

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

CheckFree Corporation and CashEdge, Inc.,

Plaintiffs,

v.

Metavante Corporation and
Fidelity National Information Services, Inc.,

Defendants.

Case No.: 3:12-cv-00015-MMH-JBT

Jury Trial Demanded

Metavante Corporation,

Counterclaim Plaintiff,

v.

CheckFree Corporation, CashEdge, Inc.,
and Fiserv, Inc.,

Counterclaim Defendants

CHECKFREE'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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INTRODUCTION

This Responsive Claim Construction Brief has two purposes. First, it responds to FIS's arguments and explains why CheckFree's proposed construction should be adopted in each case where there is a substantive dispute. Second, it identifies cases where the parties' differences are merely semantic and not substantive – and in each such case, CheckFree withdraws its proposal and agrees to FIS's to eliminate disputes.

ARGUMENT

I. FIS's Asserted Patents

A. U.S. Patent No. 7,370,014

1. “provide items of bill data to a user”

Term	CheckFree's Construction	FIS's Construction
“provide items of bill data to a user” (’014 patent, claim 1)	This term in Claim 1’s preamble is limiting (that is, the term is a required limitation of the claim)	Claim 1’s preamble is not limiting

It is simply wrong for FIS to assert that “[p]rovide items of bill data to a user” is . . . not necessary for antecedent basis for terms in the body of the claim.” FIS Br. at 31. “**The** items of bill data,” which appears later in the preamble and then in the eighth step of claim 1, refers back to the original statement “provide items of bill data to a user.” See CheckFree Br. at 6-7 (highlighted claim); *Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342-43 (Fed. Cir. 2008). This “indicates a reliance on both the preamble and claim body to define the claimed invention,” and thus the preamble is limiting. *Catalina Mktg. Int’l v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002).¹

¹ The cases FIS cites support this result. *C.R. Bard, Inc. v. M3 Systems, Inc.* provided that a preamble which states an intended use “usually does not limit the scope of the claim **unless the preamble provides**

A separate and independent reason for adopting CheckFree's proposal is that, as FIS recognizes, a preamble is limiting "if it is 'necessary to give life, meaning, and vitality to the claim.'" FIS Br. at 30 (quoting *Catalina*, 289 F.3d at 808). The very point of claim 1 is to "provide items of bill data to a user." CheckFree Br. at 8-9 (applying cases). This language is "more than a mere statement of purpose" and rather "is essential to particularly point out the invention defined by the claims." *Application of Bulloch*, 604 F.2d 1362, 1365 (C.C.P.A. 1979).² Unlike in *Symantec Corp. v. Computer Associates International, Inc.*, 522 F.3d 1279, 1289-90 (Fed. Cir. 2008), the preamble here is not duplicative of any term from the body of the claim. "[I]f the preamble helps to determine the scope of the patent claim, then it is construed as part of the claimed invention." *NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282, 1305 (Fed. Cir. 2005).

Finally, FIS's Brief makes a formalistic complaint that CheckFree has not proposed a construction for "provide items of bill data to a user." But the threshold question is whether the preamble is limiting or not – and the answer is yes. The next question is how the phrase "items of bill data" – the only portion of the preamble term without a plain meaning – should be construed. That question is addressed below.

antecedents for ensuing claim terms and limits the claim accordingly – which is the case here. 157 F.3d 1340, 1350 (Fed. Cir. 1998) (emphasis added). In *American Medical Systems, Inc. v. Biolitec, Inc.*, the "tissue" from the preamble did not provide antecedent basis because it did not provide any "context essential to understanding the meaning of the tissue in the body of each claim" and thus did not "define or refine the scope of the asserted claims." 618 F.3d 1354, 1359 (Fed. Cir. 2010) (internal citations omitted). But "provide items of bill data to a user" provides essential context and defines claim scope, as discussed below.

² *Bulloch* is a decision of the Court of Customs and Patent Appeals, a predecessor to the Federal Circuit whose decisions are binding precedent. See *South Corp. v. U.S.*, 690 F.2d 1368, 1370 (Fed. Cir. 1982).

2. “item(s) of bill data”

Term	CheckFree’s Construction	FIS’s Construction
“item(s) of bill data” (’014 patent, claims 1 and 11)	“data set(s) scraped from (a) particular bill(s) for a particular user” CheckFree is willing to delete the word “scraped” to eliminate a dispute, which changes the construction to: “data set(s) from (a) particular bill(s) for a particular user”	No construction needed

FIS’s Brief argues that the “items of bill data” are not scraped in some of the unasserted claims of the ’014 patent and therefore the word “scraped” should not appear in the construction. This is immaterial: other parts of the claims that FIS has asserted in this litigation make clear that scraping is required by the asserted claims. And because the argument is immaterial, CheckFree will concede it to eliminate a dispute. CheckFree’s revised construction simply deletes the word “scraped.”

As to substance, the need for a construction is shown by the block quote on pages 28-29 of FIS’s Brief. The first sentence defines “item of bill data” as an “item of per-customer bill information about an individual bill that has not yet been paid.” Wiggins Ex. 1 (’014 patent) at 5:31-34 (emphasis added).³ Thus, the “item of bill data” is from a particular bill for a particular customer/user. The second sentence shows that an “item” of bill data does not mean any single piece of information, but rather refers to a set of data obtained from a bill: “an item of bill data typically includes the biller’s account number, the statement date, the bill amount, the payment due date, minimum amount due, and/or total amount due.” Wiggins Ex. 1 at 5:34-37 (emphasis added).

³ “Wiggins Ex.” refers to exhibits to the Declaration of Erin Wiggins filed with CheckFree’s Opening Brief.

The '014 patent applicant used the term “item(s) of bill data” in a particular way, to refer to a particular type of data set, different from what the jury might think of as the ordinary meaning of “item.” In light of this express definition, “item(s) of bill data” must be construed. *See Advanced Fiber Techs. Trust v. J&L Fiber Servs., Inc.*, 674 F.3d 1365, 1372-73 (Fed. Cir. 2012) (“[I]f the specification or prosecution history defines a claim term, that definition shall apply even if it differs from the term’s ordinary meaning.”).

3. “scraping” / “scrape”

Term	CheckFree’s Construction	FIS’s Construction
“scraping” / “scrape” (’014 patent, claims 1, 11; ’049 patent, claim 19)	“using a program to locate an element on an HTML page and read that element’s content” CheckFree is willing to agree to FIS’s construction to eliminate a dispute.	“using a program to locate one or more elements on an HTML page and read that one or more element’s content”

The dispute with regard to this claim term is small, and having reviewed FIS’s Brief, CheckFree is persuaded that the reason why FIS seeks to alter the express definition of “scraping” in the specification is not that FIS is trying to gain a litigation advantage, but rather based on a (groundless) fear that FIS will otherwise be at a litigation disadvantage. In reliance on its understanding that FIS is not arguing that the scope of the claims should be altered in any way, CheckFree will agree to FIS’s proposal to eliminate this dispute. An updated chart listing the claim construction disputes is attached as Response Attachment A.

4. “view which bills need to be paid”

Term	CheckFree’s Construction	FIS’s Construction
“view which bills need to be paid” (’014 patent, claim 11)	“view summaries and images of bills that need to be paid”	No construction needed

FIS argues that the '014 patent does not require the ability to view an image and a summary of a bill. FIS Br. at 31-32. That is incorrect. First, every description of the bill center describes a situation where a user can view bill summaries. *See Bell Atlantic Network Servs., Inc. v. Covad Commc'ns Group, Inc.*, 262 F.3d 1258, 1273 (Fed. Cir. 2001) (“[T]his case does not involve the [v]aried use of a disputed term. Instead, the patentees defined the term ‘mode’ by implication, through the term’s consistent use throughout the ’786 patent specification.”) (internal citation omitted). The very figure cited to by FIS shows a summary of bill information being provided to the user. FIS Br. at 32. The description of that figure states: “**Each entry** [in the bill center] contains summary information for the bill....” Wiggins Ex. 1 ('014 patent) at 7:16-20 (emphasis added). This is not, as FIS would have it, reading the word “which” out of the claim; rather, it recognizes that the claimed system of the '014 patent uses bill summaries to show which bills need to be paid. FIS has identified no support (or even an explanation) for how a user could view which bills need to be paid without at least viewing a bill summary.

Second, viewing bill images is not a mere “option.” FIS Br. at 32. Claim 11 is directed entirely to scraped bills. *See CheckFree Br. at 7* (highlighted copy). The specification expressly states: “With regard to scraped bills, EBPP system 101 **must** be able to combine the biller’s per-biller image info 513 and the customer’s per-bill image info 521 to **produce a display** on the customer’s browser in response to a click on the bill image button that looks like the bill the customer would see when he or she accessed biller statement website 129.” Wiggins Ex. 1 ('014 patent) at 9:56-61 (emphasis added). Thus, the EBPP system must be capable of creating an image of a bill that the user can view. This is

further supported by the prosecution history, during which the applicants stated: “The software agent programs used to obtain billing information . . . obtains [sic] both bill summary information . . . but [sic] also obtains display information for each bill . . . so that the billing information can be displayed by method and system of the present invention as a bill image.” Wiggins Ex. 3 (’014 prosecution history) at p. 3 [FIS55051].

B. U.S. Patent No. 7,734,543

1. “said first and second consumer billing terminals”

Term	CheckFree’s Construction	FIS’s Construction
“said first and second consumer billing terminals” (’543 patent, claim 17)	Claim is indefinite	“said first and second consumer terminals”

For the reasons explained in CheckFree’s opening claim construction brief, and stated more extensively in its motion for summary judgment, D.I. 140, filed on January 15, 2013, the ’543 patent is invalid because the term “said first and second consumer billing terminals” lacks antecedent basis; this renders all asserted claims of the ’543 patent indefinite; and if the motion for summary judgment is granted, it will be unnecessary to construe any of the disputed terms in the ’543 patent. CheckFree respectfully refers to the briefing on the motion for summary judgment for CheckFree’s indefiniteness arguments, and requests that oral argument on that motion be heard at the claim construction hearing.

2. “multi-standard switch”

Term	CheckFree’s Construction	FIS’s Construction
“multi-standard switch” (’543 patent, claim 17)	“a switch configured to facilitate electronic communication irrespective of which message standard protocol each of the participants uses”	No construction needed

FIS's Brief ignores the intrinsic evidence showing that a "multi-standard switch" must be configured to facilitate electronic communication irrespective of which message standard protocol each of the participants uses. *See* CheckFree Br. at 14-16 (discussing specification and prosecution history). Moreover, the evidence that FIS discusses provides further support for CheckFree's proposed construction.

FIS cites a Patent Office Board decision that addressed the rejection of all claims over the prior art Kolling reference. FIS Ex. 13 at 3. The Board overturned the rejection of certain claims, including claim 17 which is now at issue, because the Board believed Kolling did not necessarily disclose a switch that operates irrespective of which message standard protocols are used. *See id.* at 7, 9-10.

FIS is correct that claim 17 is different from claim 1 of the '543 patent, which FIS does not accuse CheckFree of infringing, because claim 1 expressly includes the phrase "irrespective of which message standard protocol." FIS Br. at 36. But FIS is wrong to draw the conclusion that claim 17 therefore does not include such a requirement. The Board made clear, in passages that FIS's Brief does not cite, that the Board also considered claim 17 to include this requirement. First, the Board framed the issue before it, with respect to both claim 1 and claim 17, as whether the prior art Kolling reference described "a multi-standard switch structured to facilitate electronic communication between consumer and biller terminals **irrespective of which message standard protocol each of the terminals use.**" FIS Ex. 13 at 4 (emphasis added). Second, when the Board addressed claim 17, it found in the applicants' favor precisely "because we found the [applicants'] argument persuasive as to the rejection of claim 1." *Id.* at 10. The argument

as to claim 1, once again, was precisely that the claim required “that the switching network is a multi-standard switch that is structured to facilitate electronic communication **irrespective of which of the message standard protocols are used by each terminal.**”

Id. at 6-9 (emphasis added).

3. “message standard protocol”

Term	CheckFree’s Construction	FIS’s Construction
“message standard protocol” (’543 patent, claim 17)	“an EBPP message protocol which has been formally approved by a recognized industry body”	“a standard protocol for EBPP (electronic bill presentment and payment) messages”

The issue here is what it means for a message protocol to be “standard.”

Leaving “standard” unconstrued, as FIS’s Brief proposes, has considerable potential for mischief. For example, FIS’s Brief confusingly attempts to split the meaning of “standard” into two types of standards: *de facto* and *de jure*. FIS offers no meaning for these terms, and adopting them would only lead to further litigation regarding how and when a protocol might satisfy them.⁴ It appears that FIS intends to argue that any protocol that anyone, anywhere may have considered to be a standard, would fall within the scope of the claims. But FIS provides no guidance for how a jury is to assess this.

CheckFree’s proposed construction assists the jury in determining whether the protocol being used falls within the scope of the claims or not. For example, one can readily confirm that OFX and IFX, the two protocols named in the ’543 specification, were formally approved by a recognized industry body. *See* CheckFree Br. at 17-18.

⁴ FIS also cites to a 2008 “business guide.” FIS Br. at 35. The Court should not consider this citation when construing the claims. The business guide is from 2008, more than 7 years after the ’543 patent was filed, and thus is not evidence of the meaning that would have been understood at the time of filing. *See Kopykake Enter., Inc. v. Lucks Co.*, 264 F.3d 1377, 1383 (Fed. Cir. 2001).

4. “generating bill summary data”

Term	CheckFree’s Construction	FIS’s Construction
“generating bill summary data” (’543 patent, claim 17)	“the BSP or biller terminal generating bill summary data”	No construction needed

FIS does not dispute that the only participants in the invention of the ’543 patent which generate bill summary data are the BSPs (biller service providers) or the billers. FIS Br. at 37. Moreover, FIS is correct that the ’543 patent defines a BSP as any entity that generates a bill summary file. Wiggins Ex. 4 (’543 patent) at 1:66-2:1. But FIS fails to mention the other portions of the specification showing that there are other participants in the claimed method that the patent makes clear are **not** BSPs and **cannot** generate bill summary data. For example, the “switching network” in claim 17 cannot generate bill summary data, because the specification states that it is “not related to a particular CSP or BSP” and defines “participants” in the system as “any CSP, BSP, or Biller that registers to access the switching system.” *Id.* at 2:7-16. Further, the switching network cannot generate bill summary data because bill summary files “are not stored in the switching network.” *Id.* at 5:43-44. Thus, the “switching network” is distinct from the BSP or biller terminals and cannot generate bill summary data. CheckFree’s construction makes clear that the BSP or biller terminals can generate such data.

II. CheckFree's Asserted Patents

A. U.S. Patent No. 7,853,524

1. "merchant account scheme" and "merchant credit limit"

Term	CheckFree's Construction	FIS's Construction
"merchant account scheme associated with the payee" ('524 patent, claims 1, 11, 21)	"a scheme associated with the merchant or payee for its account numbers"	"a scheme associated with a particular payee or merchant for its account numbers"
"merchant credit limit associated with the payee" ('524 patent, claims 1, 11, 21)	"a credit limit associated with the merchant or payee"	"a credit limit associated with a particular merchant or payee"

FIS's Brief confirms that FIS seeks to import the word "particular" into the claims because FIS wants to argue that "[t]he word 'particular' refers to an individual merchant, as opposed to a group of merchants." FIS Br. at 19. For example, FIS wants to argue that the '524 claims require that there be a unique credit limit and account scheme for each "particular" merchant. *See* CheckFree Br. at 25-26. But that is contradicted by the example in the '524 specification where the merchant credit limit "is set at \$100.00 for all merchants" and "[d]ifferent dollar edits can" – not "must" – "be incorporated for different merchants." *Id.* (quoting '524 patent at 6:65-7:5) (emphasis added). FIS's argument would exclude this embodiment of the claim and therefore should be rejected. *See Oatey Co. v. IPS Corp.*, 514 F.3d 1271, 1276 (Fed. Cir. 2008); *Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295, 1305 (Fed. Cir. 2007).

It is also wrong to assert that the prosecution history compels importing the word "particular" into the claim. There is no dispute that a payment request is compared to the "merchant credit limit" or "merchant account scheme" for the particular merchant to which the payment is directed. That is exactly what the applicants told the Patent

Office—“determine if the transaction amount exceeds the payment limit for the particular merchant or payee.” *See* FIS Br. at 19. Similarly, Ms. Patricia Kight’s Declaration discussed comparing a received account number to a scheme for the particular merchant. FIS Br. at 20. But that does not imply that the “merchant credit limit” or “merchant account scheme” must be unique to that merchant, as FIS seeks to imply by inserting the word “particular” into the construction. They may also be “associated” with other merchants, as the example from the specification described above illustrates.

B. U.S. Patent No. 7,383,223

1. “third-party”

Term	CheckFree’s Construction	FIS’s Construction
“third-party” (’223 patent, claim 1)	No construction is necessary. The term should be given its plain and ordinary meaning.	“a party that is not associated with either the first or second financial institution”

FIS’s proposal would add a purported requirement that the third party be “not associated” with the first or second financial institution. This is contradicted by the specification, which states that the third party is “typically a neutral third party” and is “not necessarily associated with any financial institution.” Wiggins Ex. 16 (’223 patent) at 17:27-28 (emphasis added). “Typically” and “not necessarily” means that the third-party can in some cases be associated with the first or second financial institution.

Having the third-party be associated with the first or second financial institution does not “defeat[] the primary purpose of the ’223 patent.” FIS Br. at 7. FIS is pointing to a portion of the specification that is unrelated to the claims at issue. The asserted claims of the ’223 patent deal solely with transferring money between institutions, not with “acting as an unbiased advisor.” And FIS provides no reason to

believe that the invention in claim 1 requires that there be absolutely no association between the “third-party” and the other financial institutions involved.

FIS’s proposal would also engender needless debates about what “not associated with” means. Does it mean that the “third-party” cannot be a subsidiary or affiliate of one of the other financial institutions? Or does it mean that they cannot have any contractual or other relationship whatsoever? FIS’s proposal would take a simple term, perfectly understandable without a construction, and inject needless complexity.

2. “first transaction” and “second transaction”

Term	CheckFree’s Construction	FIS’s Construction
“first transaction” (’223 patent, claim 1)	No construction is necessary. The term should be given its plain and ordinary meaning.	“first debit and credit transaction”
“second transaction” (’223 patent, claim 1)	No construction is necessary. The term should be given its plain and ordinary meaning. CheckFree is willing to agree to FIS’s construction to eliminate a dispute.	“second debit and credit transaction”

These terms do not require construction, but FIS’s briefing shows that FIS is not trying here to change the scope of the claim. In reliance on this and to narrow the disputes, CheckFree withdraws its objection to the proposed construction.

3. “depositing the funds ... in an intermediate account”

Term	CheckFree’s Construction	FIS’s Construction
“depositing the funds ... in an intermediate account” (’223 patent, claim 1)	No construction is necessary. The term should be given its plain and ordinary meaning.	“irreversibly depositing funds in an intermediate account”

FIS relies on the prosecution history as purportedly requiring that the word “irreversibly” be injected into claim 1. FIS Br. at 9. But FIS ignores the claims

themselves, which provide “substantial guidance as to the meaning of particular claim terms”; and the specification, which is “the single best guide to the meaning of a disputed term.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314-15 (Fed. Cir. 2005) (en banc). The claims and specification demonstrate that the Automated Clearinghouse (ACH) network may be used to practice claim 1. *See* Wiggins Ex. 16 (’223 patent) at 20:37-40 (claim 3, which depends from claim 1 and therefore falls within the scope of claim 1, *see* 35 U.S.C. § 112(d), reciting use of the ACH network to deposit funds into the “second account”); *id.* at 17:13-20, 18:35-38 (specification, describing example in which ACH network is used for all of the transactions). And deposits using the ACH network can be reversible, as shown by the same rules for the ACH network that FIS produced and cited in its invalidity contentions in this lawsuit. *See* Nava Decl. Ex. 1⁵ (1999 ACH Rules) at FIS57891-96 (describing “return entries”), FIS58106-08 (describing “reversals”). Thus, importing “irreversibly” would be inconsistent with the ’223 patent itself.

The prosecution history does not change this. To justify importing “irreversibly” into claim 1, FIS must show that the applicants made a “clear and unmistakable disclaimer” of ACH and other reversible transactions. *See Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1365-67 (Fed. Cir. 2012). But the Examiner’s Notice of Allowability is the first and only place the word “irreversibly” appears in the prosecution history. There was no discussion of “irreversibly” prior to the Examiner’s statement; the word “irreversibly” does not appear anywhere in the specification; and in response to the Notice of Allowability, the applicants specifically stated that “[n]o

⁵ “Nava Decl. Ex.” refers to exhibits to the Declaration of Annaka Nava filed concurrently herewith.

inference or conclusion should be drawn that Applicants believe the Examiner's reasons for allowance are the only reasons the claims are patentable.” FIS Ex. 5 at 1. This is not a clear and unmistakable disclaimer of claim scope. Indeed, even a discussion between the PTO and the applicant, more than what happened here, would not be sufficient for disclaimer. *UCB Societe Anonyme v. Mylan Labs., Inc.*, No. 1:04-cv-683-WSD, 2006 WL 1663347, at *6 (N.D. Ga. June 14, 2006).

4. “executing a debit transaction”

Term	CheckFree’s Construction	FIS’s Construction
“executing a debit transaction” (’223 patent, claim 1)	No construction is necessary. The term should be given its plain and ordinary meaning.	“fully carry out the debit transaction”

FIS’s proposal would add to claim 1 a purported requirement that when a debit transaction is executed, it must be “fully carried out” by and only by the referenced third-party system, so FIS can then argue that if the third-party system relies on other organizations for assistance with the debit transactions – as is common and specifically contemplated by the specification, Wiggins Ex. 16 (’223 patent) at 17:63-18:3 – then the claim requirements are unmet. Thus, most of this section of FIS’s Brief seeks to draw purported distinctions between “sending instructions” and “fully carrying out” debit transactions that are immaterial to the plain and ordinary meaning of the claim language.

There is nothing in the specification to suggest that a party executing a debit transaction must do so “fully” without assistance. To the contrary, the same passage cited by FIS at column 19, lines 46-53 confirms that assistance sometimes is necessary: “financial institution 660 is utilized for those transactions that cannot be executed directly by the financial management system 652.”

FIS argues that the prosecution history supports its argument because the originally filed claims recited “initiating a withdrawal” and “initiating a deposit” as opposed to “executing” one. FIS Br. at 11. But the as-filed claims differed significantly from the granted claims. *See* FIS Ex. 5 at 9. It is not as simple as replacing “executing” for “initiating a withdrawal.” There is no indication that the applicants meant for “executing” to be different than “initiating,” and indeed the applicants could very well have intended “executing” to simply be broader. This is far from the “clear and unmistakable disclaimer” that would be required to hold that the applicants disclaimed the full scope of claim 1 during prosecution. *See Thorner*, 669 F.3d at 1365-67.

FIS attempts to buttress its proposal by citing unrelated cases construing unrelated patents. FIS Br. at 11. But this Court must look to the intrinsic record for this patent in order to construe its language. *Phillips*, 415 F.3d at 1314-17.

5. “account”

Term	CheckFree’s Construction	FIS’s Construction
“account” (’223 patent, claim 1)	No construction is necessary. The term should be given its plain and ordinary meaning.	“an account at a financial institution”

FIS seeks to import a requirement that each and every account referenced in claim 1 be “at a financial institution,” based on what it calls the “unwavering” description by the patent of accounts at financial institutions. FIS Br. at 12. But every single example provided by FIS is referring to either the “source account” or the “destination account,” both of which are already expressly stated by claim 1 to be at financial institutions. The real issue is that claim 1 also refers to an “intermediate account” that the claim does **not** require to be at a financial institution. *See* CheckFree Br.

at 26-27. When the applicants wanted to require accounts to be at financial institutions, they did so, and they chose **not** to require this of the “intermediate account.”

Separately, FIS argues that if credits or debits are being used with an account, it must be at a financial institution. This makes no sense. If Person A gives money (a credit) to Person B, that does not make Person B a financial institution. And it will only sow confusion if the jury is required to consider debate on whether the institution housing the “intermediate account” is or is not a financial institution.

C. U.S. Patent No. 7,792,749

1. “stored billing information”

Term	CheckFree’s Construction	FIS’s Construction
“stored billing information” (’749 patent, claims 1, 20)	No construction is necessary. The term should be given its plain and ordinary meaning. Should the Court determine that construction is required, CheckFree proposes “stored information related to billing”	“information related to existing bills”

FIS seeks to limit the plain and ordinary meaning of “stored billing information” based on an incomplete set of examples from the specification. To be clear, it is correct that FIS’s proposal, “information relating to existing bills,” covers one example of stored billing information. But this ignores other examples that the specification also describes and that are inconsistent with FIS’s proposal. The other examples include information relating to payers and payees, not just information relating to bills, and even include “future” stored billing information regarding bills that do not yet exist. *See* Wiggins Ex. 18 (’749 patent) at 5:20-25, 18:21-24; CheckFree Br. at 34-35; *Oatey*, 514 F.3d at 1276; *Verizon*, 503 F.3d at 1305.

FIS is correct that the '749 patent describes a number of separate databases for storing billing information, FIS Br. at 16, but this does not support FIS's position. First, the databases are not mutually exclusive (for example, the information in the master payee pick-list and that in the payee pick-list must overlap). Second, claim 1 itself provides for the possibility of keeping the "stored billing information" in more than one database, by reciting "accessing, **from at least one database** . . . , stored billing information." Wiggins Ex. 18 ('749 patent) at 22:37-39 (emphasis added). "From at least one database" contemplates that there can be more than one.

2. "transmitting, by the clearinghouse to the payor, the generated notification"

Term	CheckFree's Construction	FIS's Construction
"transmitting, by the clearinghouse to the payor, the generated notification" ('749 patent, claims 1, 20)	No construction is necessary. The term should be given its plain and ordinary meaning.	"transmitting a notification of a bill of a payee for which the payor has not yet activated electronic bill presentment"

FIS seeks to construe the "notification" in claims 1 and 20 as a notification "of a bill." But the claims expressly provide that the notification is of or includes "bill presentment information," not merely a bill. Wiggins Ex. 18 ('749 patent) at 22:47-48, 25:5-6. And as with the "stored billing information" addressed in the preceding section, "bill presentment information" is not merely limited to "bills." For example, claim 22, which is dependent on claim 20 and thus provides an example of the scope covered by claim 20, states that "bill presentment information" can include "an indication that the payee is an electronic biller capable of providing electronic bill presentment to the payor through the

clearinghouse.” *Id.* at 25:18-21. “Bill presentment information” may include information about an existing bill, but it also may include other things.

As for the remainder of FIS’s proposal, CheckFree has explained that nowhere do the claims or specification (or, for that matter, the prosecution history) limit the notification to **bills** “for which the payor has not yet activated electronic bill presentment.” CheckFree Br. at 36. FIS is correct that other parts of the claims refer to such payors – for example, the second step of claim 1, Wiggins Ex. 18 (’749 patent) at 22:40-43, which provides “wherein the payor has not previously activated electronic bill presentment from the payee” – and that CheckFree relied on those separate references during prosecution. But that does not provide a basis for mixing them up with the disputed claim language, which appears in the sixth step of claim 1. Notably, FIS has not proposed to construe the second step of claim 1. The terms in the second step are clear and their plain and ordinary meaning applies. The same is true of the disputed term, and FIS’s proposal to change it should be rejected.

D. U.S. Patent No. 7,996,311

1. “wherein the consumer account number is not in a format expected by the payee”

Term	CheckFree’s Construction	FIS’s Construction
“wherein the consumer account number is not in a format expected by the payee” (’311 patent, claims 1, 15)	No construction is necessary. The term should be given its plain and ordinary meaning. Should the Court determine that construction is required, CheckFree proposes “wherein the consumer account number is not in a format the payee expects to receive”	“wherein the consumer account number is in a format that the payee does not expect the payment processor to receive”

FIS’s proposal seeks to change the meaning of this claim term to refer to a consumer account number, or “CAN,” that “the payee does not expect the payment

processor to receive.” This makes no sense. It is the payee – the party who is to be paid – who has the accounting system based on a specific CAN format. *See, e.g.,* Wiggins Ex. 19 (’311 patent) at 3:43-52, 4:4-7, 8:15-17. The payment processor is only an intermediary who facilitates payment to the payee, and has no axe to grind regarding the format for the payment. *Id.* Thus, the payee only cares about the format of the CAN as received from the payment processor, and there is no reason to expect the payee to have any expectation at all with respect to the format in which the payment processor receives the CAN. CheckFree Br. at 39 (discussing ’311 specification and prosecution history).

CheckFree stated, in the very same Response to Office Action discussed on page 24 of FIS’s Brief, that the invention has “an alteration rule associated with the payee resulting in modification of the submitted account number such that the account number is in the proper or **expected format to be transmitted to the payee for processing.**” Wiggins Ex. 20 (’311 prosecution history) at pg. 9 [CHK 499449] (emphasis added); *see* CheckFree Br. at 39. This confirms the plain and ordinary meaning of the claim, which is that the CAN is not in a format the **payee** expects to receive.

FIS’s Brief attacks the plain and ordinary meaning as purportedly “subjective.” Not so. Instead, the payee provides the payment processor with the format that it expects to receive and CANs received by the payment processor are compared to this. Wiggins Ex. 19 at 8:45-67. Plainly, the “format expected by the payee” means the format of the CAN that the payee expects to receive from the payment processor so it will be compatible with its accounting system. CheckFree Br. at 39 (discussing specification). It is also worth repeating that when CheckFree amended claim 1 to refer to the “expected”

format, the Patent Office did not reject the change or do anything to suggest that the Patent Office considered it to be “subjective.”

Finally, there is no merit to the argument that CheckFree is seeking to “recapture” claim scope surrendered during prosecution. FIS Br. at 24. The amendment in question uses the word “expected.” That is the word that the Patent Office approved when it issued the patent, and that is the same word both parties include in their proposed constructions. Moreover, FIS’s Brief fails to mention that the purpose of the amendment was not to change the claim scope, but rather only to “clean up the claims language,” as explained in the examiner’s summary of an August 18, 2009 interview with the applicant’s counsel, immediately before the amendment in question was made. Nava Decl. Ex. 2 (’311 prosecution history) at CHK499437-40 (“Atty. White stated that they may be filing amendments to clean up the claims language.”).

CONCLUSION

For the aforementioned reasons, CheckFree respectfully requests that the Court adopt its proffered constructions of the disputed claim terms.

Dated: January 22, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of January, 2013, a copy of the foregoing was filed with the Court's CM/ECF system, which provides service to all counsel of record.

/s/ Rutledge R. Liles
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RESPONSE EXHIBIT A

REVISED JOINT CLAIM CONSTRUCTION CHART

This revised chart provides the current positions of the parties as reflected in CheckFree's Responsive Claim Construction Brief. This revised chart is being provided to the Court as a convenient reference to understand the parties' positions and is also being provided in Word format in order to allow the Court, should it so desire, to use the chart to enter its ultimate constructions.

Agreed-Upon Constructions

Term	Construction	Court's Construction
"scraping" / "scrape" ('014 patent, claims 1, 11; '049 patent, claim 19)	"using a program to locate one or more elements on an HTML page and read that one or more element's content"	
"switching network" ('543 patent, claim 17)	"an open, interoperable routing network"	
"first transaction" ('223 patent, claim 1)	"first debit and credit transaction"	
"second transaction" ('223 patent, claim 1)	"second debit and credit transaction"	

Disputed Terms and Constructions

Term	CheckFree's Construction	FIS's Construction	Court's Construction
FIS'S PATENTS			
"provide items of bill data to a user" ('014 patent, claim 1)	This term in Claim 1's preamble is limiting (that is, the term is a required limitation of the claim)	Claim 1's preamble is not limiting	
"item(s) of bill data" ('014 patent, claims 1 and 11)	"data set(s) from (a) particular bill(s) for a particular user"	No construction needed	
"view which bills need to be paid" ('014 patent, claim 11)	"view summaries and images of bills that need to be paid"	No construction needed	
"said first and second consumer billing terminals" ('543 patent, claim 17)	Claim is indefinite	"said first and second consumer terminals"	
"multi-standard switch" ('543 patent, claim 17)	"a switch configured to facilitate electronic communication irrespective of which message standard protocol each of the participants uses"	No construction needed	
"message standard protocol" ('543 patent, claim 17)	"an EBPP message protocol which has been formally approved by a recognized industry body"	"a standard protocol for EBPP (electronic bill presentment and payment) messages"	
"generating bill summary data" ('543 patent, claim 17)	"the BSP or biller terminal generating bill summary data"	No construction needed	
CHECKFREE'S PATENTS			
"merchant account scheme associated with the payee"	"a scheme associated with the merchant or payee for its account"	"a scheme associated with a particular payee or merchant for	

Term	CheckFree's Construction	FIS's Construction	Court's Construction
('524 patent, claims 1, 11, 21) "merchant credit limit associated with the payee" ('524 patent, claims 1, 11, 21)	numbers" "a credit limit associated with the merchant or payee"	its account numbers" "a credit limit associated with a particular merchant or payee"	
"third-party" ('223 patent, claim 1)	No construction is necessary. The term should be given its plain and ordinary meaning.	"a party that is not associated with either the first or second financial institution"	
"depositing the funds ... in an intermediate account" ('223 patent, claim 1)	No construction is necessary. The term should be given its plain and ordinary meaning.	"irreversibly depositing funds in an intermediate account"	
"executing a debit transaction" ('223 patent, claim 1)	No construction is necessary. The term should be given its plain and ordinary meaning.	"fully carry out the debit transaction"	
"account" ('223 patent, claim 1)	No construction is necessary. The term should be given its plain and ordinary meaning.	"an account at a financial institution"	
"stored billing information" ('749 patent, claims 1, 20)	No construction is necessary. The term should be given its plain and ordinary meaning. Should the Court determine that construction is required, CheckFree proposes "stored information related to billing"	"information related to existing bills"	
"transmitting, by the clearinghouse to the payor, the generated notification"	No construction is necessary. The term should be given its plain and ordinary meaning.	"transmitting a notification of a bill of a payee for which the payor has not yet activated	

Term	CheckFree's Construction	FIS's Construction	Court's Construction
('749 patent, claims 1, 20)		electronic bill presentment"	
"wherein the consumer account number is not in a format expected by the payee" ('311 patent, claims 1, 15)	No construction is necessary. The term should be given its plain and ordinary meaning. Should the Court determine that construction is required, CheckFree proposes "wherein the consumer account number is not in a format the payee expects to receive"	"wherein the consumer account number is in a format that the payee does not expect the payment processor to receive"	