

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

VARIA HOLDINGS LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 1:23-cv-07477-RPK-RML

ORAL ARGUMENT REQUESTED

APPLE INC.'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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TABLE OF EXHIBITS

Exhibit	Document
1	U.S. Patent No. 8,127,984 ('984 patent)
2	U.S. Patent Nos. 8,381,974 ('974 patent)
3	U.S. Patent Nos. 9,405,947 ('947 patent)
4	'984 patent file history
5	'974 patent file history
6	'947 patent file history
7	Excerpts from July 16, 2024 deposition of Dr. Jacob Sharony
8	Excerpts from March 6, 2024 deposition of Dr. Jacob Sharony

TABLE OF ABBREVIATIONS

Abbreviation	Definition
'984 patent	U.S. Patent No. 8,127,984
'974 patent	U.S. Patent Nos. 8,381,974
'947 patent	U.S. Patent Nos. 9,405,947
Asserted Patents	'984 patent, '974 patent, and '947 patent, collectively
PTO	Patent and Trademark Office
POSITA	Person of Ordinary Skill In The Art

Apple proposes constructions grounded in the claim language, specification, and prosecution history, including arguments about claim scope used to obtain the patents. Now, years later, when Varia accuses technology fundamentally different from that disclosed in the patents, Varia proposes constructions at odds with that intrinsic evidence. Varia seeks to expand the scope of its claims and takes positions contrary to those taken before the PTO. Claim construction is not an opportunity for a patentee to take back the statements from prosecution to expand the scope of the claims. The Court should reject Varia’s attempts to escape from those statements.

I. BACKGROUND

The Asserted Patents share the same inventors and identical specification.¹ The patents are titled “emulated radio frequency identification,” and relate to mobile communications devices that can output both voice call signals and an RFID, which is a “key/identifier” transmitted using a “radio frequency signal” and voice signals. Ex. 1 at 3:34–39 (’984 patent).² The patents also claim priority to the same provisional application filed in June 2003. As of June 2003, mobile communications devices capable of voice calling and RFID transmission were well known, and others in the art had come up with the idea of incorporating RFID transmitters/transponders into cell phones. *See, e.g.*, Ex. 4 at 194–95 (6/22/2010 Rejection); *id.*, 296–97 (3/31/2011 Rejection).

Thus, the patent proposes using “the same elements employed to facilitate the primary function of the device,” such as voice calling, “to provide a RFID.” Ex. 1 at 3:42–49. The claims of the ’984 and ’974 patent thus require a multi-state “transceiver” or “transmitter,” and certain claims of the ’947 patent recite this concept as “communication circuitry.” In ***every disclosed embodiment*** in the specification, this is accomplished using a ***single transceiver*** capable of

¹ The application that issued as the ’974 patent is a continuation of the ’984 patent application. The application that issued as the ’947 patent is a continuation of the ’974 patent application.

² Citations are to the ’984 patent but, unless noted, all patents have the same disclosures.

outputting both voice call signals and RFID, using the same reception and transmission path within the transceiver for both RFID and voice signals. *Id.*, Figs. 3; 4; 6:52–7:28. Because these different signal types use the *same transmission path* within the transceiver, the patents teach using a switch, such as “switch 404” to “switch[] between the output of high frequency signal processing . . . and the output of low frequency signal processing.” *Id.*, 7:1–4.

Finally, the RFIDs may function like (1) a “passive transponder,” where a “default RFID will be outputted automatically, whenever device . . . is within the proximal presence, or more specifically, the operational space, of an intended RFID reader” (*id.*, 4:62–65); or (2) an “active transponder,” where the RFID is outputted “in response to a user instruction” (*id.*, 4:54–65).

II. LEGAL STANDARDS

A claim term’s “ordinary and customary meaning” is its meaning to a “person of ordinary skill in the art in question at the time of the invention” “after reading the entire patent.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–17, 1321 (Fed. Cir. 2005). Although it is a “bedrock principle” of patent law that “the claims of a patent define the invention,” the specification “is always highly relevant to the claim construction analysis” and “is the single best guide to the meaning” of a term. *Id.* at 1312, 1315. “[A] Court should also consider the patent’s prosecution history,” as it “provides evidence of how the PTO and the inventor understood the patent,” and can reveal “whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.” *Id.* at 1317. The claims, specification, and file history are “intrinsic evidence” and are of paramount importance to a term’s meaning. *Id.* at 1314–17.

The Court also may consult “extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art,” including “expert and inventor testimony, dictionaries, and learned treatises.” *Id.* at 1314, 1317. Finally, under 35 U.S.C. § 112, ¶ 2, claims must “particularly point[] out and distinctly claim[] the subject matter which the applicant regards

as the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). Claims must define the invention’s scope with “reasonable certainty” and provide “clear notice” of what is claimed, “appris[ing] the public of what is still open to them.” *Id.* at 901, 909–10. Failure to do so renders claims indefinite and invalid, and the Court may not rewrite claims to preserve their validity. *Id.* at 902. Indefiniteness is a “question of law” considered as “a subset of claim construction.” *In re Packard*, 751 F.3d 1307, 1311 (Fed. Cir. 2014).

III. ARGUMENT

A. “Transceiver” (’984 Patent, Claims 1, 9, 13; ’974 Patent, Claims 1, 6, 8)

Varia’s Construction	Apple’s Construction
The components responsible for transmitting and receiving signals in a mobile communications device that are integrated into the electronics of the device	A single component within the mobile communication[s] device that includes common circuitry for transmitting and receiving both RFID and voice signals to/from an antenna

A POSITA would have understood the claimed “transceiver” is a **single** component within the mobile communication device that includes **common circuitry** for transmitting RFID and voice signals to and from an antenna based on the claims, the specification and the prosecution history. To obtain its patents, the applicant repeatedly and consistently touted the single, two-state (voice and RFID) transceiver as the supposed point of distinction over existing mobile communications devices with RFID capabilities. As discussed below, without this argument, the claims would not have been allowed. Because the requirement of a single, two-state transceiver is fatal to Varia’s infringement case, Varia seeks to jettison it through claim construction.³ *Int’l Rectifier Corp. v. IXYS Corp.*, 361 F.3d 1363, 1369 (Fed. Cir. 2004) (infringement and construction should be addressed separately, despite party “conflat[ing]” these arguments).

³ As discussed in Apple’s Motion to Dismiss (which would moot construction of this element), as well as the “transmitter,” “communication circuitry,” and “switchable mobile communication[s] device” elements, Varia’s infringement theory is implausible, and should be dismissed.

Apple’s construction aligns precisely with the intrinsic record, using the claim language, the applicant’s prosecution terminology, and language directly from the specification to clarify the term’s meaning. The claims recite the phrases “RFID signals” and “voice call signals,” and require a transceiver “configured” to output both RFID and voice signals. Ex. 1 at Claims 2, 13. The applicant used the phrases “single component,” “for transmitting and receiving [RFID and voice data],” and “common circuitry” to overcome prior art during prosecution. *See, e.g.*, Ex. 4 at 226–227 (8/31/2010 Response). The phrase “to/from an antenna” is from Figure 4 of the patents and clarifies how the single transceiver is configured within the mobile communication device.

The construction Varia now seeks in support of its arguments in this litigation is precisely the opposite of what the applicant argued during prosecution to obtain these claims. Indeed, Varia’s construction mirrors the interpretation that the PTO applied to reject the pending claims. *See, e.g., id.* at 156 (12/10/09 Response); 182 (3/24/10 Response); 226–27 (8/31/10 Response); 272–73 (12/21/10 Appeal Br.); 333–34 (7/14/11 Appeal Br.). But the applicant rebuked the PTO’s interpretation and specifically argued that the claims require a single component capable of transmitting and receiving in two states (RFID and voice); the patents were thus allowed. Varia’s attempt to take back these prosecution statements is motivated by its desire to accuse multiple discrete transceivers (and processing components) as the singular transceiver of the claims, and is not supported by the specification, nor recited by the claims. *See* Apple Mot. to Dismiss, Dkt. 34, at 4–5; Reply in Support of Mot. to Dismiss, Dkt. 39, at 1, 3–4.

Claims. The claim language supports Apple’s construction requiring a single transceiver capable of both voice and RFID communications. Although the claims initially refer to “a” transceiver (or “a” transmitter), the claims go on to specify that “the” transceiver (or transmitter) must be capable transmitting both RFID and voice calls. *See, e.g.*, Ex. 1 at Claim 1 (“switching a

transceiver . . . the transceiver configured to output voice call signals in the first state and to output RFID transponder signals in the second state); Ex. 2 at Claim 8 ('974 patent) (“a transceiver configured, to output, in a first state, RFID . . . the transceiver being also configured to output, in a second state, a voice call signal”). This transition from an indefinite article (“a”) to a definite article (“the”) requires the same transceiver to perform both functions (RFID and voice transmission). See *Salazar v. AT&T Mobility LLC*, 64 F.4th 1311, 1317 (Fed. Cir.) (“[T]he claim . . . requires a singular element—‘a microprocessor’—to be capable of performing all of the recited functionality”); *Convolve, Inc. v. Compaq Comput. Corp.*, 812 F.3d 1313, 1321 (Fed. Cir. 2016) (“[R]eference to ‘the processor,’ referring back to the ‘a processor’” requires “the same processor to perform all of the recited steps”). The Federal Circuit said it best in *Varma*: “[f]or a dog owner to have ‘a dog that rolls over and fetches sticks,’ it does not suffice that he have two dogs, each able to perform just one of the tasks.” *In re Varma*, 816 F.3d 1352, 1363 (Fed. Cir. 2016).

Apple’s construction is also consistent with the claim language requiring the transceiver to include two “signal processing units,” one each for voice data and RFID. *E.g.*, Ex. 1 at Claim 2; Ex. 2 at Claim 2. Figure 4 depicts two signal processing units as subcomponents within the transceiver, where both units share a “joint transmit/receive” section (including various shared subcomponents) of the single transceiver. *Infra* 9. *Varia*’s argument that these “signal processing units” should be construed as separate components contradicts the applicant’s statements during prosecution: “Applicants clearly disclose . . . a single transceiver 308 that *includes* high frequency signal processing 410 (voice calls), low frequency processing 408 (RFID) and a switch 404 that switches between them . . . describing a single transceiver that can be switched from a first state . . . to a second state.” Ex. 4 at 273–74 (12/21/10 Appeal Br.) (emphases in original).

Specification. Apple’s proposed construction is also supported by the specification, which

describes the invention as “advantageously leverag[ing] on existing elements of mobile communication device 102, and supplementi[ng] them, to enable [the device to] provide a RFID.” Ex. 1 at 3:51–54. In line with this objective, **every embodiment** discloses a transceiver with common RFID and voice transmit/receive circuitry. No embodiment describes separate transceivers for RFID and voice data, which would subvert the stated goal of the invention.

Figure 1 depicts an “intersection” between the “mobile communication HW/SW elements” and the “RFID emulation HW/SW elements” of the mobile device. *Id.*, Fig. 1; 3:42–43. This intersection shows how “substantial portions of the hardware and/or software elements employed to provide a RFID, are the same elements employed to facilitate the primary functions” of the mobile device (voice communications). *Id.*, 3:43–49. In the applicant’s words, this intersection shows the “two functions in one component sharing common circuitry” for transmitting/receiving RFID and voice signals within the transceiver. Ex. 4 at 228 (8/31/10 Response).

Figure 3 “illustrates the relevant elements of [the mobile device],” including “processor 302, memory 304, persistent store 306, transceiver 308.” Tellingly, the figure depicts the transceiver as a single box, connected to the other elements (*e.g.*, the processor and memory).

Figure 4 offers an in-depth view of “the transceiver 308 of Fig. 3,” which “includes a joint radio frequency (RF) transmit/receive (TX/RX) section 402.” Ex. 1 at 6:52–55. This joint transmit/receive section 402 contains filters, amplifiers, and a switch, the switch sending and receiving signals “to/from [an] antenna.” *Id.*, Fig. 4. Still within transceiver 308, there is a “high frequency signal processing section” (410) and a “low frequency signal processing section” (408). A POSITA would have understood the transmission, reception, and signal processing of both RFID and voice data to take place entirely within the transceiver 308, using the common receive and transmit paths to and from the antenna. Buehrer Decl. ¶ 94. Figure 4 also makes clear that although

the single component transceiver may have subcomponents, the subcomponents must share circuitry for transmitting and receiving both RFID and voice signals.

Varia’s argument that the specification “need not describe every embodiment” fails. Br. 5. That the specification does not disclose any embodiment of Varia’s construction weighs against it. *Vederi, LLC v. Google LLC*, 813 F. App’x 499, 504 (Fed. Cir. 2020) (holding that a construction was “not reasonable” where the specification “does not disclose a single embodiment” of it); *Novartis Pharms. Corp. v. Eon Labs Mfg., Inc.*, 363 F.3d 1306, 1310 (Fed. Cir. 2004) (similar).

Prosecution History. Throughout the ’984 prosecution, including multiple rejections, amendments, and two *ex parte* PTAB appeals, the applicant distinguished its claimed transceiver over the prior art by describing it as a ***single component*** to send and receive both voice and RFID communications.⁴ *E.g.*, Ex. 4 at 156 (12/10/09 Response); 182 (3/24/10 Response); 226–27 (8/31/10 Response); 272–73 (12/21/10 Appeal Br.); 333–34 (7/14/11 Appeal Br.). Varia contends the examiner’s arguments in response—which, crucially, were overcome to obtain the claims’ allowance—govern the term’s meaning. That is not the law.

Instead, “Federal Circuit precedent supports applying prosecution disclaimer,” which precludes patentees from “recapturing through claim interpretation specific meanings” disavowed during prosecution, “even when an examiner rejects the patentee’s argument but nonetheless allows the claims.” *X One, Inc. v. Uber Techs., Inc.*, 440 F. Supp. 3d 1019, 1042–44 (N.D. Cal. 2020) (citing *Am. Piledriving Equip., Inc. v. Geoquip, Inc.*, 637 F.3d 1324, 1336 (Fed. Cir. 2011)); *Microlinc, LLC v. Intel Corp.*, 2013 WL 2471551, at *27 (E.D. Tex. June 7, 2013) (“patentee[’]s

⁴ Arguments made during the ’984 prosecution inform the construction of related terms in related patents. The ’974 patent is a continuation of the ’984 patent, so those arguments also apply to the ’974 patent. *Biovail Corp. Int’l v. Andrx Pharms., Inc.*, 239 F.3d 1297, 1301 (Fed. Cir. 2001).

representation is binding” even where “the USPTO expressly rejected [the patentee’s] characterization as not supported by either the specification or the claim language”). An applicant, “having sold the Patent Office on [a] distinction” of its invention over the prior art “surrender[s]” this distinction, even if initially rejected. *Tech. Properties Ltd. LLC v. Huawei Techs. Co.*, 2015 WL 12990208, at *5 (N.D. Cal. Sept. 22, 2015), *vacating the construction but affirming disclaimer*, 849 F.3d 1349 (Fed. Cir. 2017). The “examiner’s remarks do not negate the effect of the applicant’s disclaimer,” and even where “an examiner [is] not [] satisfied with the applicant’s insistence that particular claim language distinguishes a prior art reference” a court may “later hold the patentee to the distinction he pressed during prosecution.” *Springs Window Fashions LP v. Novo Indus., L.P.*, 323 F.3d 989, 995 (Fed. Cir. 2003) (holding that there was disclaimer where examiner initially rejected patentee’s attempts to overcome prior art). Here, the examiner’s initial rejections of the applicant’s transceiver arguments do not give Varia a basis to take them back.

Indeed, Varia’s own cited case contradicts its argument. Varia cites a non-precedential decision, *Galderma Lab’ys, L.P. v. Amneal Pharms. LLC*, which states that “[a] prosecution history statement may inform the proper construction of a term without rising to the level of . . . disclaimer.” 806 F. App’x 1007, 1011 (Fed. Cir. 2020); *see also Personalized Media Commc’ns, LLC v. Apple Inc.*, 952 F.3d 1336, 1340, 1345 (Fed. Cir. 2020) (a patentee can “define a claim term” through “repeated and consistent remarks during prosecution,” even if those remarks do not rise to prosecution disclaimer). Thus, even if not formally deemed prosecution disclaimer, Varia’s own authority supports that Varia’s statements during prosecution still control.⁵

⁵ Varia’s other cited cases are distinguishable. None support ascribing to a claim term a meaning that would have resulted in the PTO holding the claim invalid, as is the case with Varia’s construction. In non-precedential decision *Galderma Labs, L.P.*, the PTAB rejected the patentee’s claim constructions but nonetheless held the claims not invalid even under the construction it

During prosecution, the PTO relied primarily on two references to reject the proposed claims: U.S. 6,771,981 (“Zalewski”) and U.S. Patent App. Pub. No. 20002/0123325 (“Cooper”). The PTO observed that both Zalewski and Cooper had ***separate components*** that could transmit and receive signals—one that could receive an instruction to output RFID data (and output that data) and another capable of voice communications. Ex. 4 at 194–95 (6/22/10 Rejection); 296–97 (3/31/11 Rejection). Mirroring the argument Varia now makes in this litigation, the examiner reasoned that the claimed transceiver was obvious when interpreted as the “sum total of the communications circuitry” or the “components/circuitry” of the device, including the “RFID components and voice components . . . together.” *Id.* at 298; 194–95. In other words, applying the construction Varia now proposes, the examiner found the claims invalid.

The applicant successfully rebutted the examiner’s statements, arguing a POSITA would have understood a “transceiver” to be “a single component for transmitting and receiving,” distinguishing the prior art for “fail[ing] to teach or suggest a single transceiver that is configured to output a RFID signal and is also configured to output a voice call signal as claimed.” *Id.*, 226–27 (8/31/10 Response); 275 (12/21/10 Appeal Br.). The applicant argued the prior art failed to disclose the transceiver of its patents, and “t[ought] away” from the claimed invention because it used separate components—a “radio frequency component . . . for voice calls/messages and a separate transmitter/receiver or transponder” for RFID. *Id.*, 182 (5/24/10 Response). The applicant also argued that multiple components—such as “two separate transmitters housed inside

adopted. 806 F. App’x at 1010–12. The court held those statements did not preclude the patentee’s infringement theory. *Id.* In *Bausch & Lomb Inc. v. Vitamin Health, Inc.*, the examiner rejected the patentee’s construction but “issued the patent after adopting the plain and ordinary meaning of the term.” 2015 WL 13574354, at *7 (W.D.N.Y. Jan. 15, 2015). In *Vertical Tank, Inc. v. BakerCorp*, the alleged disclaiming statements by the patentee were not made about the claim phrase being construed. 2019 WL 2207668, at *11 (E.D. Cal. May 22, 2019).

the same device”—was “**not a reasonable interpretation** of the claim language.”⁶ *Id.*, 333–34 (7/14/11 Response). The applicant argued the prior art, “at no point teaches or suggests” use of the “**same hardware** to transmit both Bluetooth and RFID data.” *Id.*, 333.

In view of several narrowing amendments to align the proposed claims with the applicant’s arguments, the examiner was persuaded and allowed the claims. Among other things, the amendment made clear that **the** transceiver must be capable of functioning in **two states**: outputting RFID data in one state and voice call signals in the other. *See id.*, 357 (Examiner’s Amendment to claim 13) (“the mobile communication device having a transceiver configured, to output, **in a first state**, [RFID data] . . . the transceiver being also configured to output, **in a second state**, a voice call signal”) (examiner’s additions in bold); *see also* Lieber Decl. Ex. 4. In the reasons for allowance, the examiner reiterated the point of distinction as “the transmitter/transceiver configured to” output “voice calls in a first state and RFID transponder signals in a second state” wherein “the transceiver/transmitter switches states.” *Id.*, 351 (Examiner’s Amendment).⁷ Thus, a POSITA would have understood the allowance was predicated on an alleged invention involving a single transceiver, capable of operating in two states: RFID and voice. Buehrer Decl. ¶¶ 61–63.

Extrinsic Evidence. Varia cites several dictionary definitions for “transceiver” and the declaration of its expert, Jacob Sharony, in support of its construction. Although the relevant dictionaries actually support *Apple’s* construction and not Varia’s (Buehrer Decl. ¶¶ 99–100), to the extent this extrinsic evidence is perceived as inconsistent with Apple’s proposed construction, the evidence should not be considered. Extrinsic evidence may “not be used to vary, contradict, expand, or limit” how claims are defined by the intrinsic evidence, including the prosecution

⁶ Unless otherwise noted, all emphasis added.

⁷ The examiner rejected the notion that the claims to require “integration” with the mobile device. Ex. 4 at 199 (6/22/2010 Rejection); Ex. 7 at 129:9–130:18; Buehrer Decl. ¶¶ 80–88.

history. *Bell Atl. Network Servs. v. Covad Commc'ns Grp.*, 262 F.3d 1258, 1269 (Fed. Cir. 2001).

B. “Transmitter” (’984 Patent, Claims 21, 32; ’974 Patent, Claim 12)

Varia’s Construction	Apple’s Construction
The components responsible for transmitting signals in a mobile communications device that are integrated into the electronics of the device	A single component within the mobile communication[s] device that includes common circuitry for transmitting both RFID and voice signals to an antenna

Varia and Apple agree the construction for “transmitter” should be analogous to the construction adopted for “transceiver.” A POSITA would have understood the transmitter to be analogous to the transceiver, except it is not required to be capable of receiving signals (other than as separately specified in the claims). Buehrer Decl. ¶ 100; Ex. 7 at 96:14–97:7 (Sharony) (agreeing that the transmitter is the analog of the transceiver, but only transmits). In its attempts to distinguish the prior art and overcome the examiner’s rejections, the applicant linked the interpretation of the two terms: “[a POSITA] . . . would not have interpreted ‘a transceiver’ or ‘a transmitter’ in the manner asserted by the Examiner. . . . the claims clearly require ‘a transceiver’ (or ‘a transmitter’ in claims 21 and 22) that is a component of the phone, not an entire phone.” Ex. 4 at 245 (9/19/2010 Response). The examiner likewise interpreted the two terms as analogs, as made clear in the Notice of Allowance: “the transmitter/transceiver configured to output/transmit voice calls . . . and RFID transponder signals.” *Id.*, 361 (11/01/2011 Allowance). Thus, a POSITA would have understood the transmitter to be a single component within the mobile communication[s] device that includes common circuitry for transmitting both RFID and voice signals to an antenna for the same reasons discussed above. Buehrer Decl. ¶ 108.

C. “Communication Circuitry” (’947 Patent, Claims 16, 26)

Varia’s Construction	Apple’s Construction
The combination of circuits responsible for outputting voice call and RFID signals, and receiving RFID signals, that are integrated	A single component within the mobile communication[s] device that includes common circuitry for transmitting and

into the electronics of the device	receiving both RFID and voice signals to/from an antenna
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Based on the intrinsic record, a POSITA would have understood “communication circuitry” to have the same function and meaning as “transceiver.” Buehrer Decl. ¶ 109. Varia’s expert agreed that these terms share the same meaning. Ex. 8 at 180:5–16 (Sharony MTD Tr.).

Specification. The specification does not use the term “communication circuitry,” and its only support is the disclosure of the “transceiver 308” and the intersecting mobile and RFID “HW/SW elements” in Figure 1. Thus, the only elements that output voice and RFID signals—the communication circuitry’s purpose—are the transceiver 308 and the “intersection” in Figure 1, which, in the applicant’s words, represents “two functions in one component sharing common circuitry.” *Compare, e.g.,* Ex. 3, Figs. 3, 4 (’947 patent) *with* Ex. 1, Figs. 3, 4; Ex. 4 at 227 (8/31/10 Response). The specification’s disclosure for these elements is identical to the “transceiver.”

Prosecution History. The applicant’s statements about the “transceiver” in the ’984 patent file history apply to “communication circuitry.” The ’947 patent is a continuation of the ’974 patent, which in turn is a continuation of the ’984 patent. A POSITA would have recognized the communication circuitry performs the same function as the transceiver and transmitter: outputting voice call and RFID signals. Buehrer Decl. ¶¶ 112–113. “Transceiver” and “communication circuitry” are, therefore, related terms, describing the scope of the invention. *Microsoft Corp. v. Multi-Tech Sys., Inc.*, 357 F.3d 1340, 1350 (Fed. Cir. 2004) (“[A]ny statement of the patentee in the prosecution of a related application as to the scope of the invention would be relevant to claim construction”). Varia appears to concede the ’984 prosecution history is relevant to the construction of “communication circuitry,” citing it in support of its construction. Br. 11. But Varia fails to acknowledge that the construction it urges—when applied by the PTO—resulted in finding the then-pending claims obvious. Ex. 4 at 297 (3/31/2011 Rejection).

Extrinsic Evidence. Extrinsic evidence confirms that communication circuitry should be construed consistently with the term transceiver. Varia’s expert agreed that “communication circuitry” should have the same construction as “transceiver.” Ex. 8 at 180:5–16. Varia’s reliance on dictionary definitions related to circuitry generally (as opposed to communication circuitry specifically) are inapposite. In any event, Varia’s attempt to use extrinsic evidence to contradict the intrinsic evidence, particularly the prosecution history, is improper. *Bell*, 262 F.3d at 1269 (“[E]xtrinsic evidence . . . may not be used to vary, contradict, expand, or limit the claim language from how it is defined, even by implication, in the specification or file history.”).

D. “Switchable Mobile Communication[s] Device” (’984 Patent, Claims 1, 13, 21, 32; ’974 Patent, Claims 1, 8, 12)

Varia’s Construction	Apple’s Construction
To the extent the preamble is limiting: mobile communication[s] device capable of changing states.	Mobile communication[s] device configured to switch between an RFID state and a voice call signal state.

The claim language, common patent specification, and file histories all confirm this term must mean a mobile communication[s] device configured to switch between an RFID state and a voice call signal state. This term is in all independent claims of the ’984 and ’974 patents. Some claims further clarify the switching is done by the transceiver or transmitter, while others do not specify what switches. *Compare, e.g.*, Ex. 1 Claim 1 (“switching a transceiver of the mobile communications device from a first state to a second state . . . , the transceiver configured to output voice call signals in the first state and to output RFID transponder signals in the second state”), *with* Claim 13 (no further specificity on where switching occurs).

The common specification confirms a switchable mobile communications device is one configured to switch between an RFID state and a voice call signal state. As discussed, Figure 4 of the ’984 and ’974 patents—the only detailed depiction in the patents showing how switching

occurs—depicts sub-components of the transceiver sharing common transmit/receive circuitry. *See supra* 6–9. Figure 4 shows a single transmit path connected to each signal processing unit via switch 404, just as a railroad switch between two tracks would connect with one track *or* the other, and thus switch between them. *Id.*, Figure 4; 7:1–4. The specification is clear: the inventions of the patents must switch “*between*” voice call states (i.e., “high frequency signal processing”) and RFID states (i.e., “low frequency signal processing”). *Id.*, 7:1–4; *see also Mynette Techs., Inc. v. United States*, 139 Fed. Cl. 336, 351 (Fed. Cl. 2018) (“[T]he claims of the ’156 Patent recite that the ‘ON/OFF state’ is *either* in an ON or OFF state that can change between the two. This function is . . . described in the written description of the ’156 Patent, providing that the ‘RFID tag’ is ‘switched *between* the ON state and the OFF state[.]’” (cleaned up)).

Varia’s construction of “switchable mobile communication[s] device” is intended to broaden the claims to capture devices that may perform RFID and voice communication completely independently, with no actual switching required. *See* Buehrer Decl. ¶¶ 117, 120. The patents disclose no device capable of transmitting both RFID and voice signals at the same time and do not suggest such a hypothetical device would be “switchable.”

Varia’s construction also reads the word “switchable” out of every independent claim in the ’984 and ’974 patents. “All the limitations of a claim must be considered meaningful.” *Unique Concepts, Inc. v. Brown*, 939 F.2d 1558, 1562 (Fed. Cir. 1991). Although surplusage may exist in certain limited circumstances, constructions resulting in surplus language are disfavored. *See, e.g., Pickholtz v. Rainbow Techs., Inc.*, 284 F.3d 1365, 1373 (Fed. Cir. 2002) (holding that “computer” and “computer system” were interchangeable in patent at issue); *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 810 (Fed. Cir. 2021) (“It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous.”). Each independent claim separately recites a “mobile

communication[s] device **capable of RFID communication and voice call communication.**” See Ex. 1 at Claims 1, 13, 21, 32; Ex. 2 at Claims 1, 8, 12. Varia’s construction would render the term “switchable” surplusage: instead of requiring any actual switching, the construction requires only that the device is capable of outputting voice signals and outputting an RFID—which, according to Varia could occur independently or even simultaneously with no actual switching required. The Federal Circuit repeatedly has rejected constructions exactly like this. See, e.g., *Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 82 F. App’x 691, 694 (Fed. Cir. 2003) (finding error in district court’s construction that rendered certain terms surplusage); *Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp.*, 93 F.3d 1572, 1578 (Fed. Cir. 1996) (similar).

Although the issue of “switching” and “switchable” did not feature in the file history of the ’974 patent, the ’984 patent file history supports Apple’s construction and forecloses Varia’s. In distinguishing prior art from its application before the PTO, the applicant repeatedly argued that “switchable” and “switching” in its application referred to switching **between** two exclusive states. For example, in an August 31, 2010 amendment, the applicant argued that “a person of ordinary skill would clearly understand that a user of the electronic device in . . . [prior art] can continue to be on a voice call (using the voice component), while [external RFID reader] interrogates the RFID component separately disposed on the cover. There is simply no switching of state taught or suggested.” Ex. 4 at 227 (8/31/2010 Remarks); (emphasis in original); see also *id.*, 275–76 (12/21/2010 Appeal). Ultimately, the PTO accepted this argument, and ensured it was written into every independent claim of the ’984 patent: in the examiner’s amendment that resulted in the claims being allowed over the prior art, the PTO added “switchable mobile communication[s] device” to the claims. *Id.*, 355–60 (11/01/2011 Allowance). The file history thus confirms that not only is Apple’s construction the only plausible construction in light of the claim language and

specification, it is the *only* construction consistent with the applicant’s position during prosecution.

Varia relies on a statement from the ’947 patent’s prosecution, where the examiner found switching did not require that the device operate in only one state at a time (*i.e.*, the states did not need to be exclusive). *See* Ex. 6 at 251 (7/22/2014 Rejection). But this statement—made *after* the ’984 and ’974 patents had issued and contrary to the applicant’s statements (and the examiner’s actions) that led to allowance of the ’984 claims—cannot supersede them. *ResQNet.com, Inc. v. Lansa, Inc.*, 346 F.3d 1374, 1383 (Fed. Cir. 2003) (noting that “a parent patent’s prosecution history may inform the claim construction of its descendent,” but not implying that a later-in-time application can inform the construction of an earlier patent). Regardless, the ’947 patent does not include the “switchable mobile communication[s] device” language.

The Preamble is Limiting. Finally, the preamble to the independent claims is limiting. “[A] preamble limits the invention if it recites essential structure or steps, or if it is ‘necessary to give life, meaning, and vitality to the claim.’” *Vizio, Inc. v. Int’l Trade Comm’n*, 605 F.3d 1330, 1340 (Fed. Cir. 2010). A preamble is also limiting where it provides “antecedent basis” to later claim terms, or where the preamble is used “during prosecution to distinguish the claimed invention from . . . prior art.” *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002). The “switchable” preamble is limiting for all of these reasons.

First, the preambles here recite essential structure necessary to give meaning to claims. In *Vizio*, for example, a preamble was found limiting where it described the invention as an “[a]pparatus for decoding a datastream of MPEG compatible packetized information,” because absent this limitation infringement could result from a broad swath of devices that the specification and prosecution history clearly did not cover. 605 F.3d at 1340–41. So too here: absent the “switchable” preamble, the claims could be infringed by a device or method that was not a mobile

communications device at all—sweeping well-beyond the purported inventions of the ’984 and ’974 patents. *See, e.g.*, Ex. 1 at Claim 32 (containing no limitation absent the preamble limiting the claim to a mobile communications device).

Second, as Varia’s own expert conceded, the “switchable mobile communication[s] device” preamble provides necessary antecedent basis for at least Claim 1 of the ’984 patent, because it identifies the particular “communications device” referred to in line 4 of that claim. *See* Ex. 7 at 94:21–95:6 (Sharony Markman Tr.); Ex. 1 at Claim 1. *Third*, Varia’s expert agreed that where a preamble was added to overcome a patentability rejection, that preamble is limiting. Ex. 7 at 27:8–28:5 (Sharony Markman Tr.). That is exactly what happened here. *See supra* 7–8.

E. The “outputting” limitations (’984 Patent, Claims 9, 13, 21, 32; ’974 Patent, Claims 6, 8, 12; ’947 Patent, Claims 1, 9, 16, 26)

Plaintiff’s Construction	Defendant’s Construction
Plain and Ordinary Meaning	The [RFID transponder data / RFID signal] is outputted automatically whenever the mobile communication[s] device is within the [operational space / proximal presence] of the RFID reader

Apple’s construction reflects how a POSITA would have understood the “outputting” limitations: the “RFID transponder data” or “RFID signal” is outputted automatically whenever the mobile device is within the “operational space” or “proximal presence” of the RFID reader.

The common specification discloses two ways of outputting RFIDs from the mobile device—functioning either as an “active” or “passive” transponder. Ex. 1 at 4:29–5:4. The specification explains that “in preferred embodiments, mobile communication device 102 is equipped to provide RFID, emulating an active and/or a passive RFID transponder,” meaning that in those embodiments, the device may be equipped only to function like a passive transponder. *Id.* at 3:56–59. The claim terms at issue are directed to such passive (i.e., automatic) embodiments.

In the active transponder scenario, the user selects an RFID, and the RFID is outputted:

“after the user has selected the RFID to be outputted from a number of RFIDs stored in device 102, block 203, device 102 outputs the selected RFID as instructed, emulating an **active** RFID transponder, block 204.” *Id.*, 4:54–58. The patents describe this function in four instances—in each, the operation requires a user’s instruction to output an RFID, and includes no detection of the operational space or proximal presence of an RFID reader. *Id.*, Abstract, 4:54–58, 7:46–50, 8:51–57. Indeed, that detection would be unnecessary because the user would have determined proximity of the reader before actively choosing to output an RFID. Buehrer Decl. ¶ 125.

In the passive transponder scenario, however, the outputting is automatic. In Figure 2, the user first selects a “default RFID,” which “will be outputted **automatically, whenever** device 102 is within the proximal presence, or more specifically, the operational space, of an intended RFID reader 120.” *Id.*, 4:59–65 (emphases added). The device “monitors for probing signals of an intended RFID reader 120 . . . to determine whether device 102 is within the operational space of such a RFID reader 120, block 205. **On so determining**, device 102 outputs the designated RFID **automatically**, emulating a passive RFID transponder, block 206.” *Id.*, 4:66–5:4.

The claim terms are drawn to passive outputting: they will output an RFID automatically whenever the mobile device is within the “operational space” or “proximal presence” (depending on the claim) of the RFID reader, fundamentally requiring the following:

- A determination that the device is sufficiently close to an RFID reader (e.g., “proximal presence” or “operational space”—both terms are also indefinite (*infra* 20–25)); and
- Outputting an RFID because of that determination (e.g., “on detection . . . outputting,” “output . . . upon determining . . . proximal presence,” “output . . . in response to detection”)

Apple’s construction thus appropriately clarifies what a POSITA would have recognized: the claimed mobile communications device will output an RFID automatically whenever the device is

within the operational space or proximal presence of an RFID reader.⁸

Varia’s arguments attempting to expand the claims’ scope should be rejected. For instance, Varia argues “[t]he words of the ‘outputting’ limitations describe exactly what is meant—outputting RFID [transponder data / signal] in response to the claimed event.” Br. 15. Varia also contends (incorrectly) that the claims encompass a device actively functioning in response to user input. *Id.* For example, Varia argues “the specification discloses embodiments where user action is needed to output RFID data.” *Id.* (citing Ex. 1 at 4:54–58). But that **active** embodiment—unlike each term at issue—does not involve determining the device is sufficiently close to a reader.

Varia also argues Apple’s construction “improperly reads out embodiments that require user action before outputting RFID data.” Br. 15. But every claim need not cover every embodiment. *Aug. Tech. Corp. v. Camtek, Ltd.*, 655 F.3d 1278, 1285 (Fed. Cir. 2011) (construing terms to cover one embodiment and not another). Varia is also wrong. Apple’s construction does not foreclose selecting a default RFID. Rather, the specification makes clear that where the user selects a default RFID, the RFID is then outputted **automatically whenever** the mobile device is within the operational space / proximal presence of the RFID reader. Ex. 1 at 4:59–65.

Finally, Varia argues the applicant could have, but did not, include the word “automatically” in the claims. But in light of the clear determination/outputting language, the additional word “automatically” would have been superfluous. *Intel Corp.*, 21 F.4th at 810. It is only necessary to construe the terms as such here because Varia, under the guise of plain meaning, seeks to expand the claim language beyond what the patents disclose.

F. “Operational Space” (’947 Patent, Claims 1, 9, 16, 26)

Varia’s Construction	Apple’s Construction
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⁸ Varia alleges that outputting of RFIDs only after manual input meets these limitations.

Plain and ordinary meaning. In the alternative, to the extent construction is required: the area surrounding an RFID reader in which a conventional RFID transponder will respond to an RFID probing signal from the RFID reader	Indefinite.
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The term “operational space” has no objective boundary, and even under Varia’s proposed construction, could range from a centimeter or two to several miles. Because this term has no such boundaries, and could even depend on the weather, it is indefinite.⁹ It is not enough that one could assign a reasonable meaning to a claim term—the claims, when read as a whole, must set “objective boundaries” for a phrase. *Ave. Innovations, Inc. v. E. Mishan & Sons Inc.*, 310 F. Supp. 3d 457, 464 (S.D.N.Y. 2018), *aff’d*, 829 F. App’x 529, 462 (Fed. Cir. 2020). “While a person skilled in the art may read [the claims] and understand their plain meaning, this person would still lack adequate notice of the parameters of the patentee’s rights.” *Id.* at 464. *See also Geoscope Tech. Pte Ltd v. Apple Inc.*, 2023 WL 4629539, *11 –12 (E.D.V.A July 19, 2023) (holding term of degree “in proximity” indefinite because the evidence was “devoid of any objective boundary” by which a POSITA would understand the term). Thus, even if “operational space” could be understood as Varia suggests, the claim still lacks any objective boundary.

In *Ave. Innovations*, the district court held that “operative position most convenient to the

⁹ The Court should reject Varia’s suggestion to defer resolving the indefiniteness issues now before it. Br. 17–18. *Packard*, 751 F.3d at 1311; *ePlus, Inc. v. Lawson Software, Inc.*, 700 F.3d 509, 517 (Fed. Cir. 2012) (“[I]ndefiniteness is a question of law and in effect part of claim construction.”). Courts routinely resolve questions of indefiniteness at the claim construction stage. *See, e.g., Berkheimer v. HP Inc.*, 881 F.3d 1360, 1363–64 (Fed. Cir. 2018); *Dialect, LLC v. Amazon.com Inc.*, 2024 WL 1859806, *17 (E.D. Va. 2024) (rejecting patentee’s argument that the court should not rule on indefiniteness issues on claim construction); *Brazabra Corp. v. Ce Soir Lingerie Co.*, 2019 WL 13136348, at *4 (W.D. Tex. Aug. 15, 2019) (“[C]ourts generally address indefiniteness during claim construction.”). Nor is there any reason to wait for expert reports, as Varia suggests, because both parties’ experts have been heard on the issue. Here, findings for Apple on indefiniteness would narrow the asserted claims down from 25 to 2.

user” was indefinite because the evidence provided no insight into which position was most convenient for the user and therefore left a “zone of uncertainty” and a POSITA “would not be able to understand with reasonable [certainty] how to construct a noninfringing device.” 310 F. Supp. 3d at 464. Varia contends “operational space” means “the area surrounding an RFID reader in which a conventional RFID transponder will respond to an RFID probing signal from the RFID reader.”¹⁰ Br. 18. But Varia can identify no objective means of measuring the operational area of an RFID reader. This is fatal to Varia’s construction, because the range of RFID readers (and transponders) is extremely variable: from well-under a meter to well-over 1,000 feet, turning on factors including active versus passive transponders, the operational frequency, antenna design, reader power, and environmental conditions and physical structures. Buehrer Decl. ¶¶ 134–36.

Varia’s construction is also critically inconsistent with the applicant’s positions taken during prosecution of the ’947 patent. During prosecution, the applicant submitted an expert declaration that defined “operational space” as “the ‘area’ or ‘range’ surrounding an RFID reader in which a conventional **passive** RFID transponder can respond successfully to an RFID probing signal from the RFID reader.” Ex. 6 at 278–79, ¶ 3 (1/21/2015 Remarks, Stewart Decl.) (emphasis added). To help distinguish the prior art, Mr. Stewart eschewed the notion that the “operational space” embraced the area in which conventional **active** RFID transponders will respond to an RFID probing signal, explaining that, in the patent, active tags may be outside the “intended operating space of the RFID reader,” and may “therefore trigger unwanted RFID tag responses.” *Id.*

In this litigation, Varia contends this phrase refers to the range of all “conventional RFID transponders,” whether active or passive. See Ex. 7 at 147:10–148:15 (Sharony Markman Tr.).

¹⁰ Varia’s expert confirmed that its primary argument, that “operational space” should be given its plain and ordinary meaning, amounts to the same argument as its proposed construction. Ex. 7 at 138:25–140:12 (Sharony Markman Tr.).

This inconsistency among Varia’s own retained experts alone demonstrates the indefiniteness of this term. Indeed, Dr. Sharony admitted that RFID systems utilizing active transponders may operate over distances of multiple miles, Ex. 7 at 154:22–155:16, whereas some passive transceivers operate over only a range of a few centimeters. *Id.*, 147:15–148:15. This means that the definition of “operational space” has shifted from a “*few centimeters*” (the operational range of some passive transponders according to Dr. Sharony) during prosecution, to “*multiple miles*” here in litigation—which only further underscores the term’s indefiniteness.¹¹

G. “Proximal Presence” / “Proximal RFID Reader” (’984 Patent, Claims 9, 13, 21, 32; ’974 Patent, Claims 6, 8, 12; ’947 Patent, Claims 9, 16, 26)

Varia’s Construction	Apple’s Construction
Plain and ordinary meaning. In the alternative, to the extent construction is required: the device is within the area surrounding an RFID reader in which a conventional RFID transponder will detect an RFID probing signal from the reader	Indefinite.

These terms fail to “inform those skilled in the art about the scope of the invention with reasonable certainty,” and are thus indefinite. *Nautilus*, 572 U.S. at 910. Courts repeatedly have held that terms of degree, like proximity, proximal, and near, are indefinite where the record fails to provide “objective boundaries for [a POSITA].” *Interval Lic. LLC v. AOL, Inc.*, 766 F.3d 1364, 1370–71 (Fed Cir. 2014) (holding “unobtrusive manner” indefinite because it was “highly subjective and, on its face, provide[d] little guidance to [a POSITA].”) *RideApp Inc. v. Lyft, Inc.*, 845 F. App’x 959, 963 (Fed. Cir. 2021) (holding “proximity” indefinite, *infra* 24); *Geoscope*, 2023 WL 4629539, *11–12 (“The claims, specification, and prosecution history are devoid of any

¹¹ Even if Varia had stuck with its construction from prosecution, the term would still be indefinite. The operational ranges of even passive RFID transponders can vary dramatically from system-to-system, depending on factors such as antenna design, reader power, signal frequency, and the physical environment. See Buehrer Decl. ¶¶ 134–36.

objective boundary by which a POSA would understand the term, and Plaintiff has failed to identify any such boundaries—or any particularized guidance . . . that would enable a POSA to understand, with reasonable certainty, what ‘in proximity’ could mean.”). Here, nothing in the intrinsic record provides necessary context to inform a POSITA of the scope of the invention.

Neither the claims nor the specification offer any standard or context for discerning the bounds of the terms “proximal presence” and “proximal RFID reader.” Each relevant claim recites only a generic limitation that the method or device “monitor[] for proximal presence” of one or more RFID readers, or a “proximal RFID” reader. Ex. 1 at Claims 9, 13, 21, 32; Ex. 2 at Claims 6, 8, 12; Ex. 3 at Claims 9, 16, 26. Likewise, the phrase “proximal presence” appears twice in the specification, but gives no context or explanation of the term. Ex. 1 at Abstract, 4:59–65. The specification states that a “selected/designated default RFID will be outputted automatically, whenever device 102 is within the **proximal presence, or more specifically, the operational space**, of an intended RFID reader 120,” without explaining what those terms mean, or why operational space and proximal presence are different. *Id.* (emphasis added). *Geoscope*, 2023 WL 4629539, *11 (“[T]he term ‘in proximity’ appears only four times in the specification; in none . . . does the specification provide any specific guidance about what ‘in proximity’ might mean”).

The file histories also undermine Varia’s construction. As discussed, in the ’947 prosecution, Varia submitted an expert declaration that admitted RFID probing signals may be detected by active transponders at distances “more than 1000 times further away from the reader” than distances in which a passive RFID signal could detect them, and that conventional active RFID receivers could “often detect such reader signals **several miles away**.” Ex. 6 at 278–79, ¶ 3 (1/21/2015 Remarks, Stewart Decl.); *see also* Ex. 7 at 147:10–148:15, 154:22–155:16 (Sharony Markman Tr.) (stating that some RFID transponders can detect signals over several miles). But,

again, Varia’s construction references only a generic “conventional RFID transponder,” covering both active and passive transponders. *See* Ex. 7 at 147:10–148:15; Ex. 6 at 278–79, ¶ 3 (“[A]ll conventional RFID transponders—whether passive or active— . . . ”); Buehrer Decl. ¶¶ 137–38, 142–44. Thus, even under Varia’s construction, the file histories confirm the “proximal” terms are unbounded, varying in definition from transponder to transponder or even environmental conditions, and reaching as far as several miles away. Buehrer Decl. ¶¶ 137, 142–44.

In *RideApp*, the Federal Circuit affirmed the district court’s holding that “detecting the proximity” was indefinite, because “without any limit on how the invention calculates proximity, RideApp [had] in effect claimed everything that performs the task under the sun.” 845 F. App’x at 961–63. Similarly, here, the phrases “proximal presence” and “proximal RFID reader” are used with no limiting context, and the ’947 file history confirms that even under Varia’s construction what constitutes “proximate” varies depending on the type of transponder one selects as a comparator. *See also NuVasive, Inc. v. Alphatec Holdings, Inc.*, 557 F. Supp. 3d 1069, 1077–78 (S.D. Cal. 2021) (“[P]roximate to the medial plane” held indefinite).

Varia contends that because the examiner of the ’984 application did not focus on the term “proximal presence,” its meaning must be readily understood. Br. 21. But this argument is predicated on a misreading of the law and, if accepted, would essentially eliminate the law of indefiniteness for issued claims. In *Sonix Tech Co., Ltd. v. Publications Int’l, Ltd.*, although the Federal Circuit held that the examiner’s understanding of a term was relevant, the specification included specific, concrete examples of the alleged indefinite term (rendering the term definite on the face of the patent), and the file history showed that the examiner had specifically considered and understood the term. 844 F.3d 1370, 1379 (Fed. Cir. 2017). Here, in contrast to *Sonix*, Varia points only to the **absence** of consideration by the examiner of the term “proximal presence” for

support, providing no affirmative support for its position that the term is not indefinite.

H. “[Facilitate / facilitating] the user” / “[facilitate / facilitating] a user” (’984 Patent, Claims 6, 26; ’974 Patent, Claims 4, 15; ’947 Patent, Claims 5, 21)

Varia’s Construction	Apple’s Construction
Plain and ordinary meaning In the alternative, to the extent construction is required, the terms should be construed in the context of the claims in which they appear: enabling a user to select [RFID transponder data / RFID data] to output from the RFIDs stored in the device	Indefinite

These terms fail to “inform those skilled in the art about the scope of the invention with reasonable certainty,” and are indefinite. *Nautilus*, 572 U.S. at 910. Although the patent includes examples of what facilitating a user could entail, the terms lack any discernable limitation in scope.

For example, claim 6 of the ’984 patent recites “facilitating the user in selecting the first RFID transponder data from a plurality of RFID transponder data using the mobile communication device.” Ex. 1 at claim 6. Although this facilitating could include providing a display and means for selecting an RFID tag, as in certain embodiments (Ex. 1 at 8:63–66), it could also include other means of “facilitating.” Facilitating could include allowing the user to select an RFID by typing the RFID into a keypad, or could include an instruction manual on how to select an RFID. Ex. 7 at 164:4–166:15, 167:23–173:17 (Sharony Markman Tr.). Although Varia’s expert argued that a user manual would not meet the claim, he could not explain the bounds of “facilitating,” except by reference to vague ideas about a subjective scale of how convenient the facilitation was. *Id.*, 167:23–173:17. Varia’s construction, “enabling a user to select [RFID transponder data / RFID data] to output from the RFIDs stored in the device,” has the same problem of indefiniteness.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served on all counsel of record via email on July 30, 2024.

/s/ Brian Rosenthal

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