

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

PROXENSE, LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Case No. 6:23-cv-00319-ADA

MICROSOFT CORPORATION'S REPLY CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

	<u>Page(s)</u>
I. SUMMARY OF REPLY	1
II. DISPUTED CLAIM TERMS	2
A. “access message” (’730 Patent, claims 1, 15; ’954 Patent, claim 1; ’905 Patent, claim 1)	2
B. “wherein the biometric data and the scan data are both based on a fingerprint scan by the user” (’730 Patent, claim 5)	5
C. “personal digital key” or “PDK” (’042 Patent, claim 10).....	11
D. “receiver-decoder circuit” or “RDC” (’042 Patent, claim 10; ’289 Patent, claims 14 and 16)	14
III. CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Camreta v. Greene</i> , 131 S. Ct. 2020 (2011).....	1
<i>Central Admixture Pharmacy Services, Inc. v. Advanced Cardiac Solutions, P.C.</i> , 482 F.3d 1347, 82 U.S.P.Q.2d 1293 (Fed. Cir. 2007), <i>cert. denied</i> , 128 S. Ct. 648 (U.S. 2007).....	14
<i>Chore-Time Equipment, Inc. v. Cumberland Corp.</i> , 713 F.2d 774, 218 U.S.P.Q. 673 (Fed. Cir. 1983)	8
<i>IGT v. Bally Gaming Intern., Inc.</i> , 659 F.3d 1109 (Fed. Cir. 2011).....	1
<i>Multilayer Stretch Cling Film Holdings, Inc. v. Berry Plastics Corp.</i> , 831 F.3d 1350 (Fed. Cir. 2016).....	8
<i>Pfizer, Inc. v. Ranbaxy Lab'ys Ltd.</i> , 457 F.3d 1284 (Fed. Cir. 2006).....	8
<i>Proxense v. Samsung</i> , Dkt. No. 1.....	1
<i>Proxense, LLC v. Samsung Electronics Co., Ltd. et al.</i> , 6:21-cv-00210-ADA (W.D. Tex.)	6
<i>Renishaw PLC v. Marposs Societa' per Azioni</i> , 158 F.3d 1243 (Fed. Cir. 1998).....	14
Statutes	
35 U.S.C. § 112, ¶ 4.....	6, 9, 11
Other Authorities	
37 C.F.R. 1.312.....	9, 10

TABLE OF EXHIBITS

Ex. No.	Description
Ex. A	2023-10-02 Email from counsel for Proxense regarding claim construction
Ex. B	Excerpts from the file history for U.S. Patent No. 8,352,730
Ex. C	Excerpts from the file history for U.S. Patent No. 8,886,954
Ex. D	Excerpts from The Concise Oxford American Thesaurus
Ex. E	Excerpts from The New Oxford American Dictionary, 2d ed.
Ex. F	Excerpts from Collins English Dictionary, 7th ed.
Ex. G	Excerpts from Facility Manager's Guide to Security
Ex. L	Excerpts from the file history of U.S. Patent No. 8,352,730 (Appl. No. 11/314,199)
Ex. H	Excerpts from The American Heritage Dictionary of the English Language, 4th ed.
Ex. I	Excerpts from Merriam-Webster's Collegiate Dictionary, 11th ed.
Ex. J	Excerpts from Bloomsbury English Dictionary
Ex. K	Excerpts from Random House Webster's College Dictionary
Ex. L	Excerpts from the File History of U.S. Patent No. 8,352,730

I. SUMMARY OF REPLY

Instead of rebutting the intrinsic evidence that is counter to its proposed construction, Proxense asks the Court to ignore the plain language in the Asserted Patents, plain English in general, and rely on new extrinsic evidence in support of its claim construction positions. The crux of Proxense's argument is that the Court already construed the terms (or related terms) at issue in another case where Microsoft was not a party, so the issues are resolved. But the prior constructions are not binding on this Court and cannot override the intrinsic record.

Clinging dogmatically to prior constructions in *Proxense-Samsung*, Proxense fails to account for the significant distinctions between *Proxense-Samsung* and this matter. The asserted patents and claims are not identical, nor are the evidence and argument presented. Indeed, even Proxense acknowledges that the “accused infringing technologies in the two cases are different.” Dkt. No. 25 at 20 n.7; Dkt. No. 35 at 6. Microsoft's proposed constructions for two disputed terms also differ from those proposed by Samsung. Further, in *Proxense-Samsung*, Proxense accused Samsung phones and Samsung Pay, a mobile payment technology unique to Samsung. *See Proxense v. Samsung*, Dkt. No. 1 ¶ 40, Dkt. No. 142 at 3 (“Proxense alleges that the Samsung Pay mobile payment software on Samsung smartphones directly infringes...”); Ex. 34. On the other hand, this case does not involve any mobile phone or payment technology. Instead, Proxense vaguely accuses a Microsoft “architecture.” Lastly, prior constructions from *Proxense-Samsung* are not binding on this Court. *See Camreta v. Greene*, 131 S. Ct. 2020, 2033 n.7 (2011) (“A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.”); *IGT v. Bally Gaming Intern., Inc.*, 659 F.3d 1109, 1117 n.1 (Fed. Cir. 2011) (noting that a prior district court's construction of claim term was not binding). And nothing prevents this Court from reconsidering its prior constructions, especially when, as here, a new party offers new arguments and evidence.

II. DISPUTED CLAIM TERMS

A. “access message” (’730 Patent, claims 1, 15; ’954 Patent, claim 1; ’905 Patent, claim 1)

Microsoft’s Construction	Proxense’s Construction
“a message enabling access”	Adopts the <i>Proxense/Samsung</i> Claim Construction Order: “A signal or notification enabling or announcing access”

Proxense does not deny “access message” is “a message enabling access,” as Microsoft proposes and the record supports. *See* Microsoft Opening Brief at 4–7. The main dispute arises from Proxense’s attempt to broaden the term to add an undisclosed alternative “announcing” function onto “access message,” which is unsupported by the intrinsic record and contradicts plain English. The term “message” (alone) is not the issue.¹ The record simply does not support tying the term “access message” to the singular function of announcing access.

Proxense’s proposed construction conflicts with the patents’ disclosures, starting with the claim language. It argues that “access message” can enable access *or* announce access. But each disputed claim recites “access message” only once. *See* ’730 Patent at claims 1, 15; ’954 Patent at claim 1; ’905 Patent at claim 1. Logically, if “access message” can alternatively *enable* or *announce* access, as Proxense contends, then in instances where it performs the *announcing* function, the claims are left without anything to perform the *enabling* function—completely undermining the claim language. In an attempt to refute this, Proxense argues:

¹ Similarly, “notification” does not belong in a proper construction of “access message.” As explain in this section, “access message” does not announce access, it enables it. And while a message may enable access, a “notification” does not—it just provides notice. Hence, for the reasons “announcing” is not part of a proper construction of “access message,” “notification” is also improper.

There is no claim limitation or teaching within the specification that limits the number of access messages sent or received. There is *no explicit disclosure that* states that if there is an access message that enables access *there cannot be another access message* that announces access or vice versa.

Proxense Response at 7.² This is a misdirection and incorrect. The issue is what, exactly, the access message is. Every claim at issue puts “an” in front of “access message.” See ’730 Patent at claims 1, 15; ’954 Patent at claim 1; ’905 Patent at claim 1. And the specifications do not disclose sending multiple access messages for the purposes identified by Proxense. In fact, the specification confirms that there is only one “access message” in each disputed claim: the one enabling access. See, e.g., ’730 Patent at 7:18–23 (describing “an access message” and referring to it again as “the message”).

Proxense also argues, without support, that “allowing,” which appears elsewhere in the claim, can mean “announc[ing] that access is permitted.” Proxense Response at 4; see also, e.g., ’730 Patent at claim 1 (“receiving an access message from the agent *allowing* the user access to an application”). First, this is not a term identified for construction. Second, “allowing” is the functional result of receiving the access message. Third, the term “allowing” does not equate to “announcing” under any fair reading.

In fact, “allowing” is a synonym of “enabling” and unrelated to “announcing.” Compare Ex. D (Concise Oxford American Thesaurus)³ at 27 (listing synonyms for “allow,” which includes “enable”) and *id.* at 259 (listing synonyms for “enable,” which includes “allow”) with *id.* at 33 (listing synonyms for “announce,” the entire list of which is: “Make Public, make known, report, declare, divulge, state, give out, notify, publicize, broadcast, publish, advertise, circulate, proclaim,

² All emphases in quoted language have been added, unless otherwise indicated.

³ Proxense’s response injects an unsupported construction for “allowing.” To rebut, Microsoft responds with evidence to demonstrate that non-patent texts support Microsoft’s constructions (although the intrinsic evidence should be sufficient for Microsoft’s constructions).

blazon”). In contrast, the meaning of “announce,” a term absent from the terms for construction and intrinsic evidence, means: “make a public and typically formal declaration about a fact, occurrence, or intention.” Ex. E (The New Oxford American Dictionary, 2d ed.) at 62; *see also* Ex. F (Collins English Dictionary, 7th ed.) at 65 (defining “announce” as “1 . . . to make known publicly; proclaim”). Proxense does not point to any disclosure in any of the Biometric Authentication Patents that equate “access message” with such function (i.e., make public/known that access was granted).

Other portions of the specification Proxense cites also do not equate “access message” to any “announcing” function. *See* Proxense Response at 4–5. At best, they suggest “access message” can be *followed* by the provision of user data, which does *not announce access*, but rather provides some data after access is granted. Proxense argues that “an LED can be a signal” and “a pop-up window can be a notification.” Proxense Response at 7–8 (citing ’730 Patent at 3:33–35; 6:28–31; ’954 Patent at 4:26–28, 7:23–26; ’905 Patent at 4:28–30, 7:28–29). But these disclosures do not relate to “access message” and contradicts the claim language surrounding “access message,” which must be received from the third-party agent/authority. *See* ’730 Patent at claims 1 and 15 (“*receiving* an access message *from the agent*”); ’954 claim 1 (“*receiving*, at an application, an access message *from the trusted authority*”); ’905 Patent at claim 1 (“responsive to *receiving* an access message *from the third party trusted authority*”). In contrast, the “LED” and “pop-up window” are not received from a third party, so they cannot correspond to the claimed “access message.” *Id.*

Proxense’s argument implying that “access message” only leads to “the next step to ask[ing] for more information” is also unsupported. *See* Proxense Response at 5. Proxense cites to the ’730 Patent’s statement: “If authentication is successful, the trusted key authority sends an

access message to the application to allow user access and/or provide additional information from the profile (such as the user’s age).” Proxense Response at 5 (citing ’730 Patent at 7:18–21). Where the authority “sends an access message to the application to . . . provide additional information,” this information, such as “the user’s age,” does not announce access (it does not inform anyone that access was granted). Instead, the user’s age is a value for the application (such as a slot machine) to determine whether to grant access. *See, e.g.*, ’730 Patent at 2:6–14 (“[T]he trusted key authority can store a profile associated with the biometric key having the code. The profile can contain user information such as name, age, account numbers, preferences, and the like. In addition, the profile can describe the status of the key, identify the trusted key authority, and/or contain other information. The profile can also be sent to the authentication module for use by the application (e.g., an age of user sent to a casino machine).”); *id.* at 6:32–53 (describing establishment of a profile). The claim language (“receiving an access message . . . allowing the user access”) describes the situation where the message itself from the agent enables access, not some other component.

Accordingly, there is no reason to add the alternative, undisclosed “announcing” function to the term. “Access message” means “a message enabling access.”

B. “wherein the biometric data and the scan data are both based on a fingerprint scan by the user” (’730 Patent, claim 5)

Microsoft’s Construction	Proxense’s Construction
Invalid under 112 ¶ 4	Adopts the <i>Proxense/Samsung</i> Claim Construction Order: No construction needed, plain and ordinary meaning.

Claim 5 is invalid. “Fingerprint” is absent from the list of biometric data listed in the closed Markush group in claim 1 of the ’730 Patent, but dependent claim 5 adds a new member

“fingerprint.” Thus, claim 5 is invalid under 35 U.S.C. § 112, ¶ 4 because it broadens the closed Markush grouping from claim 1. *See* Microsoft Opening Brief at 7–10.

Proxense does not dispute that claim 1’s list is a closed Markush group. *See* Proxense Response at 8–10. Instead, Proxense argues that “fingerprint” is a subset of claim 1’s “palm print” or “hand geometry.”⁴ “Fingerprint” is not a subset of either “palm print” or “hand geometry”—these are three distinct and non-overlapping biometric measures—indeed this argument suggests deeper indefiniteness issues. A finger is not a palm, nor is it part of the palm, and a fingerprint is not a part of a palm print or hand geometry—this is basic anatomy and common sense.

The Asserted Patents repeatedly and consistently distinguish “fingerprint” from “palm print” and “hand geometry,” among other biometric measures. Proxense does not address the fact that the Asserted Patents clearly and repeatedly distinguish among fingerprint, palm print, and hand geometry as different kinds of biometric verification, data, and scanners. *See, e.g.*, ’730 Patent at 3:4–11 (“Although the embodiments below are described using the example of biometric verification using a *fingerprint, other embodiments . . .* can include a *palm print*, a retinal scan, an iris scan, *hand geometry* recognition, facial recognition, signature recognition, or voice recognition.”); ’954 Patent at 3:58–62 (same); ’905 Patent at 3:60–64 (same); ’954 Patent at claim 5 (“5. The method of claim 1, wherein the biometric data includes one or more of a *fingerprint, palm print*, a retinal scan, an iris scan, a *hand geometry*, a facial recognition, a signature recognition and a voice recognition.”); *id.* at claim 26 (“26. The system of claim 22, wherein the

⁴ Proxense’s argument for this limitation, like all others in its response brief, relies heavily on the Court’s prior construction. There, the Court stated that “palm print” may include “fingerprint.” *Proxense, LLC v. Samsung Electronics Co., Ltd. et al.*, 6:21-cv-00210-ADA (W.D. Tex.), ECF 149 (“*Proxense-Samsung Markman Order*”) at 24. Here, Proxense hedges and adds that “fingerprint” may also be captured under “hand geometry,” although Proxense merely mentions this alternate theory without explanation or citation. *See* Proxense Response at 8–10. As explained in this section, neither theory supports Proxense’s construction.

biometric data includes one or more of a *fingerprint, palm print*, a retinal scan, an iris scan, a *hand geometry*, a facial recognition, a signature recognition and a voice recognition.”); ’905 Patent at claim 4 (“4. The method of claim 1, wherein the biometric data includes data from one or more of a *fingerprint, palm print*, a retinal scan, an iris scan, a *hand geometry*, a facial recognition, a signature recognition and a voice recognition.”); *id.* at claim 16 (“16. The system of claim 11, wherein the biometric data includes data based on one or more of a *fingerprint, palm print*, a retinal scan, an iris scan, a *hand geometry*, a facial recognition, a signature recognition and a voice recognition.”); ’042 Patent at 4:7–13 (“The biometric input **104** comprises a representation of physical or behavioral characteristics unique to the individual. For example, the biometric input **104** can include a *fingerprint, a palm print*, a retinal scan, an iris scan, a photograph, a signature, a voice sample or any other biometric information such as DNA, RNA or their derivatives that can uniquely identify the individual.”); ’289 Patent at 4:38–45 (same); ’960 Patent at 4:45–52 (same); ’042 Patent at 7:25–29 (“In one embodiment, the biometric reader **302** is a *fingerprint* scanner. *Other embodiments of biometric readers 302 include* retinal scanners, iris scanners, facial scanner, *palm scanners*, DNA/RNA analyzers, signature analyzers, cameras, microphones, and voice analyzers.”); ’289 Patent at 7:60–64 (same); ’960 Patent at 7:66–8:4 (same). At no point do the Asserted Patents categorize “fingerprint” as a subset of “palm print” or “hand geometry.” Nor would it make sense to do so.

Other extrinsic evidence relating to biometric authentication also clearly distinguish “fingerprint,” “palm print,” and “hand geometry.” *See, e.g.,* Ex. G (Facility Manager’s Guide to Security) at 148–49 (describing “Biometric Credential Verification,” contrasting fingerprint from “palm print” and “hand geometry” (which it collectively calls “Palm or Hand Geometry”), stating:

“Fingerprint scanners are reliable but measure more information than Palm Geometry and hence take longer when comparing a credential to a database.”).

To support its position that “palm print” includes “fingerprint,” Proxense argues that “palm” can include fingers. *See* Proxense Response at 10 (arguing that palm means “area extending from the top of the wrist bracelet to the tips of the fingers”). This is meritless. A palm does not include fingers—that would be a hand. Dictionaries confirm the common sense understanding that a palm does not include fingers. *See, e.g.,* Ex. E (The New Oxford American Dictionary, 2d ed.) at 1226 (defining “palm” as “the inner surface of the hand between the wrist and fingers”); Exs. F, H–K (other dictionaries defining “palm” to in ways that exclude fingers).

Although Proxense relies on the presumption that an examiner would not introduce an indefinite term, Proxense Response at 9, this is a rebuttable presumption. “Th[is] presumption is, like all presumptions in law, a starting place and a procedural device assigning the burden of proof.” *Chore-Time Equipment, Inc. v. Cumberland Corp.*, 713 F.2d 774, 780, 218 U.S.P.Q. 673 (Fed. Cir. 1983). When a claim, like claim 5, is invalid on its face, this presumption cannot salvage it. *See, e.g., Multilayer Stretch Cling Film Holdings, Inc. v. Berry Plastics Corp.*, 831 F.3d 1350, 1362 (Fed. Cir. 2016) (holding a dependent claim invalid, finding that the Markush group of elements in the independent claim for plastic cling wrap film layers (selected from linear low density, very low density, ultra low density, and metallocene-catalyzed linear low density polyethylene resins) was closed to other types of resins, like the one recited in the dependent claim); *Pfizer, Inc. v. Ranbaxy Lab ’ys Ltd.*, 457 F.3d 1284, 1292 (Fed. Cir. 2006) (“Although the district court was reluctant to find the fourth paragraph of § 112 to be an invalidating provision, doing so . . . is consistent with the overall statutory scheme that requires applicants to satisfy certain requirements before obtaining a patent.”). Obviously, this presumption cannot mean that

every issued claim is immune to invalidation under § 112, ¶ 4. Congress wrote § 112, ¶ 4 precisely for situations like this. That the examiner made the revision does not immunize it from ¶ 4.

The presumption is further weakened by the prosecution history. The original application was filed with 21 claims on December 20, 2005. Ex. L at 2–5 (2005-12-20 Initial Claims). On February 25, 2010, Proxense’s attorney added a new dependent claim 22, which read: “wherein the biometric data comprises one from a group of a palm print, a retinal scan, an iris scan, a hand geometry, a facial recognition, a signature recognition and a voice recognition.” Ex. L at 13 (2010-02-25 Amendment B and Response). Like dependent claim 7 (which became asserted claim 5), claim 22 depended on claim 1. On August 31, 2012, the Examiner changed the transition phrase to close the group:

Replace claims 1, 2, 5, 8-10, 12, 14-15, and 18-25 with the amendments below:

Claim 1:

A method for verifying a user during authentication of an integrated device, comprising the steps of:

persistently storing biometric data of the user and a plurality of codes and other data values comprising a device ID code uniquely identifying the integrated device and a secret decryption value in a tamper proof format written to a storage element on the integrated device that is unable to be subsequently altered; **wherein the biometric data is selected from a group consisting of a palm print, a retinal scan, an iris scan, a hand geometry, a facial recognition, a signature recognition and a voice recognition.**

responsive to receiving a request for a biometric verification of the user, receiving scan data from a biometric scan;

Ex. L at 26 (2012-08-31 Notice of Allowance and Fee(s) Due) (highlight added). And consistent with MPEP 1302.04, Proxense’s attorney was asked whether they approved of the Examiner’s Amendment and was reminded of another opportunity to amend the claims under 37 C.F.R. 1.312.

Id. Proxense could have, and chose not to, amend the new claim language before it simply paid the issue fee.

Proxense also argues that a new cited document it supposedly found on the FBI’s website supports its argument that “palm” includes fingers. Proxense Response at 10. This argument is also without merit. First, Proxense does not explain the supposed relevance of this random post-2013 FBI document here. Yet even the excerpt that Proxense cites distinguishes “palm print” from “fingerprint.” It states: “[w]hen submitting to the FBI, best practices for this collection of prints are defined as the *equivalent* of *one* FBI Standard *Fingerprint* Card FD-249 *or* FD-258 and *two* FBI Standard *Palm Print* Cards FD-884 per subject.” Dkt. No. 42-2 at 4. If, as Proxense contends, a palm print already captures fingerprints, why would *two* palm prints (the supposedly more comprehensive scan of a hand) be equivalent to only *one* fingerprint? Clearly, even Proxense’s extrinsic evidence recognizes that palm prints and fingerprints measure different things.

But Proxense does not just ignore evidence, it misrepresents them too. Specifically, it misrepresents this Court’s order from *Proxense-Samsung*, presenting *Proxense’s arguments* as if it *was the Court’s opinion*. In its Responsive brief, Proxense states that the “Court held” as highlighted:

the Markush group in claim 1 to include the term “fingerprint[.]” Op. Br. at 10. But as the Court held in *Proxense v. Samsung*, Claim 5 of the 730 Patent:

properly narrows the scope of “biometric data” to a single “fingerprint.” The plain and ordinary meaning of “palm print” would be understood to include some combination of prints from the heel and/or flat of the hand, with multiple fingerprints and/or a thumb print (*see, e.g.*, 730 Patent 3:4-11, expanding exemplary biometric data from “fingerprint” to additional metrics like an entire “palm print”; *id.* at 3:29-33, indicating that biometric data capture could include thumb or other fingerprints). *Id.* at 24 (emphasis added).

There is no need for the Court to hold any differently in this case or to re-constue this term. Microsoft has not shown any evidence—intrinsic or extrinsic—that suggests that a person

Proxense Response at 9 (highlight added). But this quote comes from the Court’s description of Proxense’s argument, not the Court’s holding (red highlight shows the words Proxense omitted, yellow highlight shows the words Proxense kept):

ECF No. 35 at 12. According to Proxense, dependent claim 5 properly narrows the scope of “biometric data” to a single “fingerprint.” Proxense asserts that the plain and ordinary meaning of “palm print” would be understood to include some combination of prints from the heel and/or flat of the hand, with multiple fingerprints and/or a thumb print (*see, e.g.*, 730 Pat. 3:4–11, expanding exemplary biometric data from “fingerprint” to additional metrics like an entire “palm print”; *id.* at 3:29–33, indicating that biometric data capture could include thumb or other fingerprints).

Proxense-Samsung Markman Order (ECF 149) at 24 (highlights added); *see also id.* at 20 (this text appearing in a section titled “The Parties’ Positions.”).

Accordingly, claim 5 is invalid under 35 U.S.C. § 112 ¶ 4.

C. “personal digital key” or “PDK” (’042 Patent, claim 10)

Microsoft’s Construction	Proxense’s Construction
“a device that includes an antenna, a transceiver for communicating with the RDC and a controller and memory for storing information particular to a user”	Adopts the <i>Proxense/Samsung</i> Claim Construction Order re the ’188 and ’700 Patents: “An operably connected collection of elements including an antenna and a transceiver for communicating with a RDC and a controller and memory for storing information particular to a user

The Asserted Patents consistently describe “PDK” as a device, whether standalone or integrated with another device. *See* Microsoft Opening Brief at 11–17. Rather than rebut the evidence in favor of Microsoft’s construction, Proxense attacks a straw man. Proxense argues that Microsoft is seeking to construe PDK as “a stand-alone, single-purpose, monolithic device.” Proxense Response at 10. This is not true. Microsoft’s construction simply reads PDK as “a

device” having certain non-disputed features. This device need not be “stand-alone.” As Microsoft already described, it can be integrated into another device. Nor does Microsoft’s construction say the PDK is “single-purpose” or “monolithic.”

Having spent most of its response fighting a fictional construction, *see* Proxense Response at 10–12, Proxense fails to address the clear teachings of the ’042 Patent. The patent consistently—and without contradiction—describes PDK (a Proxense-coined initialism) as a “device” having features of a device (portability, location trackability, operability without wireless connection, etc.). *See* Microsoft Opening Brief at 12–16; *see also, e.g.*, ’042 Patent at 3:48–50 (“*The PDK 102* is a compact, *portable* uniquely identifiable wireless *device* typically *carried* by an individual.”); 5:44–45 (“*The PDK 102* can be standalone *as a portable, physical device* or can be integrated into commonly carried items”); 17:63–64 (“[A] *PDK 102 b* operating as the first *device*”). Of course, a device can be integrated into another device, without needing to be disassembled into a collection of elements (e.g., a USB key plugged into a laptop, a cellphone plugged into a charger, a camera mounted on a stand, etc.). And “hybrid device” (a term repeated throughout the ’042 Patent, starting from the title) describes a “hybrid” of subset devices that can function alone or in combination with another device. *See* ’042 Patent at Abstract (“The hybrid device operates in one of several modes including, PDK only, RDC only, or PDK and RDC.”). This is likely why Proxense avoids even referring to the Hybrid Device Patents (the ’042, ’289, and ’960 Patents) as such, and instead opts to calling them “Family B” patents. This is likely also why Proxense characterizes the PDK’s functionalities in its own patents as “alleged abilities.” *See* Proxense Response at 11, 12. Proxense cannot use claim construction to distance itself from its own patents’ disclosures to avoid the proper scope of its own coined terms.

Aside from failing to rebut intrinsic evidence, Proxense cites no affirmative evidence to support its construction. Nothing in the '042 Patent states or suggests that a PDK is a “collection of elements.” Such a construction introduces confusion, turning PDK into some amorphous and uncertain group of amorphous “elements.” Among other issues, Proxense’s proposed construction of a “collection of elements” only underscores the unclear definition—what are these collections of elements? Even Proxense appears to acknowledge that a “collection of elements” cannot fit the '042 Patent’s disclosures. For example, Proxense states:

The 042 Patent teaches the PDK being a collection of elements integrated within a cell phone. . . . Thus, a ***PDK*** can simultaneously be a collection of elements ***integrated within a cell phone and arguably have the abilities of (1) portability, (2) proximity/location tracking, and (3) being able to operate with or without wireless connectivity.***

Proxense Response at 11–12. Evidently, Proxense acknowledges that, only once the disconnected elements that supposedly make up a PDK are somehow gathered into ***a device***, like a cellphone, is it capable of practicing the disclosures in the specification, such as portability and location tracking.

And again, Proxense attempts to put words in the Court’s mouth by misleadingly reframing a quote from the *Proxense-Samsung Markman* Order. Proxense states:

As this Court recognized in Proxense v. Samsung, in such embodiments where the hybrid device/PDK function is integrated into a cell phone (e.g., with a SIM card), “the transceiver and/or antenna of the PDK is provided by the cell phone, and the memory and controller of the PDK are provided by the SIM card.”

Proxense Response at 11 (citing *Proxense-Samsung Markman* Order (ECF 149) at 30). Again, the quoted language was not the Court’s holding, but was instead contained in the Court’s recounting of Proxense’s position. See *Proxense-Samsung Markman* Order (ECF 149) at 28–30. And again, Proxense deleted the words “According to Proxense” from the Court’s Order to repackage its argument as the Court’s holding. *Id.* at 28–29.

Based on consistent intrinsic evidence, “personal digital key” / “PDK” means “a device that includes an antenna, a transceiver for communicating with the RDC and a controller and memory for storing information particular to a user.”

D. “receiver-decoder circuit” or “RDC” (’042 Patent, claim 10; ’289 Patent, claims 14 and 16)

Microsoft’s Construction	Proxense’s Construction
“a circuit that wirelessly receives encrypted data from the PDK and decodes it”	Adopts the <i>Proxense/Samsung</i> Claim Construction Order re the ’188 and ’700 Patents: “A component or collection of components, capable of wirelessly receiving data in an encrypted format and decoding the encrypted data for processing.”

A “receiver-decoder circuit” is a circuit—like the claim says. In its response, Proxense again straw-mans Microsoft’s proposed construction, arguing that Microsoft seeks to construe RDC as “a separate and distinct device.”⁵ Proxense Response at 13–15. But Microsoft is not arguing this. Microsoft simply posits that a circuit is a circuit.

At no point does Proxense even attempt to refute the fact that a “receiver-decoder circuit” / RDC is a circuit. How could it? It coined these terms, where one expressly says “circuit” and in the other the “C” stands for circuit. “Claims mean precisely what they say.” *Central Admixture Pharmacy Services, Inc. v. Advanced Cardiac Solutions, P.C.*, 482 F.3d 1347, 1355, 82 U.S.P.Q.2d 1293, 1298 (Fed. Cir. 2007), *cert. denied*, 128 S. Ct. 648 (U.S. 2007). As explained, construing

⁵ This mischaracterization of Microsoft’s construction evidently arises from Proxense’s effort to replicate its arguments from *Proxense-Samsung*. In *Proxense-Samsung*, Samsung proposed to construe “RDC” as “A device that provides a wireless interface to the PDK” (for the ’188 and ’700 patents, which are not at issue here). Proxense appears to have carried over its counterargument from *Proxense-Samsung* without updating it to address Microsoft’s different construction.

RDC as a “A component or collection of components,” as Proxense proposes, is nonsensical and unsupported. *See* Microsoft Opening Brief at 17–21.

Based on a plain reading, “receiver-decoder circuit” / “RDC” means “a circuit that wirelessly receives encrypted data from the PDK and decodes it.”

III. CONCLUSION

For the foregoing reasons, Microsoft respectfully asks the Court to adopt its proposed constructions.

Date: December 11, 2023

Respectfully submitted,

/s/ Jason W. Wolff

Betty Chen (SBN 290588)
bchen@desmaraisllp.com
DESMARAIS LLP
101 California Street, Suite 3070
San Francisco, CA 94111
Telephone: (415) 573-1900
Facsimile: (415) 573-1901

Jason W. Wolff (CA Bar No. 215819)
wolff@fr.com
FISH & RICHARDSON P.C.
12860 El Camino Real, Suite, 400
San Diego, CA 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Benjamin C. Elacqua (SBN 24055443)
elacqua@fr.com
FISH & RICHARDSON P.C.
909 Fannin Street, Suite 2100
Houston, TX 77010
Tel: (713) 654-5300
Fax: (713) 652-0109

Melissa Smith
Texas Bar Number 24001351
melissa@gillamsmithlaw.com
J. Travis Underwood

travis@gilliamsmithlaw.com
GILLAM & SMITH, LLP
303 South Washington Avenue
Marshall, Texas 75670
Telephone: (903) 934-8450

***Attorneys for Defendant Microsoft
Corporation***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 11, 2023, the foregoing document was filed electronically in compliance with Local Rule CV-5(a) and was served via CM/ECF on all counsel of record.

/s/ Jason W. Wolff

Jason W. Wolff