

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CARDWARE INC.,

Plaintiff,

v.

**SAMSUNG ELECTRONICS CO.,
LTD. AND SAMSUNG
ELECTRONICS AMERICA, INC.,**

Defendants.

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CIVIL ACTION NO. 2:22-cv-00141-JRG-RSP

JURY TRIAL DEMANDED

**PLAINTIFF CARDWARE INC.'S
OPENING CLAIM CONSTRUCTION BRIEF**

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Pursuant to P.R. 4-5(a), Plaintiff CardWare Inc. (“CardWare”) respectfully submits this Opening Claim Construction Brief.

I. INTRODUCTION

Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”) proposed that all but one of the 32 asserted claims of the five Asserted Patents¹ are indefinite based mainly on a mix of (1) eight different purported “antecedent” basis issues, (2) arguments that certain terms are too subjective to give notice to a person of ordinary skill in the art, and (3) a supposed IPR disclaimer. Samsung’s arguments should fail on all counts.

As for the antecedent basis issues, Samsung and its expert, Dr. Vijay Madiseti, fail to consider the context of the claims and the invention as a whole, which make clear that the terms are not indefinite and are readily understandable. Indeed, Samsung’s expert does not do any of the limited things that the Supreme Court and Federal Circuit permit experts to do during claim construction, such as apply some expertise in the field, describe the nature of the technology, or provide context about the invention or state of the art. Rather, his declaration is nearly indistinguishable from a legal brief and an English language analysis, written under the guise of how a person of ordinary skill would understand the disputed terms. His declaration should be disregarded under controlling Supreme Court and Federal Circuit law.

The same is true with respect to the supposedly “subjective” terms, “imminent” and “thin.” For example, Dr. Madiseti asserts that the term “imminent payment” is too subjective and is therefore unclear. Dr. Madiseti says the patent specification provides no guidance and that

¹ As used herein, the term “Asserted Patents” refers to, collectively: U.S. Patent Nos. 10,339,520 (“the ’520 patent,” Ex. 1); 10,628,820 (“the ’820 patent,” Ex. 2); 10,810,579 (“the ’579 patent,” Ex. 3); 11,176,538 (“the ’538 patent,” Ex. 4); and 11,328,286 (“the ’286 patent,” Ex. 5).

“imminent” depends on context, providing an example that an “imminent” stock market crash could happen in weeks or months. But, the invention is not about a stock market crash; it is about payments, and in the context of the disputed claim, merchant-based payments. “Imminent” is clear from this context, which Dr. Madisetti never purports to consider.

Finally, as for the supposed IPR disclaimer (pertaining to the claim term “static”) Samsung is simply wrong. CardWare did not disclaim anything. In fact, just this week the Patent Trial and Appeal Board (“PTAB”) denied institution of Samsung’s IPR on the ’520 patent, holding that the term “static” has its plain and ordinary meaning, notwithstanding any of CardWare’s arguments that Samsung asserts give rise to a disclaimer (and render the term indefinite).²

II. BACKGROUND AND TECHNOLOGY REVIEW

The Asserted Patents are directed to more secure payment technology, as explained in CardWare’s accompanying technology tutorial. *See also, e.g.*, Ex. 1 (’520 patent) at 9:9–13. Prior art traditional credit cards were generally not secure; payment information could easily be compromised from unscrupulous merchants or onlookers, or through skimming or computer phishing techniques, resulting in both fraud loss and massive inconvenience to consumers, merchants, and payment processors. Early attempts to address these issues had many technical and practical problems, including, for example, that they were often not compatible with the existing conventional credit card infrastructure. *See, e.g., Id.* at 1:32–2:4.

The Asserted Patents sought to address these problems by disclosing technologically improved methods and systems for reducing fraud during payment transactions while remaining compatible with existing, conventional payment infrastructures. Specifically, the Asserted Patents

² This brief is limited to the terms in the 32 currently asserted claims. *See* Order (Dkt. No. 97).

relate to payment technology in which traditional, fixed payment information printed on a traditional credit card is never used in a transaction. Instead, traditional, fixed payment information is, in some embodiments, replaced by a combination of static and dynamically generated information with built-in limitations on use that render the information useless should it be compromised and end up in the hands of a third-party. The Asserted Patents claim various iterations and embodiments of this secure payment technology, using limited-use numbers, all within the framework of the existing payment infrastructure.

III. AGREED CONSTRUCTIONS

The parties do not presently have any agreed claim constructions.

IV. LEGAL STANDARD

A. Indefiniteness and Antecedent Basis

Pre-AIA 35 U.S.C. section 112, ¶ 2 “require[s] that a patent’s claims, viewed in light of the specification and prosecution history, inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 910 (2014). As a challenge to patent validity, the failure of any claim in suit to comply with Section 112 must be shown by clear and convincing evidence. *BASF Corp. v. Johnson Matthey Inc.*, 875 F.3d 1360, 1365 (Fed. Cir. 2017); *Sonix Tech. Co. v. Publ’ns Int’l, Ltd.*, 844 F.3d 1370, 1377 (Fed. Cir. 2017). The legal test for definiteness “does not require that a potential infringer be able to determine *ex ante* if a particular act infringes the claims”—the patentee need only “apprise the public ‘of what is still open to them.’” *Niazi Licensing Corp. v. St. Jude Med. S.C., Inc.*, 30 F.4th 1339, 1346 (Fed. Cir. 2022).

The antecedent basis requirement is a rule of patent drafting, administered during patent examination, but even the M.P.E.P. states that “obviously, however the failure to provide explicit antecedent basis for terms does not always render a claim indefinite.” *See Energizer Hldgs., Inc.*

v. Int’l Trade Comm’n, 435 F.3d 1366, 1370 (Fed. Cir. 2006) (quoting MPEP § 2173.05I (8th ed. Rev.2, May, 2004) (internal quotations omitted)); *CA, Inc. v. Netflix, Inc.*, No. 2:21-CV-00080-JRG-RSP, 2021 WL 5323413, at *30 (E.D. Tex., Nov. 16, 2021) (stating the same). “When the meaning of the claim would reasonably be understood by persons of ordinary skill when read in light of the specification, the claim is not subject to invalidity upon departure from the protocol of ‘antecedent basis.’” *Energizer*, 435 F.3d at 1370; *CA, Inc.*, 2021 WL 5323413, at *30; *Luminati Networks, Ltd., v. Teso LT, UAB*, No. 2:19-CV-00395-JRG, 2020 WL 7222818, at *4 (E.D. Tex. Dec. 7, 2020) (citing *Energizer*); *see also OnPoint Sys., LLC v. Protect Animals With Satellites, LLC*, No. 4:20-CV-0657-ALM, 2022 WL 1612070, at *18 (E.D. Tex. May 20, 2022) (“[T]he lack of antecedent basis does not render the claims indefinite. The claim language and the specification illustrate how a person of ordinary skill in the art would reasonably understand the terms.”). To amount to failure to comply with Section 112, therefore, antecedent basis defects or similar errors in the claim language must be “so profound that they produce an unresolved ambiguity.” *See Optimum Imaging Techs. LLC v. Canon Inc.*, No. 2:19-CV-00246-JRG, 2020 WL 3104290, at *9 (E.D. Tex. June 11, 2020). For example, where the defendant proposes “alternative constructions,” it becomes evident that “persons of ordinary skill are reasonably able to ascertain claim scope,” and the claims are not indefinite. *Id.*

V. ARGUMENT

A. Samsung’s Expert Declaration Should be Disregarded

Samsung asserts that multiple claim terms are indefinite for lack of antecedent basis, relying on the declaration of Dr. Madisetti. *See* Ex. 6.³ As further explained in the following

³ For brevity, only the relevant portions of the Dr. Madisetti’s declaration is attached hereto. CardWare will provide the full document upon request.

sections, Dr. Madisetti repeatedly recites portions of the claim language, asserts there is more than one possible interpretation, and, on that basis, asserts that the terms are indefinite. Similarly, for the two allegedly subjective terms, he draws an inapt analogy for one and incorrectly asserts the patent specification lacks guidance for the other. Such opinions fail to meet Samsung’s burden to show—by clear and convincing evidence—that any term is indefinite. *See, e.g., Semcon IP Inc. v. Louis Vuitton N. Am., Inc.*, No. 2:18-CV-00194-JRG, 2020 WL 2544774, at *15 (E.D. Tex. May 19, 2020).

As the Federal Circuit has explained, expert testimony has a limited role in claim construction, such as “to provide background on the technology at issue, to explain how an invention works, to ensure that the court’s understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005) (*en banc*); *see also Id.* (“extrinsic evidence in general [is] less reliable”); *Id.* (“expert reports and testimony [are] generated at the time of and for the purpose of litigation and thus can suffer from bias that is not present in intrinsic evidence”). Likewise, the Supreme Court has explained this limited role: “experts may be examined to explain terms of art, and the state of the art, at any given time, but they **cannot** be used to prove the proper or legal construction of any instrument of writing.” *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 332 (2015) (cleaned up; emphasis added).

Despite this precedent, Dr. Madisetti offers **no** technical analysis whatsoever. Instead, he offers only “unsupported assertions” to conclude the claims are indefinite, which “are not useful to a court.” *See Phillips*, 415 F.3d at 1318; *see also, e.g., Barkan Wireless IP Holdings, L.P. v. T-Mobile US, Inc.*, No. 2:21-CV-34-JRG, 2021 WL 4399514, at *3 (E.D. Tex. Sept. 26, 2021)

("[E]xpert testimony may aid a court in understanding the underlying technology and determining the particular meaning of a term in the pertinent field, but an expert's conclusory, unsupported assertions as to a term's definition are entirely unhelpful to a court."); *Semcon*, 2020 WL 2544774, at *15 (rejecting defendant's indefiniteness assertion where expert's "conclusory—unsupported—statement is not helpful to the court").

Dr. Madisetti's conclusions should be disregarded and afforded no weight.

B. Terms Common To Several Asserted Patents

1. **"static" ('520 patent, claims 1, 10; '820 patent, claim 18; '579 patent, claims 21, 22; '538 patent, claims 1, 21, and 28 '286 patent, claims 20, 21, and 24-27)**

<u>Plaintiff's Proposed Construction</u>	<u>Samsung's Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite or, in the alternative, "remaining the same and not updated after a certain number of transactions or certain time period"

Samsung does not contend that "static" has some particular meaning to a person of ordinary skill in the art in the context of the claimed inventions, or that the patentee acted as his own lexicographer. Rather, Samsung argues that "static," an otherwise readily-understandable term, became indefinite, or else requires a very narrow construction, because of an "IPR disclaimer" that CardWare purportedly made in its preliminary response to one (of seven) post-grant challenges that Samsung filed with respect to the five asserted patents. Samsung's position is baseless.

"A disclaimer must be clear and unambiguous." *Seachange Int'l, Inc. v. C-COR Inc.*, 413 F.3d 1361, 1373 (Fed. Cir. 2005); *see also Cellular Commc'ns Equipment LLC v. HTC Corp.*, No. 6:16-CV-363-KNM, 2018 WL 1804518, at *2, 6 (E.D. Tex. Apr. 17, 2018) (citing *Middleton Inc. v. 3M Co.*, 311 F.3d 1384, 1388 (Fed. Cir. 2002)); *Tech. Props. Ltd. LLC v. Huawei Techs. Co., Ltd.*, 849 F.3d 1349, 1358 (Fed. Cir. 2017) ("If the challenged statements are ambiguous or amenable to multiple reasonable interpretations, prosecution disclaimer is not established.");

Gemstar-TV Guide Int’l Inc. v. Int’l Trade Comm’n, 383 F.3d 1352, 1375, 1377 (Fed. Cir. 2004) (“[Patentee’s] statements in the prosecution history do not indicate a disavowal or disclaimer of claim scope . . . but merely provided an example to illustrate differences between the invention and the prior art. In essence, [the patent owner] stated only that the [prior art] reference was incapable of performing a certain type of search, not that the scope of the claimed invention was limited to that particular type of search.”).

Samsung’s argument is based on a single sentence (described below) in CardWare’s Preliminary Response (Ex. 9) to its Petition in IPR2023-00210 concerning the ’520 patent (“-00210 Petition,” Ex. 7). This sentence does not come close to meeting the above-described standard for prosecution disclaimer, let alone convert an otherwise easily understandable term into one that is indefinite, as Samsung contends.

The full context of the IPR proceedings and the parties’ arguments are important to understanding the dispute, and confirm that there is no disclaimer, inconsistency, or indefiniteness issue. Specifically, in the -00210 Petition—which the PTAB denied this week—Samsung argued that independent claims 1 and 10 (as well as several claims depending therefrom) were obvious over U.S. Patent No. 9,600,808 (“Gomez”) and U.S. Patent App. Pub. No. 2008/0319905 (“Carlson”), in combination with a mix of additional references that are not pertinent to this claim construction dispute. *See* Ex. 7. In one proposed unpatentability ground, Samsung argued that each of Gomez and Carlson disclosed elements 10(e) and 1(k) of the claims of the ’520 patent, both requiring a “static device account number.” *Id.* at 17–20, 39.

Carlson discloses a portable wireless device used for “contactless payment transactions” that relies on a “pseudo account identifier that corresponds to a primary account identifier.” *See* Ex. 8 at Abstract, [0002]. The pseudo account number (“PAI”), in effect, acts simply as a proxy

or substitute for the real account number. Carlson discloses that, for security purposes, the PAI can be set to “expire after a certain number of transactions or after a certain period of time.” *Id.* 8 at [0036], [0044]. Samsung argued in the -00210 Petition that the PAI in Carlson is a static device account number because “it remains unchanged across transactions for its period of use as a substitute for a live/actual account number . . .” Ex. 7 at 18. Samsung further argued that a person of ordinary skill would have been motivated to combine Carlson with Gomez because the Carlson disclosure “would have enabled the device to more readily obtain new or updated [payment] numbers from time-to-time, such as when the current [payment] number expires or in the event [Gomez’s payment] account is compromised To this point, Carlson expressly recognizes security protections that would be realized by updating the PAI from time-to-time—i.e., a capability made possible by configuring the device to receive wirelessly new PAIs.” *Id.* at 19.

CardWare disagreed. In its Preliminary Response, CardWare explained that, for one, the PAI is associated with a user’s account, and not a device, and is therefore not a “*device* account number,” static or not. Ex. 9 at 11. Additionally, CardWare explained the PAI is not static because, per Carlson, it “may be dynamically generated, and Carlson specifically explains that it should be regularly updated by the payment processor, and may even be limited to a single use by the device.” *Id.* at 19. This single sentence is the sole basis of Samsung’s argument, and the accompanying expert declaration, that a person of ordinary skill would not understand the term “static” in view of Petitioner Samsung’s argument and that about half of the claims of CardWare’s patents are invalid as indefinite. See Ex. 6, ¶¶ 123–127. Samsung’s argument is baseless.

CardWare’s Preliminary Response must be read in this context of responding to Samsung’s arguments in its Petition and discussing the disclosure of Carlson as a whole. To this end, CardWare specifically explained that “Petitioner tries to have it both ways with Carlson. On the one hand,

Petitioner argues that a POSITA would modify Gomez based on Carlson's PAI disclosure because a POSITA would want to regularly change the payment number to purportedly improve security. But, on the other hand, Petitioner argues the PAI is static. Petitioner never reconciles these facially inconsistent statements or explains how a 'dynamically generated' and 'transitory' number [(the PAI)] that is designed to regularly change and be updated can also be a 'static device account number.'" Ex. 9 at 20 (internal citations omitted). In other words, Samsung's own -00210 Petition was internally inconsistent; it tried to argue that the PAI was static, but in the same breath, asserted that a person of ordinary skill would regularly change it to improve security.

Read in context, there is nothing about CardWare's argument in the Preliminary Response that suggests that "static" has anything other than its plain and ordinary meaning. CardWare simply pointed out that the Carlson PAI is "dynamically generate[d]," per its own terms, and is specifically designed to regularly change as an additional security measure. *See, e.g.*, Ex. 9 at 19 (quoting Ex. 8 at [0035]) (also citing *Id.* at [0036] ("the pseudo primary account number may be set to expire after a certain number of transactions or after a certain time period. Doing so can help ensure that if for some reason a pseudo primary account is revealed to anyone other than an authorized user, the amount of damage that can be done is limited due to the limited lifetime of the pseudo primary account number."); *Id.* at [0044] ("Because the pseudo primary account identifier can be transitory and may have a limited lifetime, it can be noted that this provides a level of protection of the consumer's account.")). CardWare further pointed out Samsung's own inconsistency in its Petition, which was reason enough to deny institution given that Samsung had the burden of proving invalidity. *See, e.g., Id.* at 20.

Samsung's expert, Dr. Madisetti, doesn't specifically say that he even read the Carlson reference or the full IPR record, and doesn't discuss Carlson's or Gomez's disclosure anywhere in

his declaration. *See* Ex. 6, ¶¶ 123–127. Rather, Dr. Madisetti simply concludes, based solely on the single sentence in CardWare’s Preliminary Response, that a POSITA “would understand CardWare’s arguments as a disclaimer of information that ‘may be set to expire after a certain number of transactions or after a certain time period.’” *Id.*, ¶ 124. Dr. Madisetti never recognizes that CardWare was simply distinguishing static numbers from numbers that are dynamically generated, and was further pointing out Samsung’s own inconsistency.⁴

To the extent there was any remaining doubt about the nature of CardWare’s arguments in its Preliminary Response, they were resolved this week by the PTAB in the *very IPR* where Samsung asserts CardWare made a disclaimer. Specifically, the PTAB stated that:

To the extent that [Samsung] equates a static number with a dynamic number, we disagree. The ’520 Patent uses the words, “static” and “dynamic,” consistent with their ordinary and customary meanings, where “static” means fixed or unchanging, and “dynamic” means continuously changing. Claims 1 and 10 [of the ’520 patent] recite “a static device account number” and a “dynamically generated one-time limited-use number,” and further recite using these two numbers “together in place of issuer provided payment information for making a payment transaction.” We find that these recitations are consistent with the ordinary and customary meanings of “static” and “dynamic.”

Ex. 10 at 8 (internal citations omitted). Accordingly, CardWare respectfully requests the Court reject Samsung’s claim construction position. Plain and ordinary meaning should apply.

2. “device-specific [information]”; “user-specific information” (’520 patent, claims 1, 10; ’538 patent, claims 8, 28)

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

⁴ Samsung and Dr. Madisetti offer an alternative construction, further undermining their indefiniteness position. *See Optimum Imaging Techs. LLC v. Canon Inc.*, Case No. 2:19-CV-00246-JRG, 2020 WL 3104290, at *9 (E.D. Tex. June 11, 2020) (“Defendant’s expert offers an opinion that one of ordinary skill would conclude that each of its alternative constructions are appropriate, and thus that persons of ordinary skill are reasonably able to ascertain claim scope.”).

Samsung asserts that these terms are allegedly indefinite because it is unclear how a person of ordinary skill would distinguish between these terms. Dr. Madisetti does not assert that “device-specific information” or “user-specific information” are unclear standing alone. Nor does he assert that they have any meaning to a person of ordinary skill in the art different from their plain and ordinary meaning. *See* Ex. 6, ¶¶ 128–130. Rather, he asserts that they are indefinite because the “sets of device-specific and user-specific information overlap.” *Id.*, ¶ 129. But there is no claim term or other indication in the specifications of the ’520 and ’538 patents saying that “device-specific” and “user-specific” information must be mutually exclusive. *See generally* Exs. 1, 4. Information can be just device-specific or just user-specific. Or, it can be both user- and device-specific. Dr. Madisetti points to “device account numbers” specifically, and asserts that the claims are unclear because user-specific information (as well as device-specific information) can come from the set including “device account numbers.” Ex. 6, ¶ 129. But a device account number could be both device specific, and also be different for a given user, making it both device and user-specific. The question of whether a product meets these limitations is one for the jury, but there is nothing unclear or indefinite about the terms themselves.

C. U.S. Patent No. 10,339,520

1. “the payment information” (claim 1)

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Claim 1 of the ’520 patent recites:

“An electronic device comprising: . . . a computer readable medium having instructions stored thereon that, responsive to execution by the electronic device, cause the electronic device to perform operations comprising:

accepting a user input of issued payments information input at a touch screen display of the electronic device, wherein the information comprising an issuer provided payment information;

wherein the memory comprises device-specific and user-specific information; and,

wherein the user provided payment information is communicated wirelessly; and,

wirelessly receiving a static device account number payment information for storage on the electronic device; and

wherein at least a portion of the payment information is a limited-use number for limited-use by the device, in place of a issuer provided payment information; and,

dynamically-generating a one-time limited-use numbers based on at least one of a set of information including: user-identifying information; user secrets; device information; device secrets; time; merchant; facility location; sequence count; payment information; account information; amount; and transaction information; and

using said static device account number and said dynamically generated one-time limited-use number together in the place of issuer provided payment information for making a payment transaction.

Ex. 1, cl. 1 (emphasis added; alleged indefinite term underlined).

Samsung asserts that “the payment information” (underlined above) in claim 1 of the ’520 patent is indefinite for lack of antecedent basis. Specifically, Dr. Madisetti asserts that “the payment information” in the claim term “wherein at least a portion of the payment information is a limited-use number for limited-use by the device, in place of a issuer provided payment information” could refer to either (i) “the user provided payment information” or (ii) “a static device account number payment information,” which appear in the two preceding “wherein” claim limitations. See Ex. 6, ¶¶ 33–35.

This is clearly wrong. For good reason, the claim recites several different categories of “payment information.” Indeed, a focus of the claimed invention involves replacing one type of payment information (*e.g.*, payment information supplied by an issuer, including a primary account number and an expiration date) with static and dynamically generated numbers, which can

be used to complete a payment transaction in place of the issuer provided payment information. *See, e.g.*, Ex. 1 at Abstract, 6:49–7:17, 10:4–63, 11:67–12:22, 13:62–14:7; 15:33–40. Claim 1 of the ’520 patent reflects this.

The antecedent basis of “the user provided payment information” in the claim comes from the prior limitation: “accepting a *user input* of issued payments information . . . wherein the information comprising an issuer provided payment information.” Ex. 1, cl. 1 (emphasis added). Accordingly, “the user provided payment information” identified by Dr. Madisetti is unambiguously directed to the issued payments information (*i.e.*, from the issuer), including, for example, the original primary account number that is typically printed on the front of a traditional credit card.

With this context, there can be little doubt that the disputed (underlined) claim term does *not* refer to the “user provided payment information,” as Dr. Madisetti suggests it could. The disputed claim term reads “wherein at least a portion of the payment information is a limited-use number for limited-use by the device, **in place of a issuer provided payment information.**” *Id.*, cl. 1 (emphasis added). Since the “user provided payment information” is equivalent to the “issued payments information” from the issuer, Dr. Madisetti is effectively suggesting that the limitation requires that “issuer provided payment information” (the “user provided payment information”) is used “in place of a issuer provided payment information,” as the remainder of the limitation requires (bolded and underlined, above). This obviously makes no sense and is not a plausible interpretation. *See, e.g., Gesture Tech. Partners, LLC v. Huawei Device Co., Ltd.*, No. 2:21-CV-40-JRG, 2021 WL 4760632, at *37 (E.D. Tex. Oct. 12, 2021) (rejecting assertion that claim was indefinite based on an alleged antecedent basis issue because it was “not a fair reading of the disputed term in the context of [the] claim as a whole”); *Hillman Grp., Inc. v. KeyMe, LLC*, No. 2:19-CV-209-JRG, 2020 WL 3605626, at *16–17 (E.D. Tex. July 2, 2020) (term should be

interpreted in context of the claim); *Abstrax, Inc. v. Hewlett-Packard Co.*, No. 2:14-CV-158-JRG, 2015 WL 156555, at *15 (E.D. Tex. Jan. 12, 2015) (“Reading the claim as a whole, the Court rejects defendant’s argument that there is a ‘logical flaw’ that renders the claim indefinite.”). Dr. Madisetti never considered this or, for that matter, analyzed the antecedent basis of “user provided payment information.”⁵ See Ex. 6, ¶¶ 33–35.

Beyond this, the context of the claim makes clear that the disputed claim limitation is referring to the actual payment information that is used in connection with the secure “payment transaction.” See Ex. 1, cl. 1. The disputed limitation says that at least a portion of the “payment information” is a limited-use number for limited-use by the device. And, it is used “in place of a issuer provided payment information.” The final limitation of claim 1 explains that the electronic device uses both the “static device account number” and a “dynamically generated” number in connection with “a payment transaction.” Importantly, claim 1 recites that these two numbers “together” are to be used “in the place of issuer provided payment information.” This claim language helps tie it all together; like this final limitation of claim 1, the “payment information” in the disputed phrase is used in place of the issuer provided payment information. Accordingly, the disputed “payment information” phrase corresponds to the same information used in the payment transaction—including the static and dynamically-generated numbers—which is used “in place of issuer provided payment information.”

The penultimate limitation of claim 1 further confirms the analysis. That limitation requires “dynamically-generating a one-time limited-use numbers. . . .” This is the only other

⁵ Beyond this flaw in his logic, “the payment information” in the disputed limitation is a “limited-use number.” There is no indication that the “user provided payment information,” which, again, is the “issued payments information” is of limited use for limited-use by the device. This is yet another reason why Samsung’s position does not hold up.

recitation of “limited-use number” in claim 1, and ties back directly to the “payment information” in the disputed limitation, at least a “portion” of which is a “limited-use number.” As such, the “portion” of the “payment information” in the disputed “payment information” limitation includes this dynamically-generated limited-use number, which, as noted above, is part of the transmitted payment information sent in connection with “making a payment transaction.”

In sum, based on a full reading of the claim and the context of the invention, the term “payment information” is not indefinite. It refers to the payment information transmitted in connection with the payment transaction.

2. **“issued payment information”; “an issuer provided payment information”; “the issuer provided payment information”; “a static device account number payment information”; “the payment information”; “a issuer provided payment information”; “payment information”; “issuer provided payment information” (claim 10)**

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Samsung asserts that certain uses of “payment information” and “issuer provided payment information” that do not include “a” or “the” in claim 10 of the ’520 patent are indefinite because the antecedent basis is allegedly unclear.⁶ Claim 10 recites:

dynamically generating a one-time limited-use number based on at least one of a set of information including . . . payment information . . .

Using said static device account number and said dynamically generated one-time limited-use number together in the place of issuer provided payment information.

Ex. 1, cl. 10 (emphasis added).

⁶ Although Samsung listed eight terms in its Joint Claim Construction chart, its expert addresses indefiniteness of only two terms. Ex. 6 ¶¶ 40–42.

Dr. Madisetti asserts that the terms “payment information” and “issuer provided payment information” (underlined above) are unclear because they could refer to new elements or could refer back to prior claim terms as antecedent basis. Ex. 6, ¶¶ 40–42. As with his entire declaration, Dr. Madisetti does not purport to apply any particular expertise, discuss the technical field of the invention, or address any factual dispute that might be appropriate for expert testimony. Instead, he effectively makes a legal argument about patent claim drafting techniques, which this Court should disregard under Federal Circuit and Supreme Court precedent. *See* § V.A *supra*.

Contrary to Dr. Madisetti’s position, there is no requirement in patent law that a patentee specify an antecedent basis, or, as Dr. Madisetti suggests, either limit themselves to an entirely new element, or one that has already been introduced. A patentee can claim just what CardWare did, including, for example, dynamically generating a one-time limited-use number based on “payment information.” Does it have to be the previously introduced “payment information”? No, not necessarily. Does it have to be a *new* piece of “payment information”? No, the claim is not so limited. It just has to be “payment information.” That is what the patentee wrote, it is clear, and it is permissible under the law. There is nothing remotely ambiguous about it.

D. U.S. Patent No. 10,628,820

- 1. “the payment information provided by the computing device is used in online transactions in place of a card issuers payment card information” (claim 15)**

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Samsung alleges that this term lacks a clear antecedent basis. Claim 15 recites:

An online payment system comprising:

a thin card-shaped payment card device that bears no fixed payment numbers on the card device; and

a computing device operable for completing an online payment transaction
[. . .]

wherein at least one of the set comprising: the computing device; and the card-shaped payment device, is configured to dynamically generate a limited-use payment information, upon the authorization of a valid computing device user, and

wherein the payment information provided by the computing device is used in online transactions in place of a card issuers payment card information.

Ex. 2, cl. 15 (coloring added). Dr. Madisetti asserts that the claim is unclear “because it requires ‘the payment information’ to be ‘provided by the computing device,’ but there the only possible antecedent ‘payment information’ appears in the claim term ‘wherein at least one of the set comprising: the computing device; and the card-shaped payment device, is configured to dynamically generate *a limited-use payment information*’ . . . where that limited-use payment information . . . is optionally generated by either the computing device or the card-shaped payment device.” Ex. 6, ¶ 60 (emphasis in original).

Dr. Madisetti seems to misunderstand that the payment information is *provided*, for example, from the computing device to an online merchant over the internet, but it may be *generated* by either the computing device itself or the card-shaped payment device. There is no inconsistency or ambiguity. The generation of the limited-use information is a different step (and may be alternatively performed by one of two devices) than *providing* it for payment in an online transaction. This is consistent with the disclosure in the specification, which teaches that, “[w]hen performing online transactions, the multi-function electronic device 501 can uniquely generate a limited-duration credit card number . . . for online purchases. . . . This enables a per-transaction, limited-use credit card number, enhancing the security of the credit account by substantially negating the possibility of a theft of the credit card number used to perform the transaction leading to account compromise.” Ex. 2 at 12:61–13:10, Fig. 10. Figure 10 of the ’820 patent, reproduced

below, further shows the computing device providing “limited-use payment information” in an online transaction.

As explained in the claim, the computing device (such as the personal computer in Figure 10) can alternatively generate the limited-use payment information. But in either event, the computing device *provides* that generated limited-use payment information for payment in the online transaction (as shown in step F and the upper right of Figure 10, above). That is perfectly clear, and the Court should reject Samsung’s indefiniteness challenge.

2. “thin shaped body”; “a thin payment device”; “a thin card-shaped payment card device” (claims 1, 11, and 15)

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Samsung alleges that these terms are indefinite because the adjective “thin” is used to describe them. It is undisputed, however, that the specification is replete with examples of the thin, credit card type payment devices referenced in these terms, as Dr. Madisetti concedes. *See*

Ex. 6, ¶ 64 (“Figures in the specifications show a credit card type device, **which most would agree is thin** in the context of the alleged invention.”) (citing ’820 patent [Ex. 2], at Figs. 1, 2A, 2B, 4A, 4B) (emphasis added); *see also* Ex. 2 at Figs. 1, 2A, 2B, 4A, 4B, 5, 6, 11, 12; *see also Id.* at 2:35–36 (“[A]n aspect of the present disclosure provides an apparatus comprising: a thin card shaped sized body[.]”); *Id.* at 18:42–45 (“An apparatus for conducting credit transactions comprising: a device with the similar dimensions and thickness to a standard credit card.”).

But specific numerical values for the dimensions of the device are not necessary because the specification reasonably describes the claimed subject matter to one of ordinary skill in the art. *See Niazi Licensing Corp. v. St. Jude Med. S.C.*, 30 F.4th 1339, 1347 (Fed. Cir. 2022) (“While there must be objective boundaries, we have explained that a patentee need not define his invention with mathematical precision in order to comply with the definiteness requirement. . . . Indeed, patentees often use descriptive words . . . to avoid a strict numerical boundary to the specified parameter.”) (internal quotations and modifications omitted); *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*) (“In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.”); *Verve, LLC v. Crane Cams, Inc.*, 311 F.3d 1116, 1120 (Fed. Cir. 2002) (holding term “substantially constant wall thickness” was not indefinite, and explaining “the term ‘substantially’ is a descriptive term commonly used in patent claims to ‘avoid a strict numerical boundary to the specified parameter’”); *Id.* (“[T]he patentee is not required to include in the specification information readily understood by practitioners, lest every patent be required to be written as a comprehensive tutorial and treatise for the generalist, instead of a concise statement for persons in the field.”); *Freeman v. Gerber Prods. Co.*, 357 F. Supp. 2d 1290, 1304–

05 (D. Kan. 2005) (declining to limit the general descriptive word “thin” to a numerical range stated in the written description) (internal citations omitted).

Samsung alleges that these terms are indefinite because “smartphone-style” and “smartwatch-style” devices could also be considered thin and the phone devices could also be considered card-shaped (see Ex. 6, ¶ 64), but this is contrary to the intrinsic evidence, including the context of the claims, and should be disregarded. See *Phillips*, 415 F.3d at 1318; see also § V.A, *supra*. The ’820 patent specification does not describe either of these types of devices as thin or card-shaped. See generally Ex. 2. Further, neither Samsung nor Dr. Madisetti allege that “thin” has a special meaning in the relevant art. See Ex. 6, ¶¶ 62–66.

Finally, Dr. Madisetti alleges that the specification “does not provide guidance on how to distinguish between ‘thin,’ ‘thin-shaped body’ and ‘thin card-shaped’” and that “claim differentiation indicates they should each have a different scope.” Ex. 6, ¶ 65. This is improper legal argument disguised as expert opinion and should be disregarded. Even if such evidence is considered, Samsung is wrong. The doctrine of claim differentiation does not apply unless the *claims* at issue would be identical in scope but for the disputed terms. See *Andersen Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1370–71 (Fed. Cir. 2007) (“[O]verlapping patent claims are not unusual, and the overlap does not require us to construe the [claims at issue] to cover subject matter that differs from the subject matter covered by the other two sets of claims.”). Here, although the scope of the three terms overlap, there are clear differences in scope—“thin shaped body” (claim

1); “a thin *payment device*” (claim 11); “a thin card-shaped *payment card device*” (claim 15)—and so claims 1, 11, and 15 also differ in scope.⁷

E. U.S. Patent No. 10,810,579

- 1. “wherein a limited-use number comprises a device account number”;
“combining the limited-use number and said device account number”
(claim 4)**

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Dr. Madisetti argues that the limited-use number cannot both “comprise” a device account number and be combined with it. Ex. 6, ¶ 68. This is of course wrong. A number can be an input into an algorithm to generate a limited-use number, and then can also be combined with the generated limited-use number. For example, a very simple cryptogram could be generated based on four different inputs:

$$(1) \text{ Cryptogram} = (\text{product purchase value}) * (\text{device account number value}) * (\text{sequence count value}) * (\text{merchant ID number})$$

Plugging in some arbitrary values for each of the variables results in:

$$(2) \text{ Cryptogram} = (4) * (35) * (5) * (3) = 2220$$

The above cryptogram value, which “comprises” the device account number, can then be “combined” with the same device account number value (35) used to generate the cryptogram in a variety of ways, such as 222035 (if placing the digits of the numbers together) or 2255 (if adding the two values). There is nothing indefinite about it at all; a number can serve multiple purposes.

⁷ Further the general presumption that different terms have different meanings is not conclusive, as “it is not unknown for different words to be used to express similar concepts.” *Perdiem Co, LLC v. IndusTrack LLC*, No. 2:15-CV-727-JRG-RSP, 2016 WL 3633627, at *25 (E.D. Tex. July 7, 2016) (citing *Bancorp. Servs., L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1373 (Fed. Cir. 2004)).

Dr. Madisetti does not offer any logic, reasoning, or expertise from the perspective of a person of ordinary skill (or industry documentation) suggesting that in payment technology specifically, numbers can't be used in multiple ways, as claimed. See Ex. 6, ¶¶ 67–69.

2. “imminent performance” (claim 19)

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Dr. Madisetti acknowledges that “imminent” means something that will happen soon, but he claims he doesn’t know how soon because, for example, an “imminent stock market crash” might be weeks or months away. Ex. 6, ¶ 78. The Federal Circuit has been clear for many years that terms must be construed based on the intrinsic record and the context of the invention. *Phillips*, 415 F.3d at 1319. The claimed invention of the ’579 patent relates to payments, not predicting stock market crashes. And claim 19 relates to payments via NFC, including at an in-store merchant facility. Clearly, in this context, a user is not going to wait “weeks or months” while waiting to pay in a store. “Imminent,” in this context, involves the process of paying for a good or service at a terminal using NFC technology. A person of ordinary skill would of course understand this, when read in context of the invention and the particular claims at issue.

F. U.S. Patent No. 11,176,538

1. “said limited-use payment information” (claim 1)

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Samsung again argues for indefiniteness due to purported lack of clear antecedent basis. Fatal to Samsung’s argument is the Certificate of Correction signed and sealed on May 10, 2022 (*i.e.*, *before* the present lawsuit), which Samsung’s expert *admittedly ignores*. Ex. 4, (Cert. of Correction); Ex. 6, ¶ 79 (“My opinions in this section relates [*sic*] to the original claim language

from before the Certificate of Correction issued”). There is no dispute—nor does Samsung raise any—that this claim term is definite after the Certificate of Correction.

2. “the electronic device”; “the device inputs”; “the electronic device” (claim 25)

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Samsung asserts that the terms in claim 25 of the ’538 patent are indefinite because (1) there is no antecedent basis (each term uses “the” in the first instance) and (2) the preamble includes “[a] non-transitory, computer readable medium.” Ex. 6, ¶¶ 82–84, 86.

As to the former, it is clear what these terms refer to in claim 25: “accept[ing] a priming action of *the electronic device* by an identified valid device user, identified from *the device inputs*” refers to an electronic device and device inputs, respectively; and “enabl[ing] *the electronic device* . . . responsive to the priming action” likewise refers to that electronic device. *See* Ex. 4, cl. 25 (emphases added). This is consistent with the patent specification, which, for example, refers to a “multi-function electronic device 201b” being primed by an input to identify a valid user, such as tap, gesture or swipe and the device enabled in response thereto. *See, e.g.*, Ex. 4 at 11:54–12:3. “When the meaning of the claim would reasonably be understood by persons of ordinary skill when read in light of the specification, the claim is not subject to invalidity upon departure from the protocol of ‘antecedent basis.’” *Energizer Hldgs., Inc. v. Int’l Trade Comm’n*, 435 F.3d 1366, 1369–70 (Fed. Cir. 2006) (finding that, although “said zinc anode” lacked explicit antecedent basis, a person of ordinary skill in the art would understand it to refer to an “anode gel comprised of zinc as the active anode component” recited earlier in the claim at issue); *Luminati Networks, Ltd., v. Teso LT, UAB*, No. 2:19-CV-00395-JRG, 2020 WL 7222818, at *8 (E.D. Tex. Dec. 7, 2020) (rejecting indefiniteness challenge to claims reciting “the first IP address” and “the first

client IP address” but not “a first IP address” or “a first client IP address”). Stated differently, these supposed claim drafting issues are not “so profound that they produce an unresolved ambiguity.” See *Optimum Imaging Techs. LLC v Canon Inc.*, No. 2:19-CV-00246-JRG, 2020 WL 3104290, at *9 (E.D. Tex. June 11, 2020).

As to the latter, Samsung does not allege the preamble is limiting or otherwise impacts the claim scope. Further and notwithstanding, there is nothing confusing or inconsistent about a “processor” (such as processor 205 in the patent) that performs certain functions related to the device.

Samsung has failed to meet its burden; plain and ordinary meaning should apply.

3. “the communication interface” (claim 25)

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Samsung’s argument that “the communication interface” in claim 25 of the ’538 patent is indefinite for lack of clear antecedent basis mirrors its argument for “the electronic device” and “the device inputs,” resting on the idea that “communication interface” is used only once in the claim and that use is preceded by “the.” See Ex. 6 ¶¶ 82–83, 85–86. But for the “the,” Samsung does not assert “communication interface” is itself indefinite. And Dr. Madisetti does not provide any technical background as to this claim or the meaning of a communication interface to a person of ordinary skill; he effectively just provides his views on the English language and patent claim drafting technique, and draws a legal conclusion based on the same. Accordingly, Samsung’s argument thus fails for effectively the same reasons as “electronic device” and “device inputs.” See § V.F.2, *supra*; see also *Energizer*, 435 F.3d at 1370; *Luminati*, 2020 WL 7222818, at *8.

4. “said dynamically generating said card validation value number”
(claim 20)

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Once again, Samsung’s expert fails to offer any actual technical expertise in connection with his opinion on this claim term and fails to consider the full context of the claim. The disputed limitations recite:

dynamically generating a cryptogram number for use by the electronic device in place of a card validation value . . .

wherein further, said dynamically generating said card validation value number results in a one-time limited-use payment information . . .

Ex. 4, cl. 20 (emphasis added to show disputed claim term).

Dr. Madisetti asserts that a person of ordinary skill in the art would not understand the underlined language, presumably because it uses the word “said” and there is no other introductory language that *exactly* matches this phrase. But, the context of claim 20 makes it all abundantly clear. The method involves “dynamically generating a cryptogram for use . . . in place of a card validation value.” The next limitation—the purportedly indefinite limitation—recites “said dynamically generating said card validation value.” This limitation clearly refers to the cryptogram. Why? Because the cryptogram is what is “dynamically generat[ed]” in the claim. Why does the disputed limitation refer to “said card validation value number”? Because the cryptogram is a replacement card validation value number; the claim itself says that the dynamically generated cryptogram is used “in place of a card validation value number.” Therefore, the patentee simply referred to this cryptogram as “said card validation value number.” Dr. Madisetti never even considers this possibility, or, for that matter analyzes anything else in the

claims, the specification, or payment technology generally. It is also worth noting that Samsung's IPR expert had no issues interpreting this claim. *See* Ex. 11, ¶¶ 251–52, 213.⁸

5. “said selected account information” (claim 19)

<u>Plaintiff's Proposed Construction</u>	<u>Samsung's Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Samsung alleges that this term lacks a clear antecedent basis. Claim 19 recites:

A method of performing an online payment transaction, the method comprising,

receiving an input signal at an electronic device, [. . .]

a displaying of the payment request notification at a touch-screen display user-interface of the electronic device; and

upon an authorizing of a valid device user, displaying at least one user-selectable payment account option, and requesting a user approval of payment, via the touch-screen display user-interface;

receiving, from a valid device user, a payment selection and authorization approval input on the electronic device;

generating at least one limited-use numbers at said electronic device, and using said limited-use number in place of at least a portion of selected account issuer payment information; and

combining said at least one limited-use numbers, with said selected account information, to form a complete payment information; [. . .].

Ex. 4, cl. 19 (coloring added). Dr. Madisetti admits that “[t]he antecedent basis for said selected account information . . . appears to be selected account issuer payment information,” thus demonstrating that the antecedent basis for this term is reasonably certain. *See* Ex. 6, ¶ 99. Nevertheless, he argues that “selected account issuer payment information” cannot be the

⁸ For brevity, only the relevant portions of the Declaration of Dr. Michael I. Shamos in IPR2023-00219 regarding the '538 patent is attached hereto. CardWare will provide the full document upon request.

antecedent basis for “said selected account information” because the “at least one limited-use numbers” cannot both be used in place of “at least a portion of selected account issuer payment information” and be combined with “said selected account information” to form a complete payment information. *Id.* ¶ 100. Dr. Madisetti’s reading improperly pushes the claim into a logical impossibility even though there is another, far more reasonable, interpretation.

Claim 19 requires “displaying at least one user-selectable payment account option.” This account option clearly has account information associated with it, as well as “payment” numbers. The specification confirms this, explaining that information associated with a selected account includes, for example “an account number, an expiration date, and other user information associated with the account (e.g. a username, PIN, password, email address, etc.).” Ex. 4 at 7:12–17.

As Dr. Madisetti recognizes, the claim 19 method involves receiving (from a user) a “payment selection,” meaning that the user selects one of the user-selectable payment account options. Associated with such account would be (as per the above specification cite), both payment information, such as account numbers and an expiration date, and “other user information” including, for example, an “email address”—i.e., “selected account information.” Claim 19 next requires “generating at least one limited-use numbers at said electronic device.” Since this is a number, it is logically used “in place” of another number, namely, “at least a portion of selected account issuer payment information,” which would include numbers such as the “account number” and/or “an expiration date.” Ex. 4 at 7:12–17; *see also Id.* at 10:53–11:3, 12:28–31.

Next, claim 19 requires “combining” the generated limited-use number “with selected account information.” Dr. Madisetti argues that this is a logical impossibility, simply assuming that the “selected account information” is the same as “selected account issuer payment information” (e.g., the payment numbers) and that it doesn’t also include other user information

such as a username or email address. *See* Ex. 6, ¶ 100. It does include such other information, and the Court should not follow Dr. Madisetti or Samsung down this logical impossibility path. As the specification makes clear, any selected account has issuer payment information associated with it, as well as “other user information” used in a transaction. The “combining” limitation refers to just this, and specifically recites “account information” rather than “account issuer payment information.” This account information simply refers to other information associated with the account, not the exact same payment information that the claim says is being replaced (as Dr. Madisetti argues).

CardWare’s reading is not only consistent with a logical reading of claim 19, but it is also consistent with the rest of the specification. Specifically, the ’538 patent explains, in a section entitled “Online Transactions” (the same subject of claim 19), that “[w]hen performing online transactions, the multi-function electronic device 501 can uniquely generate a limited duration payment number . . . for online purchases. . . . This enables a per-transaction, limited-use payment number, enhancing the security of the payment account . . .” Ex. 4 at 12:28-45. The next paragraph states that “the transaction is able to include information regarding a user account, such as an email address of the user . . .” In other words, the online transaction involves transmission of “information regarding a user account” even though it may *also* use a limited-use payment number.” *Id.* at 12:46–53. This other information could be, for example, an email address. That is what the claim covers and is the far more plausible reading based on the claim itself and the specification.

Samsung has failed to meet its burden, and its indefiniteness challenge should be rejected.

6. “said limited-use number” (claim 21)

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Samsung asserts that this term, which appears in dependent claim 21 and depends from claim 19, is indefinite for lack of clear antecedent basis. Claims 19 and 21 recite:

19. A method of performing an online payment transaction, the method comprising, [. . .]

generating at least one limited-use numbers at said electronic device, and using said limited-use number in place of at least a portion of selected account issuer payment information; and

combining said at least one limited use numbers, with said selected account information, to form a complete payment information; [. . .]

21. The method of claim 19, wherein at least a portion of said limited-use number comprises a static device account number, [. . .]

Ex. 4, cls. 19, 21 (coloring added). Dr. Madisetti professes confusion because claim 19 uses the term “numbers” (plural) whereas claim 21 refers to “said limited use number” (singular). This is little more than a picayune claim drafting argument that is both wrong and inappropriate for expert testimony (aside from the fact that Dr. Madisetti offers nothing resembling an expert opinion). Claim 19 refers to “*at least one* limited-use numbers.” The use of numbers in the plural sense is just to emphasize that it can be more than one. But claim 21 only requires a portion of a single limited-use number to comprise a static device number. The patentee was not required to claim *multiple* limited-use numbers (plural) to comprise a static device account number in claim 21; the limitation of claim 19 is met if it is even a single limited-use number. *See, e.g., Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1343 (Fed. Cir. 2008) (“In grammatical terms, the instances of ‘said fabric roll’ in the claim are anaphoric phrases, referring to the initial antecedent phrase. Because the initial phrase carries no definitive numerosity, the anaphoric phrases do not alter that meaning in the slightest.”); *Transocean Offshore Deepwater Drilling, Inc. v. Pacific Drilling, Inc.*, No. H-13-1088, 2015 WL 3422410, at *31-34 (S.D. Tex. May 27, 2015) (“The term ‘the well’ is ‘an anaphoric phrase that merely refers back to the initial antecedent phrase.’”).

7. “a statically generated portions” (claim 25)

<u>Plaintiff’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
Not indefinite. Plain and ordinary meaning.	Indefinite.

Dr. Madisetti asserts that this term is indefinite, asserting that it is unclear whether this term requires “one or more” or “two or more” portions. Claim 25 recites:

A non-transitory, computer-readable medium storing computer executable instructions that when executed by one or more processors, cause the one or more processors to: [. . .]

form a complete combined device payment information from a dynamically generated portion and a statically generated portions stored in a memory of the device, [. . .]

Ex. 4, cl. 25 (coloring added). When read in context of the surrounding claim language, including the element “a dynamically generated portion” in the same limitation, it is obvious that the inclusion of “s” in “portions” was a typographical error. Even including the error, however, there is no substantive difference in claim scope. It is “well established precedent” that the indefinite articles “‘a’ or ‘an’ in a patent claim carry the meaning of ‘one or more.’” *01 Communique Lab., Inc. v. LogMeIn, Inc.*, 687 F.3d 1292, 1297 (Fed. Cir. 2012) (quoting *TiVo, Inc. v. EchoStar Commc'ns Corp.*, 516 F.3d 1290, 1303 (Fed. Cir. 2008)). Certainly, if “a” is read as it should be understood in the claim, the result would be “one or more statically generated portions” and there is no confusion regarding its scope.

VI. CONCLUSION

For the foregoing reasons, CardWare respectfully requests that the Court enter an order adopting CardWare’s proposed constructions and rejecting the positions Samsung advances in its constructions.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on June 15, 2023, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document *via* the Court's CM/ECF System.

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