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Federal Court of Australia
District Registry: New South Wales
Division: General

No. NSD 1288 of 2025

On appeal from the Federal Court of Australia

CPC Patent Technologies Pty Ltd (ACN 615 736 028)
Appellant

Apple Pty Limited (ACN 002 510 054) and another
Respondents

CPC'S OUTLINE OF SUBMISSIONS IN REPLY

16 February 2026

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A. INTRODUCTION

1. These submissions respond to Apple's submissions in answer on the appeal and notice of contention (**ASA**). They are to be read together with CPC's submissions in chief (**CSC**) and in answer on the cross-appeal (**CSA**). Defined terms are adopted herein. Three observations may be made at the outset. ***First***, as a general proposition, ASA (despite their apparent level of detail) tend to repeat findings made by the primary judge, without engaging directly with the substance of CPC's challenges to his Honour's reasoning. ***Secondly***, it remains the case that the appeal largely turns upon construction, which the Full Court is readily able to decide. ***Thirdly***, Apple's heavy reliance on the expert evidence to divert from the ordinary meaning of plain words in the claims, which are not terms of art, is misplaced. Construction is a matter for the Court.

B. CONSTRUCTION

2. **Controlled Item:** Apple concedes that the controlled item must be a thing **to which** access is provided: ASA [2] (although, insofar as Apple suggests that the RSS must, in all cases, provide access that is incorrect - some claims do not require an RSS at all). Despite this concession, Apple continues wrongly to assert that the controlled item is only a "single locking mechanism" or an "electronic key circuit", without confronting that access is not granted **to** either of those things. Apple's error is apparent even at ASA [4], where Apple acknowledges that access is not granted **to** an electronic key circuit, but rather the functionality of the PC.

3. Apple's rationale rests solely on p 10.18-23 (Pt C Tab 28, AB-1014). However, reliance on a single passage in the specification to change the ordinary meaning of the claims is contrary to well-established principle: see CSC [5], [7]. In any event, it is apparent that the reference to "door locking mechanism" and "electronic key circuit" at p 10.18-23 is an artefact of the prior art discussion at p 1.1-23 (Pt C Tab 28, AB-1005), which discusses a prior art arrangement for providing access via a "controlled device", not secure access to a "controlled item" in accordance with the invention. That distinction is critical. The Patents are directed to providing secure access **to** a controlled item. By contrast, the prior art involved sending an access signal **to** a locking mechanism **device** in order to **provide** access. Thus Apple's reliance on p 10.18-23 is misplaced.

4. Contrary to ASA [4], this is consistent with other aspects of the specification. P 12.18-21 states "[i]n the event that the secure access system is being applied to providing secure access **to a PC**…". No reference is made in this passage to an "electronic key circuit", and the disclosure expressly contemplates providing secure access **to** a PC, not **in** a PC. P 15.1-13 relates to a controlled item that has multiple secure doors, any one of which can be selected by a user to access using the controller. It is not suggested that each door is a controlled item - the controlled item is the building or other item with multiple doors via which access is granted. The fact that

access may only be granted to a part of the controlled item, depending on the door, forms the basis for the conditions of access that are granted. P 28.14ff is discussing other examples of controlled items to which "the system" can provide secure access - consistent with the fact that the claims are directed to "a system for providing secure access to a controlled item" (or, in the case of claims 27, 29 and 37 of the 293 Patent methods or an apparatus).

5. **Accessibility Attribute:** the agreed definition of accessibility attribute at p 14.18-19 does not exclude the output of the accessibility attribute forming part of the communication of a biometric match. Further, that definition should be understood in the context of the different ways in which the term "accessibility attribute" is used in the asserted claims. Claims 1 and 2 of the 168 Patent involve providing an accessibility attribute if a legitimate biometric signal is received (Pt C Tab 28, AB-1033); claim 3 of the 168 Patent is silent as to the provision or output of the accessibility attribute, stipulating only that access is to be provided to the controlled item dependent upon an accessibility attribute received from the TSS (something that both Apple and the primary judge fail to grapple with) (Pt C Tab 28, AB-1033-1034); claims 5 and 6 of the 168 Patent require a means for matching the biometric signal against members of the database to thereby output an accessibility attribute (Pt C Tab 28, AB-1034-1035); and the asserted claims of the 293 Patent require a means for matching the biometric signal against members of the database to thereby output an accessibility attribute if the matching is authenticated (Pt C Tab 29, AB-1084, AB-1091-1092, AB-1096-1099).

6. Even the asserted claims of the 293 Patent, which are the most prescriptive when it comes to accessibility attribute, only require a means for matching the biometric signal to thereby output an accessibility attribute if the matching is authenticated. This language does not exclude the output of the accessibility attribute forming part of the communication of a match (provided it still establishes whether and under which conditions access should be granted in the context of which it is output or provided). The presence of "legitimate" in claims 1 and 2 of the 168 Patent in place of "matching" and "authenticated" does not advance matters for Apple, it goes without saying that an accessibility attribute cannot be provided unless a legitimate biometric signal is received – otherwise there would be no secure access system – but the claim language does not prescribe the manner in which matching and provision of the accessibility attribute is to occur. In no way does the language of any of the claims make the receipt of a matching biometric signal a "precondition" to the provision or output of an accessibility attribute in the sense that it must be entirely separate from and proceed after the matching process: cf ASA [7]-[8]; J [121].

7. For similar reasons, non-limiting embodiments where "authentication of the biometric signature matching produces an accessibility attribute" (reflective of the language of the 293 Patent claims) are not determinative. Nor is the agreement of the experts that successful biometric authentication produces an accessibility attribute – this does not make the two things resolutely

distinct: cf ASA [9]; J [124]. In summary, none of the claims require a successful match to be communicated prior to and separately from the output/provision of an accessibility attribute.

8. Further, contrary to ASA [9], the requirement of some claims that the accessibility attribute be provided/output is not synonymous with "conveyed" in the manner contemplated at J [122], [136]-[137]. The primary judge incorrectly held that the accessibility attribute must "convey" whether and under what conditions access should be granted in the sense that it must itself contain the conditions of access. That is not synonymous with the provision/output of an accessibility attribute that establishes whether and under what conditions access should be granted, which is not prescriptive as to the manner in which this is achieved.

9. Finally, ASA [10] does not withstand scrutiny. Nothing in the claim language excludes a scenario where: **(a)** a user specifies what type of access they seek (eg access to room 1 in the building, which is accessible via door 1, as opposed to access to room 2 in the building, which is accessible via door 2); **(b)** the user is authenticated via the matching process; and **(c)** something is output or provided as part of the matching process which establishes that the user may be granted access to room 1 (but not, for example, room 2). In this scenario, a legitimate biometric signal has been received / a means for matching has been provided / matching is authenticated, and an accessibility attribute has been provided / output which determines whether and under what conditions access should be granted. That is contemplated by p 14.20-15.13 (Pt C Tab 28, AB-1018).

10. **TSS and RSS:** ASA [16] is premised on a mischaracterisation of CPC's construction. CPC does not contend, and has never contended, that the *functions* of the two subsystems as defined in each of the asserted claims can be merged or overlapping. Indeed, as discussed in CSC [17], the TSS and the RSS of the claims are defined solely by their differing functionalities (save for claim 39 of the 293 Patent that also requires a single apparatus within the TSS to be responsible for enrolling relevant signatures into a database of biometric systems (Pt C Tab 29, AB-1097-1098)). That is why, consistently with the CGK (which is not disputed: ASA [16]), whilst the TSS and RSS have differing defined *functions*, they need not have discernible and identifiably separate *components*. Read in that light, none of the matters raised in ASA [16] (most of which incorrectly focus on overlapping functionality) withstand scrutiny. In relation to the fourth point of ASA [16]: whilst the claims generally envisage a secure access signal being sent from the TSS to the RSS (albeit not in all cases), the mere fact that there is this "flow of information" does not mean that the TSS and RSS must be "discernible as identifiably separate components". Neither the primary judge nor Apple articulate a basis for why that must be so. The disputes about the disclosures outlined in the fifth point in ASA [16] and ASA [17] will be addressed orally, but for the reasons outlined in CSC [18], Apple's characterisation of these aspects of the specification is not correct.

11. As to ASA [18], Apple largely just repeats the points raised by the primary judge, without dealing with CSC [19]-[21]. For the reasons outlined therein, defining TSS and RSS by reference to every single component is not a practical or common sense construction in light of the undisputed CGK, language of the claims and teachings of the specification (particularly if, contrary to CPC's contention, the TSS and RSS must be entirely distinct without overlap).

12. **Administrator signature**: claims 3 and 6 of the 168 Patent require a method or means for enrolment that includes "storing a biometric signal received … in the database as an administrator signature" (Pt C Tab 28, AB-1033-1035). Claim 29 of the 293 Patent simply requires the database of biometric signatures to comprise signatures "in at least one of a system administrator class…" (Pt C Tab 29, AB-1092). Claim 41 of the 293 Patent requires a means for "enrolling the relevant signatures into the database… as an administrator…" (Pt C Tab 29, AB-1098). Thus, contrary to ASA [22], not all of the claims expressly require the storing of a biometric signal in a database "as an administrator signature". In any event, a requirement to store a biometric signal in a database as an administrator signature does not prescribe <u>how</u> it is stored and recognised as such. Nothing in the claims, nor in the language of p 19.1-6, nor the expert evidence relied upon in ASA fns 46 and 47 support the narrow construction adopted by the primary judge and contended for by Apple that administrative privileges associated with a signature must necessarily be embedded within the mathematical representation itself. As to ASA fn 47 and claim 29 of the 293 Patent, it is not clear what assistance Apple seeks to derive from the contention about the duress class, and CPC's construction is compatible with this claim. Indeed, the fact that claim 29 requires the signatures to be in a duress class supports CPC's position that the claims do not prescribe how an administrator signature (or system user or duress signature) is to be stored in the database.

13. **Series Feature**: for the reasons outlined in CSC [26] and CSA [15], CPC's construction of the series feature gives effect to each of the individual requirements of the integer, directly reflects the language of the claims, and accords with the CGK at the priority date: cf ASA [25]. The suggestion at ASA [25] and by the primary judge at J [210] that the instruction "necessarily pre-exists the entry of the series" is, with respect, nonsensical. The series feature requires *first* a means for receiving a series of entries of the biometric signal; *second* a means for mapping <u>said</u> series <u>into</u> an instruction; and *third* a means for enrolling relevant signatures into the database according to the instruction. The instruction cannot pre-exist the entry of the series when it is the series that must be mapped <u>into</u> an instruction. This is why, as observed in CSC [27], the primary judge's construction fails to give effect to the whole of the claim language.

C. INFRINGEMENT

14. As to the matters raised in ASA [11]-[13], [20], [23], [26]-[27] - each of these paragraphs is premised on an incorrect construction of the relevant integers. CPC does not understand Apple

to contend that, on CPC's construction of controlled item, accessibility attribute, TSS and RSS, administrator signature and series feature, the Apple Devices nevertheless do not possess each of those features such that they would not fall within the scope of the asserted claims. Contrary to ASA [21], all Apple Devices are addressed in CSC, and CPC's position on the Apple Watch accords with the correct construction of RSS, which is defined by functionality not by components (whether hardware or software).

D. VALIDITY

15. **Deferred Priority Date:** in the case of: **(a) administrator signature and series feature** - as observed in CSC [34], in the event that the disclosures of the relevant prior art are sufficient to disclose an administrator signature and series feature on CPC's construction, it necessarily follows that there is a real and reasonably clear disclosure of those integers in the Provisional (see also CSA [18]). ASA does not contend otherwise; **(b) accessibility attribute** - this again turns on construction. On CPC's construction, the outcome of the "check of preconditions to access" is a sufficiently adequate disclosure of the determination of both whether and under what conditions access should be granted; **(c) wired transmission -** the primary judge correctly held at J [505] that there is a sufficient disclosure in the Provisional of a wired communication between the TSS and the RSS. Critically, as the primary judge observed at J [498], the "Field of the Invention" described in the Provisional is said to be "in particular" to systems using wireless transmission of security code information, and such language does not preclude systems using communication means other than wireless transmission. ASA [29] ignores this and focuses on a purported "wrong turn" at J [503]-[504]. The primary judge made no such "wrong turn", as is apparent from his Honour's reasoning in those paragraphs; but, even if that particular passage of the Provisional was directed to a wireless communication, that does not detract from the findings at J [498], which are sufficient for the purposes of establishing external fair basis.

16. **Novelty**: **ASA [30]** does not engage with CSC [35] as to why "convenience functions" in a vehicle are not conditions of access. Further, as the "impersonal code" relates to such "convenience functions", it is correct (as submitted in CSC [36]) that the unlock signal is a purely binary lock/unlock signal and not an accessibility attribute. Apple also does not refute the points made in CSC [36] (a) and (b). Contrary to **ASA [31]**, CPC's position is not inconsistent with the infringement position. The TSS and RSS are defined by their functionalities, not components, and the primary judge correctly held that the determination of whether and under what conditions access should be granted must occur in the TSS, which is something that the prior art does not disclose. It also follows that Mathiassen does disclose multiple signals being broadcast to separate receivers. Finally, **ASA [32]** is an over-simplification and improper characterisation of CPC's construction of administrator signature: see CSC [22], [23], [39].

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