

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

**FARE TECHNOLOGIES LLC,  
Plaintiff,**

**v.**

**UBER TECHNOLOGIES, INC.  
d/b/a UBER,  
Defendant.**

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**Civil Action No. 6:22-cv-00317-ADA**

**JURY TRIAL DEMANDED**

**PLAINTIFF FARE TECHNOLOGIES LLC'S  
OPENING CLAIM CONSTRUCTION BRIEF**

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## I. GENERAL DESCRIPTION OF THE INVENTION

Embodiments of the he '727 patent provides a taxi trip mete system and related methods:

Accordingly, a taxi trip meter system is provided. It provides an estimated shortest trip distance. It indicates a distance violation if the estimated shortest trip distance is exceeded by an actual trip distance by a permissible margin. It calculates an actual average speed for the trip. It indicates a speed violation if an estimated average speed limit for the actual route is exceeded by the actual average speed. It provides an estimated fare based on the estimated shortest trip distance and an estimated waiting time. It indicates a fare violation if the estimated fare is exceeded by an actual fare by a permissible margin.

The system is defined by what it includes, for Claim 1, it includes: (1) a computer; (2) a trip meter connected to said computer; (3) a location sensor; and, (4) instructions loaded in said computer.

The summary of the invention explains that the invention determines the shortest route and distance between the starting and ending points.<sup>2</sup>

## II. CLAIM-CONSTRUCTION LAW

### A. Resolving a Claim-Construction Dispute

The parties' claim-construction dispute will typically be reflected by the proposed constructions. Thus, a court's rejection of a defendant's proposed construction and adoption of a "plain and ordinary meaning" construction will typically resolve the parties' claim-construction dispute without need for further construction of the term.<sup>3</sup>

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<sup>1</sup> Doc. No. 1-2 at Column 4, lines 18-28 ("4:18-28")

<sup>2</sup> Id. at 1:60-63.

<sup>3</sup> See *PerdiemCo, LLC v. IndusTrack LLC*, No. 2:15-cv-727-JRG-RSP, 2016 U.S. Dist. LEXIS 87927, at \*64 (E.D. Tex. July 7, 2016) (Payne, Mag.) (stating, "The Court therefore expressly rejects Defendants' indefiniteness arguments. No further construction is necessary. [Citations and paragraph break omitted]. Defendants have cited *Maytag Corp. v. Electrolux Home Prods., Inc.*, 411 F. Supp. 2d 1008 (N.D. Iowa 2008), as authority for the proposition that construction is required because 'asserting that [the ordinary meaning of a term] should apply, without further construction, merely begs the question of what that meaning is.' [Citations omitted]. *Maytag* is not binding authority and, moreover, here the Court has resolved the parties dispute by rejecting Defendants' indefiniteness argument and Defendants' argument that the breadth of the 'code' terms necessarily gives rise to a

## B. Other Legal Principles

### a. Heavy Bias to Plain and Ordinary Meaning

The purpose of claim construction is “to clarify and when necessary to explain what the patentee covered by the claims, for use in the determination of infringement.”<sup>4</sup>

“Claim construction focuses primarily on the language of the claims.”<sup>5</sup> Per this “primacy of the claims,”<sup>6</sup> “[T]he claim construction inquiry, [ ], begins and ends in all cases with the actual words of the claim.”<sup>7</sup>

In the absence of ambiguity, construing claim terms with different language than that of the claim (i.e., providing a construction other than “plain and ordinary meaning”) runs the risk of “redraft[ing],”<sup>8</sup> “redefin[ing],”<sup>9</sup> or otherwise “chang[ing]”<sup>10</sup> a claim term’s meaning. The danger of “redraft[ing]”<sup>11</sup> or “redefin[ing]”<sup>12</sup> a claim term’s meaning is particularly heightened when a

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lack of reasonable certainty as to claim scope. [Paragraph break omitted]. The Court accordingly hereby construes “**user identification codes**” and “**authorized user identification code**” to have their **plain meaning**. [Court’s original bolding.]; *Optis Wireless Tech., LLC v. Huawei Techs. Co.*, No. 2:17-cv-123-JRG-RSP, 2018 U.S. Dist. LEXIS 7711, at \*\*84, 115 (E.D. Tex. Jan. 18, 2018) (Payne, Mag.) (distinguishing *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008)); *Optis Cellular Tech., LLC v. Kyocera Corp.*, Nos. 2:16-cv-0059-JRG-RSP, 2017 U.S. Dist. LEXIS 18191, at \*\*87, 88, 92 (E.D. Tex. Feb. 8, 2017) (Payne, Mag.) (distinguishing *O2 Micro*); *Nokia Solutions & Network US LLC v. Huawei Techs. Co. Ltd.*, No. 2:16-cv-0756-JRG-RSP, 2017 U.S. Dist. LEXIS 79837, at \*70 (E.D. Tex. May 24, 2017) (Payne, Mag.) (distinguishing *O2 Micro*); *Mobile Telecomm’n Techs., LLC v. Google Inc.*, No. 2:16-CV-2-JRG-RSP, 2016 U.S. Dist. LEXIS 174667, at \*\*51, 52 (E.D. Tex. Dec. 18, 2016) (Payne, Mag.).

<sup>4</sup> *Mobile Telecomm’n, LLC v. T-Mobile USA, Inc.*, 78 F. Supp. 3d 634, 656 (E.D. Tex. 2015) (Payne, Mag.) (quoting *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997)); *Freeny v. Murphy USA Inc.*, No. 2:13-CV-791-RSP, 2015 U.S. Dist. LEXIS 6377, at \*90 (E.D. Tex. Jan. 21, 2015) (Payne, Mag.) (quoting the same case).

<sup>5</sup> *Mobile Telecomm’n, LLC v. T-Mobile USA, Inc.*, 78 F. Supp. 3d at 664 (quoting *Aria Diagnostics, Inc. v. Sequenom, Inc.*, 726 F.3d 1296, 1300 (Fed. Cir. 2013)).

<sup>6</sup> *Id.*

<sup>7</sup> *Mobile Telecomm’n, LLC*, 78 F. Supp. 3d at 664 (quoting *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998)).

<sup>8</sup> See *Arthrex, Inc. v. Smith & Nephew, Inc.*, No. 2:15-cv-1047-RSP, 2016 U.S. Dist. LEXIS 105750, at \*\*93, 173 (E.D. Tex. Aug. 10, 2016) (Payne, Mag.).

<sup>9</sup> See *Core Wireless Licensing S.a.r.l. v. LG Elecs. Inc.*, No. 2:14-cv-0911-JRG-RSP, 2015 U.S. Dist. LEXIS 150041, at \*\*60, 61, 65, 66 (E.D. Tex. Nov. 5, 2015) (Payne, Mag.).

<sup>10</sup> See *Freeny*, 2015 U.S. Dist. LEXIS 6377, at \*\*52, 61, 68, 90 (Payne, Mag.).

<sup>11</sup> See *Arthrex*, 2016 U.S. Dist. LEXIS 105750, at \*\*93, 173 (Payne, Mag.).

<sup>12</sup> See *Core Wireless Licensing S.a.r.l.*, 2015 U.S. Dist. LEXIS 150041, at \*\*60, 61, 65, 66 (Payne, Mag.).

proposed construction uses words found nowhere in the patent specification.<sup>13</sup>

Unless the patent applicant clearly redefined (in the application or prosecution history) a term, an easily understandable, unambiguous term should simply be construed as “plain and ordinary meaning.”<sup>14</sup> A proposed construction narrowing a term from its plain and ordinary meaning should be rejected if the intrinsic evidence does not require the narrowing restriction.<sup>15</sup> A defendant proposing a different construction because of purported ambiguity bears the burden of proving the ambiguity.<sup>16</sup>

### **b. Level of Ordinary Skill in the Art**

A person of ordinary skill in the art (“POSITA”) at the time of the filing of the Asserted Patents or Patents-in-Suit would have at least a Master of Science (“MS”) Degree in Mechanical or Electrical Engineering, or equivalent work experience in the field of impact transducers for

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<sup>13</sup> See *Arthrex*, 2016 U.S. Dist. LEXIS 105750, at \*173 (Payne, Mag.) (stating, “[G]rooves’ does not appear in the specification. The Court is not persuaded that it should redraft the claims to replace a term that is in the specification with a term that is not in the specification, particularly when doing so would not provide any additional clarity.”); *Freeny*, 2015 U.S. Dist. LEXIS 6377, at \*73 (Payne, Mag.) (stating, “The specification never uses the term ‘group’ or ‘encoded,’ and the Court rejects Defendant’s inclusion of these terms as not being necessary or warranted.”).

<sup>14</sup> See *Arthrex*, 2016 U.S. Dist. LEXIS 105750, at \*\*106, 108, 127, 173, 174 (Payne, Mag.); *Traxxas, L.P. v. Hobbico, Inc.*, No. 2:16-CV-00768-JRG-RSP, 2017 U.S. Dist. LEXIS 162858, at \*41 (E.D. Tex. Sept. 29, 2017) (Payne, Mag.).

<sup>15</sup> *Arthrex*, 2016 U.S. Dist. LEXIS 105750, at \*127 (Payne, Mag.) (stating, “There is nothing in the claim language that *requires* [emphasis added] the width to be the largest width.”); *Optis Cellular*, 2017 U.S. Dist. LEXIS 18191, at \*27 (stating, “Defendants have pointed to no clear language in the intrinsic record of lexicography, disavowal, or disclaimer *mandating* [emphasis added] that ‘mapping’ be limited to ‘placing.’”); *Mobile Telecomm’s, LLC v. T-Mobile USA, Inc.*, 78 F. Supp. 3d at 661 (stating, “. . . Defendants have failed to identify anything in the claims or the specification that *necessarily limit* [emphasis added] s the disputed term to . . .”); see also *PerdiemCo.*, 2016 U.S. Dist. LEXIS 87927, at \*90 (stating, “Plaintiff has not demonstrated that the existence of multiple ‘levels’ *necessarily requires* [emphasis added] a hierarchical organization.”); *Cellular Commc’s Equipment LLC, v. AT&T, Inc.*, No. 2:15-CV-576-RWS-RSP, 2016 U.S. Dist. LEXIS 174666, at \*\*62, 63 (E.D. Tex. Dec. 19, 2016) (Payne, Mag.) (stating, “[T]he specification does not *limit* [emphasis added] the claim scope to ‘resource blocks’ (RBs), which are only one disclosed example.”); *Core Wireless Licensing S.a.r.l.*, 2015 U.S. Dist. LEXIS 150041, at \*90 (Payne, Mag.) (stating, “There is no *requirement* [emphasis added] in the claim that . . .”).

<sup>16</sup> *Optis Cellular*, 2017 U.S. Dist. LEXIS 18191, at \*\*91, 92 (stating, “Defendants have not demonstrated any lack of clarity of the actual claim language in light of the specification.”); *Freeny*, 2015 U.S. Dist. LEXIS 6377, at \*\*52, 60, 68, 90 (Payne, Mag.) (stating, “Absent clear evidence to the contrary, the Court is hesitant to change the plain meaning of a term.”); see also *Applera Corp. v. MJ Research, Inc.*, 297 F. Supp. 2d 453, 455, 456 (D. Conn. 2004); *Chamberlain Grp., Inc. v. Techtronic Indus. Co.*, No. 16 C 6097, 2017 U.S. Dist. LEXIS 53509, at \*55 (N.D. Ill. Apr. 7, 2017).

measuring vibration.

### III. TERMS FOR WHICH DEFENDANT PROPOSES A CONSTRUCTION

#### A. “TAXI”

| Claim Term | Fare’s Construction                                   | Defendant’s Construction                                                        |
|------------|-------------------------------------------------------|---------------------------------------------------------------------------------|
| “taxi”     | “plain and ordinary meaning, needing no construction” | “an automobile licensed for hire as a taxi or taxicab and fitted with a meter ” |

Uber’s proposed construction adds words not found in the patent specification. No where are the words “an automobile licensed for hire as a taxi or taxicab and fitted with a meter” found in the specification. It belies logic that Uber claims the phrase taxi needs construction. First, Uber does not allege the term is ambiguous or that it is defined in the specification. Rather, Uber appears to be making some kind of noninfringement argument. However, because the term is not ambiguous and not defined, the plain and ordinary meaning, needing no further construction should apply.

The common definition of taxi is simply “a car with a driver who you pay to take you somewhere.”<sup>17</sup> The term does not need to be redefined by Uber. The plain and ordinary meaning should apply, needing no further construction.

#### B. “TRIP METER”

| Claim Term   | Fare’s Construction                                   | Defendant’s Construction                                                                      |
|--------------|-------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| “trip meter” | “plain and ordinary meaning, needing no construction” | “a device in the taxi that determines distance traveled using input collected from the taxi ” |

Defendant does not appear to allege that the terms are ambiguous or that they would

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<sup>17</sup> <https://dictionary.cambridge.org/dictionary/english/taxi>.

not be understood by one of ordinary skill in the art. However, Defendant's construction impermissibly changes the patentee's choice of words without providing an explicit basis for changing patentee's words. As the term "in the taxi" is not in the patent claims, it should not be in the construction.<sup>18</sup> Thus, Fare's construction of plain and ordinary meaning is more appropriate.

Defendant's construction also impermissibly reads out claimed embodiments of the invention. Specifically, Claims 19, 27 and 39 of US RE47,727 claim a computer connected to a trip meter that is remote from the taxi:

19. The taxi fare estimating method of claim 12 wherein  
 35 the estimated taxi fare is determined on a remote computer  
 in network communication with a taxi trip meter. 19

27. The taxi fare estimating method of claim 12, wherein  
 a computer determines the fare from a remote location and 20  
 communicates the fare over a network connection. 20

39. The taxi trip meter system of claim 30, wherein the  
 computer determines the fare from a remote location and  
 communicates the fare over a network connection. 21

A first embodiment is disclosed with a taxi meter mounted with a connected computer inside a taxi.<sup>22</sup> Claims 19, 27, and 39 specifically claim a remote computer that is connected to a trip meter:

<sup>18</sup> See *Arthrex*, 2016 U.S. Dist. LEXIS 105750, at \*173.

<sup>19</sup> Doc. No. 1-2 at Column 6, lines 34-36 (6:34-36").

<sup>20</sup> Id. at 7:19-21.

<sup>21</sup> Id. at 8:46-48.

<sup>22</sup> Id. at 2:21-26.

a trip meter connected to said computer, said trip meter for measuring an actual trip distance traveled by said taxi between a starting point and a destination point;

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A construction that would read out embodiments is not preferred. Further, the description of the claimed invention contemplates the use of GPS for determining trip distance:

possibility of cheating. The trip meter may be eliminated, and the trip distance may be determined with GPS and map data. When a violation is indicated, the recorded route may

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Thus, embodiments of the invention contemplate the system being located outside of the taxi, as GPS systems are satellite based and not mounted in a taxi.

Defendant's citation to extrinsic evidence does not add clarity to the claim term. The term trip meter is neither ambiguous or explicitly defined and therefore should be construed according to its plain and ordinary meaning, needing no further construction.

### C. "STARTING POINT" AND "DESTINATION POINT"

| Claim Term          | Fare's Construction                                           | Defendant's Construction                     |
|---------------------|---------------------------------------------------------------|----------------------------------------------|
| "starting point"    | "plain and ordinary meaning, needing no further construction" | "geographical location where the ride began" |
| "destination point" | "plain and ordinary meaning, needing no further construction" | "geographical location where the ride ended" |

Uber's attempt to define these common and ordinary words should be dismissed. There is nothing difficult to understand from these common words. Uber strains to say the jury might be

<sup>23</sup> Id. at 1-2 at 5:53-55.

<sup>24</sup> Doc. No. 1-2 at 4:37-39.

confused as to the construction. However, what Uber is really saying is that the Court should apply limitation to the terms that are not found in the specification. Ber does not allege that the claim terms "starting point" and "destination point" are ambiguous or explicitly defined. Thus, the plain and ordinary meaning must apply. In this case, that meaning needs no further construction. Uber's argument impermissibly attempts to incorporate limitations from the specification, a cardinal sin in patent law.

#### D. "WAITING TIME ENCOUNTERED IN TRAFFIC"

| Claim Term                            | Fare's Construction                                           | Defendant's Construction                                                           |
|---------------------------------------|---------------------------------------------------------------|------------------------------------------------------------------------------------|
| "waiting time encountered in traffic" | "plain and ordinary meaning, needing no further construction" | Indefinite or "amount of time spent stopped or below a predefined speed threshold" |

Because there is no evidence that the patent applicant clearly redefined (in the application or prosecution history) "waiting time encountered in traffic," and easily understandable, unambiguous term, it should simply be construed as "plain and ordinary meaning, needing no further construction."<sup>25</sup> A proposed construction narrowing a term from its plain and ordinary meaning should be rejected if the intrinsic evidence does not require the narrowing restriction.<sup>26</sup>

<sup>25</sup> See *Arthrex*, 2016 U.S. Dist. LEXIS 105750, at \*\*106, 108, 127 173, 174 (Payne, Mag.); *Traxxas*, 2017 U.S. Dist. LEXIS 162858, at \*41 (Payne, Mag.).

<sup>26</sup> *Arthrex*, 2016 U.S. Dist. LEXIS 105750, at \*127 (Payne, Mag.) (stating, "There is nothing in the claim language that *requires* [emphasis added] the width to be the largest width."); *Optis Cellular*, 2017 U.S. Dist. LEXIS 18191, at \*27 (stating, "Defendants have pointed to no clear language in the intrinsic record of lexicography, disavowal, or disclaimer *mandating* [emphasis added] that 'mapping' be limited to 'placing.'"); *Mobile Telecomm's, LLC v. T-Mobile USA, Inc.*, 78 F. Supp. 3d at 661 (stating, "... Defendants have failed to identify anything in the claims or the specification that *necessarily limit* [emphasis added] s the disputed term to ..."); see also *PerdiemCo*, 2016 U.S. Dist. LEXIS 87927, at \*90 (stating, "Plaintiff has not demonstrated that the existence of multiple 'levels' *necessarily requires* [emphasis added] a hierarchical organization."); *Cellular Commc's Equipment*, 2016 U.S. Dist. LEXIS 174666, at \*\*62, 63 (stating, "[T]he specification does not *limit* [emphasis added] the claim scope to 'resource blocks' (RBs), which are only one disclosed example."); *Core Wireless Licensing S.a.r.l.*, 2015 U.S. Dist. LEXIS 150041, at \*90 (stating, "There is no *requirement* [emphasis added] in the claim that ...").

A defendant proposing a different construction because of purported ambiguity bears the burden of proving the ambiguity.<sup>27</sup> Rejection of Defendants’ proposed construction and adoption of a “plain and ordinary meaning” construction resolves the claim-construction dispute without need for further construction of the term.<sup>28</sup> The words “amount of time spent stopped or below a pre-defined speed threshold” are taken from extrinsic evidence and improper. Defendant cannot seriously argue that the words “waiting time encountered in traffic” would not be understood by a skilled artisan or even a lay person who is accustomed to taxi travel and wait times in traffic. In short, Defendant does not show the terms are ambiguous or defined in the specification and thus a plain and ordinary meaning needing no further construction should attach.

#### **IV. CONCLUSION**

Plaintiff Fare’s claim constructions should be adopted because the constructions follow proper claim-construction principles.

Respectfully submitted,

**Ramey LLP**

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<sup>27</sup> *Optis Cellular*, 2017 U.S. Dist. LEXIS 18191, at \*\*91, 92 (stating, “Defendants have not demonstrated any lack of clarity of the actual claim language in light of the specification.”); *Freeny*, 2015 U.S. Dist. LEXIS 6377, at \*\*52, 60, 68, 90 (Payne, Mag.) (stating, “Absent clear evidence to the contrary, the Court is hesitant to change the plain meaning of a term.”); *see also Applera*, 297 F. Supp. 2d at 455, 456; *Chamberlain*, 2017 U.S. Dist. LEXIS 53509, at \*55.

<sup>28</sup> *See PerdiemCo.*, 2016 U.S. Dist. LEXIS 87927, at \*64.

**CERTIFICATE OF SERVICE**

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that all counsel of record who have appeared in this case are being served today, October 20, 2022, with a copy of the foregoing via the Court's CM/ECF system.

/s/ William P. Ramey, III  
William P. Ramey, III