1

2

3

4

5   UNITED STATES DISTRICT COURT

6   NORTHERN DISTRICT OF CALIFORNIA

7

8   SYMANTEC CORPORATION,   No. C-11-5310 EMC

9   Plaintiff,

10   v.   **CLAIM CONSTRUCTION ORDER –
                                                    ACRONIS'S PATENTS**
11   ACRONIS, INC., *et al.*,

12   Defendants.
     _____/

13

14

15   Plaintiff Symantec Corporation initiated this action against Defendants Acronis, Inc. and

16   Acronis International GmbH (collectively, "Acronis"). Under the current operative complaint,

17   Symantec charges Acronis with infringement of five patents. In response, Acronis has filed

18   counterclaims, seeking a declaratory judgment that Symantec's patents at issue are not infringed and

19   further are invalid. In addition, Acronis has asserted counterclaims, maintaining that Symantec

20   infringes two of Acronis's patents, namely, the '211 patent and the '380 patent. *See* Docket No. 93

21   (counterclaims); Docket No. 701 (joint claim construction statement). This order construes terms as

22   used in the claims of Acronis's patents only. A separate order shall provide claim construction on

23   Symantec's patents.

24   **I.   FACTUAL & PROCEDURAL BACKGROUND**

25   A claim construction hearing was held on November 20, 2012. Approximately two months

26   later, Acronis moved to amend its counterclaims. One of the amendments sought was a dismissal of

27   the '211 patent infringement claim. Symantec does not oppose dismissal of the '211 claim in

28   principle; the only dispute between the parties is whether the dismissal should be with or without

United States District Court
For the Northern District of California

1 prejudice. Accordingly, the Court shall construe only the terms identified by the parties with respect

2 to the '380 patent.

3   The '380 patent describes "[a] system for data backup [which] includes a storage device, a

4 backup storage device, and an intermediate storage device." '380 patent, Abstract. Although there

5 are multiple claims at issue for the '380 patent, the main claims that contain the terms to be

6 construed are as follows. Terms to be construed have been bolded.

7 A.   <u>Claim 30</u>

8   30.   A system for data backup, comprising:

9   a storage device;

10   a **backup storage device**; and

11   an **intermediate storage device**,

12   wherein, a backup procedure is performed on-line and copies
13 **data blocks** from the storage device into the backup storage device,

14   wherein, when a write command is directed to a **data storage
block** identified for backup that **has not yet been backed up**, the
identified data storage block is copied from the storage device to the

15 intermediate storage device, the write command is executed on the
identified data storage block from the storage device, and the data

16 storage block is copied from the intermediate storage device to the
backup storage device, and

17   wherein, in case of an error accessing a block on the storage
18 device, the block is marked as invalid.

19 B.   <u>Claim 36</u>
       36.   The system of claim 31,[1] wherein the system:

20

21   **suspends a write command** to the storage device during the
data backup process if the intermediate storage device has reached a
selected data capacity; and

22

23   copies a selected amount of data from the intermediate storage
device to the backup storage device.

24 ///

25 ///

26 ///

27 _____

28   [1] Claim 31 provides: "The system of claim 30, wherein the intermediate storage device is
external to a file system of a computer that includes the storage device."

1   **II.   DISCUSSION**

2   A.   Legal Standard

3   Claim construction is a question of law to be determined by the Court. *See Markman v.*

4   *Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) ("hold[ing] that in a case tried to a

5   jury, the court has the power and obligation to construe as a matter of law the meaning of language

6   used in the patent claim"). "The purpose of claim construction is to 'determin[e] the meaning and

7   scope of the patent claims asserted to be infringed.'" *O2 Micro Int'l Ltd. v. Beyond Innovation*

8   *Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008).

9   Words of a claim are generally given their ordinary and
      customary meaning, which is the meaning a term would have to a
10   person of ordinary skill in the art after reviewing the intrinsic record at
      the time of the invention. "In some cases, the ordinary meaning of
11   claim language . . . may be readily apparent even to lay judges, and
      claim construction in such cases involves little more than the
12   application of the widely accepted meaning of commonly understood
      words." However, in many cases, the meaning of a claim term as
13   understood by persons of skill in the art is not readily apparent.

14   *Id.*

15   Because the meaning of a claim term as understood by persons of skill
      in the art is often not immediately apparent, and because patentees
16   frequently use terms idiosyncratically, the court looks to "those
      sources available to the public that show what a person of skill in the
17   art would have understood disputed claim language to mean." Those
      sources include "the words of the claims themselves, the remainder of
18   the specification, the prosecution history, and extrinsic evidence
      concerning relevant scientific principles, the meaning of technical
19   terms, and the state of the art."

20   *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005).

21   B.   "intermediate storage device" (claims 30, 31-32, 34, 36)

Acronis	Symantec	Court's Construction
plain meaning	storage device that stores data storage blocks prior to storage on the backup storage device	plain meaning

27   As a preliminary matter, the Court notes that Symantec's construction is not unreasonable to

28   the extent it is based on the language of the claims. *See Brookhill-Wilk 1, LLC v. Intuitive Surgical,*

3

Inc., 334 F.3d 1294, 1300 (Fed. Cir. 2003) (noting that "the context of the surrounding words of the claim . . . must be considered in determining the ordinary and customary meaning of those terms"); *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (noting that "the context in which a term is used in the asserted claim can be highly instructive – *e.g.*, the use of the term "steel baffles" "strongly implies that the term 'baffles' does not inherently mean objects made of steel"). For example, claim 30 of the '380 patent provides for a system for data backup, comprising a storage device, a backup storage device, and an intermediate storage device

> wherein, when a write command is directed to a data storage block identified for backup that has not yet been backed up, the identified data storage block is copied from the storage device to the *intermediate storage device*, the write command is executed on the identified data storage block from the storage device, and the data storage block is copied from the *intermediate storage device* to the backup storage device . . . .

'380 patent, claim 30 (emphasis added).

Nevertheless, the Court declines to adopt Symantec's construction because it is redundant given the surrounding words of the claim – that is, the surrounding claim language already specifies that the intermediate storage device stores data storage blocks prior to storage on the backup storage device. *See Atser Research Techs., Inc. v. Raba-Kistner Consultants, Inc.*, No. SA-07-CA-93-H, 2009 U.S. Dist. LEXIS 25294, at *31-32 (W.D. Tex. Mar. 2, 2009) (rejecting defendant's construction of the term "client computer" because it "includ[ed] the surrounding words of the claim" which was "redundant and unnecessary"). *Compare Fastek, LLC v. Steco*, No. 10 CV 0972 MMA (CAB), 2011 U.S. Dist. LEXIS 37922, at *21 (S.D. Cal. Apr. 6, 2011) (stating that "the Court's inclusion of the word 'temporarily' [in the construction of a term] makes clear what is otherwise impliedly present in the surrounding claim language"). For the same reason, the Court declines to adopt any other specific construction for the term "intermediate storage device."

///

///

///

///

///

4

C.   "data blocks" (claims 30, 42)

Acronis	Symantec	Court's Construction
plain meaning; or blocks for data storage[2]	numbered units of data for reading and writing to the storage device at the block-level	blocks containing data

Acronis takes issue with three limitations in Symantec's construction: (1) that the data blocks must be "numbered" (rather than typically associated with a number or label); (2) that the data blocks must be for "reading and writing" (*i.e.*, writing alone is sufficient); and (3) that the data blocks must be associated with the "storage device" (as opposed to *any* storage device, including the intermediate storage device or backup storage device).

1.   Numbered Limitation

Acronis's first objection has merit. The specification expressly states: "Typically, each data block is associated with a number or label corresponding to the type of operation to be performed." '380 patent, col. 9:55-57. That means a data block can be labeled, not just numbered. Moreover, a data block is simply associated with a number or label; there is no requirement that the data block actually be numbered or labeled. Finally, the word "typically" indicates that a data block may not even be numbered or labeled or associated with a number or label.

Admittedly, at another point in the specification, reference is made to numbering. *See* '380 patent, col. 9:14-16 (stating that "[t]he sequence of the blocks in the storage is ordered and each block has its own number"). However, that reference does not detract from the above statement in the specification that refers to numbering *or* labeling.

2.   Reading and Writing Limitation

Acronis objects to the "reading and writing" limitation proposed by Symantec because it suggests that both reading and writing are required when in fact "data may be written and never

_____

[2] Acronis presented the alternative construction at the hearing.

1   read." Docket No. 109 (Acronis's Op. Br. at 10). Acronis emphasizes: "[T]he claim language

2   requires only writing – and for good reason. If the backup copy is never used, the data will never be

3   read." Docket No. 128 (Acronis's Reply at 11).

4   In response, Symantec does not dispute that, for purposes of the invention, data may be

5   written and never read. Symantec's only argument is that its "construction that the data is 'for

6   reading and writing' simply describes the purpose of the blocks." Docket No. 122 (Symantec's

7   Resp. Br. at 7). According to Symantec,

8   Acronis'[s] contention that the inclusion of the words 'reading *and*
        writing' in the definition requires that both 'reading and writing' occur

9   together or not at all is unfounded. Acronis ignores that the
        construction states that the data is '*for* reading and writing.' Thus the

10   data's *purpose* is 'for' both reading and writing, but reading and
        writing need not necessarily occur together.

11

12   Docket No. 122 (Symantec's Resp. Br. at 7) (emphasis in original). The difficulty with Symantec's

13   position is that the mere use of the word "for" does not clearly indicate that that is with respect to the

14   data's *purpose* only. Symantec's proposed construction is confusing and invites an excessively

15   narrow interpretation of the term.

16   3.   Storage Device Limitation

17   Finally, Acronis objects to Symantec's construction because it limits the data blocks to a

18   specific location – *i.e.*, the storage device only, as opposed to *any* storage device, including the

19   intermediate storage device or the backup storage device. *See* Docket No. 109 (Acronis's Op. Br. at

20   10). Acronis takes the position that data blocks can be stored in any location. *See* Docket No. 128

21   (Acronis's Reply at 10).

22   The Court finds Acronis's position persuasive. Nothing in the language of the claim

23   suggests that a data block is limited to the storage device only. Indeed, claim 30 notes that data

24   blocks are copied "from the storage device into the backup storage device." '380 patent, claim 30.

25   To the extent Symantec argues that claim 1 of the '380 patent supports its position, *see* Docket No.

26   122 (Symantec's Resp. Br. at 6), it is incorrect. In claim 1 of the '380 patent, there is a reference to

27   "a storage device operable to store block data" and then a reference to "a backup storage device

28   operable to store block data."

6

1   4.   <u>Summary</u>

2   The Court rejects Symantec's construction for the reasons stated above. However, the Court

3 also rejects Acronis's suggestion that the Court rest on plain meaning as a construction for "data

4 blocks." The term "data blocks" is not readily apparent to a layperson. The Court construes "data

5 blocks" to mean "blocks containing data." Acronis's alternative construction – *i.e.*, blocks for data

6 storage – is not unreasonable to the extent the parties seem to agree that data blocks and data storage

7 blocks are the same thing. However, Acronis's alternative construction is problematic because it

8 elevates the storage component of a block over its data content. *See* Docket No. 128 (Acronis's

9 Reply at 13) (admitting that "data blocks" (as well as "data storage blocks," discussed below) "may

10 refer to either content or, additionally, containers for the data (blocks)").

11 D.   <u>"data storage block(s)" (claim 30)</u>

Acronis	Symantec	Court's Construction
plain meaning	data blocks (construed above)	blocks containing data

15   The parties agree that there is no difference between "data blocks" and "data storage blocks."

16 *See* Docket No. 128 (Acronis's Reply at 13 n.2) (stating that "[t]he parties agree that 'data storage

17 block(s)' and 'data blocks' (but not 'block data') may be used interchangeably"). Accordingly, the

18 Court construes "data storage block(s)" in the same way that it construed "data blocks."

19 E.   <u>"suspending/suspends a write command" (claim 36)</u>

Acronis	Symantec	Court's Construction
plain meaning; or temporarily halting/halts execution of a write command before it resumes	temporarily preventing/prevents a write command from executing	temporarily halting/halts execution of a write command before it resumes

27   Initially, the parties' dispute seemed to center on "whether 'suspending' means that the write

28 command is only temporarily prevented from executing or whether it also encompasses the situation

1 where a write command is completely aborted, as in the case of a system crash." Docket No. 122

2 (Symantec's Resp. Br. at 3-4). Symantec advocated in favor of the former.

3   In its reply brief, Acronis seems to have conceded that a complete abortion is not covered by

4 the term "suspend." Acronis, however, asks the Court (to the extent it is inclined to construe the

5 term instead of resting on plain meaning) to use the word "halt" rather than "prevent" because the

6 latter term is "unduly limiting" in that "'preventing,' even if temporarily, excludes commands that

7 may have started executing and then were suspended mid-way. It includes only commands that

8 never started executing. Contrary to Symantec's argument, suspending mid-way is not necessarily

9 related to system crashes and simply depends on when the suspend command was issued." Docket

10 No. 128 (Acronis's Reply at 14).

11   The Court agrees with Acronis that the use of the term "preventing" is problematic.

12 However, the Court does not agree with Acronis that the term "suspending" is not in need of

13 construction, not only because "it is not at all self-evident from a lay perspective what the meaning

14 of [the term] is" but also because "there is some disagreement between the parties as to [the] precise

15 meaning [of the term]." *Rambus, Inc. v. LSI Corp.*, Nos. C 10-05446 RS, C 10-05449 RS, 2012 U.S.

16 Dist. LEXIS 138632, at *26-27 (N.D. Cal. Sept. 26, 2012). The Court adopts Acronis's alternative

17 construction, particularly given that that construction is consistent with Symantec's position in its

18 papers that "[t]he specification makes clear that 'suspending/suspends' involves a write command

19 being prevented from executing *and then being allowed to continue*." Docket No. 122 (Symantec's

20 Resp. Br. at 4) (emphasis added).

21 F.   "not yet been backed up" (claim 30)

Acronis	Symantec	Court's Construction
plain meaning	not yet copied to the backup storage device	not yet been put into the backup process

26   In support of its construction, Symantec relies on the specification. Most notably, the

27 specification states:

28

8

1   During this [backup] process, . . . the file system data subject to
2   backup may be in the two different states: (1) data that is already
     backed up **340** to the storage; and (2) data that is not yet backed up,
3   but only scheduled for backup **350**. When backup is completed, . . .
     all of the data is now located in the backup storage **370** . . . .

4   '380 patent, col. 10:33-37.

5   Acronis takes issue with Symantec's construction because it does not take into account that

6   "the backup process starts with the data copied to the intermediate storage device," Docket No. 128

7   (Acronis's Reply at 15), as reflected by the claim language:

8   wherein, when a write command is directed to a data storage block
     identified for backup that has not yet been backed up, the identified
9   data storage block is copied from the storage device to the
     intermediate storage device, the write command is executed on the
10   identified data storage block from the storage device, and the data
     storage block is copied from the intermediate storage device to the
11   backup storage device . . . .

12   '380 patent, claim 30. Symantec does not really dispute that the backup process begins with data

13   being copied to the intermediate storage device; Symantec argues, however, is that "[t]he

14   intermediate storage device is not intended for backup; it is merely a temporary storage location

15   before the device is copied to the backup storage device." Docket No. 122 (Symantec's Resp. Br. at

16   3).

17   The Court finds Acronis's position more persuasive. There is no real dispute that backup is

18   completed when the data is located in the backup storage device, but the phrase "not yet been

19   backed up" does not necessarily require that the backup has been finished. Nothing in the claim

20   language or specification requires such. The Court thus construes the term "not yet been backed up"

21   as follows: "not yet been put into the backup process."

III.   CONCLUSION

23   The disputed claim terms of the patents-in-suit are hereby construed as set forth above.

24   IT IS SO ORDERED.

26   Dated: February 27, 2013

27   EDWARD M. CHEN
     United States District Judge

9