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November 10, 2023

Via E-mail

David Perlson,
Quinn Emanuel Urquhart & Sullivan, LLP,
50 California Street, 22nd Floor,
San Francisco, CA 94111.

Re: *Security First Innovations, LLC* v. *Google, LLC*,
No. 2:23-cv-00097-JKW-RJK (E.D. Va.)

Dear David:

Pursuant to the Court's July 20 Scheduling Order (Dkt. 54), the parties' November 3 meet and confer and subsequent letter correspondence, and the parties' November 10 agreement regarding simultaneous exchange of preliminary proposed constructions and supporting evidence, attached is a chart containing SFI's preliminary proposed constructions and supporting evidence for the agreed-upon set of ten terms for construction. (*See* Nov. 6, 2023 Ltr. from A. Mayron to D. Perlson; Nov. 7, 2023 Ltr. from D. Perlson to A. Mayron.)[1]

By providing alternative constructions for terms for which SFI believes no construction is necessary, SFI does not concede that perfectly clear claim language needs to be replaced with different words merely for the sake of the exercise. Similarly, by identifying evidence in support of any preliminary proposed construction, SFI does not concede that such evidence is necessary to construe the identified term.

As SFI repeatedly has explained, the Scheduling Order requires the parties to have reached agreement on a list of ten terms for construction by Friday, November 3. SFI does not agree that the terms Google identified on October 27 in excess of the ten-term limitation—which Google elected not to identify in its November 7 letter—require construction and therefore does not propose constructions for those terms.[2] The claim

[1] As the parties were not able to agree on the abbreviation of the identified clauses, SFI identifies the clauses as they appear in the claims.

[2] *See generally SFA Sys., LLC* v. *1-800-Flowers.com, Inc.*, 940 F. Supp. 2d 433, 447 (E.D. Tex. 2013); *Cybergym Rsch. LLC* v. *Icon Health & Fitness, Inc.*, 2007 WL 5688735, at *22 (E.D. Tex. Jan. 25, 2007).

Google Exhibit 1043
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language for those additional terms is perfectly clear and there is no reason to replace that language with different words. Again, the Court's Scheduling Order does not allow for more than ten disputed terms for construction, and SFI has provided alternative constructions, as explained above, only for the ten terms that the parties identified as the ones to present to the Court under the Scheduling Order.

SFI provides its preliminary proposed constructions and supporting evidence based on the evidence available at this time and without the benefit of full discovery. For example, Google has not adequately disclosed its invalidity contentions in response to SFI's Interrogatory No. 2, and thus SFI's proposed constructions are based on Google's September 30 Supplemental Response to SFI's Interrogatory No. 2.

SFI reserves the right to modify, amend, or supplement its preliminary proposed constructions and supporting evidence as discovery proceeds; based on Google's preliminary proposed constructions and supporting evidence; following conferences between the parties; in response to other developments in the case; or for any other reason permitted under the Federal Rules of Civil Procedure, Local Civil Rules for the U.S. District Court for the Eastern District of Virginia, or the Scheduling Order. SFI reserves the right to identify additional terms for construction, and to respond to any term for which Google proposes a construction.

As Google has not yet identified its proposed claim constructions, SFI reserves the right to modify its preliminary proposed constructions, as necessary, to address more precisely what appears to be the dispute (if any) between the parties after the exchange of preliminary proposed constructions. SFI also reserves the right to identify additional evidence to support any such modifications or to oppose Google's proposed claim constructions, including references from the specification or prosecution history, dictionary definitions, citations to learned treatises and prior art, and testimony of fact and expert witnesses. Finally, to the extent Google propose constructions for terms included in an identified phrase for context (*see* Nov. 6, 2023 Ltr. from A. Mayron to D. Perlson), SFI reserves the right to propose constructions for those terms and disclose additional evidence supporting those constructions.

Sincerely,

/s/ Austin P. Mayron

Austin P. Mayron

cc: *All Counsel of Record* (via e-mail)

(Attachment)

SFI's November 10, 2023 Preliminary Proposed Constructions and Supporting Evidence

No.	Claim Term/Phrase	Claims	Preliminary Proposed Construction	Supporting Evidence
1.	"generating a plurality of data chunks based on [a/the] data set"	'854 pat., claim 1 '609 pat., claim 1	**No construction necessary.** In the alternative: "creating a plurality of data chunks based on [a/the] data set"	Intrinsic Evidence: '854 pat., claims 1, 8, 11, 18 '609 pat., claims 1, 4-6 '854 pat., 6:57-61; 8:38-41; 20:25-44; 21:9-37; 54:23-43; 66:14-17; 66:24-27; 68:2-5; 70:28-30; 74:57-75:10; 75:35-38; 76:22-47; 79:24-51; fig. 37 '609 pat., 6:57-61; 8:38-41; 20:25-44; 21:9-37; 54:17-37; 65:66-66:12; 67:54-57; 70:15-17; 74:47-66; 75:23-26; 76:22-26; 76:38-42; 79:18-45; fig. 37 U.S. Provisional Appl. No. 60/738,231 (the "'231 appl."), ¶¶ [0032], [0124], [0125], [0127], [0199], [0292], [0295], [0396], [0403], [0414], [0440], [0448]-[4450] Extrinsic Evidence: *generate*, Oxford English Dictionary (2d ed. 1994) (*v.* 3. "To bring about, give rise to, produce (a result, a state of things; in later use also, a state of mind, feeling, etc.)") Expert Testimony: Declaration and/or testimony of Avi Rubin, Ph.D.

No.	Claim Term/Phrase	Claims	Preliminary Proposed Construction	Supporting Evidence
	"distributing the data set into a plurality of data chunks" / "distributing the dataset in the shares" / "distributing the data set into a plurality of shares"	'854 pat., claim 1 '116 pat., claims 1, 9 '140 pat., claim 1	**No construction necessary.** In the alternative: "dividing and placing the data set into a plurality of [data chunks/the shares/a plurality of shares]"	<u>Intrinsic Evidence:</u> '854 pat., claims 1, 4-6, 8, 11, 14-16, 18 '609 pat., claim 6 '116 pat., claims 1, 7, 9, 13, 15, 21 '140 pat., claims 1, 6, 11, 15 '854 pat., 20:54-65; 21:13-17; 21:34-37; 21:50-53; 54:30-65; 75:60-67; 76:1-21; 79:32-37; 79:46-51; 82:24-27; figs. 8, 30-32, 36-37 '609 pat., 21:13-17, 21:34-37; 21:50-53, 54:28-59, 75:60-67, 75:49-76:7, 79:26-31, 79:40-45, 82:18-21, figs. 8, 30-32, 36-37 '116 pat., 8:32-39; 8:56-68; 20:17-22; 21:22-26; 21:48-52; 22:1-4; 22:13-20; 54:65-55:7; 55:11-22; 72:13-18; 74:50-59; 76:17-45; 78:33-56; 78:57-67; 79:8-47; 80:9-13; 80:39-42; 81:7-19; 81:38-45; 82:38-50; 87:22-49; 88:26-33; 99:56-67; figs. 8, 30-32, 40-43, 54 '140 pat., 8:15-22, 8:39-41, 19:53-57; 20:58-65; 21:17-21; 21:36-40; 21:53-55; 53:51-60; 53:61-54:7; 73:6-14; 74:38-65; 76:50-77:7; 77:22-31; 77:34-58; 78:22-26; 77:55-58; 78:23-28; 78:52-55; 79:19-29; 79:47-48; 80:7-9; 80:45-49; 81:35-37; 85:29-33; 97:41-51; figs. 8 30-32; 40-43, 54

No.	Claim Term/Phrase	Claims	Preliminary Proposed Construction	Supporting Evidence
				’231 appl., ¶¶ [0122], [0125], [0127], [0128], [0292], [0293], [0445]-[0447], [0452]; Abstract U.S. Provisional Appl. No. 60/622,146 (the “’146 appl.”), ¶¶ [0116], [0119], [0121], [0122], [0286], [0287], [0413]; figs. 30, 31 U.S. Provisional Appl. No. 60/718,185 (the “’185 appl.”), ¶¶ [0119], [0121], [0122], [0286], [0287], pp. 178-79, 181-89, 194-96, 209, 212, 220, 227, 229, 232, 235, 237, 238, 276-78, 284, 289, 302-03, 324; fig. 8 <u>Extrinsic Evidence:</u> *distribute*, Oxford English Dictionary (2d ed. 1994) (*v.* 4. “To divide and place into classes, or other divisions; to classify”) <u>Expert Testimony:</u> Declaration and/or testimony of Avi Rubin, Ph.D.
2.	“data indicative of at least one of the distinct encryption keys” / “data indicative of a distinct encryption	’854 pat., claims 1-2 ’609 pat., claims 1-3 ’116 pat., claim 2 ’140 pat., claim 1	**No construction necessary.** In the alternative: “information that points out, points to, makes known, shows, directs to,	<u>Intrinsic Evidence:</u> ’854 pat., claims 1-3, 11-13 ’609 pat., claims 1-3 ’116 pat., claims 2-4, 6, 10, 12, 16-18, 20, 22, 24

No.	Claim Term/Phrase	Claims	Preliminary Proposed Construction	Supporting Evidence
	key" / "data indicative of at least one of the different encryption keys" / "data indicative of the at least one session key"		hints at, or suggests [at least one of the distinct encryption keys/a distinct encryption key/at least one of the different encryption keys/the at least one session key]"	'140 pat., claims 1, 10-11, 17 '854 pat., 31:39-45; 48:33-43; 74:62-66 '609 pat., 31:34-40; 48:28-38; 74:52-56 '116 pat., 31:67-32:6; 48:63-49:6; 75:20-24; 87:14-21 '140 pat., 31:19-31:25; 47:57-67; 73:41-46; 85:21-28 '231 appl., ¶¶ [0173], [0258], [0440] '146 appl., ¶¶ [0167], [0252] '185 appl., ¶¶ [0167], [0252] <u>Extrinsic Evidence:</u> *indicative*, Oxford English Dictionary (2d ed. 1994) (*adj.* 2. "That indicates, points out, or directs; that hints or suggests") *indicate*, Oxford English Dictionary (2d ed. 1994) (*v.* 1. "To point out, point to, make known, show (more or less distinctly)") <u>Expert Testimony:</u> Declaration and/or testimony of Avi Rubin, Ph.D.

No.	Claim Term/Phrase	Claims	Preliminary Proposed Construction	Supporting Evidence
3.	"separately storing each data chunk of the plurality of data chunks together with one of the plurality of obfuscated different encryption keys"	'116 pat., claim 1	**No construction necessary.** In the alternative: "separately storing each data chunk of the plurality of data chunks together with one of the plurality of different encryption keys that has been rendered unclear or obscure"	<u>Intrinsic Evidence:</u> '116 pat., claims 1-6, 15-20 '116 pat., 54:32-53; 57:25-59:57; 57:25-60:2; figs. 21-24 '146 appl., ¶¶ [0285], [0298]-[0324]; figs. 21-24 '185 appl., ¶¶ [0285], [0928]-[0324]; p. 271; figs. 21-24 <u>Extrinsic Evidence:</u> *obfuscate*, Oxford English Dictionary (2d ed. 1994) (*v.* 3.b. "to darken, obscure (the understanding, judgment, etc.)") *obscure*, Oxford English Dictionary (2d ed. 1994) (*a.* 7.a. "Not manifest to the mind or understanding; imperfectly known or understood; not clear or plain; hidden, doubtful, vague, uncertain") ORSINI_000005021 at -5026 <u>Expert Testimony:</u> Declaration and/or testimony of Avi Rubin, Ph.D.
4.	"transforming" / "performing a transform"	'116 pat., claim 9	**No construction necessary.**	<u>Intrinsic Evidence:</u> '116 pat., claims 2-3, 9-12, 16-17, 21-24

No.	Claim Term/Phrase	Claims	Preliminary Proposed Construction	Supporting Evidence
			In the alternative: "changing the form"	'116 pat., 1:42-44; 8:43-44; 8:53-55; 77:13-29; 82:38-50; 82:65-83:11; 84:56-62; 85:26-45; 87:11-46; 88:65-89:11; figs. 41, 46 '146 provisional appl., ¶ [0004] '185 provisional appl., ¶ [0004], pp. 178-79, 181, 209, 235-36, 243, 271, 276-80, 302-03, 307 <u>Extrinsic Evidence:</u> *transform*, Microsoft Computer Dictionary (5th ed. 2002) (*vb.* 1. "To change the appearance or format of data without altering its content; that is, to encode information according to predefined rules") <u>Expert Testimony:</u> Declaration and/or testimony of Avi Rubin, Ph.D.
5.	"dataset" / "data set"	'854 pat., claim 1 '609 pat., claim 1 '116 pat., claims 1, 9 '140 pat., claims 1-2, 4, 7-8	"a collection of information for storage"	<u>Intrinsic Evidence:</u> '854 pat., claims 1, 4-6, 8, 10-11, 14-20 '609 pat., claims 1, 5-6, 8 '116 pat., claims 1, 7-9, 13, 15, 21 '140 pat., claim 1-2, 4, 6-9, 11-13, 15-16

No.	Claim Term/Phrase	Claims	Preliminary Proposed Construction	Supporting Evidence
				’854 pat., 7:23-24; 7:62-8:6; 20:14-34; 53:51-53; 56:62-59:36; 59:60-61; 63:3-19; 63:59-64:8 76:66-77:12; figs. 8, 21-24 ’609 pat., 7:23-24; 7:62-8:6; 20:14-34; 53:45-47; 56:59-59:36; 59:56-57; 62:56-63:5; 63:45-61; 76:67-77:3; figs. 8, 21-24 ’116 pat., 7:19-20; 7:56-67; 20:49-21:2; 57:25-60:2; 60:21-22; 63:24-40; 64:13-28; 89:44-46; figs. 8, 21-24 ’140 pat., 52:55-57; 53:3-5; 58:64-65; 61:64-62:12; 62:62-67; 87:48-50; figs. 8, 21-24 ’231 appl., ¶¶ [0289], [0374], [0380], [0452] ’146 appl., ¶¶ [0285], [0367], [0368], [0373]-[0374] ’185 appl., ¶¶ [0283], [0367], [0373]-[0374] <u>Extrinsic Evidence:</u> *data set*, Microsoft Computer Dictionary (5th ed. 2002) (*n.* 1. “A collection of related information made up of separate elements that can be treated as a unit in data handling”) <u>Expert Testimony:</u> Declaration and/or testimony of Avi Rubin, Ph.D.

No.	Claim Term/Phrase	Claims	Preliminary Proposed Construction	Supporting Evidence
6.	"virtual disk, the virtual disk comprising a directory mapped to the plurality of physical storage devices"	'140 pat., claim 1	**No construction necessary.** In the alternative: "a system that simulates or emulates a physical storage device, comprising a directory mapped to a plurality of physical storage devices such that physical locations of the shares are hidden from the client device"	<u>Intrinsic Evidence:</u> '140 pat., claims 1, 11 '140 pat., 87:16-59 <u>Extrinsic Evidence:</u> *Oasis Rsch., LLC* v. *AT&T Corp.*, 2012 WL 602199, at *9 (E.D. Tex. Feb. 23, 2012) <u>Expert Testimony:</u> Declaration and/or testimony of Avi Rubin, Ph.D.
7.	"external key "	'854 pat., claim 1	**No construction necessary.** In the alternative: "a key stored separately from the data chunks"	<u>Intrinsic Evidence:</u> '854 pat., claims 1, 7-11, 17-19 '854 pat., 6:65-7:22; 9:26-20:23; 62:41-47; 62: 49-57; 63:27-33; 63:35-41; 66:4-27; 71:37-44; 72:17-45; 75:39-43; 77:59-63; 78:66-79:3; 79:15-19; 79:66-80:4; figs. 1-7 '231 appl., ¶¶ [0463], [0466]; Abstract; fig. 36

No.	Claim Term/Phrase	Claims	Preliminary Proposed Construction	Supporting Evidence
				Extrinsic Evidence: *external*, Oxford English Dictionary (2d ed. 1994) (*adj.* A.1.a "Situated or lying outside, pertaining to, or connected with, the outside or outer portion of anything") Expert Testimony: Declaration and/or testimony of Avi Rubin, Ph.D.
8.	"minimum number of the plurality of [data] chunks"	'854 pat., claim 1 '609 pat., claim 1	**No construction necessary.** In the alternative: "a threshold number of chunks less than or equal to the total number of [data] chunks"	Intrinsic Evidence: '854 pat., claims 1, 11 '609 pat., claims 1, 8 '854 pat., 70:26-39 '609 pat., 70:12-35 '231 appl., ¶ [0414] Expert Testimony: Declaration and/or testimony of Avi Rubin, Ph.D.
9.	"a data set" / "the data set" / "a dataset" / "the dataset" *(antecedent basis only)*	'854 pat., claim 1 '609 pat., claim 1 '116 pat., claims 1, 9 '140 pat., claims 1-2, 4, 7-8	**No construction necessary.**	*See SFA Sys., LLC* v. *1-800-Flowers.com, Inc.*, 940 F. Supp. 2d 433, 447 (E.D. Tex. 2013); *Cybergym Rsch. LLC* v. *Icon Health & Fitness, Inc.*, 2007 WL 5688735, at *22 (E.D. Tex. Jan. 25, 2007)

No.	Claim Term/Phrase	Claims	Preliminary Proposed Construction	Supporting Evidence
10.	"session key"	'140 pat., claims 1, 8	"a key created to both secure and restore a specific collection of information"	<u>Intrinsic Evidence:</u> '140 pat., claims 1, 8-11, 17 '140 pat., 32:30-59; 33:4-15; 33:30-38; 56:4-41; 76:4-77:4 '185 appl., ¶¶ [0173], [0175], [0177], [0425]-[0426]; pp. 179, 209, 220, 227, 235, 271, 303 <u>Extrinsic Evidence:</u> *session*, Microsoft Computer Dictionary (5th ed. 2002) (*n.* 1. "The time during which a program is running. In most interactive programs, a session is the time during which the program accepts input and processes information") Charles C. Mann, *A Primer on Public-key Encryption*, THE ATLANTIC (Sept. 2002 issue) <u>Expert Testimony:</u> Declaration and/or testimony of Avi Rubin, Ph.D.