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

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

PLAINTIFF PROXENSE, LLC's SUR-REPLY CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

I. INTRODUCTION 1

II. CONSTRUCTION OF DISPUTED TERMS 1

A. FAMILY A 1

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

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) 6

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) 8

4. (a) "wherein the biometric data and the scan data are both based on a fingerprint scan by the user" (730:5) 11

B. FAMILY B 13

1. "receiver-decoder circuit" (042:10; 289:14) 13

2. "personal digital key" (042:10; 289:14, 16) 14

III. CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Cases

01 Communique Lab'y, Inc. v. LogMeIn, Inc.,
687 F.3d 1292 (Fed. Cir. 2012) 9, 13

ASM Am., Inc. v. Genus, Inc.,
401 F.3d 1340 (Fed. Cir. 2005) 7

ASM Am., Inc. v. Genus, Inc.,
2002 WL 1892200 (N.D. Cal. Aug. 15, 2002) 7

Enzo Biochem, Inc., v Applera Corp.,
559 F.3d 1325 (Fed. Cir. 2010) 6

Gonza LLC v. Mission Competition Fitness Equip. LLC,
2021 WL 5657193 (W.D. Tex. Dec. 1, 2021) 12

Gree, Inc. v. Supercell Oy,
2020 WL 2332144 (E.D. Tex. May 11, 2020) 5

Helmsderfer v. Bobrick Washroom Equip., Inc.,
527 F.3d 1379 (Fed. Cir. 2008) 11

Horizon Pharma, Inc. v. Dr. Reddy's Labs. Inc.,
839 Fed. Appx. 500 (Fed. Cir. 2021) 11

Ingevity Corp. v. BASF Corp.,
2019 WL 2356978 (D. Del. June 4, 2019) 6

Interactive Gift Exp., Inc. v. Compuserve Inc.,
256 F.3d 1323 (Fed. Cir. 2001) 1, 2

IQASR LLC v. Wendt Corp.,
825 F. App'x 900 (Fed. Cir. 2020) 5, 6

NTP, Inc. v. Rsch. In Motion, Ltd.,
418 F.3d 1282 (Fed. Cir. 2005) 5

Oatey Co. v. IPS Corp.,
514 F. 3d 1271 (Fed. Cir. 2008) 9

Paymaster Techs., Inc. v. United States,
180 F. App'x 942 (Fed. Cir. 2006) 9, 10

Teva Pharm. USA, Inc. v. Sandoz, Inc.,
574 U.S. 318 (2015) 7

Tinnus Enterprises, LLC v. Telebrands Corp.,
733 F. App'x 1011 (Fed. Cir. 2018) 12

Vasudevan Software, Inc. v. MicroStrategy, Inc.,
782 F.3d 671 (Fed. Cir. 2015) 13

Vitronics Corp. v. Conceptronic, Inc.,
90 F.3d 1576 (Fed. Cir. 1996) 1, 3

Yeda Research and Dev. v. Abbott GmbH & Co. KG,
837 F.3d 1341 (Fed. Cir. 2016) 5

Statutes

35 U.S.C. § 112 11

35 U.S.C. § 282 12

I. INTRODUCTION

Google fails to present any evidence or argument sufficient to disturb this Court's previous constructions in *Proxense v. Samsung*. Beyond the three terms this Court already construed, Google attempts to alter the plain and ordinary meanings of additional disputed claim terms by impermissibly adding claim limitations, injecting unnecessary and confusing language into the claims, or baselessly arguing for their indefiniteness despite the terms being readily discernible to a POSITA. The Court should adopt its prior constructions and construe the additional disputed terms according to their plain and ordinary meaning.

II. CONSTRUCTION OF DISPUTED TERMS

A. Family A

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

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

Google's reply disregards the language of the 730 Patent's claims and specification which both support the term's plain and ordinary meaning. Google does so hoping this Court will place more import on irrelevant extrinsic evidence proffered by Google than pertinent intrinsic evidence. But that is contrary to settled law. *Interactive Gift Exp., Inc. v. Compuserve Inc.,* 256 F.3d 1323, 1332 (Fed. Cir. 2001) ("If the meaning of the claim limitations is apparent from the totality of the intrinsic evidence, then the claim has been construed."); *accord Vitronics Corp. v. Conceptronic, Inc.* 90 F.3d 1576, 1583 (Fed. Cir. 1996) ("In most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. In such circumstances, it is improper to rely on extrinsic evidence.").

First, Google misstates the record by asserting that Proxense interprets the term to have two different meanings: "either as synonymous with a 'biometric key' with integrated components or as a larger device with a biometric key integrated within." Reply at 2. This is wrong. Proxense's

construction has been (Resp. at 4-7), and continues to be, that the term has a plain and ordinary meaning such that no construction is necessary. Proxense noted, "[t]he 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 also discloses that the integrated device has a "'storage element' storing 'biometric data' and 'a device ID code.'" Resp. at 5. The language of claim 1 plainly defines an integrated device; no construction is necessary for a factfinder to understand the term. Similar definitional language is found in claims 8 (disclosing an integrated device comprising a "memory" and a "verification unit"), claims 9-11 (depending on the "integrated device" of claim 8), and claim 12 (discussing receiving a code "uniquely identifying the integrated device" in conjunction with a "decryption value" to "biometrically verif[y] [the] user"). The claims of the 730 Patent, therefore, demonstrate that the "integrated device" integrates or includes a biometric key ***component***, which is consistent with a POSITA's understanding that "when something is a whole composed of multiple components, that it's an integrated device." ECF 48-2 at 31:19-32:2; *see* Rubin Decl. ¶¶ 29-30. The claim language speaks for itself.

Second, the specification provides no reason to deviate from the language of the claims. "If the claim language is clear on its face, then our consideration of the rest of the intrinsic evidence is restricted to determining if a deviation from the clear language of the claims is specified." *Interactive Gift Exp.,* 256 F.3d at 1331. Proxense has provided a detailed account of where "[t]hroughout the specification, the patent recites the functionality for a biometric key and those particular functions are listed as requirements to the claimed 'integrated device.'" *See* Resp. at 5. The totality of the intrinsic evidence, which includes the plain language of the claims, "demonstrate[s] that the claimed 'integrated device' integrates or includes a biometric key." *Id.* Contrary to Google's assertion, there is no instance in which Proxense interpreted or argued that a

"biometric key" comprises a claimed "integrated device" in view of the intrinsic record.

Third, Google's reliance on extrinsic evidence in an attempt to contravene the intrinsic record is improper. *Vitronics,* 90 F.3d at 1583. Google misapprehends Proxense's expert's testimony by arguing that he conceded "that a biometric key is an integrated device." Reply at 2. Proxense's expert, Dr. Rubin, made no such concession. Instead, Dr. Rubin answered Google's question regarding what was shown in Fig. 1 of the patent, which depicts a device comprised of several components including (integrating) a biometric key—an example of an integrated device.

> Q. Does [figure 1] show an integrated device?
> A. I see that in the text that describes figure 1, it says "it comprises a frame, a scan pad and an LED." **So it is made up of other components. And so I would say that's an integrated device.**

ECF 48-2 (emphasis added) at 18:21-19:1. As can be seen below, Dr. Rubin's description was accurate both to the figure and the patent's specification describing the same.

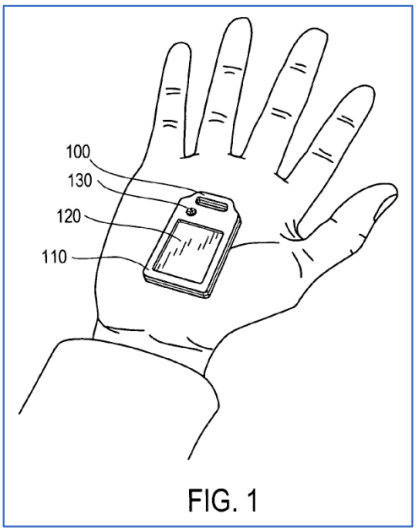

FIG. 1

730 patent, Fig. 1. Furthermore, Dr. Rubin explained that this singular embodiment did not represent the full scope of how a POSITA would understand the term:

> Q. In the context of the patent, your opinion is that an integrated device is a collection of hardware components?
> MR. BARCELO: Objection, form.
> **THE WITNESS: It's an integration of hardware components.**

ECF 48-2 (emphasis added) at 20:6-11. Contrary to Google's assertions, Dr. Rubin did not contradict the plain meaning of the term "integrated device" as it exists in the intrinsic record. Indeed, Google never even questioned Dr. Rubin on the meaning of that term within the context of the patent claims. *See* ECF 48-2 at 18:17-19:1; 24:13-18; 24:20-25:3; 59:22-24.

Fourth, Google's argument that Dr. Rubin's plain and ordinary meaning understanding of "integrated device" would "incorporate all electronics" and have a "boundless scope" is absurd. No POSITA—Dr. Rubin included—would view electrical building blocks like a resistor or a capacitor as a "biometric key" or part of the hardware components comprising an "integrated device," as Google asserts. Reply at 3. Dr. Rubin's testimony that "***integrating circuits into a whole*** would be an integrated device" speaks forcefully against Google's nonsensical proposition that any collection of electrical components could be an "integrated device." ECF 48-2, 33:15-22 (emphasis added). Likewise contrary to Google's suggestion, Dr. Rubin was clear that "all electronics" would ***not*** be within the scope of a POSITA's understanding of the term as it is used in this patent, *e.g.*:

> Q. Are those the types of components, standard circuit components, that this paper is discussing?
> A. I think it's explaining why this invention that's being described as needed is to be able to deal with integrated devices, and **not ones [that] have a single standard circuit component**.

Id. at 33:9-14 (referring to an integrated device simulator). The 730 Patent claims and specification sufficiently define an integrated device and delineate what hardware components need to be integrated therein.

Likewise, the plain and ordinary meaning of "integrated device" in the 730 Patent is applied consistently in the related 954 and 905 Patents: "[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; *see* Rubin Decl. ⁋ 32. Google attempts to bury this consistency by falsely asserting that this is

"new matter." Reply at 5. But not only does this "new matter" argument ignore the clear language of the 730 Patent, it also disregards that "when a specification describes an invention that has certain undisclosed yet inherent properties, that specification serves as adequate written description to support a subsequent patent application that explicitly recites the invention's inherent properties." *Yeda Research and Dev. v. Abbott GmbH & Co. KG,* 837 F.3d 1341, 1345 (Fed. Cir. 2016). There can be no dispute that the 730 Patent discloses an integrated device that integrates or includes a biometric key. This integration provides the inherent disclosure that the subsequent patents build upon further to provide a device that is "unobtrusive to carry." 954 Patent, 4:10-14; 905 Patent, 4:12-16.

Fifth, the caselaw cited by Google does not change the above result. The Federal Circuit's finding as to a "magnetic fuzz" term in *IQASR* is inapposite. *See IQASR LLC*, 825 F. App'x at 908 (Fed. Cir. 2020). There, the Federal Circuit condemned the patent at-issue for failing to offer "any meaningful and functional explanation" for that term. *Id*. No such issue exists here. The 730, 954, and 905 Patents all apply the term consistently, as demonstrated above, and Dr. Rubin has further provided testimony in support of that understanding. *See* Rubin Decl. ¶ 32; *e.g.,* ECF 48-2 at 27:11-25 (wherein Dr. Rubin testified that figure 2B of the 1999 IEEE publication titled *A New Circuit Breaker Integrated Device for Protection Applications* contained a schematic cross-section of an integrated device). And Dr. Rubin's application of his understanding is well-supported by caselaw. *See NTP, Inc. v. Rsch. In Motion, Ltd*., 418 F.3d 1282, 1293 (Fed. Cir. 2005) (holding that where multiple patents "derive from the same parent application and share many common terms, we must interpret the claims consistently across all asserted patents."); *Gree, Inc. v. Supercell Oy*, No. 219CV00070JRGRSP, 2020 WL 2332144, at *28 (E.D. Tex. May 11, 2020) (applying *NTP*'s guidance across two patents). Moreover, *IQASR* belies Google's reliance on extrinsic evidence as that Court provided that "[b]ecause indefiniteness applies 'general principles of claim

construction,' indefiniteness 'involves consideration of primarily the intrinsic evidence, viz., the claim language, the specification, and the prosecution history." *IQASR LLC,* 825 F. App'x at 904 (citing *Enzo Biochem, Inc., v Applera Corp.,* 559 F.3d 1325, 1332 (Fed. Cir. 2010)).

Google's reliance on *Ingevity* is similarly misplaced. The patent claims at issue in *Ingevity* concerned a term of degree—"***incremental*** adsorption capacity"—which the District of Delaware found would have required a POSITA to select between *multiple* available methods of measuring "absorption capacity," and for which the intrinsic record provided "no direction on which methods should apply." *Ingevity,* 2019 WL 2356978 at *4. By contrast, "integrated device" is not a term of degree and both the patent claims and the specification disclose what it is comprised of.

Finally, Google cannot both adopt the following construction of "persistently storing . . . a tamper proof format written to a storage element on ***the integrated device*** that is unable to be subsequently altered" while simultaneously asserting that "integrated device" is indefinite.[1] At a minimum, Google should have asserted an alternative construction for "integrated device" to provide some support for its adoption of the phrase above, but it failed to. Because Google is (assumedly) capable of discerning what constitutes an "integrated device" in its own adopted claim term, it has inherently conceded that the term is not indefinite.

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

In its reply, Google reveals that rather than the full phrase, it is solely concerned with how the terms "a plurality of" and "comprising" renders the full claim phrase indefinite. Reply at 7. As

[1] Google's reply, for the first time, argues that "judicial resources" were somehow implicated when it chose not to propose this term for construction (Reply at 6) but fails to distinguish how judicial resources are not likewise "waste[d]" in Google's unsupported reargument of several terms this Court has previously considered and construed in *Proxense vs. Samsung*.

well, Google asserts that the Court did not previously evaluate whether this term is indefinite. But, as Google is aware, part and parcel to the process of determining the meaning of a term is first determining ***if*** the term is definite, and ***then*** ascribing a meaning, if necessary. *See Proxense v. Samsung*, ECF 149 at 14; *e.g., ASM Am., Inc. v. Genus, Inc*., No. C-01-2190-EDL, 2002 WL 1892200, at *15 (N.D. Cal. Aug. 15, 2002), aff'd sub nom. *ASM Am., Inc. v. Genus, Inc*., 401 F.3d 1340 (Fed. Cir. 2005) (cleaned up) (holding that a Court "… must attempt to determine what a claim means before it can determine whether the claim is invalid for indefiniteness …"). That this Court did not specifically find the term to not be indefinite in the *Proxense v. Samsung* matter is irrelevant—that conclusion is readily inferable by the fact that the Court already construed the term.

Google then heaps confusion upon the term where none exists, drawing irrelevant parallels to *Teva* and how to ascertain "molecular weight." But a dispositive issue in *Teva* that Google wholly ignores renders *Teva* inapplicable. There, the specification revealed a mathematically irreconcilable difference between a value listed in the legend of a figure and the actual peak of the curve in that same figure. *Teva Pharm. USA, Inc. v. Sandoz, Inc*., 574 U.S. 318, 335 (2015). Google cannot point to any similar inconsistency in the 730 or 954 Patents to support its indefiniteness argument.

Further, the claim phrase is rendered definite and is fully supported by a plain reading of both the claims and the specification. For example, the 730 Patent discloses that:

> In one embodiment, persistent storage **226** also stores the code that is provided by the key **100** responsive to successful verification of the user. As described above, in one embodiment the code is **a device ID or other value that uniquely identifies biometric key 100**. In one embodiment, the code is providing during the manufacturing process and the biometric data are provided during an enrollment of the user. In other embodiments, the code is provided during enrollment and/or the biometric data are provided during manufacturing. Further, in some embodiments persistent storage **226** stores other data utilized during the operation of biometric key **100**. For example, persistent storage **226** can store encryption/decryption keys utilized to establish secure communications links.

730 patent, 4:43-54 (emphasis added). A POSITA reading the above would understand that the claimed persistent storage area may store, among other things, "***other data*** utilized during the operation of [a] biometric key." Also evident from the excerpted specification is that this "other data" is used in the same manner as a "device ID … that uniquely identifies the biometric key." Notably, the specification discloses "a device ID or other value" for this purpose *before* offering further explanation. Google simply disregards that a POSITA would understand, according to the plain and ordinary meaning of the claim term, that within this stored area are (1) codes and values uniquely identifying an integrated device or biometric key;[2] and (2) a secret decryption value.

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 this 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

With ellipses, Google's proposed terms cut out the terms "agent," "trusted authority," and "third party trusted authority" from the claims, respectively. This is an attempt to limit these claims to devices or systems where the application being accessed is on the biometric key. While that is certainly one embodiment, in other embodiments discussed in the specification the biometric key must be informed that the agent/trusted authority/third party trusted authority allows access so that it can, for example, light the proper LED or display a pop-up window. In view of the plain language of the claims with respect to an "access message," and taking into account disclosed embodiments

[2] Claim 15 of the 730 Patent requires the device ID code to uniquely identify a biometric key. Claim 22 of the 954 Patent requires the device ID code to uniquely identify an integrated hardware device.

in the specification, the Court's prior construction is clearly proper because an "access message" enables access, announces access, or both.

Google's proposed construction is contrary to basic claim construction principles. Courts "normally do not interpret claim terms in a way that excludes embodiments disclosed in the specification." *Oatey Co. v. IPS Corp.*, 514 F. 3d 1271, 1276 (Fed. Cir. 2008). Likewise, it is a "well-established principle of claim construction that explicit limitations in one claim will not be read into another claim that does not include them." *Paymaster Techs., Inc. v. United States*, 180 F. App'x 942, 949 (Fed. Cir. 2006) (concurrence). Furthermore, "[a]s a general rule, the words 'a' or 'an' in a patent claim carry the meaning of 'one or more.'" *01 Communique Lab'y, Inc. v. LogMeIn, Inc.*, 687 F.3d 1292, 1297 (Fed. Cir. 2012)) (internal citation omitted).

Google's proposed constructions exclude the disclosed embodiments in which the biometric key receives an access message indicating that user authentication is complete or where multiple types of access messages are received and sent. The shared specification presents embodiments in which the received "access message" enables access, announces access, and both enables and announces access. For example, the method presented in Figure 4 discloses a message sent from the third party trusted authority to enable access to an application or resource that is received by Authentication Module 310. Upon receiving the message, Authentication Module 310 "can send a message to application 330, **or otherwise allow access** to the application responsive to successful authentication by trusted key authority 320." 730 Patent, 5:23-26 (emphasis added); *see also* 730 Patent, 6:28-31 ("Responsive to successful authentication of the key, access is allowed 470 to the application."). In other embodiments, an access message that is received (after access is allowed) causes an indication like an LED or a pop-up window. *See id.* at 6:28-31 ("Responsive to successful authentication of the key, access is allowed 470 to the application. In the slot machine example, a new pop-up window can be spawned to indicate successful age

verification."); 3:33-34 ("In one embodiment, LED 130 can also confirm that user verification and/or authentication has completed.").

Aside from excluding various embodiments, Google's rewrite of the claim would also artificially import limitations from one claim into another where the limitation does not exist. *See Paymaster*, 180 F. App'x at 949 (Fed. Cir. 2006) (concurrence). Claim 15 of the 730 Patent recites "***the authentication unit*** receiving an access message from the agent allowing the user to access the application"; claim 1 of the 954 Patent recites "receiving, ***at an application***, an access message from the trusted authority"; and claim 13 of the 905 Patent recites "***an authentication circuit***" "receives the 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." (emphases added). These different claims illustrate that, in one claim (claim 1 of the 954 patent) the application is on the device that performs the authentication and allows access (e.g. an app on a smartphone with a fingerprint reader). But Google's proposed construction would exclude from all claims an embodiment where the biometric key simply receives a notification access message while the application is elsewhere.

This Court previously recognized that the patent specification is clear that an access message can announce or allow access or both:

> The sole mention of 'access message' in the specification is when after the device is authenticated, the system sends an 'access message to the application to allow user access and/or provide additional information from the profile 740 (such as the user's age).' 730 Patent at 7:18–21. The access message therefore 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. Moreover, the term 'access message' appears in claims 1, 9, and 13 of the 905 Patent (part of this family of patents), where it 'indicat[es] that the third-party trusted authority successfully authenticated the ID code.' That language of 'indicates' suggests that it can serve to **notify the user of access, not just enable access**.

Proxense v. Samsung, ECF. No. 149 at 21-22 (emphasis added).

The *Horizon Pharma* case is easily distinguished. There, the claim term "target" was a one-

word construction and appellants did not cite to anything from the patent-at-suit supporting that it could deviate from its commonly understood meaning to also encompass "produce." *Horizon Pharma, Inc. v. Dr. Reddy's Labs. Inc*., 839 Fed. Appx. 500, 503 (Fed. Cir. 2021). The *Horizon Pharma* appellants were arguing that the specification's mere use of both "target" and "produce" somehow rendered those terms interchangeable and provided only conclusory expert testimony in support. *Id*. Proxense makes no such bare suggestion: it has provided multiple intrinsic record citations supporting its construction and this Court has already found the same based on those disclosures (*see supra*). Lastly, Google fails to recognize the irony in its reliance on *Helmsderfer* for the proposition that "[c]ourts cannot rewrite claim language" when ***that is precisely what Google is advocating here***. *Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527 F.3d 1379, 1383 (Fed. Cir. 2008).

4. (a) "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
Adopt the Court's previous construction in *Proxense v. Samsung:* Plain and ordinary meaning. No construction necessary.	Indefinite or invalid under 35 U.S.C. § 112, ¶ 4 alternatively: wherein the biometric data and the scan data of claim 1 consists of a single fingerprint

Google, aware that this Court already rejected[3] the same argument in the *Samsung* case, attempts to completely re-write the limitations of claim 5 in its reply. Google has no cogent argument why the Examiner's own addition of a *Markush* group of biometric data during prosecution should have rendered claim 5 indefinite. Knowing that their invalidity and indefinite arguments are dead-on-arrival, Google asks this Court to read "a fingerprint scan" as "a single

[3] *See* Resp. at 13 (reciting the Court's previous holding that 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).

fingerprint." Reply at 12. However, this term cannot be limited to a "single fingerprint" as there is no explicit disavowal within the specification or the prosecution file history of a scan encompassing more than one fingerprint and the plain language of the claims inherently includes one or more fingerprints.

Google's attempt to overcome the presumption that an Examiner's amendment would not render a claim indefinite with "new evidence" falls flat. Though Google does not provide a proper citation for its attorney argument, it appears that Google may be referring to the Detailed Action accompanying the Notice of Allowance.[4] ECF 40-7 at 36-47. Google alleges that the Examiner did not consider how the amendments to claim 1 would affect claim 7 but this a transparent attempt by Google to burden shift and is improper; "Patents are presumed valid by statute." *Gonza LLC v. Mission Competition Fitness Equip. LLC*, No. W-21-CV-00771-ADA, 2021 WL 5657193, at *4 (W.D. Tex. Dec. 1, 2021) (citing 35 U.S.C. § 282). It is irrelevant that there is not an explicit evaluation in the Examiner's Detailed Action accompanying the Notice of Allowance. Google provides no support to challenge the 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." *Tinnus Enterprises, LLC v. Telebrands Corp.*, 733 F. App'x 1011, 1020 (Fed. Cir. 2018).

Finally, Google jettisons its indefiniteness argument altogether for its alternative construction and petitions the Court to memorialize its prior commentary as to claim 5. However, the concept of a "single fingerprint" provides no additional clarity to the claim whatsoever; only

[4] It should be noted that Google's citation to the prosecution history (Reply at 12) is unclear as the page Google relies upon is the Electronic Patent Application Fee Transmittal page, which contains no discussion of the claims as drafted. ECF 40-7 at 20. Proxense reserves the right to modify, supplement, or withdraw its arguments as to this claim term based upon Google's erroneous citation should the Court allow Google to belatedly provide a new citation.

additional confusion and an improperly narrowed scope. A system that utilizes multiple fingerprints would still infringe a patent even with Google's faulty construction. Google provides no support from the intrinsic record for ignoring the general rule that "the words 'a' or 'an' in a patent claim carry the meaning of 'one or more.'" *See 01 Communique Lab'y, Inc. v. LogMeIn, Inc.*, 687 F.3d 1292, 1297 (Fed. Cir. 2012) (internal citation omitted). The Court's prior construction of a plain and ordinary meaning provides the proper scope of the claim.

B. Family B

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

Proxense's Construction	Google's Construction
Adopt the Court's previous 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

Google fails to offer any evidence that this Court's prior construction was incorrect. Instead, Google quibbles with *Samsung's* previous approach to claim construction and then proceeds to speak for the Court to change the outcome. Reply at 14. Curiously, and without basis, Google attempts to narrow the Court's construction by substituting "a collection of ***circuit*** components" for "***a component or*** collection of components."

Whether or not this Court's prior claim constructions are binding upon Google here is irrelevant. Google attempts to rely upon *Vasudevan* but missteps as *Vasudevan* addressed "a claim construction [that] was ***agreed*** to" in a different litigation with a different ***defendant***—it was not addressing where a ***Court*** had issued a construction where the term was ***disputed*** through *Markman*. *Vasudevan Software, Inc. v. MicroStrategy, Inc.*, 782 F.3d 671, 678 (Fed. Cir. 2015) (emphasis added). Looking to the complete language of this Court's prior Order, it is clear that the "physical structures" limitation Google wishes to impart through its "circuit components"

language was not contemplated by the patent's embodiments[5]: "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 (emphasis added). The Court's construction here was based on the intrinsic record of the affected patents, which has not changed regardless of Google's apparent displeasure with the Court's prior construction.

2. "personal digital key" (042:10; 289:14, 16)

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

As with the preceding term, Google seeks to disturb a previously construed term supported by nothing more than Google's say-so. Google asserts its "proposed construction is based on the patent's language that the parties ***agree*** is ***definitional***." Reply at 15. But Google then fails to cite a single instance where the 042 or 289 Patents recite that the "antenna and transceiver for communicating with a RDC" or "controller and memory for storing information particular to a user" are even circuit components. In fact, Google admits it "is not relying on any figure from the patent to narrow the claim language." *Id.* Thus Google is reading imagined limitations pulled from thin air into the claims.

Google also asserts that the Court's decision to include the phrase "for communicating with a RDC" is "redundant" and "injects unnecessary ambiguity." Reply at 15-16. Google erroneously contends that because a "similar description" was removed from the Court's RDC construction, it

[5] Fig. 3 of the 042 patent likewise supports this as that figure represents "a block diagram illustrating one embodiment of a sensor," and not discrete physical structures.

should be removed here. This is nothing but misdirection. The 042 Patent specification, for example, clearly discloses that a "personal digital key" (PDK) must have "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. The fact that a wireless link is recited in the claims or in the specification has no bearing on the requirements of the PDK. Nor does the Court's (and Proxense's) interpretation "inject[] antecedent basis issues" or have the "potential to render the entire claim indefinite" as Google baselessly contends.

III. CONCLUSION

For the foregoing reasons, Proxense respectfully requests that the Court reject Google's proposed constructions and claims of indefiniteness, adopt Proxense's constructions, and re-adopt the Court's prior constructions.

Dated: January 5, 2023

Respectfully submitted,

By: */s/ David L. Hecht*

David L. Hecht **(Co-Lead Counsel)**
dhecht@hechtpartners.com
Maxim Price (*pro hac vice*)
mprice@hechtpartners.com
Yi Wen Wu (*pro hac vice*)
wwu@hechtpartners.com
HECHT PARTNERS LLP
125 Park Avenue, 25th Floor
New York, New York 10017
Telephone: (212) 851-6821

Brian D. Melton (**Co-Lead Counsel**)
bmelton@susmangodfrey.com
Geoffrey L. Harrison
gharrison@susmangodfrey.com
Meng Xi
mxi@susmangodfrey.com
Bryce T. Barcelo
bbarcelo@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, Texas 77002-5096
Telephone: (713) 653-7807

Facsimile: (713) 654-6666

Lear Jiang
ljiang@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, California 90067-6029
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

Counsel for Plaintiff Proxense, LLC

CERTIFICATE OF SERVICE

I, David L. Hecht, hereby certify that on January 5, 2023, I served a true and correct copy of the foregoing **PLAINTIFF PROXENSE, LLC's SUR-REPLY CLAIM CONSTRUCTION BRIEF** to counsel of record via ECF.

/s/ David L. Hecht
David L. Hecht