

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION**

CardWare Inc.,

Plaintiff,

v.

Google LLC,

Defendant.

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Civil Action No. 7:24-cv-00278-DC-DTG

JURY TRIAL DEMANDED

PLAINTIFF CARDWARE INC.'S SUR-REPLY CLAIM CONSTRUCTION BRIEF

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U.S. Patent No. 10,339,520	
10[pre]	A method of storing and generating payment information in an electronic device, the method comprising:
10[a]	accepting a user input of issued payment information input at a touch screen display of the electronic device, wherein the information comprises an issuer provided payment information;
10[b]	wherein the electronic device comprises device-specific and user-specific information; and,
10[c]	wherein the issuer provided payment information is communicated wirelessly; and,
10[d]	receiving wirelessly a static device account number payment information for storage on the electronic device; and wherein
10[e]	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,
10[f]	dynamically generating a one-time limited-use number 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
10[g]	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.
U.S. Patent No. 11,176,538	
1[pre]	A method of performing a payment transaction, the method comprising:
1[a]	receiving an input at an electronic device corresponding to a priming operation of the electronic device by an authorized user; and,
1[b]	wherein the authorizing of a user of the electronic device comprises recognizing a user input using a human input sensor, and wherein the human input sensor is any one of a touch sensor, a touch-screen display interface, a gesture sensor, a motion sensor, and a biometric sensor; and,
1[c]	receiving a request for a transaction payment at said electronic device via an NFC interface of the device; and,
1[d]	displaying, on a display of the device, a transaction payment request and at least a portion of an original static issuer-supplied payment account information associated with a payment method, for a user selection in paying the payment request; and,
1[e]	retrieving from a memory attached to a processor of the device, a device-specific static limited-use payment information, associated with said selected payment method; and,
1[f]	dynamically generating, by a processor of the device, device-specific limited-use payment information, for said selected payment method; and,
1[g]	using said limited-use payment information in place of at least a portion of said selected original issuer-supplied payment information for the transaction; and,
1[h]	combining of said dynamically-generated limited-use payment information with said static limited-use payment information, to generate a complete device payment

Claim	Claim Language
	information; and,
1[i]	transmitting said complete device payment information from said electronic device to a recipient reader via said NFC interface to the recipient NFC reader for a processing of the payment transaction; and,
1[j]	receiving information at said electronic device corresponding to a transaction status of the payment transaction, wherein such transaction status is at least partly dependent on validation of the transmitted complete device payment information by a payment processor authority and a payment issuer authority; and,
1[k]	visually conveying the transaction payment authorization status via a user-interface displayed on said display.
3	The method of claim 1, further comprising receiving said confirmation result of said complete device payment information authentication status from a payment processing authority via at least one interface of a set of interfaces comprising: said device NFC interface, a wireless interface of said device.
4[a]	he method of claim 3, wherein the generating the limited-use payment information utilizes a unique device generated information limited-in-use to said selected issuer-payment method, in payment transactions performed by said device, in place of said selected issuer-payment information; and,
4[b]	wherein said device account information will be rejected as invalid when not including a valid device generated limited-use information.
7	The method of claim 3, wherein the visual conveying of the transaction status is further comprising at least one, of a set of visual information including: a confirmation result of payment authority authenticating said device-transmitted limited-use payment information, a confirmation result of payment authority authenticating said device-transmitted complete device payment information, an NFC transaction status, a transaction payment amount, a payment facility wherein the transaction was performed, a merchant information, an original issuer payment account information, an original payment issuer information, a request for an authorized-user approval of the transaction, a payment processing status, an issuer payment approval status, and a payment completion status.
8[a]	The method of claim 1, wherein the generating the limited-use payment information is comprising: a device-specific account number; and,
8[b]	a device-internal transaction sequence counter count; and,
8[c]	an information unique to the user and device which does not pass in the transaction; and,
8[d]	at least one payment authority-supplied information which does not pass in the transaction, wherein the complete device payment information is only valid for use in place of an issuer payment method in authorizable payments when comprising all valid device generated limited-use information elements, and

Claim	Claim Language
8[e]	wherein said generating is limiting in-scope-of-use said generated payment information, for said user-selected issuer payment method option, to a unique-per-device unique-per-use one-time transacting by said combining device; by combining said information elements including: said transaction-specific sequence count information, said device-specific information, said user-specific information, and said authority-specific information.
9	The method of claim 8, wherein the generating the limited-use payment information further utilizes a secure combining of said information, by at least one processor of the device, into a singular cryptogram number, capable of passing in at least a portion of the device transaction payment information.
25[pre]	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:
25[a]	accept a priming action of the electronic device by an identified valid device user, identified from the device inputs;
25[b]	enable the electronic device for imminent performance of a payment operation responsive to the priming action of said valid user;
25[c]	display a summary of online purchase information including the merchant information and the purchase amount; and,
25[d]	display at least one selectable issuer payment account methods on a display; and,
25[e]	receive a payment selection and approval authorization from said valid device user via a human input sensing at the device; and
25[f]	responsive to receiving a valid user transaction payment approval, generate a device-specific limited-use payment information for use in place of at least a portion of said selected issuer payment account information on the device,
25[g]	form a complete combined device payment information from a dynamically generated portion and a statically generated portions stored in a memory of the device,
25[h]	wherein the communication interface is operable to transmit said complete device payment information from said electronic device to the recipient of the online purchase transaction; and
25[i]	wherein further the processor is operable to receive an approval and a denial confirmation from an online payment facility of the complete device payment information, and cause the display to visually convey a status of the online purchase transaction.
27[a]	The non-transitory, computer-readable medium of claim 25, wherein the one or more processors include a cryptographic processor, and wherein the executable instructions further cause the one or more processors to:
27[b]	cryptographically compute a dynamically generated one-time-use cryptogram number,
27[c]	and combine said dynamically generated portion with a static device-specific account number known to a payment processing authority and limited in use to the device use in place of an issuer payment method; and,
27[d]	wherein further said cryptogram number is created by said device processor cryptographic combination of device transaction sequence counter count, a payment

Claim	Claim Language
	account information, a user information, and information stored in the device and specific to the device and which is not communicated in the transaction; and,
27[e]	wherein said transaction sequence counter, said information and said secrets are known to both said device, and to said payment processing authority; and,
27[f]	wherein further said static device-specific device account number is known to a payment issuer, and has a device-specific expiration date of limited duration of validity; and,
27[g]	wherein the generating said complete combined device payment information comprises a device combining said static device-specific device account number, said device account expiration date, said user information, said payment account information, and said dynamically generated cryptogram,
27[h]	and transmitting said complete device payment information when said issuer payment account method is selected.

I. INTRODUCTION

The patents-in-suit describe multiple types of payment information because that is the nature of this invention: replacing issued payment information (*e.g.*, a traditional credit card number) with more secure replacement information that generally includes: (1) a static portion (*e.g.*, a device account number) that is wirelessly received and stored on the device, and (2) a limited-use portion that is dynamically generated by the device itself (based on various inputs). The claims and technology are complex, given the various pieces of information at issue and the various ways in which they are received, generated, and transmitted to payment authorities. But they are not indefinite, as Judge Payne already held with respect to certain disputes herein. In every instance, the claim terms and their antecedent bases are clear when read in context of the intrinsic record as a whole. CardWare further explains that context and logic below.

II. ARGUMENT

A. Dr. Black's Declaration Is Not Relevant to *This Case*.

Even if Dr. Black is a POSITA, that does not mean he has anything relevant to say as it concerns the particular indefiniteness arguments that Google has raised. All of Google's indefiniteness positions turn on purported claim drafting errors and antecedent basis questions. The positions are not, for example, the type that were at issue in *Teva Pharmaceuticals USA, Inc. v. Sandoz, Inc.*, which turned on factual questions concerning the meaning of "molecular weight" in the art. 574 U.S. 318, 322–23 (2015). Courts may allow experts to explain "terms of art, and the state of the art . . . but they cannot be used to prove the proper or legal construction of any instrument of writing." *Id.* at 332 (citations omitted). That is exactly what Dr. Black has done—he has a very short section on the "state of the art," but does not tie that to the actual disputes, which are instead entirely tied to an interpretation of the patent itself. *See, e.g.*, Dkt. 58-2, ¶¶ 35–41 (Dr. Black parsing the antecedent basis questions within the patent without any reference to a technical question or even the general meaning of a term in the art, outside of the patent). Google effectively admits as much, stating "Dr. Black analyzed everything in the intrinsic record as well as a prior claim construction order involving the same patents." Dkt. 71 ("Reply") at 2. That is

exactly what experts are *not* permitted to do during claim construction. Accordingly, the Court should not consider his testimony aside from his discussion of the “state of the art” (which he does not link to any substantive opinions).

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

1. The “Payment Information” Terms Are Not Indefinite

Google again mischaracterizes Judge Payne’s ruling. Judge Payne did *not* hold that “payment information” in the preamble (or in claim 10(e)) refers to “all information” in the claim, as Google again argues. *See* Reply at 3. Rather, Judge Payne held that “payment information” in the preamble and claim 10(e) refers to the “various recitals of ‘information’ involved in ultimately ‘making a payment transaction.’” Dkt. 58-1 at 23. This is exactly what CardWare is now arguing: the entire point of claim 10 is to replace issued payment information (*e.g.*, a traditional credit card number) with secure, replacement payment information. In claim 10, that secure replacement is a combination of the static device account number and the dynamically generated one-time limited-use number. There is no indication in the claim that “issued payment information” is involved “in ultimately making a payment transaction.” To the contrary, limitation 10(g) recites “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.” Dkt. 1-1 (“520 patent”) at 16:30–33 (emphasis added). Judge Payne had it exactly right.

a) “Payment Information” In Limitation 10(e) Is Definite.

Google criticizes CardWare’s color-coding, but this color-coding shows how the various claim terms match up with each other and is consistent with how Judge Payne construed the claim. Reply at 4.¹ First, Google argues that CardWare and Judge Payne cannot be correct because the preamble indicates that the “payment information” is “stored,” and, because only the “static device account number” is “stored,” the “payment information” in the preamble must mean something other than the complete payment information used in the transaction. Reply at 4. This argument

¹ CardWare used a figure from its prior technology tutorial simply as a demonstrative to illustrate the functionality of the claims, just the same as Google color-coded the claims itself.

only highlights exactly why the claim is definite.

Per limitation 10(g), the complete payment information used in the transaction is the combination of the “static device account number” and the “dynamically generated one-time limited-use number.” Per limitation 10(d), the “static device account number payment information” is received wirelessly “for storage on the electronic device.” On the other hand, the dynamic portion is “generat[ed],” per limitation 10(f). It all lines up perfectly. The preamble says that the claim is directed to “storing and generating payment information.” The storage part is the “static device account number” and the “generated” part is the dynamic one-time limited-use number. Together, they form the complete “payment information” that, as Judge Payne held, is “involved in ultimately ‘making a payment transaction.’” Dkt. 58-1 at 23.

Second, Google argues that “it makes little sense that ‘payment information’ introduced in the preamble” would “appear in the middle of the claim.” Reply at 4. SAP cites a Court of Federal Claims decision for the proposition that “the antecedent relationship implies a sequence as a matter of grammar.” Even if correct as a matter of law, claim 10 does not violate this principle. The term “payment information” is introduced in the preamble and then referenced later in the claim. There is no prohibition or even a canon of claim construction prohibiting reference to such a limitation in the “middle” of a claim. Moreover, it is a logical placement considering the context of the claim.

Claim 10 is organized into several different concepts that generally follow an actual secure payment transaction using the patented technology: (i) the preamble sets out the overall goal of the method—storing and generating secure [replacement] payment information; (ii) limitations 10(a)-10(d) recite a process of onboarding an issued payment instrument and receiving a token (static device account number) that gets stored on the device for later use in a secure transaction; (iii) limitation 10(e) begins to set out the nature of the secure replacement payment information that will be used for a transaction; and (iv) limitations 10(f)-(g) recite generation of the dynamic portion, and, finally, use of the static and dynamic portions to complete a payment transaction. The “payment information” in 10(e) refers back to the same term in the preamble because it is the limitation that begins to describe the nature of the information that will be used in the transaction.

10(f) and 10(g) then provide further detail and complete the transaction process. Putting the limitation in the middle of the claim is entirely proper, and, in this case, logical.

Third, Google argues that because of the article “a” in limitation 10(e), it is possible that the “payment information” could refer to “issued payment information” in limitation 10(a). Reply at 5. This is incorrect. Regardless of the article “a,” it is clear that “payment information” in 10(e) does not refer to *any* issued payment information. There are several reasons. First, per limitation 10(e), a “portion of the payment information is a limited-use number for limited use by the device.” There is nothing about “issued payment information” that is for “limited use by the device.” Rather, issued payment information comes from a bank (*e.g.*, an issued credit card number) and would be device agnostic.² Second, the point of claim 10 is to use secure *replacement* information for the transaction—information that did not come from an issuer (and therefore cannot be used fraudulently). In other words, why would “the payment information” in limitation 10(e) refer to *any* kind of “issuer” provided payment information when it is used “***in place of*** a issuer provided payment information,” irrespective of the article “a”? That’s not a reasonable reading of the claim as a whole or a reason to hold a claim indefinite, particularly when Judge Payne already considered and rejected the same argument. Dkt. 58-1 at 22 (referencing Samsung arguments that “payment information” could be “issuer provided payment information” or “issued payment information”).

Finally, Google repeats its position that “the payment information” could refer to the “static device account number payment information.” Reply at 4–5. But Google has never offered any real argument as to why that might be the case. In its Opening Brief, Google’s only argument about this was a reference to claim 23 (which concerns ATM transactions). Dkt. 58 (“Br.”) at 5–6. Google does not advance anything additional in reply, and instead just criticizes CardWare’s explanation of how claim 10 all fits together (as if it is CardWare’s burden to show definiteness).

To recap, “payment information” and “static device account information” are not

² Google argues that “nothing in the intrinsic record limits ‘issued payment information’ or ‘an issuer provided payment information’ as being from a bank.” But CardWare referenced two patents cited on the face of the ’520 patent that indicate this. Dkt. 63 (“Resp.”) at 7, n. 4. And Google’s own expert admitted this is how it would be understood in the art. *Id.* at 7, n. 5.

synonymous for several reasons. First, claim 10 refers to “said static device account number” in limitation 10(g) when referring back to the “static device account number payment information.” There is no reason to think that the claim uses “said static device account number” in one instance but just uses “payment information” when referring to it a second time.

Second, limitation 10(e) provides that “at least a portion of the payment information is a limited-use number for limited use by the device.” That language provides contextual clues, including (1) the “payment information” can have portions; and (2) the “payment information” is not the same as a “portion” of itself. Looking to limitation 10(g), the claim specifies that both “said static device account number and said dynamically generated one-time limited-use number” are used together “for making a payment transaction.” Accordingly, each of “said static device account number” and “said dynamically generated one-time limited-use number” are “portion[s]” of the information used for completing a “payment transaction.” It all lines up. The “payment information” in limitation 10(e) cannot be the same thing as different portions of itself. Rather, as Judge Payne held, the “payment information,” both in the preamble and in limitation 10(e), refers to the complete payment information used in ultimately making a payment transaction.

Even claim 23 is consistent with this. In that claim, the “payment information” has at least two portions, one of which is the “static” portion. Accordingly, just as in claim 10, the “payment information” refers to the complete payment information used for making a transaction.

In sum, claim 10 refers to different types of payment information because that is an important part of what the claimed technology is about—replacing issued payment information with different, more secure, payment information (including static and dynamic portions). Everything about the context of the claim supports exactly what Judge Payne already held—the “payment information” refers to the complete payment information used in the actual transaction (and not simply “all” payment information as Google repeatedly misstates).

b) “Payment Information” In 10[f] Is Clear.

Limitation 10(f) recites that “dynamically generating a one-time limited-use number” may be based on, *inter alia*, “payment information.” Google pretends as if the term has an antecedent

basis, and from there concludes that it must refer back to something else (that, in Google’s view, is unclear). Reply at 8–9. But “payment information” in limitation 10(f) does not contain any such antecedent basis. It is simply “payment information.” There is nothing indefinite about that. Google does not cite any law indicating that a patentee has to describe a claim term with reference to something else. The parties can dispute, as a factual matter, whether any dynamic generation of a limited-use number in the Accused Products is based on “payment information.” But this is not a basis, under any case or claim construction principle, to hold that the claim is indefinite.

c) “A Issuer Provided Payment Information” In 10[e] Is Clear.

Google does not cite any case, either in its opening brief or in reply, holding that inclusion of the article “a” makes a term indefinite. Reply at 9–10. Limitation 10(e) provides that “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.” It is well-established that use of the article “a” means “one or more.” *Salazar v. AT&T Mobility LLC*, 64 F.4th 1311, 1315 (Fed. Cir. 2023) (citations omitted). There is no requirement in patent law that a patentee forego use of the phrase “a” in favor of, *e.g.*, “said” or “the” that refers back to some prior claim term. Indeed, Judge Payne already held, *as it concerns this exact claim term*, “some of the identified terms are introduced by the indefinite article ‘a,’ thus on their face not requiring any antecedent basis.” Dkt. 58-1 at 23.

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

1. “said device account information” (claim 4)

In its Opening Brief, Google asserted that “said device account information” could refer to any of six different things. Br. at 10–12. It has now effectively given up on at least three, focusing its reply on two remaining alternatives: “limited-use payment information” and a “unique device generated information.” Reply at 9–11. Neither of these make sense in the context of the claim. Rather, the only information that is validated in claims 1 or 3 (from which claim 4 depends) is the “complete device payment information.” This can be seen by considering the claims in order, with “said device account information” substituted with “the disputed phrase,” for purposes of illustrating the pattern.

- Claim 1 says that the “transaction status is at least partly dependent on **validation of the transmitted complete device payment information** by a payment processor authority...” (emphasis added)
- Claim 3, which depends on claim 1 refers to the “**confirmation result of said complete device payment information authentication status** from a payment processing authority.”
- And then claim 4 provides that **[the disputed phrase]** “will be **rejected as invalid** when not including a valid device generated limited-use information.”

The only logical conclusion to draw from this sequence is that the [disputed phrase] refers to “said complete payment information.” This information is transmitted and validated by the payment processing authority. It is all the clearer because the claim phrase is so similar (“said device account information” vs. “said complete device payment information”). *See Energizer Holdings, Inc. v. Int’l Trade Comm’n*, 435 F.3d 1366, 1371 (Fed. Cir. 2006) (“an antecedent basis can be present by implication.”). CardWare explained this in its Responsive Brief but Google does not substantively address it in Reply, instead criticizing CardWare for not squarely addressing its strawman argument that the disputed phrase could (notwithstanding the sequence and context of the claims) refer to something else.³ Resp. at 10–11; Reply at 8–11. To be sure, Google’s remaining alternatives are wrong, as explained below.

First, the “limited use information” cannot be the same as “said device account information” because the same limitation in claim 4 uses each term; they cross-reference each other in a way that evidences the patentee considered them to be different. Specifically, claim 4 says “wherein said device account information will be rejected as invalid when not including a valid device generated limited-use information.” In other words, “said device account information” *includes* “limited-use information.” They cannot be the same.

Second, “unique device generated information” cannot be right for similar reasons. It is just an input to the “limited-use information” (as per the first clause of claim 4), which itself is different than “said device account information.” Moreover, there is no indication in the claim that “unique device generated information” gets validated (as is required of the disputed phrase).

³ Dr. Black does not mention the import of “validation” or “rejected as invalid” in his declaration. Dkt. 63-2 (Black Tr.) at 128:22-130:1; *see also id.* at 130:3–7.

2. “[device-transmitted] limited-use payment information” (claim 7)

The disputed phrase refers to the “dynamically-generated limited-use payment information” introduced in claim 1. Google is correct that there are two portions of limited-use payment information that are part of claim 7: “static limited-use payment information” and “dynamically-generated limited-use payment information”—and that, read in a vacuum, the disputed phrase (“device-transmitted limited-use payment information”) could refer to either. Reply at 12–14. But claim construction is not done in a vacuum. *Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319 (Fed. Cir. 2005) (“We cannot look at the ordinary meaning of the term . . . in a vacuum.”). Courts must consider the context of the claims and the intrinsic record as a whole. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*) (“Other claims of the patent in question, both asserted and unasserted, can also be valuable sources of enlightenment as to the meaning of a claim term.”) From the context of the claims, and the specification, it is clear that the disputed phrase in claim 7 refers to the “generated” limited-use information.

Claim 1 provides that the “dynamically-generated limited-use payment information” is combined with the “static limited-use payment information” to generate complete device payment information. This “complete device payment information” is transmitted for a “processing of the payment transaction.” It is clear from various claims, as well as the specification, that the “dynamically generated” piece is included as part of the transmitted “complete device payment information” and that it remains segregable after transmission and *subject to validation* by the payment processing authority. For example, claim 4 (which also depends from claim 1) provides “wherein said device account information will be rejected as invalid when not including a valid device generated limited-use information.” This highlights how the “device generated limited-use information” is subject to separate validation. Claim 5 recites that the payment processing authority authorizes a transaction by comparing “said device-generated limited-use payment information.” Same, too, with claim 6: a payment processing authority compares “said device generated payment information.” Dkt. 1-3 (“’538 patent”) at 20:49-21:30. And, same with the specification, which recites that a “unique number may be *generated* . . . and verified by the

payment authority.” Resp. at 15 (citing ’538 patent at 10:30-33). There is no similar indication across the claims and specification regarding the static limited-use information; the claims and specification focus on validation of the *dynamic* portion.

Claim 7 follows this same pattern as everything else in the specification and other claims depending from claim 1. Consistent with everything else in the patent, claim 7 involves confirmation of the (i) complete device payment information and (ii) device-generated limited-use payment information. Accordingly, “device-transmitted limited-use payment information” refers to “device-generated limited-use payment information.”

3. “said information” (claim 9)

CardWare’s Responsive Brief explained that claim 8 specified the four pieces of information that are inputs to the dynamic generation and that form the antecedent basis for “said information” in claim 9. Resp. at 15–18. Google does not respond to this contextual reading of the claims themselves, and for that reason alone, the claim is sufficiently definite. Google only responds that the Table in the ’538 patent specification (cols. 18-19) does not recite the same exact words as the information in claim 8. Reply at 11. This is true, but the concepts are generally aligned (*e.g.*, “sequential parameter” in Table 1 vs. “transaction-specific sequence count information” in claim 8). And, “said information” in claim 9 is, of course, not specifically cross-referencing Table 1; it is cross-referencing the introduction of the four pieces of information in claim 8. CardWare offered Table 1 in its Responsive Brief only as further support for how the patent describes combining multiple categories of information in the process of dynamically generating limited-use payment information

4. “said information” (claim 27)

“[S]aid information” refers to “payment account information” and “user information” recited in the limitation of claim 27 immediately before it. See Resp. at 18–19. The parallel structure of these adjacent limitations in claim 27, and the corresponding specification disclosure, confirm this. See Resp. at 18–19 (citing ’538 patent at cols. 18–19, Table 1). Antecedent basis can be implied. See *Energizer*, 435 F.3d at 1369–70.

Google, relying on Dr. Black’s opinions, points again to “online purchase information” and “merchant information” of claim 25 as possible antecedents, but neither Google nor Dr. Black explain why a POSITA would look to limitations in claim 25 about displayed information for antecedent basis instead of the immediately preceding limitation in the same claim 27, or how these elements would be “known to both said device, and to said payment processing authority” as recited in claim 27. *See* ’538 patent at 24:58–60, 25:57–59; Reply at 11; Resp. at 19.

5. “said secrets” (claim 27)

“[S]aid secrets” of claim 27 finds its antecedent in the immediately preceding limitation, specifically “information stored in the device . . . which is not communicated in the transaction.” Antecedent basis can be implied and claim phrases need not be recited verbatim in the specification to be definite. *See Energizer*, 435 F.3d at 1369–70; *Bancorp Servs., L.L.C. v. Hartford Life Ins. Company*, 359 F.3d 1367, 1373 (Fed. Cir. 2004).

Dr. Black admitted as much, testifying that “the reference to said secrets is referring to, you know, anything in that category [*i.e.*, “information stored in the device and specific to the device which is not transmitted in the transaction”] that would be considered by the protocol or the specification or context to be sensitive.” *See* Dkt. 63-2 at 162:17–163:10. It is irrelevant to the antecedent basis analysis that the word secrets can, in general, refer to other information.

D. The Court Should Disregard the Last 5 Pages of Google’s Brief for Exceeding the Page Limit.

The Court’s Standing Order provides for a 10-page reply limit when less than 3 patents are at issue. There are 4 patents in this case, but only 2 at issue in claim construction. Both parties adhered to the 2-patent page limit of 20 pages in the first two claim construction briefs, but Google filed a 15-page reply brief as if there were 3-5 patents at issue in *Markman*. *See generally* Br., Resp., Reply. It did not move for a page extension or contact CardWare in advance. In the interests of fairness, and to set a precedent against parties violating the Court’s page limit requirements without repercussions, the Court should disregard pages 11 to 15 of Google’s Reply.

Dated: July 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Eric H. Findlay
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