IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF DELAWARE

ORCA SECURITY LTD.,	)	
	)	
	)	
Plaintiff and Counter-Defendant	)	C.A. No. 23-758-JLH
	)	
v.	)	
	)	
WIZ, INC.,	)	
	)	
Defendant and Counter-Plaintiff.	)	

WIZ, INC.'S ANSWERING CLAIM CONSTRUCTION BRIEF

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Orca Security Ltd.
Exhibit 2048
Wiz v. Orca
IPR2024-01109
Ex. 2048-001

C. "Alert(s)"

Claim Term	Wiz's Proposed Construction	Orca's Proposed Construction
"alert(s)"	"an affirmative message sent to a user to notify them regarding a detected threat or vulnerability."	Plain and ordinary meaning, "notification(s)."

Wiz's proposed construction is straightforward based on the claim language itself. The claims require, *e.g.*, "report the detected vulnerabilities as alerts." Ex. 1 at claim 1. A report and an alert must mean different things to give meaning to all the claim language. *Merck & Co. v. Teva Pharms. USA*, 395 F. 3d 1364, 1372 (Fed. Cir. 2005) ("A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so."). Orca's own expert in IPR agrees: "a person of ordinary skill in the art would have known and understood that reporting results and reporting detected vulnerabilities 'as alerts,' as claimed, are not the same." Ex. 29, ¶ 122. Only Wiz's construction gives meaning to "alerts" as distinct from "reports." Orca, by contrast, argues here that reports and alerts are effectively the same thing, the opposite of its express statements to the PTO in recent IPRs.

As Orca admits, the term "alert" is found in all instances paired with "report" or "reporting." Orca CC Br. at 9. This claim language directly supports Wiz's construction, as the claims presuppose that one would be able to report results without using alerts. Otherwise the "as alerts" language in the relevant claims would be superfluous. *Intel Corp. v. Qualcomm Inc.,* 21 F.4th 801, 810 (Fed. Cir. 2021) ("It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous." (citation omitted)). The specification is in accord, referring to reports and alerts separately "At S250, the detected cyber threats and/or vulnerabilities are reported, for example, as alerts." Ex. 1 at 8:60-61.

Orca's own statements and expert in IPR once again support Wiz's construction. According to Orca's expert: "a person of ordinary skill in the art would have known and understood

that reporting results and reporting detected vulnerabilities 'as alerts,' as claimed, are not the same." Ex. 29, ¶ 122. "For example, alert functions and report functions can involve different system components and capabilities." *Id.* Alerts, could be provided by "via email, SMS text message, MMS, web page, intranet alert, extranet alert, or any other way." *Id.* (quoting U.S. Pat. No. 9,467,465 ("Hibbert"), 20:34-44."). All of these examples support Wiz's construction requiring an affirmative message to distinguish from a "report" as described in the specification.

Relevant here, Orca and its expert argued that the prior art's reporting of results were not alerts. *See* Ex. 28 at 47-48. Now it proposes that any notification would suffice. This is contrary to its own statements that "reports" and alerts are not the same thing. The reason is simple; Wiz proactively advertises that it does not use the same alert-based approach that Orca claimed. *See* Ex. 33 at ORCA_0011646 (Wiz "[r]educe[s] alert fatigue"). Now, faced with this difficulty, it seeks to argue that any reporting of results on a console or dashboard are now "alerts." Either as a disclaimer or based on the evidence Orca itself relies on in the IPR, this contradiction should be rejected.

Regardless, left unanswered by Orca's construction is how one of skill would differentiate a report versus an alert. Orca's proposed construction of "plain and ordinary meaning," with their suggested construction to reflect "notification(s)" does not create any distinction between the two. Would including a row with a vulnerability in a dashboard be a notification or a merely a report? Would coloring such a row red versus black be a "notification"? Orca's proposal answers none of these basic questions. Its proposed construction of "notification" "does not resolve the parties' dispute[s]." *See O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.,* 521 F.3d 1351, 1361 (Fed. Cir. 2008). Wiz's proposal is the only one that resolves this dispute, and it is supported by Orca's own statements and expert in the IPR.

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2024, true and correct copies of the foregoing document were served on counsel of record in the manner indicated:

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