cir. 2018) (“We do not hold that all terms of degree are
14 indefinite.”). “Thus, ‘a patentee need not define his invention with mathematical precision
15 in order to comply with the definiteness requirement.’” *Sonix Tech. Co. v. Publ’ns Int’l,*
16 *Ltd.*, 844 F.3d 1370, 1377 (Fed. Cir. 2017). Nevertheless, “claims having terms of degree
17 will fail for indefiniteness unless they ‘provide objective boundaries for those of skill in
18 the art’ when read in light of the specification and the prosecution history.” *Liberty*
19 *Ammunition*, 835 F.3d at 1396 (quoting *Interval Licensing*, 766 F.3d at 1370); *see also*
20 *Sonix*, 844 F.3d at 1378 (“[T]he written description is key to determining whether a term
21 of degree is indefinite.”). For example, “a term of degree fails to provide sufficient notice
22 of its scope if it depends ““on the unpredictable vagaries of any one person’s opinion.””
23 *Interval Licensing*, 766 F.3d at 1371 (quoting *Datamize, LLC v. Plumtree Software, Inc.*,
24 417 F.3d 1342, 1350 (Fed. Cir. 2005)); *see also, e.g., Berkheimer*, 881 F.3d at 1364 (finding
25 claims indefinite where “[t]he specification contain[ed] no point of comparison for skilled
26 artisans to determine an objective boundary” for the claim term).

27 Apple argues that the ’754 Patent fails to provide the required objective boundaries
28 for definiteness because the ’754 Patent does not provide the answer to questions such as:

1 [I]s a shared boundary required? If so, how much of a shared boundary? If
2 not, how close or far away from the object must the gesture be detected?
3 Would a gesture that is one pixel away from the displayed object be
4 considered “adjacent”? What about two pixels? Or five? Would a gesture or
5 touch that is 1mm away from the displayed object be considered “adjacent”?
6 What about 5mm? Or 10mm?

7 (See ECF No. 163 at 9; *see also id.* at 12 (“[T]he specification provides no examples,
8 guidance, or objective criteria in order to determine how close together two locations must
9 be to be considered adjacent, whether measured in pixels, millimeters or any other unit,
10 such that one infringes the claims—or, just as importantly, how far apart must two locations
11 be so as to not be adjacent, such that one can avoid infringing the claim.”).) These
12 questions posed by Apple reflect a misunderstanding of the definiteness requirement for
13 patent claims. In seeking answers to those questions, Apple is requesting that the ’754
14 Patent define the invention with mathematical precision. But the Federal Circuit has
15 repeatedly stated that “‘a patentee need not define his invention with mathematical
16 precision in order to comply with the definiteness requirement.’” *Sonix*, 844 F.3d at 1377;
17 *see also, e.g., Niazi*, 30 F.4th at 1347; *Guangdong Alison*, 936 F.3d at 1359; *BASF*, 875
18 F.3d at 1365. “Indeed, patentees often use descriptive words to avoid a strict numerical
19 boundary to the specified parameter.” *Niazi*, 30 F.4th at 1347 (cleaned up). And that is
20 precisely what has happened here. The ’754 Patent uses the descriptive word “adjacent”
21 (rather than a strict numerical boundary) to define the spatial relationship between the
22 detected gesture and the displayed object, which is permissible under the definiteness
23 requirement. *See Niazi*, 30 F.4th at 1347.

24 That the claim term “adjacent” is not indefinite is supported by a review of the
25 specification. In describing embodiments of the claimed invention, the ’754 Patent’s
26 specification explains:

27 In the context of the present description, the selection area refers to a region
28 of the display, or a region of an object pictured on the display, which has been
chosen for selection. The calculation of the selection area may be based upon
one or more factors, including, but not limited to, a contact pressure level, a

1 touch state, a contact area, a contact point, a selection boundary, a selection
2 boundary geometry, and/or any other information derived from user
3 interaction.

4 '754 Patent col. 18 ll. 5–12. The specification further explains:

5 [T]he calculation of the selection area may depend upon the context of the
6 selection. Specifically, the selection boundary may be dependent upon the
7 type of content on or near a point or area associated with the selection,
8 including but not limited to, a contact point, a contact area, a cursor, a user
focus, etc.

9 *Id.* at col. 20 ll. 19–24. Here, the specification explains what a selection area is, how it can
10 be calculated, and that the selection boundary may be “on or near” a point or area associated
11 with the selection.

12 The specification goes on to describe the “context determination zone.” '754 Patent
13 col. 26 l. 50, fig 6. “[A] context determination zone refers to the area that is examined
14 while determining the context of a selection,” and it “may be a predefined shape (e.g.,
15 circle, square, etc.) of predefined size, centered on the contact point” or it “may be located
16 such that the contact point is off-center.” *Id.* at col. 26 ll. 52–65. The specification then
17 goes on to explain:

18 In various embodiments, the determination as to whether there is a user
19 interface control widget within the context determination zone begins with
20 determining whether there is a UI control widget located at the contact point
21 upon which the zone is based. In this way, time is not wasted determining the
context of a well-aimed contact point.

22 If a UI control widget is not located at the contact point, then it may be
23 determined if there is a UI control widget in the vicinity, within the context
24 determination zone. In various embodiments, this determination may be
25 performed using the bounding boxes associated with user interface elements.
26 Within the context of the present description, a bounding box refers to a
rectangle within which a user interface control widget may reside. In some
27 embodiments, a bounding box may be the smallest rectangle which may
contain a particular user interface control widget. In this way, detection of
user interface control widgets whose shape is not rectangular is simplified.

28 *Id.* at col. 27 ll. 29–46.

1 The specification then provides examples of how the bounding box can be used to
2 determine if there is a UI control widget within the context determination zone. *See id.* at
3 col. 27 ll. 47–64. If “there is at least one user interface control widget within the context
4 determination zone, then a context sensitive UI control widget selection function is
5 chosen.” ’754 Patent col. 27 l. 65 to col. 28 l. 1; *see also id.* at col. 30 ll. 4–7 (“[A] user
6 may make contact with and exert pressure upon an interaction surface, with a contact point
7 near a drop down menu. The user may increase the contact pressure until the drop down
8 menu is highlighted.”), col. 34 ll. 15–18 (“[I]f there is a selectable graphic within the
9 context determination zone, but not at the contact point, the selection function may define
10 the selection based upon the entire selected object.”).

11 In describing how context determination zones along with bounding boxes can be
12 used to determine if a user interface object is near or in the vicinity of a contact point (i.e.,
13 adjacent to the contact point) so that the object is selected, the specification provides
14 objective boundaries to a POSITA regarding the scope of the claim term “adjacent.” *See*
15 *Niazi*, 30 F.4th at 1347 (explaining that a specification can provide objective boundaries to
16 a POSITA by providing “exemplary designs and specific examples”). Either the context
17 determination intersects with the relevant bounding box or it doesn’t. That is an objective
18 standard. As such, the specification provides objective boundaries and reasonable certainty
19 to a POSITA regarding the scope of the term “adjacent” contained in the claim language.
20 As such, the claim term “adjacent” is not indefinite.

21 In response, Apple contends that these portions of the specification do not relate to
22 the claim term “adjacent” because they do not contain the word “adjacent” and instead
23 contain the word “near” or the phrase “in the vicinity of.” (*See* ECF No. 163 at 13–14.)

24 Apple’s contention is flawed because it fails to appreciate that the word “near” is included

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1 as part of the meaning of the word “adjacent.”² Thus, these passages in the specification
2 provide context to the scope and meaning of the claim term “adjacent” even though they
3 do not include the precise word “adjacent.”

4 Apple also contends that the above passages do not pertain to the claims where the
5 gesture is “adjacent” to the object to be selected because the passages describe instances
6 where the context determination zone intersects with the relevant bounding box. Apple
7 contends that since there is an intersection between the context determination zone and the
8 bounding box, these embodiments relate to different claim language—claim language
9 where the gesture is detected “on” the object to be selected. (*See* ECF No. 163 at 15); *see*
10 *also, e.g.*, ’754 Patent col. 96 ll. 57–60 (“[T]he apparatus is configured such that the at
11 least part of the gesture is detected on the touch screen . . . on the object.”). Apple states
12 that “on” and “adjacent” are not the same thing. (ECF No. 163 at 15.)

13 Apple’s argument might have merit if the context determination zone and the contact
14 point of the gesture are coextensive. But a review of the specification shows that they are
15 not; they are two separate things. *See, e.g.*, ’754 Patent col. 27 ll. 35–37 (“If a UI control
16 widget is not located at the contact point, then it may be determined if there is a UI control
17 widget in the vicinity, within the context determination zone.”), col. 34 ll. 15–18 (“[I]f
18 there is a selectable graphic within the context determination zone, but not at the contact
19 point, the selection function may define the selection based upon the entire selected
20 object.”). The context determination zone can be the same size as the contact point (and,
21 thus, be coextensive with the contact point), but it need not be. The context determination
22 zone can be bigger than the contact point. *See id.* And, in those situations when the context
23 determination zone is bigger than the contact point, there can be instances when the context
24 determination zone intersects with the UI control widget (*i.e.*, the object to be selected),
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27 ² Indeed, as explained below, during the *ex parte* reexamination proceedings as to the ’754 Patent,
28 Apple treated the word “near” as being interchangeable with the term “adjacent.” (*See* ECF No. 164–10,
Poulos Decl. Ex. 9 at 275 (“[A] user could begin a gesture either on or near (e.g., adjacent) to an object.”).)

1 but the actual contact point of the gesture does not intersect with the object to be selected.
2 *See id.* In those instances, the contact point of the gesture is “adjacent” to the object to be
3 selected; the contact point is not “on” the object. As such, Apple is incorrect in asserting
4 that the above passages in the specification only pertain to instances when the contact point
5 of the gesture is “on” the object to be selected.

6 In addition, that the claim term “adjacent” is not indefinite is also supported by
7 Apple’s and its expert’s statements during the *ex parte* reexamination proceedings for the
8 ’754 Patent. In its request for reexamination of the ’754 Patent that it filed with the PTO,
9 Apple and its expert were able to apply the claim term “adjacent” to the prior art at issue
10 without any difficulty or uncertainty. (*See* ECF No. 164-10 (“Poulos Decl. Ex. 9”) at
11 274–75.) In that filing, Apple explained: “[I]n order to provide some leeway for a user, a
12 POSITA would have at least found it obvious to configure the apparatus of the Beaumier-
13 Chaudhri-Wang combination such that a user could begin a gesture either on or near (e.g.,
14 adjacent) to an object.” (*Id.* at 275.)

15 The Federal Circuit has explained that application of the term at issue by the
16 challenger and its expert without any uncertainty during reexamination proceedings is
17 “evidence that a skilled artisan d[oes] understand the scope of this invention with
18 reasonable certainty.” *Sonix*, 844 F.3d at 1380; *see Liqwd, Inc. v. L’Oreal USA, Inc.*, 720
19 F. App’x 623, 631 (Fed. Cir. 2018) (“Evidence of a challenger’s own ability to apply a
20 term without unreasonable uncertainty counts against an indefiniteness contention.”).
21 Thus, application of the term by Apple and its expert without issue during the *ex parte*
22 reexamination proceedings is evidence that a skilled artisan understands the scope of this
23 invention with reasonable certainty. *See id.*; *see, e.g., Samesurf, Inc. v. Intuit, Inc.*, No.
24 3:22-CV-00412-RSH-DDL, 2025 WL 1287805, at *15 (S.D. Cal. May 2, 2025)
25 (“[A]pplication of the term by Intuit and its expert without issue during the IPR
26 proceedings is evidence that a skilled artisan understands the scope of this invention with
27 reasonable certainty.”); *DNA Genotek Inc. v. Spectrum Sols. L.L.C.*, No. 3:21-CV-00516-
28 RSH-DDL, 2022 WL 17331255, at *10 (S.D. Cal. Nov. 29, 2022) (relying on accused

1 infringer and its expert’s ability to apply claim term without issue during their invalidity
2 analysis in IPR proceedings in rejecting indefiniteness challenge), *aff’d*, No. 2023-2017,
3 2025 WL 502040 (Fed. Cir. Feb. 14, 2025). Indeed, the statement above shows not only
4 that Apple and its expert were able to understand and apply the term “adjacent” without
5 any issue, but it also shows that Apple and its expert understood the term to encompass the
6 plain meaning of the word “adjacent,” *i.e.*, next to or very near something else. (*See Poulos*
7 *Decl. Ex. 9* at 275 (“either on or near (e.g., adjacent)”)).

8 To support its indefiniteness challenge, Apple has provided the Court with extrinsic
9 evidence suggesting that the term “adjacent” is “somewhat heuristic” when used in the
10 field of computer graphics. (*See ECF No. 163* at 9 (citing *ECF No. 163-6, Ex. 5* (Dictionary
11 of Computer Vision and Image Processing))). This extrinsic evidence is not persuasive.
12 As explained above, the intrinsic record (the specification) provides clear objective
13 boundaries for the claim term “adjacent,” and extrinsic evidence cannot be used to vary or
14 contradict intrinsic evidence. *See Genuine Enabling Tech.*, 29 F.4th at 1373; *Summit 6*,
15 802 F.3d at 1290. In addition, Apple’s extrinsic evidence is contradicted by other more
16 persuasive extrinsic evidence, specifically, Apple and its own expert’s ability to understand
17 and apply the claim term “adjacent” during the reexamination proceedings.

18 In sum, Apple has failed to demonstrate that the claim term “adjacent” is indefinite.
19 The Court also construes the claim term “adjacent” as “next to or very near something
20 else.”³

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25 ³ In support of its position that the claim term “adjacent” is not indefinite, Smith Interface notes that,
26 to its knowledge, no district court has ever held that the claim term “adjacent” is indefinite. (*See ECF No.*
27 *164* at 2–3, 6–7; *ECF No. 169* at 1–2.) Those cases involved unrelated patents, however, and Apple is
28 correct that “unrelated patent[s] ‘shed[] no light’ on the claims in the patent at issue.” *Goldenberg v.*
Cytogen, Inc., 373 F.3d 1158, 1167 (Fed. Cir. 2004); *see also Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286,
1312 (Fed. Cir. 2014), *overruled on other grounds by Williamson v. Citrix Online, LLC*, 792 F.3d 1339
(Fed. Cir. 2015) (“[S]tatements made in unrelated applications are not relevant to claim construction.”)).

1 **CONCLUSION**

2 For the reasons set forth above and in its Tentative Claims Construction Order, the
3 Court **ADOPTS** the above claim constructions. Specifically, the Court construes the claim
4 term “virtual display layer” as “one or more display elements that appear at the same
5 apparent depth of display;” construes the claim term “a distance magnitude” as “an amount
6 of distance;” declines to construe the claim terms “blur,” “blurred,” and “blurring,” instead
7 giving them their plain and ordinary meanings; and construes the claim term “adjacent” as
8 “next to or very near something else.”

9 **IT IS SO ORDERED.**

10 Dated: October 3, 2025

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12 Honorable Todd W. Robinson
13 United States District Judge
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