IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HBCU MESSAGING US LP, *Plaintiff,* v. APPLE, INC., *Defendant.*	Civil Action No. 1:24-cv-01199-ADA JURY TRIAL DEMANDED

PLAINTIFF HBCU MESSAGING US LP'S
RESPONSIVE CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

HBCU Messaging US, LP ("HBCU") respectfully requests that the Court adopt the clear, helpful claim constructions that adhere to the Supreme Court's claims construction principles. By contrast, the claim constructions proffered by Defendant Apple Inc. ("Apple") suffer from fundamental defects. Apple's constructions are inconsistent with the intrinsic record, inconsistent with the understanding of a person of ordinary skill in the art, and, most importantly, are unhelpful to a lay juror applying the claims to the accused products. Rather than clarify the claims for a lay jury, Apple's constructions seem designed to create confusion. Similarly, Apple's indefiniteness arguments are makeweight and perfunctory and should be rejected.

II. DISPUTED TERMS

A. "bearer" ('127, '827, '182, '183, '600, and '601 patents)

HBCU Messaging's Construction	Apple's Construction
A protocol running on a channel for transmitting data including SS7, GSM SS7, HSDPA, WCDMA, CDMA2000, GPRS, Bluetooth, WiFi, WiMax, or any other WPAN, WLAN, or WWAN wireless data transfer protocol	A communication channel or protocol

Apple's Opening Brief skims past the term "bearer" with conclusory arguments that ignore the specification's teachings. (*See* Dkt. 62 ("Apple Br.") at 9-10.) The common specification clearly explains that both elements—channel and protocol—establish a bearer according to the patents. (*See* Dkt. 61 at 4-5 ("HBCU Brief").) Apple's either/or construction ignores this relationship.

To support its position, Apple points to an "SMS bearer" which can be a GSM SS7 or SS7 signaling channel. (Apple Br. at 9; *see also* '127 patent at 2:61-3:2.) Here, however, SMS is used as an adjective by the inventor to identify protocol type used with the signaling channel,

GSM SS7. Likewise, "packet-switched data" is used as an adjective to identify another type of protocol, *e.g.* Bluetooth, WSiFi, WiMax, or any other WPAN, WLAN, or WWAN protocol. (*See* '127 patent at 5:37-44.) The same protocols listed in the specification are those in HBCU's proposed construction.

Apple does not challenge HBCU's inclusion of the bearer protocols as inaccurate or unsupported by the specification. Apple's objection is that "[t]here is no good reason to present jurors with 12 examples of messaging protocols." (Apple Br. at 10.) But Apple fails to explain how or why a lay juror would know what the term "protocol" means. Listing the protocols solves that problem. Jurors know what WiFi and Bluetooth mean. The claim as properly construed allows the jury to find infringement (or not) by matching a specification listed protocol (or not) to the protocol(s) used by Apple. A proper construction also leaves no room for expert mischief. It is undisputed that the Accused Instrumentalities utilize, for example, the WiFi protocol to send iMessages.

Apple argues that HBCU's "proposed construction overlooks that a 'bearer' can also be a channel . . . ." (*See* Apple Br. at 10; HBCU Br. at 4-5.) That argument ignores how channels and protocols are interrelated and complimentary. HBCU's proposal is fully supported by the intrinsic record and recognizes the specification's consistent use of protocol ***and*** channel to define a bearer: "a protocol running on a channel . . ." (*See, e.g., id.* at 9, HBCU Br. at 4.)[1] Apple's argument is similar to arguing that a river is a means of travel separate from the watercraft on it. HBCU's argument points out that operating a watercraft requires a waterway or body of water.

[1] Unless otherwise indicated, emphasis in this Brief has been added.

Apple's proposal appears designed to invalidate the claims by broadening bearer so that *any* protocol or *any* channel that enables communications through the worldwide web, alone or in combination, constitutes a "bearer." This approach violates the basic *Markman* principle is to construe claims, when necessary, to ***preserve*** validity, not enhance invalidity arguments. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1327 (Fed. Cir. 2005).

HBCU's proposed construction of "bearer" adheres faithfully to the intrinsic record, whereas Apple's—which separates the claimed channel from the protocol, fails to define for the jury what a protocol means, and is designed to invalidate—does not clarify. HBCU's construction is drawn directly from the specification and should be adopted.

B. "cellular core network" ('127 and '600 patents)

HBCU Messaging's Construction	Apple's Construction
One or more entities responsible for: maintaining a database of subscriber information for a cellular network, for example, a home location register (HLR) and/or a home subscriber server (HSS); providing access to a short message service center (SMSC) or multimedia message (MMS) server; and providing Internet access to one or more mobile devices via at least mobile operator base stations	The portion of a cellular network that connects base stations to each other and to the internet

The inventor expressly defined the term "cellular core network" in prosecution. In contrast, Apple introduces extrinsic evidence that conflicts with the inventor's clear intrinsic definition. (*See* Apple Br. at 12 (citing 2008 version of Newton's Telecom Dictionary).)

It is axiomatic that an inventor may act as his own lexicographer. *Phillips*, 415 F.3d at 1316 ("[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs."); *3M Innovative Properties Co. v. Avery Dennison Corp.*, 350 F.3d 1365,

1369, 1371 (Fed. Cir. 2004). The inventor's "lexicography governs" when the definition stems from prosecution as well as the specification. *See 3M Innovative Props. Co.*, 350 F.3d at 137 ("A term's ordinary meaning, however, must be considered in the context of all intrinsic evidence, namely the claims, the specification, and the prosecution history. . . .").

The lexicography canon applies to definitions set forth in subsequent prosecution. *See, e.g., Microsoft Corp. v. Multi-Tech Sys., Inc.*, 357 F.3d 1340, 1350 (Fed. Cir. 2004). As set forth in HBCU's Opening Brief, the Federal Circuit explained in *Microsoft* the relevance of intrinsic evidence to claim construction even when the evidence came from subsequent applications in the same family: "Any statement of the patentee in the prosecution of a related application as to the scope of the invention would be relevant to claim construction, and the relevance of the statement made in this instance is enhanced by the fact that it was made in an official proceeding in which the patentee had every incentive to exercise care in characterizing the scope of its invention." *Id.*; (*see* HBCU Br. at 10).

Here, the inventor explicitly defined "cellular core network" as:

> Referring again to FIG. 1, a core network includes one or more entities responsible for: maintaining a database of subscriber information for a cellular network, for example, a home location register (HLR) and/or a home subscriber server (HSS); providing access to a short message service center (SMSC) or multimedia message (MMS) server; and providing Internet access to one or more mobile devices via at least mobile operator base stations.

(HBCU Br., Ex. 1 at 3.)[2] The inventor's definition is the construction HBCU proposes.

Violating virtually every canon of claim construction, Apple proposes a definition based on extrinsic evidence not cited in the specification or addressed during prosecution history.

[2] U.S. Pat. App. No. 16/879,161, cited here, is a parent of the '600 patent and a child of the PCT application, PCT/AU2008/001043, to which both the '127 and '600 patents claim priority

Apple's position violates the fundamental principle that, where present, intrinsic evidence controls over extrinsic evidence. *Seabed Geosolutions (US) Inc. v. Magseis FF LLC*, 8 F.4th 1285, 1287 (Fed. Cir. 2021) ("If the meaning of a claim term is clear from the intrinsic evidence, there is no reason to resort to extrinsic evidence."); *Regeneron Pharms., Inc. v. Mylan Pharms. Inc.*, 130 F.4th 1372, 1383 (Fed. Cir. 2025) ("The district court also correctly recognized that 'it need not consider this extrinsic evidence for claim construction where, as here, the intrinsic evidence is clear and unambiguous.'").

Apple's resort to Figure 1 of the patents is unavailing. First, Apple's proposed construction ignores that the Figure ***also*** demonstrates that the cellular core network connects the base stations to the SMSC 145 (Short Message Service Center). (Apple Br. at 11.) This relationship is reflected in HBCU's proposal, but not Apple's. Moreover, Figure 1 is fully consistent with the inventor's definition in prosecution. While the Figure 1 example is less specific, the two portions of the intrinsic record both reflect the operation of the cellular core network as set forth expressly by the inventors during prosecution.

Ignoring the full record, Apple's proposed construction would limit the claims to only a subset of the inventor's express definition in prosecution. The parties agree that "a 'cellular core network' connects mobile base stations," but both the specification (e.g., the inclusion of SMSC 145 in Figure 1) and the inventor in prosecution confirmed that Apple's proposal is not the complete definition. (*See* Apple Br. at 12.) Apple's proposed extrinsic definition reads out components the inventor declared *are* part of the "core cellular network."

The inventor's lexicography legally controls. HBCU's construction should be adopted.

C. "third party provider" ('827 patent)

HBCU Messaging's Construction	Apple's Construction
Plain and ordinary meaning	Indefinite

The phrase "third party provider" is clear except to those who seek to be confused. Apple cites a single case for the proposition that "Courts and parties have recognized that the term 'provider' as used in computer networking patents requires construction." (*See* Apple Br. at 7-8 (citing *Kroy IP Holdings, LLC v. Safeway, Inc.*, No. 212-CV-00800, 2014 WL 2528645, at *18–20 (E.D. Tex. June 4, 2014), *aff'd*, 639 F. App'x 637 (Fed. Cir. 2016).) Apple then argues the term is too confusing to construe.

Apple fails to cite a case where "provider" was argued to be indefinite, much less one where it was found indefinite. "Provider" is a common term easily understood by a lay juror. Even in the *Kroy* case cited by Apple, "[b]oth parties in *Kroy* agreed that 'provider' refers to an individual or company'" and then argued over additional contours of the term's meaning. *Id*. Neither party argued the term was indefinite. *Kroy IP Holdings, LLC v. Safeway, Inc*. 2014 U.S. Dist. LEXIS 75729, No. 2:12-cv-00800-JRG-RSP, at *60-61 (E.D. Tex. June 4, 2014). Apple argues that the specification here provides no guidance regarding what "provider" means, but provider has a normal English meaning that is perfectly understandable to a lay juror.

Apple also argues that "third party" somehow further confuses things, suggesting that either the sender or the receiver could potentially be the third party. (Apple Br. at 9.) But "third party" obviously means a party other than those already identified in the claim, *which Apple itself names in its own brief without any confusion*: the "sender, the recipient, the cellular network provider, and the packet switched network provider." (*Id*. at 9.) Thus, even when

Apple projects confusion, it reveals the obvious meaning of "third party" that would be readily understood by any juror, particularly in the context of the common phrase "third party provider."

Neither the meaning of "provider" nor "third party" is indefinite. The plain and ordinary meaning of "third party provider" should control.

D. "wherein . . . when" ('127 and '182 patents)

HBCU Messaging's Construction	Apple's Construction
plain and ordinary meaning	the "wherein . . . when" phrases should be construed as "Wherein the wireless device / PSMS is configured such that [X] occurs whenever condition [Y] is satisfied" (*i.e.*, "wherein the wireless device of the sender is configured such that it selects the first transmission mode whenever the indication corresponds to a subscriber of the service"; "wherein, the wireless device of the sender is configured such that whenever the selected transmission mode is the first transmission mode, the wireless device of the sender sends the outgoing message as one or more Internet protocol (IP) packets to the wireless device of the recipient via the packet switched WLAN base station"; "wherein, the wireless device of the sender is configured such that whenever the selected transmission mode is the second transmission mode, the wireless device of the sender sends the outgoing message as a short message service (SMS) message to the wireless device of the recipient using the destination address via a base station that is associated with a cellular core network that is independent of the packet switched WLAN base station"; and "wherein the PSMS is configured such that it receives and queues message addressed to a message recipient whenever the message recipient is not connected to the PSMS")

Apple's proposed construction inserts "always" into the claims in an attempt to narrow their scope. Specifically, Apple's proposal alters the plain language of "when A, then B" to "when A, ***always*** B." While Apple studiously avoids the word "always" in its proposed construction, the effect of "whenever" is clear. It takes little imagination to picture Apple's counsel or expert later arguing that any deviation from "if A, then ***always*** B" in Apple's iMessage system requires a finding of non-infringement. Such deviations occur in every system due to network instability, a random bug in a software update, or even through a deliberate edge-case scenarios developed to craft a non-infringement argument. Apple's construction is divorced from technical reality. No POSITA would interpret the claims as making zero exception for the vagaries of the technology. This is in part why the claim language includes neither "always" nor "whenever."

Moreover, each of the claims at issue is a "comprising" claim that permits non-infringing features and elements. *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376 (Fed. Cir. 2004) ("[L]ike the term 'comprising,' the terms 'containing' and 'mixture' are open-ended."); *Invitrogen Corp. v. Biocrest Manufacturing, L.P.*, 327 F.3d 1364, 1368 (Fed. Cir. 2003) ("The transition 'comprising' in a method claim indicates that the claim is open-ended and allows for additional steps."); *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.).

The claims, thus, contemplate instances of non-infringing use when condition A is not always followed by outcome B. The fact that such variations may occur from time to time does not negate infringement of a "comprising" claim when the elements are, in fact, at other times.

See Paper Converting Mach. Co. v. Magna-Graphics Corp., 745 F.2d 11, 20 (Fed. Cir. 1984) ("Imperfect practice of an invention does not avoid infringement."). This is particularly true for method claims, in which practicing the method ***sometimes***, even if not always, infringes during those instances when the claimed steps are met. *Bell Communs. Research, Inc. v. Vitalink Communs. Corp.*, 55 F.3d 615, 622-23 (Fed. Cir. 1995) (for method claims, "an accused product that sometimes, but not always, embodies a claimed method nonetheless infringes."). Here, the asserted claims include method claims that would be infringed whenever the particular "wherein . . . when" relationship is satisfied (along with the other recited steps), even if the relationship is strictly satisfied at other times.

Apple's citations to the intrinsic record fail to support its construction. Apple cites, for example, to the Abstract in support of its insertion of "whenever" into the claims, but ***the very passage from the Abstract that Apple cites and quotes uses neither the term "whenever" nor "always."*** (*See* Apple Br. at 5-6.) Instead, the Abstract is fully consistent with the claim language as recited, without resort to any modifier like Apple seeks to introduce. Likewise, neither Apple's citation to Figure 3 nor its reference to the embodiment of the '182 patent support the addition of "whenever" to the claims. (*Id*. at 6.) Nothing in these disclosures suggests that the claimed relationship must *always* happen regardless of circumstances. Finally, Apple points to portions of the specification related to the embodiments of the '127 and '182 patent claims. (*Id*. at 6-7.) But these quotes—like the others Apple seeks to rely on—***never*** say "whenever" or "always." Instead, they simply support the plain meaning of the claims as recited.

Apple's construction requiring absolute continuous infringement violates fundamental principles of claim construction and ignores the technical context of the invention. The terms should be given their ordinary meaning.

III. CONCLUSION

For the reasons set forth above, HBCU's proposed constructions should be adopted.

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Timothy Devlin
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