IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

PROXENSE, LLC, Plaintiff, vs. GOOGLE LLC, Defendant.	Case No. 6:23-cv-00320-ADA **JURY TRIAL DEMANDED**

PLAINTIFF PROXENSE, LLC's RESPONSIVE CLAIM CONSTRUCTION BRIEF

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I. Introduction.

The Court has already construed half of the terms that Defendant Google LLC ("Google") now seeks to re-construe. In the earlier case *Proxense, LLC v. Samsung Electronics Co., Ltd. et al.*, 6:21-cv-00210-ADA (W.D. Tex.) (hereinafter, "*Proxense v. Samsung*"), this Court agreed with Proxense's proposed constructions for three of the terms that Google now seeks to re-construe in this proceeding. *See id*. ECF No. 43 (Claim Construction Order); ECF 149 (Claim Construction Opinion). Google's rationale for its proposed constructions of previously construed terms provides no new credible evidence or argument that challenges the Court's previous determinations. Indeed, Google raises some of the same arguments this Court *rejected* in the *Proxense v. Samsung* case. Proxense requests that the Court simply adopt its prior rulings on these terms. For the terms that this Court did not previously construe, Proxense requests that they be given their plain and ordinary meaning as they are rooted in the intrinsic record and are neither complicated nor highly technical. In contrast, Google's proposed constructions impermissibly change the meaning of claims, add claim limitations, inject unnecessary and confusing language into the claims, or assert that claim terms are indefinite, when they are easily discernible to a person of ordinary skill. The Court should adopt its prior constructions from *Proxense v. Samsung* and construe the remaining disputed terms according their plain and ordinary meaning.

II. The Claimed Inventions

The inventions set forth in the patents-in-suit (U.S. Patent Nos. 8,352,730 (the "730 Patent"), 8,886,954 (the "954 Patent"), and 9,298,905 (the "905 Patent") (collectively, "Family A") and U.S. Patent Nos. 8,646,042 (the "042 Patent"), 9,679,289 (the "289 Patent") and 10,073,960 (the "960 Patent") (collectively, "Family B") allow users to carry, control, and protect

their personal data on devices like mobile phones, which enables secure transactions and authentication using those devices. Biometric authentication and use of remote (*e.g.*, web-based) applications requires trust between the user and the service provider. The user must trust that the service provider can and will protect personal data and that the service provider will not abuse such data. Utilizing online services—including social media, office, productivity, financial, travel, and other similar services—requires the user to trust that the service provider will safeguard the personally identifying information that a user provides using the service. Such information could include biometric data used, for example, as a means of verifying an authorized user's identity. Safeguarding and limiting the information that is shared with multiple service providers is a necessity. The inventions of the patents-in-suit address these issues by providing ways to use biometric information securely to access and/or utilize private, sensitive information.

Family A is directed to inventions ensuring biometric data privacy while enabling biometric authentication. The claimed inventions improve on the prior art by providing for multiple levels of authentication, such that a user is verified as properly in possession of a biometric access instrumentality, and also biometrically verified as authorized to access sensitive and/or secure resources. Family B is directed to inventions that improve the capabilities and flexible arrangements of multiple devices and instrumentalities that are used to provide means of authorized access to access sensitive and/or secure resources while retaining security.

III. Level of Ordinary Skill in the Art

Proxense submits that a person of ordinary skill in the art would have a bachelor's degree in computer or electrical engineering (or an equivalent degree) with at least three years of experience in the field of encryption and security (or an equivalent). This level of skill is

approximate, and more experience would compensate for less formal education, and vice versa. *See* Rubin Decl. ¶ 22.

IV. Agreed Constructions

The parties have agreed to the following constructions from the Court's Claim Construction Order in *Proxense v. Samsung*:

Term	Patents	Agreed Construction
"ID code"/"device ID code"	730 Patent, claims 1, 15; 954 Patent, claims 1, 22; 905 Patent, claims 1, 13	a unique code identifying a device
"access message"	730 Patent, claims 1, 15; 954 Patent, claims 1, 22; 905 Patent, claims 1, 13	a signal or notification enabling or announcing access
"persistently storing . . . a tamper proof format written to a storage element on the integrated device that is unable to be subsequently altered"	730 Patent, claims 1, 15	Plain and ordinary meaning. No construction necessary
"hybrid device"	042 Patent, claim 10; 289 Patent, claim 14	a device comprising an integrated personal digital key (PDK) and an integrated receiver-decoder circuit
"enablement signal"	042 Patent, claim 10; 289 Patent, claim 14; 960 Patent, claim 14	Plain and ordinary meaning. No construction necessary

V. Construction of Disputed Terms

A. Family A

A claim term is presumed to have its plain and ordinary meaning as understood by a person of ordinary skill in the art ("POSITA") at the time of the invention in the context of the patent. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005); *Alloc, Inc. v. Int'l Trade*

Comm'n, 342 F.3d 1361, 1368 (Fed. Cir. 2003). Here, an examination of the specification and the claim language of the Family A terms reveals there is no need to construe the terms beyond their plain and ordinary meaning.

1. "integrated device" (730: 1, 15)

Proxense's Construction	Google's Construction
Plain and ordinary meaning. No construction necessary.	Indefinite

The "starting point" to the inquiry of how POSITA understands the plain and ordinary meaning of a claim term is based on the understanding that "inventors are typically persons skilled in the field of the invention and that patents are addressed to and intended to be read by others of skill in the pertinent art." *Phillips*, 415 F.3d at 1313. A POSITA is deemed to read the claim term "not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id*.

Given the specification and the claim language of the 730 Patent, it is clear that the term "integrated device" is not indefinite, and that it should be given its plain and ordinary meaning. In the context of the entire patent, an "integrated device" is a "device" that is integrated with a biometric key. *See* Rubin Decl. ¶¶ 24, 28-35. Contrary to Google's assertions that neither the intrinsic evidence nor the claim language defines the scope of the term (Op. Br. at 4; Black Decl. at ¶ 30), each instance of an "integrated device" described within the specification includes functionality that incorporates a biometric key such that the integration with the biometric key is what renders the device at issue "integrated":

Integrated Device	Biometric Key
"an integrated device that persistently (or permanently) stores biometric data for a user in a tamper-resistant format" 730 Patent, Abstract	"a biometric key persistently (or permanently) stores a code such as a device identifier (ID) and biometric data for a user in a tamper-resistant format." 730 Patent, 1:60-62

"Once the user has been verified by the integrated device, a code can be wirelessly transmitted for authentication." 730 Patent, Abstract "Once the user has been verified by the integrated device, the code can be wirelessly transmitted to indicate that the user has been successfully verified." 1:64-67	"Biometric key 100 can authenticate a user for various purposes." 730 Patent, 3:36-37 "Biometric key 100 comprises control module 210 . . . control module 210 provides a verification code upon successful verification of the user." 730 Patent, 3:55-58
"The trusted key authority checks a list of enrolled integrated devices for a match." 730 Patent, Abstract	"The trusted key authority checks a list of enrolled biometric keys to determine whether the code is valid." 730 Patent, 2:2-4

The 730 Patent details "a biometric key persistently (or permanently) stores a code such as a device identifier (ID) and biometric data for a user." 730 Patent, 1:60-62. The same functionality is detailed in the Abstract of the 730 Patent with regards to an "integrated device." Claim 1 of the 730 Patent recites "storing biometric data of the user . . . and a device ID code . . . written to a storage element on the integrated device." As the claimed integrated device is performing the same function as a biometric key, the integrated device can be a device integrated with a biometric key. *See* Rubin Decl. ¶¶ 28-35.

The claim language provides additional clarity to the meaning of the term. Claims 1 and 15 of the 730 Patent recite storing "biometric data of the user … and a device ID code … written to a storage element." Claim 1 thus recites the integrated device has a "storage element" storing "biometric data" and "a device ID code." Claim 15 recites the same for the biometric key. The plain language of claims 1 and 15 of the 730 Patent, therefore, demonstrate that the claimed "integrated device" integrates or includes a biometric key. *See* Rubin Decl. ¶¶ 29-30. Throughout the specification, the patent recites functionality for a biometric key and those particular functions are listed as requirements to the claimed "integrated device." *See* Rubin Decl. ¶¶ 28-30. Therefore, there exists "objective boundaries for those of skill in the art" to understand the meaning

of the "integrated device" term from the intrinsic record. *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1371 (Fed. Cir. 2014). It would not be relevant to a POSITA nor for any purposes related to the invention whether a device integrates a biometric key or a biometric key integrates itself into a device. *See* Rubin Decl. ¶ 27. Google provides no reason why that difference in phrasing alone could render this term indefinite to a POSITA.

Further, the above-described plain and ordinary meaning of "integrated device" is consistent with the statement made in the 954 and 905 Patents that "[a] device having an integrated biometric key 100 is occasionally referred to herein as an 'integrated device.'" 954 Patent, 4:8-10; 905 Patent, 4:10-12. A POSITA would have this understanding already from the context of the 730 Patent. Rubin Decl. ¶ 32. This aligns with the premise that a claim term must be interpreted consistently across all patents derived from the same parent application. *NTP, Inc. v. Rsch. In Motion, Ltd.*, 418 F.3d 1282, 1293 (Fed. Cir. 2005) (Where multiple patents "derive from the same parent application and share many common terms, we must interpret the claims consistently across all asserted patents."); *see also Microsoft Corp. v. Multi-tech Systems, Inc.*, 357 F.3d 1340, 1350 (Fed. Cir. 2004) (holding that statements made during the prosecution of a later issued sibling patent are relevant to an earlier issue patent from the same family). Accordingly, a POSITA would have understood the term "integrated device" the same way across all three patents and would have clearly understood the scope of the 730 Patent standing alone. Rubin Decl. ¶ 32.

Google's errors and contradictory positions are further revealed by it agreeing with the Court's "plain and ordinary meaning" construction of a term that already *includes* the term "integrated device," but then arguing that "integrated device" alone is indefinite. In *Proxense v. Samsung*, this Court held that the term: "persistently storing . . . a tamper proof format written to

a storage element on the ***integrated device*** that is unable to be subsequently altered" should be given its plain and ordinary meaning. **Google has agreed to that construction in this proceeding.** Google cannot now have it both ways. It cannot on the one hand claim to accept the Court's prior construction that a term should be given its plain and ordinary meaning, while claiming on the other hand that a narrower term contained within the larger term is indefinite. Likewise, Google agreed to a construction of "hybrid device" for a different patent family that includes two instances of the term "integrated." *See supra* p. 3. In short, there is no need to look beyond the plain and ordinary meaning of "integrated device." The context of the term within the claims along with the specification provides sufficient meaning of the term to a POSITA. Thus, Proxense respectfully requests the Court to reject Google's arguments and give this term its plain and ordinary meaning.

2. "persistently storing … a plurality of codes and other data values comprising a device ID code … and a secret decryption value" (730:1, 15; 954: 1, 22)

Proxense's Construction	Google's Construction
Plain and ordinary meaning. No construction necessary.	Indefinite

Google does not identify a specific term that is allegedly indefinite. Rather, it points to a phrase within the claims it believes has multiple interpretations and improperly concludes it to be invalid. However, these phrases are not ambiguous, and they should be given their plain and ordinary meaning. Indeed, the Court already held in *Proxense v. Samsung* that "no construction is necessary" for this **identical** claim term, and that it should "receive [its] plain and ordinary meaning." *Proxense v. Samsung*, ECF 149 at 14–15.

In its brief, Google creates multiple unreasonable interpretations of the claim term and confuses them with their plain and ordinary meaning. It takes a simple phrase that a POSITA can

easily understand and places parentheses around certain portions to make it appear that the phrase can have multiple meanings. Op. Br. at 9-10. However, there is no mystery as to what the term requires: a plurality of codes and other data values are stored; within this storage is also (1) a device ID code uniquely identifying an integrated device[1] and (2) a secret decryption value. It is that simple. The multiple interpretations Google presents are deliberately confusing, unreasonable, and go beyond the scope of what a POSITA would comprehend the claim term to mean.

Google's attempt to compare the use of "persistently storing" to the more specific term of art of "molecular weight" as discussed in *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 789 F. 3d 1335, 1344-45 (Fed. Cir. 2015), is a deliberate red herring that illustrates Google's incorrect position. As the *Teva* Court found, "[t]here are three different measures of molecular weight," wherein "[e]ach measure is calculated in a different manner" and where each reference to "molecular weight" could be a reference to a separate, scientific understanding of that term. *Id*. 1338. There are no different understandings of "persistently storing" in this instance; especially not as it pertains to a unique scientific term of measurement. In fact, the 730 Patent equates "persistently" with "permanently"—which is the natural understanding of the term "persistently." Google's arguments simply attempt to inject confusion where none exists. Indeed, as the Court observed in *Proxense v. Samsung*, a specification of the 730 Patent "clearly defines 'persistently storing' as storing in non-volatile memory" and that the term need not be assigned any meaning apart from its plain and ordinary understanding. *Proxense v. Samsung*, ECF 149 at 14.

Accordingly, Proxense respectfully requests this Court to reject Google's arguments and give these terms their plain and ordinary meaning.

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[1] 730 Patent, claim 15 instead requires the device ID code to uniquely identify a biometric key and 954 Patent, claim 22 requires the device ID code to uniquely identify an integrated hardware device.

3. (a) "an access message … [allowing / allows] the user [access to an application / to access an application]" (730:1, 15; 954:1, 22);

(b) "an access message … [allowing / allows] the user to complete a financial transaction (905:1, 13)

Proxense's Construction	Google's Construction
Plain and ordinary meaning. No construction necessary beyond adopting the Court's previous construction of "access message" and "ID code" in *Proxense v. Samsung*.	730 and 954 Patents a signal or notification allowing the user to access an application 905 Patent a signal or notification allowing the user to complete a financial transaction

This Court previously construed "access message" in *Proxense v. Samsung* as "a signal or notification enabling or announcing access," which Google does not dispute and has accepted. Op. Br. at 3, 11. Google is now attempting to unnecessarily construe the words and phrases that come after "access message" (hereinafter the "Disputed Access Message Terms"). A POSITA would recognize that the additional words and phrases are clear, non-technical, and should be given their plain and ordinary meaning. Therefore, no construction of these terms is necessary.

To be clear, the Disputed Access Message Terms are not as succinct as Google represented in its claim construction brief. Proxense only shortened the terms in its title headings for conciseness. However, these are the full, unabbreviated terms Google would like construed:

730 Patent, claim 1: "an access message from the agent allowing the user access to an application"

730 Patent, claim 15: "an access message from the agent allowing the user to access an application"

954 Patent, claim 1: "an access message from the trusted authority indicating that the trusted authority successfully authenticated the one or more codes and other data values sent to the third party and allowing the user access to the application"

954 Patent, claim 22: "an access message from the trusted authority indicating that the trusted authority successfully authenticated the one or more codes and other data values to the third party and allows the user to access an application"

905 Patent, claim 1: "an access message from the third party trusted authority-indicating that the third-party trusted authority successfully authenticated the ID code, allowing the user to complete a financial transaction"

905 Patent, claim 13: "an access message from the third-party trusted authority indicating that the third-party trusted authority successfully authenticated the ID code and allows the user to complete a financial transaction"

First, even if it is appropriate to construe these terms beyond their plain and ordinary meaning, Google's constructions are inappropriate as they eliminate required claim language. For example, Google's proposed construction for claim 1 of the 905 Patent is "a signal or notification allowing the user to complete a financial transaction." However, the construction completely disregards the highlighted portion of the term below:

> an access message from the third party trusted authority-indicating that the third-party trusted authority successfully authenticated the ID code, allowing the user to complete a financial transaction

The construction of a claim term must consider all words and phrases that are part of the term, but Google's constructions fail to do so. *Exxon Chem. Pats., Inc. v. Lubrizol Corp.*, 64 F.3d 1553, 1557 (Fed. Cir. 1995) ("We must give meaning to all the words in [the] claims."); *Merck & Co., Inc. v. Teva Pharms. USA, Inc.*, 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."). Google's omission of these terms is telling. Google completely ignores the highlighted section of the actual term because it is easily understood by a POSITA and should be given its plain and ordinary meaning, like the remainder of how that term is used throughout the claims at issue. The same plain and ordinary meaning should be applied to the unhighlighted portion of the term and the full scope of the other Disputed Access Message Terms.

Second, even if it is appropriate to construe these terms beyond their plain and ordinary

meaning, Google's construction for the 730 and 954 Patents fails as the same construction is applied to terms that are completely different. More specifically, Google's proposed terms in the 954 Patent include the language "from the trusted authority indicating that the trusted authority successfully authenticated the one or more codes and other data values sent to the third party" that is not part of the terms of the 730 Patent. This additional language makes the 954 Patent terms vastly different from the 730 Patent. Google cannot attempt to give these terms the same construction. *See, e.g.*, *Proxense v. Samsung*, CCF 149 at 13 (holding that it "is contrary to fundamental tenets of claim construction" and "an end-run around the limitations set by this Court on claim terms to be construed" for a party to "give three or more distinct claim terms identical, redundant constructions across several patents").

Third, Google's proposed constructions for the Disputed Access Message Terms inappropriately modify the Court's previous construction of "access message" by eliminating the "announcing access" portion of the construction. Contrary to Google's assertions that "announcing access" is "clearly not what is required" by the claim language (Op. Br. at 12), the words "allowing" and "allows" as used in this context can be understood to mean both "causes access to be permitted" and "announces that access is permitted." The latter would permit the application to move to a next step or inform (*e.g.*, check appropriate age before granting access) a party that access was permitted (*e.g.*, pop up a window to inform a user). As this Court already held, the access message "can have the effect of moving the user to the next step of providing information (like providing the user's age), ***which is more than just enabling access***." *Proxense v. Samsung*, ECF. No. 149 at 21 (emphasis added).

Moreover, the term "access message" appears in claims 1 and 22 of the 954 Patent where it "indicat[es] that the trusted authority successfully authenticated the one or more codes and other

data values," and in claims 1 and 13 of the 905 Patent where it "indicat[es] that the third-party trusted authority successfully authenticated the ID code." Claim 12 of the 730 Patent (not asserted) recites the steps of receiving an "access message" and allowing access "in response to a positive access message" as entirely separate steps. These examples are most consistent with a construction that the access message can be "indicating" (*i.e.* announcing) that access is enabled, but that can *also* have an enabling function. This Court already found that "language of 'indicates' suggests that [the access message] can serve to notify the user of access, not just enable access." *Proxense v. Samsung*, ECF. No. 149 at 21-22. There is no need to depart from this holding.

Fourth, Google's proposed terms are unnecessarily long and attempt to shoehorn multiple terms into one. For example, the 905 Patent Disputed Access Message Terms include both the "access message" and "ID code" terms that this Court previously construed in *Proxense v. Samsung*. ***Finally***, the words and phrases of the terms are "not technical terms of art, and do not require elaborate interpretation." *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001). A jury will not have difficulty understanding the meaning of these words and phrases and they should simply be afforded their plain and ordinary meaning.

To eliminate all the unnecessary confusion presented by Google, Proxense respectfully requests this Court to reject Google's proposed constructions and to give the Disputed Access Message Terms their plain and ordinary meaning in view of the Court's previous constructions of "access message" and "ID Code" in *Proxense v. Samsung*.

4. "wherein the biometric data and the scan data are both based on a fingerprint scan by the user" (730:5)

Proxense's Construction	Google's Construction
Adopts the Court's Construction in *Proxense v. Samsung*:	Indefinite or invalid under 35 U.S.C. § 112, ¶ 4 alternatively:

Plain and ordinary meaning. No construction necessary.	wherein the biometric data and the scan data of claim 1 consists of a single fingerprint

Google makes the same argument that this Court rejected in *Proxense v. Samsung*. *See Proxense v. Samsung*, ECF 149 at 22. Dependent claim 5 is not invalid; it properly reduces the number of possible fingerprints from those intrinsic to the "palm print" or "hand geometry" of independent claim 1.

Claim 1 of the 730 Patent describes multiple categories of "biometric data" as "selected from a group consisting of a palm print, a retinal scan, an iris scan, a hand geometry, a facial recognition, a signature recognition and a voice recognition." In its briefing, Google raises the same arguments the Court already considered and rejected, asserting that "dependent claim 5 fails to 'specify a further limitation of the subject matter claimed' in independent claim 1[.]". Op. Br. at 16. But as the Court held in *Proxense v. Samsung*, Claim 5 of the 730 Patent:

> ***properly narrows*** the scope of "biometric data" to a single "fingerprint." The plain and ordinary meaning of "palm print" would be understood to include some combination of prints from the heel and/or flat of the hand, with multiple fingerprints and/or a thumb print (*see, e.g.*, 730 Patent 3:4-11, expanding exemplary biometric data from "fingerprint" to additional metrics like an entire "palm print"; *id.* at 3:29-33, indicating that biometric data capture could include thumb or other fingerprints). *Id*. at 24 (emphasis added).

There is no need for the Court to hold any differently in this case or to re-construe this term. Google has not shown any evidence—intrinsic or extrinsic—that suggests that a POSITA would *not* understand "'palm print' . . . to include some combination of prints from the heel and/or flat of the hand, with multiple fingerprints and/or a thumb print." *Id.* Google simply just asserts that to be true. Google's assertion is wrong. Its argument rests on the same "inaccurate premises" that Samsung raised in *Proxense v. Samsung*, namely, that "a person of ordinary skill in the art would not understand that the plain and ordinary meaning of 'palm print' includes multiple fingerprints and/or a thumb print," and that "the Examiner's Amendment that added the Markush

group to claim 1 . . . caused dependent claim 5 . . . to become indefinite." *Proxense v. Samsung*, ECF 149 at 24. As the Court already held—and as Proxense re-submits here in response to Google's repeat of this argument—"[b]oth premises collapse under the well-established presumption 'that an examiner would not introduce an indefinite term into a claim when he/she chooses to amend the claim for the very purpose of putting the application in a condition for allowance.'" *Id*. (citing *Tinnus Enterprises, LLC v. Telebrands Corp*., 733 F. App'x 1011, 1020 (Fed. Cir. 2018)).

The incorrectness of Google's position is further confirmed by the Federal Bureau of Investigation ("FBI")'s definition of "palm print," which confirms that the plain and ordinary meaning of the term is one of the "area extending from the top of the wrist bracelet to the tips of the fingers" and provides a figure illustrating the same. Ex. A at 2. Proxense's construction is consistent with the FBI's definition of palm print as well as the Court's prior rulings. Google's arguments fail to challenge the legitimacy of the Court's prior determination as Claim 5 properly narrows the scope of the "biometric data" term and does not broaden it.

Further, Google's alternative construction of "wherein the biometric data and the scan data of claim 1 consists of a single fingerprint" should be rejected as there is nothing within the Family A patents that limits the biometric and scan data to being based on a "single fingerprint." A "single fingerprint" suggests "just one" fingerprint can be used. But the Family A patents have no restrictions in the number of fingerprints that can be used as long as "*a* fingerprint" (*i.e.*, at least one fingerprint) is used. Google is attempting to inappropriately import limitations into the claims that do not exist in the specification. *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004) ("[I]t is improper to read limitations . . . into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited.")

Even if the claims were somehow ambiguous, despite repeated disclosures of a "fingerprint" as an exemplary type of "biometric data" in the specification, the term should be construed to preserve validity. *See Phillips*, 415 F.3d at 1327. A "fingerprint" is one example of the "biometric" information, and thus dependent claim 5 properly limits the scope of claim 1. The scope of claim 5 is readily understood by a POSITA and should not be found invalid.

B. Family B

1. "receiver-decoder circuit" (042:10; 289:14)

Proxense's Construction	Google's Construction
Adopts the Court's Construction in *Proxense v. Samsung*: a component or collection of components, capable of wirelessly receiving data in an encrypted format and decoding the encrypted data for processing.	a collection of circuit components capable of wirelessly receiving data in an encrypted format and decoding the encrypted data for processing

This Court previously construed the term "receiver-decoder circuit" (or "RDC") in *Proxense v. Samsung*. Proxense requests the Court to adopt its previous construction that includes "a component or a collection of components,"[2] whereas Google seeks to modify the construction to be a "collection of ***circuit*** components" (emphasis added). There is no need to add the additional "circuit" language to the term. It is an unnecessary addition that does not provide any additional clarity to the term and potentially limits the full scope of protection the claims are entitled to receive. *Liebel-Flarsheim*, 358 F.3d at 913.

To support its construction, Google alleges that Figure 3 shows the RDC as a "physical 'circuit' component." Op. Br. at 18-19. This is yet another improper attempt by Google to limit

[2] The "receiver-decoder circuit" term was construed with respect to U.S. Patent Nos. 9,049,188 and 9,235,700 in *Proxense v. Samsung*, which both derive from continuation applications of the 042 Patent and share the same specification as the Family B patents.

the scope of a claim term to a single embodiment—here, the physical structure of the block diagrams of the shared specification of the 042 and 289 Patents (*e.g.*, Fig. 3). A block diagram simply describes the relationships between functional elements of a system; it need not show an actual depiction of any of its physical components. The use of a box in the block diagram's depiction of the RDC in Fig. 3 is merely to denote the functional relationships among the elements; **it does not detail specific physical structures** within a circuit. This Court found this rationale to be true in *Proxense v. Samsung*, holding that the "Defendants' justification for a single device also comes from just one embodiment, which likely just describes the functional elements of the RDC rather than depict specific physical structures." *Proxense v. Samsung*, ECF. No. 149 at 38

Similarly, Figure 3—as stated in the 042 Patent itself—is just "a block diagram illustrating one embodiment of a sensor," not discrete physical structures that allegedly represent a RDC being a physical component alongside other components within a circuit. Courts routinely hold that "claims generally should not be narrowed to cover only the disclosed embodiments or examples in the specification." *See Linear Technology Corp. v. International Trade Commission,* 566 F.3d 1049, 1058 (Fed. Cir. 2009). Accordingly, "[e]ven when the specification describes only a single embodiment" —which is not the case, here— "the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using words or pression of manifest exclusion or restriction." *Liebel-Flarsheim*, 358 F.3d at 906.

Google does not provide any new credible evidence or argument that could justify disturbing the Court's previous construction of this term. Accordingly, Proxense respectfully requests that the Court adopt its prior construction in *Proxense v. Samsung*.

2. "personal digital key" (042:10; 289:14)

Proxense's Construction	Google's Construction
Adopts the Court's Construction in *Proxense v. Samsung*: an operably connected collection of elements including an antenna and a transceiver for communicating with a RDC and a controller and memory for storing information particular to a user.	a collection of circuit components that includes an antenna, a transceiver, and a controller and memory for storing information particular to a user

This Court previously construed the term "personal digital key" (or "PDK") in *Proxense v. Samsung*. Proxense requests the Court to adopt its previous construction that includes "an operably connected collection of elements,"[3] whereas Google seeks to modify the construction to be a "collection of ***circuit*** components" (emphasis added). There is no need to add the additional "circuit" language to the term. It is an unnecessary addition that does not provide any increased clarity to the term and potentially limits the full scope of protection the claims are entitled to receive. *Liebel-Flarsheim*, 358 F.3d at 913.

Google's basis for adding the "circuit" language is merely to (1) "conform the construction of '[PDK]' with Google's construction of '[RDC]' – both are circuits in a hybrid device," and (2) because the antenna, transceiver, controller, and memory of the PDK are "all physical circuit components." Op. Br. at 20-21 (emphasis omitted). However, for the reasons previously stated, Google's construction of RDC to include "circuit components" is flawed and the Court should reject it. Its rationale to conform the PDK construction to its RDC construction, therefore, fails for the same reasons. Further, the antenna, transceiver, controller, and memory that make up the PDK are not required to be physical circuit components as previously discussed with respect to

[3] The "personal digital key" term was construed with respect to U.S. Patent Nos. 9,049,188 and 9,235,700 in *Proxense v. Samsung*, which both derive from continuation applications of the 042 Patent and share the same specification as the Family B patents.

the RDC term, Figure 3, and the analysis regarding functional elements vs. physical structures within a block diagram.

Google's proposed construction also improperly removes the phrase "for communicating with a RDC" from the description of the "transceiver" in the Court's prior construction. Google argues that including the "for communicating with a RDC" language is redundant as the claims "already require 'creating a first wireless link between an integrated receiver-decoder circuit (RDC) of a hybrid device and an external personal digital key (PDK).'" Op. Br. at 20. These arguments fail to provide a valid justification for modifying the Court's previous construction. The basis for Proxense's construction, that the Court already upheld, comes directly from the specification. In particular, the specification discloses that a "personal digital key" must have, at minimum, "an antenna and a ***transceiver for communicating with a RDC*** (not shown) and a controller and memory for storing information particular to a user." 042 Patent 13:46-49 (emphasis added). A wireless link being recited in the claims has no bearing on the requirements of the PDK.

Google does not provide any new credible evidence or argument that could justify disturbing the Court's prior construction. This Court already concluded that Proxense's proposed construction "properly reflects the patent's recitation of the elements comprising a personal digital key[.]". *Proxense v. Samsung*, ECF. No. 149 at 30. Accordingly, Proxense respectfully requests that the Court adopt its prior construction in *Proxense v. Samsung*.

VI. Conclusion

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

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Respectfully submitted,

By: */s/ David L. Hecht*

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CERTIFICATE OF SERVICE

I, David L. Hecht, hereby certify that on December 1, 2023, I served a true and correct copy of the foregoing **PLAINTIFF PROXENSE, LLC's RESPONSIVE CLAIM CONSTRUCTION BRIEF** and all ancillary documents attached to counsel of record via ECF.

/s/ David L. Hecht
David L. Hecht