

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner,

v.

PROXENSE, LLC,

Patent Owner.

Case No. IPR2025-00562

U.S. Patent No. 9,049,188

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

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I. INTRODUCTION

Apple Inc. (“Petitioner” or “Apple”) submits this Reply in response to the Patent Owner’s Response (“POR”). In its POR, Proxense, LLC (“Proxense” or “Patent Owner”) attempts to distinguish the Challenged Claims of U.S. Patent No. 9,049,188 (“the ’188 patent”) from the prior art by narrowly construing the claims as “means-plus-function” elements under 35 U.S.C. §112 ¶6. POR, 6-48. The parties’ arguments and evidence turn on whether the claims invoke 35 U.S.C. §112 ¶6.

Proxense’s proposed “means-plus-function” constructions should be rejected. As demonstrated herein, the evidence of record—including Proxense’s own positions in litigation and other proceedings, the district court’s claim construction orders, the intrinsic evidence, and the only expert testimony of record—overwhelmingly indicates that the claim terms of the ’188 patent are not subject to interpretation under §112 ¶6. Indeed, the Board has repeatedly rejected the same or similar constructions proposed by Proxense in proceedings filed against related patents.¹ These proceedings include IPR2024-00405 (the “Microsoft ’960 IPR”); IPR2024-00784 (the “Google ’960 IPR”); IPR2024-00573 / IPR2024-01398 (together, the “Microsoft ’042 IPR”); IPR2024-00407 (the “Microsoft ’289 IPR”); IPR2024-00782 / IPR2024-

¹ U.S. Patent Nos. 8,646,042 (the “’042 patent”), 9,679,289 (the “’289 patent”), and 10,073,960 (the “’960 patent”).

01399 (together, the “Apple ’042 IPR”); and IPR2024-00783 / IPR2025-00075 (together, the “Apple ’289 IPR”). The POR here adds nothing new. Proxense admits that it is simply “repeat[ing] the arguments presented in those cases in this Response” so as to “not waive any arguments for appeal.” POR, 1. For at least the same reasons that the Board rejected Proxense’s proposed §112 ¶6 constructions in those other proceedings, the Board should reject Proxense’s proposed §112 ¶6 constructions in this proceeding.

Besides its attempt to improperly construe the claims narrowly under §112 ¶6 and add limitations, Proxense has no arguments to distinguish over the prior art. POR, 48-55. Proxense does not dispute the teachings of the prior art, Petitioner’s characterizations of the prior art, or the combinations asserted in the Petition against the Challenged Claims. Thus, if the Board rejects Proxense’s proposed “means-plus-function” constructions (as it should), Proxense’s attempts to distinguish over the prior art fail.

II. THE CLAIM TERMS OF THE ’188 PATENT SHOULD NOT BE CONSTRUED UNDER § 112 ¶6

Proxense asserts that the claims should be interpreted under §112 ¶6. In particular, Proxense argues that claims 1 and 10 recite the function of “enabling one or more of an application, a function and a service,” and that such function is attributable to “an ‘integrated PDK’ or an ‘integrated RDC’” in claim 1 and is

attributable to “an ‘enablement signal’ generated by a ‘hybrid device’” in claim 10. POR, 6, 14-15. Proxense argues that the claim terms “integrated RDC,” “integrated PDK,” and “enablement signal” are not “recognized by those skilled in the art as sufficiently *definite* structures for performing the function” (emphasis original), and thus should be narrowly construed to cover a particular algorithm in the ’188 patent specification, where such algorithm requires exchanging an “access key.” POR 14-40. Proxense’s argument fails for at least the following reasons.

A. The Board Has Already Rejected Proxense’s Proposed Means-Plus-Function Constructions in Other Proceedings, and Should Here Too

This is not the first proceeding in which the disputed claim terms of the ’188 patent have been construed. The very same claim terms at issue here have been considered by the Board in other proceedings challenging related patents, including the Microsoft ’960, ’042, and ’289 IPRs; the Google ’960 IPR; and the Apple ’042 and ’289 IPRs. In those other proceedings, the Board expressly rejected Proxense’s proposal that the claim terms should be construed as means-plus-function elements. *See e.g.*, Microsoft ’289 IPR (IPR2024-00407), Paper 25, at 16, 23; Microsoft ’042 IPR (IPR2024-00573), Paper 27, at 17, 29; Apple ’042 IPR (IPR2024-00782), Paper 32 at 17, 21. The Board decided that “[b]ased on the complete record before us,” these terms in the claims do “not invoke 35 U.S.C. § 112 ¶ 6.” *See e.g.*, Apple ’042 IPR (IPR2024-00782), Paper 32, at 17, 21; *see also* Microsoft ’042 IPR (IPR2024-

00573), Paper 27, at 18, 25; Microsoft '289 IPR (IPR2024-00407), Paper 25, at 16, 23.

The POR here adds nothing new for the Board's consideration. Indeed, Proxense admits that with respect to some of the other proceedings, it is simply "repeat[ing] the arguments presented in those cases in this Response" so as to not waive any arguments for appeal. POR, 1. As such, the Board's analysis and reasoning from those other proceedings is equally applicable here, and the same result should follow.

B. §112 ¶6 Is Presumed Not to Apply

The analysis for determining whether §112 ¶6 applies begins with determining whether a claim limitation uses 1) the term "means" or 2) a nonce term used as a substitute for "means" that is a generic placeholder. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348-50 (Fed. Cir. 2015); *see also* MPEP § 2181(I).

None of the elements of the Challenged Claims—including the terms "integrated PDK," "integrated RDC," and "enablement signal"—use the word "means" or its counterpart "step for." EX-1001, claims 1, 10. As the Federal Circuit stated, when a disputed claim limitation does not employ "means for" language, the presumption is that each of the terms conveys sufficiently definite structure or act and, thus, is not subject to § 112 ¶ 6. *See Dyfan, LLC v. Target Corp.*, 28 F.4th 1360, 1367 (Fed. Cir. 2022).

Proxense does not argue that “integrated PDK” and “integrated RDC” are a nonce words. POR, 6-35. While Proxense asserts that “enablement signal” is a nonce word, Proxense provides no evidence that “enablement signal” is a generic placeholder like “means” (*see Dyfan*, 28 F.4th at 1368–69), or that “enablement signal” sets forth a “black box recitation of structure” (*see Williamson*, 792 F.3d at 1350–51). Proxense largely relies on its analysis for the “RDC” and “PDK” terms of “device” claim 1. POR, 36-47. In particular, according to Proxense, claim 10 recites “generating an enablement signal,” “[g]enerating an enablement signal ... depends upon the operation and interaction of a PDK and RDC,” and each of the RDC and PDK are nothing more than “a general-purpose computer.” *Id.*, 40-41. That is not the proper analysis, because the term “enablement signal” appears in method claim 10, and as such, should be analyzed as “step-plus-function.” In step-plus-function analysis, the absence of the word “step” sets up a rebuttable presumption that § 112(f) is not invoked, but that presumption can be overcome if the claim element only recites a function without any associated acts for accomplishing that function. *See Generation II Orthotics Inc. v Medical Technology Inc.*, 263 F.3d 1356, 1368 (Fed. Cir. 2001). Proxense has failed to properly analyze “enablement signal” within this “step-plus-function” framework. POR, 36-47.

Thus, for all of the reasons discussed above, it is presumed that §112 ¶6 does not apply to any of the terms “integrated PDK,” “integrated RDC,” and “enablement signal.”

C. Proxense Fails to Overcome the Presumption Against Interpretation Under §112 ¶6

The presumption against applying §112 ¶6 can be overcome “if the challenger demonstrates that the claim term fails to ‘recite[] sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for performing that function.’” *Williamson*, 792 F.3d at 1348. The essential inquiry remains “whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” *Id.* The Federal Circuit has consistently determined that terms that connote structure do not trigger § 112 ¶ 6. *See Greenberg v. Ethicon Endo-Surgery, Inc.*, 91 F.3d 1580, 1583 (Fed. Cir. 1996). As demonstrated below, a POSITA would understand that the terms “integrated RDC,” “integrated PDK,” and “enablement signal” connote structure, and thus Proxense fails to overcome the presumption against construing under §112 ¶6. Indeed, the overwhelming evidence of record—including the only expert testimony—is to the contrary.

1. According to the Only Expert Testimony in Evidence, the Claim Terms Connote Structure

With this Reply, Apple provides a supplemental declaration from its expert Dr. Andrew Wolfe. Ex-1013. It is Dr. Wolfe’s opinion that a POSITA would understand that the terms “integrated RDC,” “integrated PDK,” and “enablement signal” connote sufficient structure to perform the function of “enabling one or more of an application, a function and a service.” EX-1013, ¶¶ 28, 35-41, 43, 50-56, 65, 67.

According to Dr. Wolfe, a POSITA would not have understood the term “integrated PDK” to be a nonce word. EX-1013, ¶ 35. To the contrary, a POSITA would have understood the term “PDK” alone is a definite structure, and that such structure encompasses at least “a collection of circuit components that includes an antenna, a transceiver, and a controller and memory for storing information particular to a user.” EX-1013, ¶ 35. Within the claim itself, the “PDK” is defined to “stor[e] information,” indicating that it includes a memory structure, and this is supported by the specification’s examples of a PDK. EX-1001 5:42-6:22 (“PDK 102 comprises a memory 210”), 3:44-62. In fact, Proxense itself recognized this by expressly construing “PDK” in litigation as including a “memory for storing information” without resorting to any §112 ¶6 invocation. *See e.g.*, EX-1011, 3-4; EX-1014, 4; EX-1015, 3-4. *Memory* is defined as the “capacity of a computer or integrated computer system for short and medium-term retention of digital data” and speaks to

a broad class of structures used to retain data for various purposes. EX-1034, ⁵²; *EnOcean GmbH v. Face Int'l Corp.*, 742 F.3d 955, 960 (Fed. Cir. 2014) (A term is “a corresponding structure, as long as the class of structures is identifiable by a person of ordinary skill in the art.”); EX-1013, ¶¶ 38-43. Not only would a POSITA understand that the claimed “PDK” includes any of multiple varieties of memory structures for storing information, but a POSITA would have recognized that such memory structures can participate in “enabling one or more of an application, a function, and a service” by storing, for example, access information, necessary to access or otherwise invoke that application, function, or service. EX-1013, ¶¶ 39-43; *Personalized Media Communications, LLC v. International Trade Commission*, 161 F.3d 696, 703-05 (Fed. Cir. 1998) (“Even though the term ‘detector’ does not specifically evoke a particular structure, it does convey to one knowledgeable in the art a variety of structures known as ‘detectors.’”).

Likewise, Dr. Wolfe opines that a POSITA would not have understood the term “integrated RDC” to be a nonce word. EX-1013, ¶ 50. Instead, a POSITA would have understood the term “RDC” alone is a definite structure, and that such structure encompasses at least “a collection of circuit components capable of wirelessly receiving data in an encrypted format and decoding the encrypted data for

² Unless otherwise stated, pagination references the PDF page.

processing.” EX-1013, ¶ 50. A POSITA would have understood that an “integrated RDC” speaks to a class of structures used to connect to wireless networks, particularly because it communicates wirelessly. EX-1013, ¶ 52. There is ample evidence that the claimed RDC is a type of wireless communication interface which has an “established meaning in the art.” *MTD Products Inc. v. Iancu*, 933 F.3d at 1343-44; EX-1013, ¶¶ 53-56. Dr. Wolfe explains that “wireless cards” were known at the time and consisted of hardware enabling a computer to communicate wirelessly. EX-1013, ¶ 53; EX-1037, 5. More broadly, “transceivers,” “receivers,” and “decoders” denote definite structure to a POSITA and were well known examples of wireless communication interfaces. *Id.*; EX-1013, ¶ 53; EX-1038, 7; EX-1035, 4, 7-8. Proxense itself recognized such structure as being implicated by the recited “RDC” in advancing a construction in litigation, without relying on any § 112 ¶6 invocation to support its construction. *See e.g.*, EX-1011. Further, the Federal Circuit has “determined that “‘circuit,’ by itself connotes some structure.” *See Dyfan LLC v. Target Corp.*, 28 F.4th 1360, 1366 (Fed. Cir. 2022) citing *Apex Inc. v. Raritan Computer, Inc.*, 325 F.3d 1364, 1373 (Fed. Cir. 2003).

Dr. Wolfe further opines that a POSITA would have understood the term “generating an enablement signal” is a definite act or structure. EX-1013, ¶ 65. The use of signals to enable functions was well known. EX-1036, 3, (“activate - To start an operation, usually by application of an appropriate enabling signal.” (emphasis

added)); EX-1013, ¶ 65. Moreover, defining an element in functional terms “is not sufficient to convert a claim element containing that term into a ‘means for performing a specified function’ within the meaning of section 112(6).” *Greenberg v. Ethicon Endo-Surgery, Inc.*, 91 F.3d 1580,1583 (Fed. Cir. 1996) (determining that “detent mechanism” is not overly vague or devoid of structure but is named for the action it performs). Similarly, “enablement signal” derives its name “from the function [it] perform[s]”—i.e., “an enablement signal enabling one or more of an application, a function and a service.” EX-1013, ¶ 64. Claim 10 recites the function of “enabling” with an associated act for accomplishing that function, i.e., the act of “generating an enablement signal.” EX-1001, 22:30-31. Further evidence establishing the well-known nature and structure of the term “enablement signal” includes:

1. “enabling signal” is defined as “*noun* a signal that starts a process or allows one to take place.” EX-1039, 3.
2. “enable” is defined as “[t]o initiate the operation of a device or circuit by applying a trigger signal or pulse.” EX-1040, 3.
3. “enable” is defined as “[t]o selectively activate a device or function. . . selective operation can be achieved by an enabling action—such as a signal . . .” EX-1041, 3.

EX-1013, ¶¶ 65-67.

The POR refers to a “Declaration of Markus Jakobsson” in support of Proxense’s arguments. *See e.g.*, POR, Exhibit List. However, no such declaration has been submitted into evidence by Proxense for this proceeding. Thus, any statements in the POR about how a POSITA would have understood the claim terms and specification of the ’188 patent are nothing more than unsupported attorney argument.³

In summary, the only expert testimony of record in this proceeding—i.e., that of Petitioner’s expert Dr. Wolfe—indicates that the claim terms of the ’188 patent connote structure. As the Federal Circuit advised in *Williamson*, declarations and/or testimony of expert witnesses can play a large role in this determination. *Williamson*, 792 F.3d at 1348. Thus, these terms should not be construed under §112 ¶6.

2. *Rain Computing* and MPEP §2181(II)(B) Cited by Proxense Are Inapposite

In an attempt to support its argument that the claim terms should be interpreted under §112 ¶6, Proxense cites to both *Rain Computing v. Samsung Electronics America*, 989 F.3d 1002 (Fed. Cir. 2021) and MPEP §2181(II)(B). POR, 14-16. In

³ It would be improper for Patent Owner to provide a declaration from Markus Jakobsson at a later time, because Petitioner would be then prejudiced since it has not had an opportunity to review the declaration and to depose Markus Jakobsson.

particular, Proxense provides the following quote from *Rain Computing*: “For means-plus-function claims in which the disclosed structure is a computer, or microprocessor, programmed to carry out an algorithm, we have held that ‘the disclosed structure is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm.’” POR, 15. And Proxense provides the following quote from MPEP § 2181(II)(B): “The corresponding structure is not simply a general purpose computer by itself but the special purpose computer as programmed to perform the disclosed algorithm.” POR, 15-16. Proxense’s arguments based on *Rain Computing* and the MPEP fail for the same reason.

The cited statement from the *Rain Computing* decision is inapposite because it applies only if it is already clear or has been determined that the claim terms are means-plus-function terms. That is, the Federal Circuit in *Rain Computing* addressed the question of whether a claim term triggers §112 ¶6 at all before proceeding to analyze the structures described in the specification to perform the claimed function. *See Rain Computing*, 989 F.3d at 1008. In fact, the claim term at issue in the *Rain Computing* decision included a “well-known nonce word” (i.e., “module”) “that can operate as a substitute for ‘means.’” *Rain Computing*, 989 F.3d at 1006. That is not the situation here with the ’188 patent because, as already discussed, none of the claim terms “integrated PDK,” “integrated RDC,” or “enablement signal” is in

means-plus-function (or step-plus-function) format, nor are they nonce words. As such, these claim terms do not trigger §112 ¶6 at all, and thus, the Board need not proceed to the next step of “means-plus-function” analysis, which is analyzing the structures described in the ’188 patent specification.

MPEP § 2181(II)(B) is likewise inapposite. It is part of MPEP § 2181, which “sets forth guidelines for the examination of 35 U.S.C. 112(f) or pre-AIA 35 U.S.C. 112, sixth paragraph, ‘means or step plus function’ limitations in a claim.” The part of MPEP § 2181 for “determining whether a claim limitation invokes 35 U.S.C. 112(f) or Pre-AIA 35 U.S.C. 112, sixth paragraph” is § 2181(I) (Part I”). Section 2181(II)(B) (cited by Proxense), however, is the second part (“Part II”) of MPEP § 2181, and only applies if the Examiner has already made a determination pursuant to Part I that a claim limitation is subject to 112(f). Again, none of the claim terms “integrated PDK,” “integrated RDC,” or “enablement signal” of the ’188 patent are in means-plus-function (or step-plus-function) format, nor are they nonce words. Thus, MPEP § 2181(II)(B) is not applicable.

3. Proxense’s Proposed Means-Plus-Function Constructions Are Inconsistent With Proxense’s Own Positions in Litigation and Other Proceedings, the Claim Construction Orders of the District Court, and the Intrinsic Evidence

The claim terms at issue here have also been considered and construed in district court cases filed by Proxense against Samsung, Google, and Microsoft.⁴ *See* EX-1011; EX-1014; EX-1015.

In the *Samsung*, *Google*, and *Microsoft* cases, the court construed the claim terms of the '188 patent (or the related '042 and '289 patents") as follows:

Claim term	Construction
"personal digital key"	An operably connected collection of elements including an antenna and a transceiver for communicating with a RDC and a controller and memory for storing information particular to a user.
"receiver-decoder circuit"	A component or collection of components, capable of wirelessly receiving data in an encrypted format and decoding the encrypted data for processing.
"enablement signal"	No construction needed.

See EX-1011; EX-1014; EX-1015. In short, no district court has ever construed any claim terms of the '188 patent or its related patents as means-plus-function terms.

Indeed, in the court cases, Proxense itself proposed and argued for the very same ***non***-means-plus-function constructions of "personal digital key" and "receiver-

⁴ *Proxense, LLC v. Samsung Electronics Co., Ltd.*, 6:21-CV-00210, 6-24-cv-00143 (W.D. Tex.) ("*Samsung* case"); *Proxense, LLC v. Microsoft Corporation*, 6:23-cv-00319 (W.D. Tex.) ("*Microsoft* case"); and *Proxense, LLC v. Google LLC*, 6-23-cv-00320 (W.D. Tex.) ("*Google* case").

decoder circuit” that were ordered by the court. *See id.* [EX-1011; EX-1014; EX-1015]. In its litigation against Apple, Proxense expressly agreed that the claim terms “personal digital key (PDK)” and “receiver-decoder circuit (RDC)” should have the constructions set forth above. EX-1016.

Nowhere in its briefing for the *Samsung*, *Google*, *Microsoft*, and *Apple* cases did Proxense ever assert that any of the terms of the ’188 or related patents were subject to interpretation under §112 ¶6. EX-1017; EX-1024; EX-1026; EX-1031; EX-1047. Nor did Proxense apply any interpretation of claim terms under §112 ¶6 in its infringement claim charts against the products accused in the *Google*, *Microsoft*, and *Apple* cases. EX-1018; EX-1050; EX-1051; EX-1052. Further, none of the claim constructions advanced by Proxense in litigation included the “service blocks” or “access keys” that Proxense now alleges form the necessary structure for the claimed “enabling one or more of an application, a function and a service.” EX-1017; EX-1024; EX-1026; EX-1031; EX-1047; POR, 4-10, 19-23.

Moreover, in IPR2024-00782 challenging the related ’042 patent, Proxense stated that the court’s constructions of “receiver-decoder circuit” and “personal digital key” are “proper,” and urged the Board to “adopt” or not “disregard” them. IPR2024-00782, Paper 5 (Patent Owner’s Preliminary Response (“POPR”)), 8-9 (“The District Court’s construction of ‘receiver-decoder circuit’ was consistent with the specification and, therefore, proper and there is no compelling reason for this

Board to disregard it.”), 12 (“The District Court’s construction of ‘Personal Digital Key’ was therefore proper and should be adopted by this Board.”). In that proceeding Proxense agreed that the Board should use the prior constructions for the same claim terms at issue here. IPR2024-00782, Hrg. Tr. at 26:12–16 (“JUDGE MCKONE: -- it sounds like everybody agrees, that we should use the prior claim constructions from [the] other proceedings ... Do you agree? MR. HECHT: -- if the Board agrees, absolutely.”).

Proxense reaches back to the *Samsung* case to support its arguments that the claim terms should be subject to §112 ¶6. POR, 41-48. But as the Board correctly noted in an IPR proceeding for the related ’042 patent, the *Samsung* court’s claim construction memo contained “a determination of whether a term is indefinite [which] is not the same thing as construing a claim term.” IPR2024-00782, Paper 32 at 39.

Proxense cites to *Intel Corp. v. Qualcomm Inc.*, 21 F. 4th 801, 814 (Fed. Cir. 2021) in an attempt to save its argument based on the *Samsung* case. That attempt fails because the facts of this proceeding are distinguishable from those in *Intel*. In *Intel*, there was no dispute that certain claim terms (i.e., “means for processing” and “means for scatter loading”) were in means-plus-function format governed by §112 ¶6. *Intel*, at _____. Here, as already discussed, the parties dispute whether the claim terms “integrated PDK,” “integrated RDC,” and “enablement signal” are subject to

§112 ¶6. In *Intel*, the Board “ha[d] questions as to the sufficiency of [petitioner’s] identified structures,” which were the same ones that patent owner had previously proposed in an ITC case. *Intel*, at _____. Here, the Board is not faced with the same challenge because, as discussed above, Proxense has not argued in litigation that the claim terms are means-plus-function terms.

Nor does the intrinsic evidence support Proxense’s position on claim construction. “Intrinsic evidence, such as...the prosecution history, can be informative in determining whether the disputed claim language recites sufficiently definite structure or was intended to invoke § 112 ¶ 6.” *Dyfan, LLC v. Target Corp.*, 28 F.4th 1360, 1365-66 (Fed. Cir. 2022), citing *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1299 (Fed. Cir. 2014). During prosecution of the ’188 patent, the applicant did not indicate that it intended any of the claim terms to invoke §112 ¶6, for example, to distinguish over prior art. *See generally* EX-1002; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1317 (Fed. Cir. 2005) (prosecution history “often inform[s] the meaning of the claim language by demonstrating how the inventor understood the invention”). Nor did the Examiner believe that the claims were subject to §112 ¶6. *See generally* EX-1002.

D. Proxense’s Proposed Means-Plus-Function Constructions Should Be Rejected Because They Could Lead to Inconsistent Results, Lack of Unity, and Undermining the Integrity of the Patent System

Proxense has advanced entirely different positions for claim construction as

between this IPR proceeding and litigation. In contrast to its positions in the court cases (discussed *supra*), here, Proxense's proposed means-plus-function constructions seek to narrow the claims to require that "enabling one or more of an application, a function and a service" be performed through the exchange of "an access key." POR, 8-26.

The timing of Proxense's first proposal to construe the claims of the '188 and related patents under §112 ¶6 is important. From what Petitioner can discern, this occurred on June 5, 2024, when Proxense filed its Preliminary Response in the Microsoft '042 IPR. IPR2024-00573, Paper 7. Proxense reaches back to the *Samsung* case to support its arguments that the claim terms should now be subject to 112 ¶6. POR, 26-30. But the *Samsung* case settled on January 19, 2023, before Proxense sued Microsoft and Google in May 2023, and Petitioner in March 2024. If the rulings of the court in the *Samsung* case counseled that the claim terms of the '188 patent should be construed under 112 ¶6, Proxense should have proposed such construction in each of the *Google*, *Microsoft*, and *Apple* cases. Proxense did not. *See* EX-1014; EX-1015; EX-1031. Instead, Proxense requested and obtained ***non***-means-plus-function constructions, and proceeded to litigate its cases on that basis. *See e.g.*, EX-1018; EX-1050; EX-1051; EX-1052. It was only after Proxense was faced with the invalidity arguments made in the various IPR proceedings challenging the related patents that Proxense changed its position on claim construction.

Proxense’s strategy is clear—it seeks to narrow the claims through a means-plus-function construction to avoid the prior art in IPR, only after advocating for broader constructions of the same terms in litigation. The Board should not reward Proxense for its gamesmanship. If the Board were to adopt Proxense’s proposed means-plus-function constructions versus the court’s broader constructions on the same terms, “the subsequent decisions issued in reliance on these inconsistent claim constructions may lack ‘uniformity’ between [the Board] and the district court and may undermine the ‘predictability’ of the [’188] patent’s claim scope and the ‘integrity of the patent system’ overall.” *Kiosoft Technologies, LLC v. TechTrex, Inc.*, IPR2021-00086, Paper 12, at 16. Thus, Proxense’s means-plus-function constructions should be rejected.

III. PROXENSE’S ATTEMPTS TO DISTINGUISH OVER THE PRIOR ART FAIL

All of Proxense’s arguments to distinguish the Challenged Claims over the prior art are based on a construction of the claims—whether interpreted under §112 ¶6, or otherwise—that require “enabling one or more of an application, a function and a service” be performed through the exchange of “an access key.” POR, 48-55. For Ground 1, Proxense argues that Giobbi-157, Giobbi-139, and Dua fail to disclose the “enabling” limitation because: “Giobbi 157 does not contemplate that the information is received in exchange for an access key,” “Giobbi 139 also fails to

disclose that the ‘activation code’ is provided in exchange for an access key,” and “the Petition fails to assert Dua discloses this element.” POR, 49, 51-52. For Ground 2, Proxense argues that Broadcom fails to disclose or render obvious the “enabling” limitation because “Broadcom at most teaches sending messages containing credential information from a token activated by proximity” and “the first message lacks information received from a token in exchange for an access key provided to the token.” POR, 52-54.

As discussed above, contrary to Proxense’s arguments, the claim terms of the ’188 patent are not subject to interpretation under §112 ¶6. Thus, Proxense’s attempts to distinguish over the prior art on this basis fail.

Furthermore, to the extent Proxense is arguing that the claimed “enabling one or more of an application, a function and a service” is required to be performed through the exchange of “an access key” even if not interpreted under §112 ¶6, the Board already considered and rejected this argument in the Institution Decision (“ID”). ID, 10-11, 20, 29. As stated in the ID, “we determine that ‘enabling one or more of an application a function, and a service’ does not require receiving information from a PDK in exchange for an access key.” *Id.*, 20; *see also id.* 10-11. And with the POR, Proxense points to no portions in the Specification that provide the requisite “reasonable clarity, deliberateness, and precision” to warrant interpreting the claim language at issue as requiring “receiving information from a

PDK in exchange for an access key.” POR; *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

IV. CONCLUSION

Proxense’s proposed constructions for the claims which lack “means for” and “step for” language, should be rejected because Proxense has failed to overcome the rebuttable presumption against §112 ¶6 treatment of these limitations. Because Proxense’s proposed narrowing constructions are the basis for its entire argument in the POR, the instituted grounds have not been rebutted and the Challenged Claims are unpatentable over the prior art.

Date: March 23, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24, the undersigned hereby certifies that the foregoing **PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE** contains 4,641 words, excluding those portions exempted under 37 C.F.R. § 42.24(c), as measured by the word-processing system used to prepare this paper.

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on March 23, 2026, a complete and entire copy of the foregoing **PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE** and accompanying exhibits were provided by email, to the Patent Owner, by serving the correspondence addresses of record as follows:

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