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12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14 **SOUTHERN DIVISION**

15 JONATHAN E. JAFFE,

16 Plaintiff,

17 v.

18 ADOBE INC.,

19 Defendant(s).

Case No. 2:23-cv-06224-JWH(MAAX)

20 **PLAINTIFF'S INITIAL CLAIM**  
21 **CONSTRUCTION BRIEF**

## TABLE OF CONTENTS

|      |                                                                                                                                                              |    |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| I.   | INTRODUCTION .....                                                                                                                                           | 1  |
| II.  | BACKGROUND .....                                                                                                                                             | 1  |
| A.   | The Patent at Issue .....                                                                                                                                    | 1  |
| B.   | Procedural Background.....                                                                                                                                   | 2  |
| III. | LEGAL STANDARD.....                                                                                                                                          | 2  |
| IV.  | PERSON OF ORDINARY SKILL IN THE ART.....                                                                                                                     | 3  |
| V.   | ARGUMENT.....                                                                                                                                                | 3  |
| A.   | Defendant’s Indefiniteness Arguments Are Premature .....                                                                                                     | 3  |
| B.   | Disputed Terms.....                                                                                                                                          | 4  |
| 1.   | “a sensor, which is tightly coupled to said memory” (’828 Patent, cl. 1) .....                                                                               | 4  |
| 2.   | “monitoring the integrity of the tight coupling between said memory and said sensor” (’828 Patent, cl. 1) .....                                              | 7  |
| 3.   | “said data stream” (’828 Patent, cl. 1) .....                                                                                                                | 9  |
| 4.   | “appended to said data file” (’828 Patent, cl. 1) .....                                                                                                      | 9  |
| 5.   | “based on” (’828 Patent, cl. 1).....                                                                                                                         | 11 |
| 6.   | “said at least one additional parameter being generally representative of a condition under which said data stream was generated” (’828 Patent, cl. 4) ..... | 14 |
| 7.   | “CamID” (’828 Patent, cl. 5) .....                                                                                                                           | 16 |
| 8.   | “Seq” (’828 Patent, cl. 5).....                                                                                                                              | 17 |
| VI.  | CONCLUSION.....                                                                                                                                              | 17 |

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

|                                                                                                                                   |      |
|-----------------------------------------------------------------------------------------------------------------------------------|------|
| <i>Advanced Aerospace Techs., Inc. v. United States</i> ,<br>124 Fed. Cl. 282 (2015) .....                                        | 15   |
| <i>C.R. Bard, Inc. v. United States Surgical Corp.</i> ,<br>388 F.3d 858 (Fed. Cir. 2004).....                                    | 6, 8 |
| <i>CUPP Computing AS v. Trend Micro Inc.</i> ,<br>53 F.4th 1376 (Fed. Cir. 2022) .....                                            | 7    |
| <i>DuraSystems Barriers Inc. v. Van-Packer Co.</i> ,<br>No. 119-CV-01388-SLD-JEH, 2021 WL 4037826 (C.D. Ill. Sept. 3, 2021) ..... | 4    |
| <i>Generation II Orthotics Inc. v. Med. Tech. Inc.</i> ,<br>263 F.3d 1356 (Fed. Cir. 2001).....                                   | 14   |
| <i>Howmedica Osteonics Corp. v. Wright Med. Tech., Inc.</i> ,<br>540 F.3d 1337 (Fed. Cir. 2008).....                              | 6, 8 |
| <i>Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.</i> ,<br>381 F.3d 1111 (Fed. Cir. 2004).....                     | 6    |
| <i>Intergraph Hardware Techs. Co. v. Toshiba Corp.</i> ,<br>508 F. Supp. 2d 752 (N.D. Cal. 2007) .....                            | 4    |
| <i>K-2 Corp. v. Salomon S.A.</i> ,<br>191 F.3d 1356 (Fed. Cir. 1999).....                                                         | 2    |
| <i>Lifescan Scotland, Ltd. v. Shasta Techs., LLC</i> ,<br>No. 11-CV-04494-WHO, 2014 WL 11206411 (N.D. Cal. Nov. 10, 2014) .....   | 3, 4 |
| <i>Nautilus, Inc. v. Biosig Instruments, Inc.</i> ,<br>572 U.S. 898. (2014).....                                                  | 3    |
| <i>Phillips v. AWH Corp.</i> ,<br>415 F.3d 1303 (Fed. Cir. 2005).....                                                             | 2    |
| <i>Primos, Inc. v. Hunter’s Specialties, Inc.</i> ,<br>451 F.3d 841, 848 (Fed. Cir. 2006).....                                    | 6, 8 |
| <i>Rhine v. Casio, Inc.</i> ,<br>183 F.3d 1342 (Fed.Cir.1999).....                                                                | 14   |
| <i>Single Touch Interactive, Inc. v. Zoove Corp.</i> ,<br>No. 12-CV-831-YGR, 2013 WL 3802805 (N.D. Cal. July 17, 2013).....       | 4    |

|    |                                                                                  |    |
|----|----------------------------------------------------------------------------------|----|
| 1  | <i>Sonix Tech., Ltd. v. Publ'ns Int'l, Ltd.</i> ,                                |    |
| 2  | 844 F.3d 1370 (Fed. Cir. 2017).....                                              | 3  |
| 3  | <i>Sunstone Info. Def., Inc. v. F5, Inc.</i> ,                                   |    |
| 4  | No. 21-CV-09529-YGR, 2023 WL 2746762 (N.D. Cal. Mar. 30, 2023).....              | 4  |
| 5  | <i>Thorner v. Sony Comput. Ent. Am. LLC</i> ,                                    |    |
| 6  | 669 F.3d 1362 (Fed. Cir. 2012).....                                              | 2  |
| 7  | <i>TrafFix Devices, Inc. v. Lakeside Plastics, Inc.</i> ,                        |    |
| 8  | 2007 WL 9758421 (C.D. Cal. Mar. 22, 2007), <i>aff'd</i> , 276 F. App'x 972 (Fed. |    |
| 9  | Cir. 2008) .....                                                                 | 6  |
| 10 | <i>United States Surgical Corp. v. Ethicon, Inc.</i> ,                           |    |
| 11 | 103 F.3d 1554 (Fed. Cir. 1997).....                                              | 9  |
| 12 | <i>W.L. Gore &amp; Assocs., Inc. v. Garlock, Inc.</i> ,                          |    |
| 13 | 842 F.2d 1275, (Fed. Cir. 1988).....                                             | 15 |
| 14 | <i>Wonderland Nurserygoods Co. v. Baby Trend, Inc.</i> ,                         |    |
| 15 | No. 514CV01153JWHSPX, 2020 WL 13680678 (C.D. Cal. Dec. 30, 2020) .....           | 3  |
| 16 | <b>Statutes</b>                                                                  |    |
| 17 | 35 U.S.C. § 112(b) .....                                                         | 3  |
| 18 | <b>Other Authorities</b>                                                         |    |
| 19 | Fed. R. Civ. P. 12(b)(6).....                                                    | 2  |
| 20 |                                                                                  |    |
| 21 |                                                                                  |    |
| 22 |                                                                                  |    |
| 23 |                                                                                  |    |
| 24 |                                                                                  |    |
| 25 |                                                                                  |    |
| 26 |                                                                                  |    |
| 27 |                                                                                  |    |
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1 Plaintiff Jonathan E. Jaffe (“Jaffe”) respectfully submits the following Initial Claim  
2 Construction brief.

3 **I. INTRODUCTION**

4 The parties submit eight disputed claim terms for the Court’s consideration. Jaffe asks the  
5 Court to find that the terms be afforded their plain and ordinary meaning. Conversely, Defendant  
6 Adobe, Inc. (“Adobe”) contends that four terms in the ’828 Patent are indefinite, thereby rendering  
7 claims containing those terms invalid. Indefiniteness requires the Defendant to show, by clear and  
8 convincing evidence, that the claim, read in light of the specification and prosecution history, fails  
9 to inform, with reasonable certainty, those skilled in the art about the scope of the invention.  
10 Contrary to the arguments advanced by Defendant and its expert, the disputed claim terms are well  
11 supported by the intrinsic record and readily understood by a person of skill in the art. Therefore,  
12 this Court should decline to hold them indefinite. The remaining terms are readily understandable  
13 by the jury, and Defendant’s proposed constructions either improperly add limitations, muddle the  
14 meaning of the terms, or both. As a result, these terms should be given their plain and ordinary  
15 meaning.

16 **II. BACKGROUND**

17 **A. The Patent at Issue**

18 U.S. Patent No. 6,757,828 (Ex. A), co-invented by Plaintiff Jonathan E. Jaffe, generally  
19 relates to authentication of digital files by using aspects of the environment in which the digital  
20 file was created including, but not limited to, date, time, latitude, longitude, altitude, roll, pitch,  
21 yaw, and compass heading. ’828 Patent at 2:65-3:6. The ’828 Patent was prescient in recognizing  
22 that, in the digital age, “the ability to alter images” had been brought to the “neophyte level.” *Id.*  
23 at 1:27-29. Indeed, in just the last few years the concern of digital alteration has been brought to  
24 the forefront as generative artificial intelligence and “deep fake” videos have begun to take hold.  
25 The ’828 Patent employs a method of creating and later determining a digital file’s authenticity.  
26 The invention uses a digital signature that is created using the file “as well as at least one parameter  
27 that is representative of at least one condition under which the digital sample was acquired.” *Id.*  
28

at 1:54-57. As described above, the parameter could be any number of things such as the date and time the file was created, or the compass heading or altitude under which the digital file was made. *Id.* at 2:65-3:6. The file is then stored in memory, and/or removable storage media, together with the parameter and digital signature. *Id.* at 1:57-59. The method then determines authenticity of the file by creating a second signature from the stored file and at least one of the parameters and then comparing the signatures. *Id.* at 1:59-62. The patented method offers several improvements over the prior art. For example, authentication is not dependent on the identity of the device that created the digital file, such as a specific digital camera. Instead, the digital file itself contains the authentication information and the signature authenticates the file. *Id.* at 1:64-67. In addition, the invention dispenses with the need for encryption which has a number of cost savings and convenience benefits. *Id.* at 1:67-2:3.

## **B. Procedural Background**

On August 1, 2023, Plaintiff brought this patent infringement lawsuit against Adobe, alleging infringement of the '828 Patent. Dkt. No. 1. On October 19, 2023, Adobe moved to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6), alleging that Plaintiff failed to state a claim regarding the same terms of Claim 1 of the '828 Patent it now asserts are indefinite. Dkt. No. 42. This Court granted the motion while permitting Plaintiff leave to amend. Dkt. No. 36. Plaintiff amended its Complaint on December 15, 2023. Dkt. No. 39.

## **III. LEGAL STANDARD**

As the Federal Circuit's *en banc Phillips* decision explains, the words of a claim are generally given their ordinary and customary meaning. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*). "[T]he ordinary and accustomed meaning of a disputed claim term is presumed to be the correct one." *See K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1362-63 (Fed. Cir. 1999) (affirming summary judgment of non-infringement after applying ordinary meaning of claim term). There are only two exceptions to this general rule: "1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution." *Thorner v. Sony Comput. Ent. Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012).

1 A patent must include claims “particularly pointing out and distinctly claiming the subject  
 2 matter which the inventor . . . regards as the invention.” 35 U.S.C. § 112(b). A claim fails that  
 3 requirement, and is therefore invalid as indefinite, only when the claims, read in light of the  
 4 specification, and the prosecution history, fail to inform, with reasonable certainty, those skilled  
 5 in the art about the scope of the invention. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898,  
 6 901. (2014). Indefiniteness must be proven by clear and convincing evidence. *Sonix Tech., Ltd.*  
 7 *v. Publ’ns Int’l, Ltd.*, 844 F.3d 1370, 1337 (Fed. Cir. 2017). This Court has noted that proving  
 8 indefiniteness is a “heavy burden.” *Wonderland Nurserygoods Co. v. Baby Trend, Inc.*, No.  
 9 514CV01153JWHSPX, 2020 WL 13680678, at \*7 (C.D. Cal. Dec. 30, 2020).

#### 10 **IV. PERSON OF ORDINARY SKILL IN THE ART**

11 Adobe has submitted a Claim Construction Expert Report of Rajeev Surati, Ph.D. who has  
 12 opined that a person of ordinary skill in the art (“POSITA”) “would have had (i) an undergraduate  
 13 degree (or equivalent) in electrical engineering, computer science, or a comparable subject and at  
 14 least two years of professional work experience in the field of image processing, or (ii) an advanced  
 15 degree (or equivalent) in electrical engineering, computer science, or a comparable subject and at  
 16 least one year of post-graduate research or work experience in the field of image processing. Such  
 17 a person would also have been aware of, and generally knowledgeable about, the design and  
 18 implementation of systems providing image processing, including image authentication, and  
 19 would have been familiar with then-existing authentication fundamentals, including signature and  
 20 hashing principles and techniques.” Ex. B. at ¶ 59. For purposes of claim construction, Plaintiff  
 21 agrees to Adobe’s definition of the POSITA.

#### 22 **V. ARGUMENT**

##### 23 **A. Defendant’s Indefiniteness Arguments Are Premature**

24 Courts regularly refuse to find a claim indefinite at an early stage. *See, e.g., Lifescan*  
 25 *Scotland, Ltd. v. Shasta Techs., LLC*, No. 11-CV-04494-WHO, 2014 WL 11206411 at \*3 (N.D.  
 26 Cal. Nov. 10, 2014) (“[W]here extrinsic evidence of the perspective of someone skilled in the art  
 27 is relevant to the indefiniteness inquiry, it is appropriate to defer the indefiniteness determination  
 28

until after the close of discovery.”); *Intergraph Hardware Techs. Co. v. Toshiba Corp.*, 508 F. Supp. 2d 752, 773 n.3 (N.D. Cal. 2007) (“This indefiniteness argument is inappropriate at the claim construction stage.”). Further, courts have declined to “decide, in the context of this claim construction motion” whether a claim term was “so indefinite as to be invalid as a matter of law” and has instead reserved such questions for “later evidentiary showing of invalidity.” *Single Touch Interactive, Inc. v. Zoove Corp.*, No. 12-CV-831-YGR, 2013 WL 3802805, at \*5 (N.D. Cal. July 17, 2013).

One recent decision delved deeply into whether indefiniteness should be considered at the claim construction stage or the summary judgment stage and found that “[s]everal well-settled principles . . . tend to discourage rulings on indefiniteness at the *Markman* stage.” *DuraSystems Barriers Inc. v. Van-Packer Co.*, No. 119-CV-01388-SLD-JEH, 2021 WL 4037826, at \*6 (C.D. Ill. Sept. 3, 2021) (internal quotation marks omitted). In particular, “while indefiniteness is a question of law to which ‘[g]eneral principles of claim construction apply,’ indefiniteness is an ‘invalidity defense[ ] [that must] be proven by clear and convincing evidence.’” *Id.* (alterations original). It is particularly appropriate to refrain from considering indefiniteness during claim construction, where, as here, the defendant relies on expert testimony rather than the specification alone. *Sunstone Info. Def., Inc. v. F5, Inc.*, No. 21-CV-09529-YGR, 2023 WL 2746762, at \*3 (N.D. Cal. Mar. 30, 2023) (acknowledging that “delaying the indefiniteness determination is appropriate” when “expert testimony is relevant,” while distinguishing from *Lifescan* in the court’s indefiniteness determination based solely on the specification).

## **B. Disputed Terms**

### **1. “a sensor, which is tightly coupled to said memory” (’828 Patent, cl. 1)**

| PLAINTIFF’S PROPOSED CONSTRUCTION                             | DEFENDANT’S PROPOSED CONSTRUCTION                                                            |
|---------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| Plain and ordinary meaning / no express construction required | Indefinite<br><br>Alternatively, “a sensor that is connected to said memory within a device” |

1 Defendant and its expert argue that “a sensor, which is tightly coupled to said memory” is  
2 indefinite because the term “tightly coupled” is not expressly defined in the specification.  
3 Defendant does not contend that any of the terms “sensor,” “coupled,” or “memory” are indefinite.  
4 And Defendant further recognizes that “coupled” means a connection. Therefore, Defendant’s  
5 entire basis for finding this term indefinite is that a POSITA could not understand the scope of the  
6 claim with reasonable certainty because of the “tightly” modifier.

7 As Defendant recognized in its Motion to Dismiss (Dkt. No. 30-1), the tight coupling  
8 between the sensor and memory is “key to the claimed invention.” *Id.* at 8. As a result, the  
9 invention makes very clear that “tightly coupled” means the processor and memory are coupled  
10 such that “there is no possibility for altering the image before the authentication information is  
11 generated.” Ex. C at Jaffe-ADOBE000311. The specification reiterates this language from the  
12 file history by stating “[t]here can be nothing that can possibly alter the recording before the  
13 authentication information is generated.” Ex. A at 3:18-20. The file history further describes the  
14 tight coupling where the patentee stated “[b]ecause the processor is ‘tightly coupled’ to the  
15 memory, it will be virtually impossible for a user to supply false information to the memory by  
16 breaking the conductive trace or lead between the memory and the processor.” Ex. C at Jaffe-  
17 ADOBE000311. Therefore, a POSITA would readily understand that the sensor and memory are  
18 “tightly coupled” where they are coupled in such a way that the data stream cannot be altered  
19 before authentication information is generated.

20 Defendant’s expert agrees, stating “[a] person of ordinary skill in the art would understand  
21 this passage to mean that the processor and memory are ‘tightly coupled’ because they are  
22 connected by conductive traces or leads.” Ex. B at ¶ 77. However, Dr. Surati follows this up with  
23 the unsupported legal conclusion that “a person of ordinary skill in the art would not understand  
24 this to define the outer metes and bounds of the term.” *Id.* As argued above, given Defendant’s  
25 reliance on Dr. Surati for its determination that “tightly coupled” is indefinite, it is inappropriate  
26 to rule on the indefiniteness of this term at this time. Moreover, as demonstrated above, the  
27 specification and file history make clear, and would inform a POSITA with reasonable certainty  
28 as to, the scope of the claim.

Defendant’s alternative construction, “a sensor that is connected to said memory within a device,” cannot be correct given it dispenses with the “tightly” or “tight” coupling, needlessly substitutes “connection” for “coupling,” and imports a limitation that the sensor and memory must be connected “within a device.” It is a “first principle” of claim construction that “all words in a claim are presumed to add meaning to the claim.” *TrafFix Devices, Inc. v. Lakeside Plastics, Inc.*, 2007 WL 9758421, at \*1 (C.D. Cal. Mar. 22, 2007), *aff’d*, 276 F. App’x 972 (Fed. Cir. 2008) (citing *Primos, Inc. v. Hunter’s Specialties, Inc.*, 451 F.3d 841, 848 (Fed. Cir. 2006); *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1119 (Fed. Cir. 2004)). Defendant’s construction, which removes “tightly” from the claim, therefore cannot be correct. The claim requires more than simply a “connection” between the processor and the memory. There must be a tight coupling, which is a coupling that means “[t]here can be nothing that can possibly alter the recording [i.e. data stream] before the authentication information is generated.” Ex. A. at 3:18-20.

Defendant’s substitution of the word “coupled” for “connection” is also improper as it simply rephrases the claim language. *C.R. Bard, Inc. v. United States Surgical Corp.*, 388 F.3d 858, 863 (Fed. Cir. 2004) (“[M]erely rephrasing or paraphrasing the plain language of a claim by substituting synonyms does not represent genuine claim construction.”). The term “coupled” is easily understood by a POSITA and a jury, and Defendant cannot demonstrate any reason to substitute “connection” for “coupled.”

Finally, Defendant’s proposed construction is improper because it imports a limitation into the claim that the sensor and memory be connected “within a device.” *Howmedica Osteonics Corp. v. Wright Med. Tech., Inc.*, 540 F.3d 1337, 1345 (Fed. Cir. 2008) (declining to impute a limitation into a disputed claim term in the absence of a clear *requirement* in the specification, even where “every disclosure of [the disputed term] in the specification shows [the alleged limitation]”). Likewise, neither the claims nor the specification of the ’828 Patent *require* that the sensor and memory be tightly coupled, coupled, or connected “within a device.” Indeed, one of the embodiments of the ’828 Patent expressly contemplates that a sensor and processor in two different devices may be tightly coupled. As Figure 1 illustrates, a general purpose computer may

be used to simulate the processor of an external camera described by Figure 2A. The mouse and keyboard can simulate the user's settings. Ex. A at 4:41-43.

FIG. 1

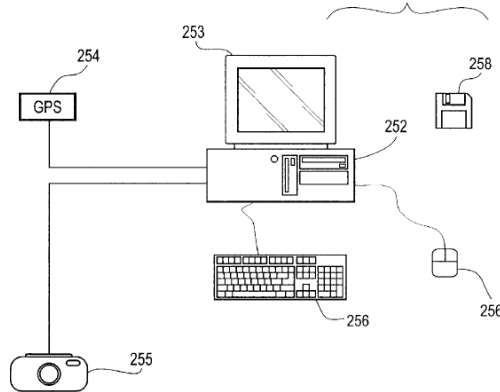
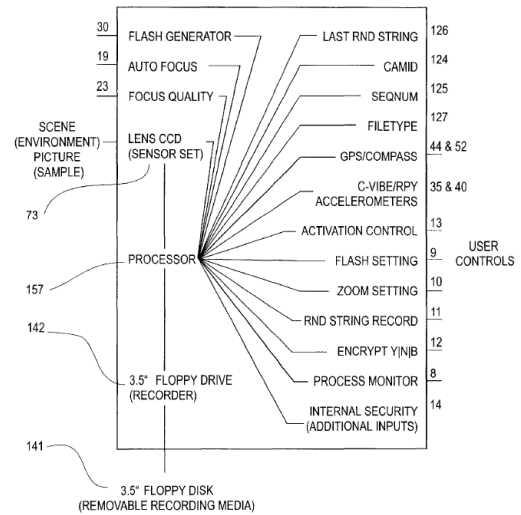


FIG. 2A



Therefore, the invention clearly contemplates a scenario in which a processor and memory could be tightly coupled but not within a device or not within a single device. As a result, Defendant's imported limitation, which would exclude this embodiment, cannot be correct. *CUPP Computing AS v. Trend Micro Inc.*, 53 F.4th 1376, 1381 (Fed. Cir. 2022) ("a claim interpretation that excludes a preferred embodiment from the scope of the claim is rarely, if ever, correct.").

**2. "monitoring the integrity of the tight coupling between said memory and said sensor" ('828 Patent, cl. 1)**

| PLAINTIFF'S PROPOSED CONSTRUCTION                             | DEFENDANT'S PROPOSED CONSTRUCTION                                                                                                            |
|---------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Plain and ordinary meaning / no express construction required | Indefinite<br><br>Alternatively, "determining whether physical access has been gained to the connection between said memory and said sensor" |

Defendant asserts that the term "monitoring the integrity of the tight coupling between said memory and said sensor" is indefinite for the same reasons as the term "a sensor, which is tightly coupled to said memory" because it uses the "tight coupling" phrase. Ex. B at ¶ 79. As Plaintiff

1 demonstrated above, the term “tightly coupled” or “tight coupling” does not render either term  
2 indefinite.

3 As to Defendant’s proposed alternative construction, it again imports limitations and  
4 substitutes words unnecessarily which would only serve to confuse the jury and are contrary to the  
5 plain meaning of the claims. Defendant’s proposed construction once again substitutes  
6 “determining” for “monitoring” and “connection” for “coupling.” *C.R. Bard, Inc.*, 388 F.3d at 863  
7 (“[M]erely rephrasing or paraphrasing the plain language of a claim by substituting synonyms does  
8 not represent genuine claim construction.”). Defendant’s proposed construction also again ignores  
9 and deletes “tight” from the claims. *Primos, Inc.*, 451 F.3d at 848. Defendant’s proposed  
10 construction similarly also improperly imports a limitation, which in this case is “physical access.”  
11 *Howmedica*, 540 F.3d at 1345. Defendant appears to find this limitation from the file history in  
12 which the applicant explained the “monitoring” step by referring to Figure 4A as an exemplary  
13 disclosure that “means that, for example, a signal is generated if the device that prevents physical  
14 access to the interconnections between the sensor set and memory is broken.” Ex. C at JAFFE-  
15 ADOBE000327. However, neither the claims of the ’828 Patent nor the specification suggest that  
16 “monitoring” the “tight coupling” is limited to situations in which “physical access” is gained.  
17 The file history itself states that the signal generated if there is a break between a physical  
18 connection between the sensor and memory is merely an example. *Id.* It is further unclear what  
19 “physical access” to the “connection between said memory and said sensor” means. Indeed, under  
20 Defendant’s proposed construction is digital alterations (which the patent clearly contemplates) of  
21 an image would not qualify as a “physical access” that had been gained between the sensor and  
22 memory coupling. This limitation would only serve to confuse the jury and Defendant’s proposed  
23 construction should therefore be rejected.

1                   **3.       “said data stream” (’828 Patent, cl. 1)**

2

| PLAINTIFF’S PROPOSED CONSTRUCTION                                    | DEFENDANT’S PROPOSED CONSTRUCTION                                |
|----------------------------------------------------------------------|------------------------------------------------------------------|
| 3 Plain and ordinary meaning / no express<br>4 construction required | “the data stream that was stored previously in the<br>data file” |

5

6           Defendant does not identify any reason necessary for its proposed construction, and its

7 importation of a timing element, *i.e.*, “stored previously,” will only serve to confuse the jury.

8 Defendant’s construction does not define the “data stream,” as Defendant recognizes that this term

9 alone requires no construction. Instead, Defendant’s construction expressly adds the elements of

10 “stored” and “in the data file”—phrases are already explicitly in Claim 1 (“storing a data stream

11 in a data file in a memory”)—rendering the construction redundant at best. *United States Surgical*

12 *Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997) (stating that claim construction is

13 “not an obligatory exercise in redundancy”). Defendant’s construction is also improper because it

14 introduces a temporal limitation of “previously” into the claim without providing a baseline as to

15 what was previously stored or when it was previously stored. Defendant has not provided a single

16 reason for construing this term in a manner alternative to its plain and ordinary meaning, and its

17 proffered construction will only serve to confuse the jury and should therefore be rejected.

18                   **4.       “appended to said data file” (’828 Patent, cl. 1)**

19

| PLAINTIFF’S PROPOSED CONSTRUCTION                                      | DEFENDANT’S PROPOSED CONSTRUCTION                         |
|------------------------------------------------------------------------|-----------------------------------------------------------|
| 20 Plain and ordinary meaning / no express<br>21 construction required | “contained in the same data file with the data<br>stream” |

22

23           Defendant’s proposed construction should be rejected because Defendant again alters

24 terms that are readily understandable while introducing limitations that will only serve to confuse

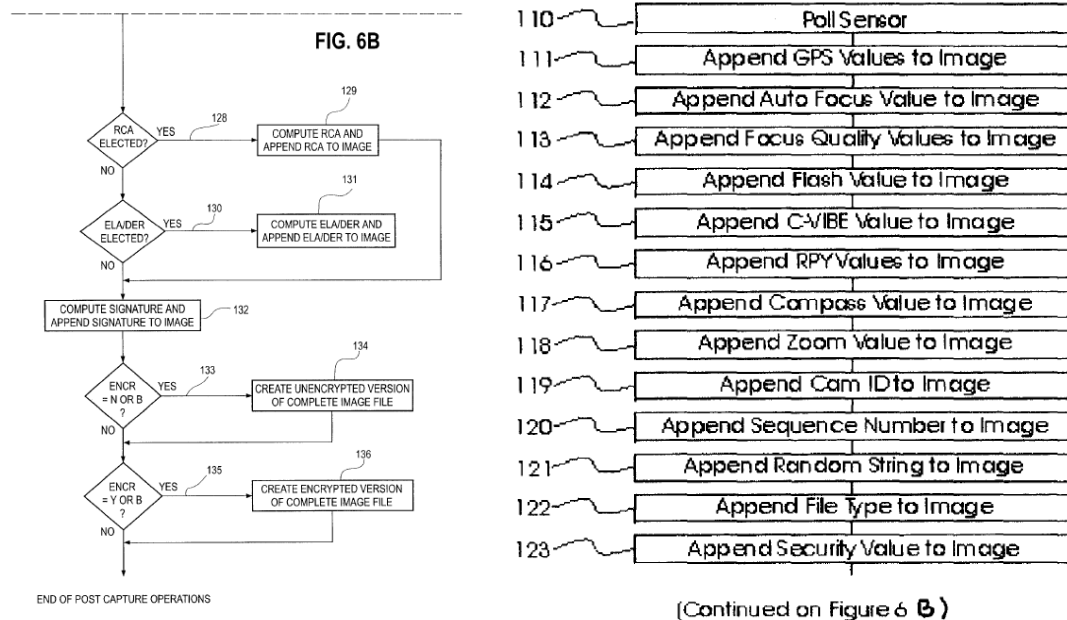
25 the jury. “Appended to” a data file is not the same thing as being “contained in” a data file. While

26 the claim itself is clear that the digital signature is appended to the data file and not contained

27 within the data file, the specification further explains, in describing Figure 6B, that “[t]he digital

28 signature 132 which is a function of the signature protocol (SP) being used and the block, is

1 computed *and made part of the file*.” Ex. A at 7:27-30 (emphasis added). Being “made part of  
 2 the file” would be synonymous with “appending” to the file as Figures 6 and 6B repeatedly  
 3 describe.



16 Defendant appears to be importing the “contained within the file” language from the  
 17 specification’s description of Figure 7A, which states “[a]dditional information is contained within  
 18 the file, but the addition of the information is in compliance with the standards for the format.”  
 19 Ex. A at 7:64-67. However, Figure 7A is an embodiment the expressly states it is describing “files  
 20 created by the Signa2 process.” *Id.* at 7:62-63. Nevertheless, the specification’s explanation of  
 21 Figure 7A does not describe any digital signature being contained within the data file and instead  
 22 describes information, such as the random string, which can be a part of the digital signature in  
 23 some embodiments, as being “made part of the file.” *Id.* at 8:55-56; 20:23-26. Again, this “made  
 24 part of” language is consistently used throughout the specification. For example, the specification  
 25 describes the parameters that the signature is in part based on such as “date, time, latitude,  
 26 longitude, altitude, roll, pitch, yaw, and compass heading can be made part of the image . . .” *Id.*  
 27 at 2:67-3:2. All of these different parameters of the signature “become[] part of the recording and  
 28 can also be authenticated.” *Id.* at 5-8. The signature being “made a part of” the data file does not

mean the signature is “contained within” the data file. The language from the claim “appended to the data file” clearly captures this idea. There is no need for further construction and Defendant’s proposed construction should be rejected.

**5. “based on” (’828 Patent, cl. 1)**

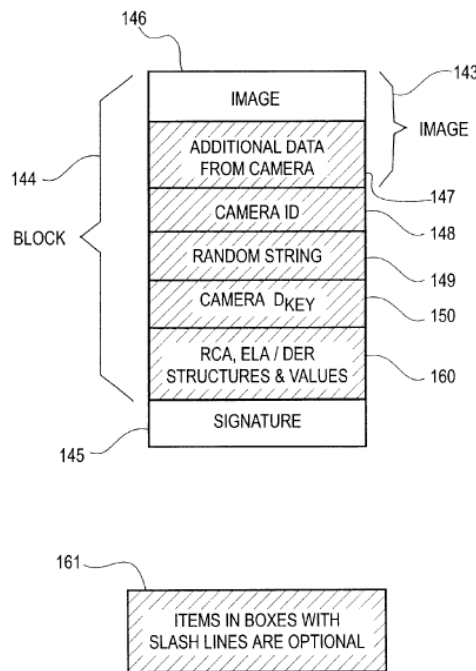
| PLAINTIFF’S PROPOSED CONSTRUCTION                             | DEFENDANT’S PROPOSED CONSTRUCTION |
|---------------------------------------------------------------|-----------------------------------|
| Plain and ordinary meaning / no express construction required | Indefinite                        |

Claim 1 contains two limitations that use the term “based on.” The first is the step of “utilizing a signature protocol to generate a first signature based on said data stream and said at least one parameter” and the other being “utilizing said signature protocol to generate a second signature based on said data stream.” Ex. A at 21:3-9 and Certificate of Correction. Defendant argues that the term “based on” is indefinite as used to generate the second signature because “the claim does not specify or otherwise limit what additional inputs can be used in generating the second signature,” therefore “a person of ordinary skill in the art would not understand the full scope of the claim with reasonable certainty.” Ex. B at ¶ 80.

Defendant’s argument, presented through its expert, is improper because the specification makes clear that the second signature is based on at least the same parameters used in generating the first signature and Dr. Surati admits in his report that he understands the second signature is based on these same parameters.

There is no dispute that the first signature is “based on said data stream and said at least one parameter.” Ex. A at 21:3-9. There is also no dispute as to the term “parameter.” The “at least one parameter” is described as “representative of at least one condition under which the digital sample was acquired.” *Id.* at 1:54-57. The specification then provides several examples of a parameter such as “date, time, latitude, longitude, altitude, roll, pitch, yaw, and compass heading, [as well as] camera identification, image sequence number, flash status, lens zoom factor, counter vibration status, focus status and focus quality.” *Id.* at 2:67-3:6. Figure 7A also describes parameters that the signature is based on:

FIG. 7A

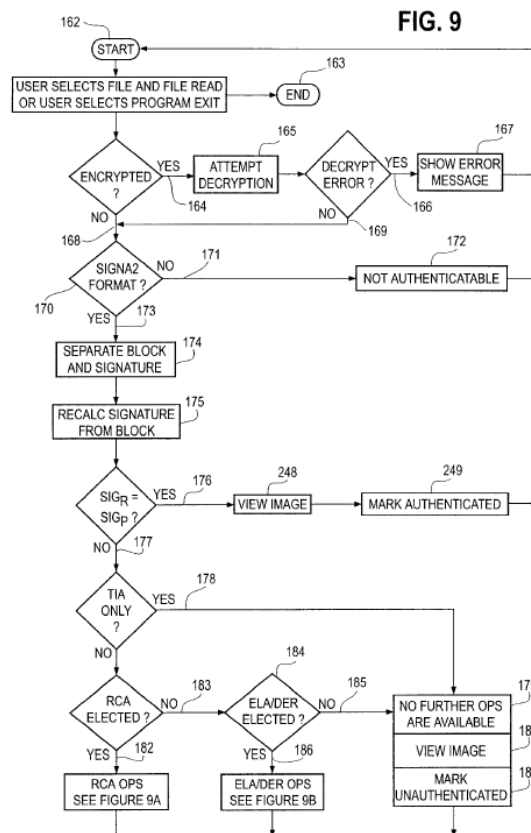


In describing Figure 7A, the specification teaches that “[a]dditional data from the camera 147 viewable by the user, include: Global Positioning System (GPS) information 111; zoom settings; AutoFocus status; the results of the focus quality sampling; roll, pitch and yaw (RPY) values; the compass heading; flash status; File Type; CamID; Seq 120; and Security Value.” *Id.* at 8:14-19. GPS information is further described as “includ[ing] latitude, longitude, altitude, date, time.” *Id.* at 8:20-22. Claim 5 also describes additional parameters such as “GPS coordinates, zoom settings, AutoFocus status, focus quality sampling, roll, pitch and yaw values, compass headings, flash status, CamID, Seq, and a Security Value.” *Id.* at 22:9-14.

With the parameters the first signature is based on established, the specification makes clear that the second signature is also based on these same parameters. The specification describes that the “sample is stored in memory together with the at least one parameter and the digital signature.” *Id.* at 1:57-59. This describes the first signature in Claim 1. The specification goes on to describe the second signature which is the authenticating signature: “Authenticity of the stored image is determined by creating a new signature from the stored image *and at least one*

parameter, and then comparing the two signatures to determine if they are the same.” *Id.* at 59-62. (emphasis added).

Figure 9 further describes the second signature, which is as explained in the specification “the block 144 is separated 174 from the signature 145 and the signature is recalculated 175 from the original block 144.” *Id.* at 9:43-45. The “Block 144” contains the parameters discussed in Figure 7A above such as “Additional Data From Camera,” “Camera ID,” etc. Therefore, as the specification makes clear, the first signature is based on “Block 144” which contains the parameters previously discussed. These parameters are then separated from the first signature, and the second signature is recalculated “from the original block” or in other words “based on” the original block. *Id.* at 9:45.



Defendant’s expert, Dr. Surati, confirms that he understand that the second signature is based on these parameters: “Thus the term ‘based on’ must mean that the second signature is

generated using at least the data stream, but potentially other data (e.g., the same parameter(s) used for the first signature).” Ex. B at ¶ 83.

The above demonstrates that the specification makes clear that the second signature is based on the data stream (and also the parameters that are part of the data stream). The specification describes repeatedly that the second signature is based not just on the data stream but on the parameters as well and Dr. Surati confirms this understanding. The fact that the claim language states “utilizing said signature protocol to generate a second signature based on said data stream,” while not explicitly repeating “and said at least one parameter” from the first signature, should not render the claim indefinite. It is a “familiar axiom that claims should be so construed, if possible, as to sustain their validity.” *Rhine v. Casio, Inc.*, 183 F.3d 1342, 1345 (Fed. Cir. 1999); *see also Generation II Orthotics Inc. v. Med. Tech. Inc.*, 263 F.3d 1356, 1365 (Fed. Cir. 2001) (“[C]laims can only be construed to preserve their validity where the proposed claim construction is ‘practicable,’ is based on sound claim construction principles, and does not revise or ignore the explicit language of the claims.”). Given the clear instructions in the specification, and Defendant’s own expert’s clear understanding of the meaning of the term, “based on” is not indefinite.

**6. “said at least one additional parameter being generally representative of a condition under which said data stream was generated” (’828 Patent, cl. 4)**

| PLAINTIFF’S PROPOSED CONSTRUCTION                             | DEFENDANT’S PROPOSED CONSTRUCTION |
|---------------------------------------------------------------|-----------------------------------|
| Plain and ordinary meaning / no express construction required | Indefinite                        |

Defendant argues this term is indefinite because Defendant’s expert argues that several examples of “parameters being generally representative of a condition under which said data stream was generated,” that are provided in Claim 5 of the ’828 Patent do not qualify as such “under any reasonable understanding of that phrase.” Ex. B. at ¶ 87. Defendant, through its expert, allege that CamID and Seq cannot be a “parameter being generally representative of a condition under which said data stream was generated.” *Id.* However, Defendant raises no issue with the

1 other parameters named in Claim 5 such as GPS coordinates, zoom settings, AutoFocus status,  
 2 focus quality sampling, roll, pitch and yaw values, compass headings, flash status, and a Security  
 3 Value. Ex. A. at 22:9-13. Therefore, out of ten parameters, Defendant's allege that two of the  
 4 named parameters cannot satisfy being a "parameter being generally representative of a condition  
 5 under which said data stream was generated" and ask the Court to invalidate the claim as indefinite  
 6 on that basis.

7 Whether CamID and Seq are parameters "being generally representative of a condition  
 8 under which said data stream is generated" is "an issue of infringement, not claim indefiniteness."  
 9 *Advanced Aerospace Techs., Inc. v. United States*, 124 Fed. Cl. 282, 306 (2015) (citing *W.L. Gore*  
 10 *& Assocs., Inc. v. Garlock, Inc.*, 842 F.2d 1275, (Fed. Cir. 1988) (holding that whether a 50-degree  
 11 or 60-degree angle falls outside of the scope of "generally vertical" or "generally perpendicular"  
 12 as an issue of infringement, not indefiniteness)).

13 Further, Dr. Surati does not demonstrate why CamID and Seq cannot be "representative of  
 14 a condition under which said data stream is generated" besides his conclusory opinion that neither  
 15 has anything "to do with any condition under which a data stream was generated." Ex. B at ¶ 87.  
 16 Dr. Surati then explains his opinion that CamID is a camera identification "usually set by the  
 17 manufacturer, such as a serial number" and Seq is an image sequence. *Id.* However, even  
 18 accepting Dr. Surati's premise that CamID and Seq are so limited, he does not explain why then  
 19 these parameters cannot be "representative of a condition under which said data stream is  
 20 generated." Certainly a POSITA could find that the identity of the camera used to generate the  
 21 data stream was "representative of a condition under which the data stream was generated."  
 22 Similarly, the sequence in which a photo falls in a sequence of photos could be representative of a  
 23 condition under which the image was generated such as the time of day. Dr. Surati then goes on  
 24 to argue that the CamID and Seq parameters are limited to the description of Figure 6 as "metadata  
 25 for a picture." *Id.* However, again, even accepting Dr. Surati's premise, there is no explanation  
 26 as to why metadata for such things as GPS values, roll, pitch, and yaw values, or zoom settings  
 27 could be "representative of a condition under which said data stream is generated" but CamID and  
 28 Seq could not. Ex. A at 6:47-57.

Moreover, the CamID and Seq are not limited, as Dr. Surati appears to imply, as only “metadata for a picture.” Ex. B at ¶ 87. For example, CamID and Seq are described in Figure 7A as “additional data from the camera 147 viewable by the user.” Ex. A at 8:14-19. The CamID can also be a segment within the File Structure described in the specification and “in a section of the file not viewable by the user.” *Id.* at 8:53-55. Dr. Surati provides no explanation for why these examples cannot be parameters that are “representative of a condition under which said data stream is generated.” Therefore, Dr. Surati’s non-infringement position should be rejected.

#### 7. “CamID” (’828 Patent, cl. 5)

| PLAINTIFF’S PROPOSED CONSTRUCTION                             | DEFENDANT’S PROPOSED CONSTRUCTION           |
|---------------------------------------------------------------|---------------------------------------------|
| Plain and ordinary meaning / no express construction required | “camera identifier set by the manufacturer” |

Defendant’s proposed construction improperly imports a limitation that the “CamID be a camera identifier set by the manufacturer.” There is no such limitation in the claims or the specification and Defendant’s own expert opines that the camera identification is “a value that is *usually set* by a camera manufacturer.” Ex. B at ¶ 87 (emphasis added). CamID is described in the specification as “camera identification” (Figure 2A), “camera identifier” (6:60), and “camera identification code” (8:36). While two of the examples state that the CamID is “set at the factory,” this is not the same as “set by the manufacturer” and the specification and claims do not expressly limit the CamID to being set by the factory. *Id.* at 6:60-61, 8:36-37. Defendant has not demonstrated why CamID would not be readily understandable by a jury and its construction should therefore be rejected.

1                                    **8. “Seq” (’828 Patent, cl. 5)**

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| PLAINTIFF’S PROPOSED CONSTRUCTION                             | DEFENDANT’S PROPOSED CONSTRUCTION |
|---------------------------------------------------------------|-----------------------------------|
| Plain and ordinary meaning / no express construction required | “image sequence number”           |

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6            Defendant’s construction of Seq should be rejected because it limits Seq to an image  
7 sequence, which its expert has opined is “a value indicating where a particular image falls in the  
8 sequence of photos the user has taken.” Ex. B at ¶ 87. However, the specification does not indicate  
9 that the Seq is so limited. One example of “Seq 120 is the sequence number for unique image  
10 identification, automatically incremented.” Ex. A at 8:41-44. The Seq could therefore be any  
11 sequence number used for unique image identification. Figure 2A further describes Seqnum as a  
12 “sequence number” rather than an “image sequence number” and Figure 6 describes “append  
13 Sequence Number to Image” when discussing the Seq. Therefore, the full scope of the Seq to  
14 which Plaintiff is entitled encompasses more than the situation described by Defendant. Again,  
15 the Seq is expressly described in the claims and requires no further construction to aid the jury.  
16 Therefore, Defendant’s construction should be rejected.

17 **VI. CONCLUSION**

18            For the foregoing reasons, the Court should find the disputed terms have their plain and  
19 ordinary meaning and require no express construction, reject Defendant’s constructions, and find  
20 that none of the disputed claim terms are indefinite.

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1 Dated: May 31, 2024

Respectfully submitted,

2 DICKINSON WRIGHT PLLC

3 /s/ Christopher E. Hanba

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15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on May 31, 2024, I caused the foregoing to be served on counsel of  
17 record for Plaintiffs and Counter-Defendants by electronic mail.

19 Dated: May 31, 2024

/s/ Christopher E. Hanba

20 Christopher E. Hanba