

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NEC CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 22-987 (CJB)
	)	
PELOTON INTERACTIVE, INC.,	)	
	)	
Defendant.	)	

**DEFENDANT PELOTON INTERACTIVE, INC.’S IDENTIFICATION OF CLAIM
TERMS AND PHRASES TO BE CONSTRUED AND PROPOSED CLAIM
CONSTRUCTION OF THE TERMS AND PHRASES**

Pursuant to the Court’s Scheduling Order (D.I. 36, ¶ 12), Defendant Peloton Interactive, Inc. (“Peloton”) hereby provides the following list of those claim terms and phrases from U.S. Patent Nos. 8,752,101 (“’101 Patent”), 8,909,809 (“’809 Patent”), and 9,769,427 (“’427 Patent”) (collectively “Asserted Patents”) that it believes need construction and its proposed claim construction of those terms and phrases, based upon the information known to Peloton at this time.

Discovery in this case is ongoing. Peloton’s identification of terms and phrases and proposed claim construction are based upon its current knowledge, its current understanding of Plaintiff NEC Corporation’s (“NEC’s”) infringement and implied claim construction positions, and Peloton’s investigation to date. Peloton understands that NEC is asserting the following claims against Peloton:

- ’101 Patent: claims 1, 2, 4, 5, 11, 12, 14–16, 18, 20–23, 25, 26
- ’809 Patent: claims 1, 2, 8, 13–15, 18–20, 22–24, 26, 27, 30, 31
- ’427 Patent: claims 1, 4, 5, 14–18, 20, 22, 32, 34–36

Accordingly, Peloton’s identification and proposed construction are limited to terms and phrases contained in the asserted claims.

Peloton reserves the right to modify the identification and proposed construction (*e.g.*, due to information learned in the course of NEC's identification of claim terms and phrases for construction, NEC's proposed claim construction of those terms and phrases, NEC's responsive construction of the claim terms and phrases identified by Peloton, meeting and conferring with NEC's counsel to prepare a Joint Claim Construction Chart, any change to NEC's infringement contentions, or any other appropriate reason). Unless otherwise indicated, the construction of a claim term or phrase of an Asserted Patent in the table below should be interpreted as applying to all occurrences of the same or similar item and of its grammatical variants throughout the asserted claims of the Asserted Patent, regardless of the number of times each term or phrase expressly appears in the table below; the citations to the patent claims below are provided for convenience only and should not be construed to limit the identification and construction in any way.

For terms where Peloton has identified alternative constructions, Peloton has done so in an attempt to facilitate discussion and potential compromise with NEC. Peloton expects to propose to the Court one or more of these constructions, potentially with modifications as the claim construction meet and confer process with NEC continues. For terms not identified in the table below, Peloton's position is that those terms do not require construction at this time, based upon Peloton's understanding of those terms. If NEC seeks to propose constructions for additional terms, Peloton reserves the right to present its respective positions pursuant to the Scheduling Order.

Peloton further reserves the right to rely on additional identification of claim terms and phrases and proposed construction by NEC, if any. Peloton further reserves the right to separately request construction of portions of the identified claim terms or phrases or to construe more than one of the identified claim terms together as a single term. Peloton further reserves all rights to

assert that any asserted claim of the Asserted Patents is invalid, including under 35 U.S.C. §§ 101, 102, 103, and 112, in addition to the terms identified as being indefinite in the table below.

NEC Corporation V. Peloton Interactive, Inc., C.A. No. 22-987-CJB
Peloton’s Identification of Claim Terms and Phrases and Proposed Construction

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
“content”	’101 Patent, claims 1, 5, 11, 15, 16, 21, 22, 26 ’809 Patent, claims 1, 8, 14, 18, 22, 26, 30	video and/or audio program
“content data”	’101 Patent, claims 1, 11, 16, 21, 22, 26 ’809 Patent, claims 1, 2, 13– 15, 18–19, 22– 23, 26–27, 30– 31	data that represents a portion of content
“reproduction start time set as time at which the reception device starts reproduction of the content”	’101 Patent, claims 1, 11, 16, 21, 26	reproduction start time set as time at which the reception device starts reproduction of the first downloaded content data of the content
“reproduction start time set as time to start reproduction of the content”	’101 Patent, claim 22	reproduction start time set as time to start reproduction of the first downloaded content data of the content
“based on an available reproduction time, which is a time available for reproducing the content based on the content data stored in the storage device”	’101 Patent, claims 1, 11, 16, 21, 22, 26	based on an available reproduction time, which is a time available for reproducing the content to be reproduced at the reproduction start time based on the content data stored in the storage device
“code rate”	’101 Patent, claims 1, 2, 4, 11, 12, 14, 16, 18, 20–23, 25, 26	data amount (the data size, e.g., the number of bytes) of content data for reproducing content at constant speed (reproducing content at 1× speed) for a unit time (e.g., one second)

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
“code rate determining unit”	'101 Patent, claims 1, 2, 4, 22, 23, 25, 26	Means-plus-function term governed by 35 U.S.C. § 112, ¶ 6 <u>Functions:</u> Claim 1: - Determine the code rate based on a remaining time before reproduction start time set as time at which the reception device starts reproduction of the content from a present moment and based on an available reproduction time, which is a time available for reproducing the content based on the content data stored in the storage device of the reception device Claim 2: - The functions cited in claim 1 - Determine a value becoming smaller as the available reproduction time becomes shorter than a target available reproduction time, which is a target value of the available reproduction time, and becoming smaller as the remaining time becomes shorter, as the code rate Claim 4: - The functions cited in claim 1 - Determine the code rate with every change period set in advance Claim 22: - Determining the code rate based on a remaining time before reproduction start time set as time to start reproduction of the content from a present moment and based on an available reproduction time, which is a time available for reproducing the

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
		content based on the content data stored in the storage device Claim 23: • The functions cited in claim 22 • Determine a value becoming smaller as the available reproduction time becomes shorter than a target available reproduction time, which is a target value of the available reproduction time, and becoming smaller as the remaining time becomes shorter, as the code rate Claim 25: • The functions cited in claim 22 • Determine the code rate with every change period set in advance Claim 26: • Determining the code rate based on a remaining time before reproduction start time set as time at which the reception device starts reproduction of the content from a present moment, and based on an available reproduction time, which is a time available for reproducing the content based on the content data stored in the storage device of the reception device <u>Corresponding Structure:</u> A general purpose computer or microprocessor programmed to carry out the algorithm disclosed in the '101 Patent at 10:13–11:10. In the alternative, insufficient structure to perform the claimed functions.
“content transmitting unit”	'101 Patent, claims 1, 16, 21	Means-plus-function term governed by 35 U.S.C. § 112, ¶ 6 <u>Functions:</u>

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
		Claim 1: • Transmit content data, which is one content coded with any one code rate of a plurality of code rates different from each other, to the reception device • Change the code rate of the content data to be transmitted to the reception device to the determined code rate Claim 16: • Transmit content data, which is one content coded with any one code rate of a plurality of code rates different from each other, to the reception device • Change the code rate of the content data to be transmitted to the reception device to a code rate determined based on a remaining time before reproduction start time set as time at which the reception device starts reproduction of the content from a present moment and based on an available reproduction time, which is a time available for reproducing the content based on the content data stored in the storage device of the reception device Claim 21: • Transmit content data, which is one content coded with any one code rate of a plurality of code rates different from each other, to the reception device • Change the code rate of the content data to be transmitted to the reception device to a code rate determined based on a remaining time before reproduction start time set as time at which the reception device starts reproduction of the content from a

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
		present moment, and based on an available reproduction time, which is a time available for reproducing the content based on the content data stored in the storage device of the reception device <u>Corresponding Structure:</u> Insufficient structure to perform the claimed functions. In the alternative, a general purpose computer or microprocessor programmed to carry out the algorithm disclosed in the '101 Patent at 10:13–11:10.
“the code rate determining unit”	'101 Patent, claims 18, 20	Indefinite under 35 U.S.C. § 112, ¶ 2. In the alternative, means-plus-function term governed by § 112, ¶ 6. <u>Functions:</u> Claim 18: - Determine a value becoming smaller as the available reproduction time becomes shorter than a target available reproduction time, which is a target value of the available reproduction time, and becoming smaller as the remaining time becomes shorter, as the code rate Claim 20: - Determine the code rate with every change period set in advance <u>Corresponding Structure:</u> A general purpose computer or microprocessor programmed to carry out the algorithm disclosed in the '101 Patent at 10:13–11:10. In the alternative, insufficient structure to perform the claimed functions.
“the bit rate”	'809 Patent, claims 1, 14, 18, 22, 26, 30	Indefinite under 35 U.S.C. § 112, ¶ 2. In the alternative, the phrase means the bit rate of the content data transmitted before calculating the correction amount.

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
“changing the bit rate based on the calculated correction amount”	’809 Patent, claims 1, 18, 22, 26, 30	Indefinite under 35 U.S.C. § 112, ¶ 2
“bit rate changing unit”	’809 Patent, claims 1, 2, 8, 13, 18–20, 22–24	Means-plus-function term governed by 35 U.S.C. § 112, ¶ 6 <u>Functions:</u> Claim 1: • Calculate, according to a predetermined correction amount calculation procedure, a correction amount for correcting the bit rate of the content data transmitted by the server device based on the acquired remaining reproduction time and a preset target value so as to approximate the remaining reproduction time to the target value • Change the bit rate based on the calculated correction amount • Calculate, when the bit rate is within a predetermined correction amount reducing range, a correction amount having a smaller magnitude than a magnitude of the correction amount calculated according to the correction amount calculation procedure Claim 2: • The functions cited in claim 1 • Determine the correction amount reducing range based on the acquired reception rate, the acquired remaining reproduction time, and the target value Claim 8: • The functions cited in claim 1 • Determine the correction amount reducing range based on the acquired reproduction speed

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
		Claim 13: • The functions cited in claim 1 • Set the correction amount to zero when a bit rate of content data being transmitted by the server device is within the correction amount reducing range Claim 18: • Calculate, according to a predetermined correction amount calculation procedure, a correction amount for correcting the bit rate of content data transmitted to the client device based on the received remaining reproduction time and a preset target value so as to approximate the remaining reproduction time to the target value • Change the bit rate based on the calculated correction amount • Calculate, when the bit rate is within a predetermined correction amount reducing range, a correction amount having a smaller magnitude than a magnitude of the correction amount calculated according to the correction amount calculation procedure Claim 19: • The functions cited in claim 18 • Determine the correction amount reducing range based on the received reception rate, the received remaining reproduction time, and the target value Claim 20: • The functions cited in claim 18 • Narrow the correction amount reducing range as the received remaining

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
		reproduction time approaches the target value Claim 22: • Calculate, according to a predetermined correction amount calculation procedure, a correction amount for correcting the bit rate of content data transmitted to the client device based on the received remaining reproduction time and a preset target value so as to approximate the remaining reproduction time to the target value • Change the bit rate based on the calculated correction amount • Calculate, when the bit rate is within a predetermined correction amount reducing range, a correction amount having a smaller magnitude than a magnitude of the correction amount calculated according to the correction amount calculation procedure Claim 23: • The functions cited in claim 22 • Determine the correction amount reducing range based on the received reception rate, the received remaining reproduction time, and the target value Claim 24: • The functions cited in claim 22 • Narrow the correction amount reducing range as the received remaining reproduction time approaches the target value <u>Corresponding Structure:</u> A general purpose computer or microprocessor programmed to carry out the algorithm disclosed in the '809 Patent as follows:

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
		Claim 1: 7:24–15:31, 22:36–50 Claim 2: 7:24–15:31, 22:36–50, 23:8–12 Claim 8: 7:24–15:31, 22:36–50, 23:65–67 Claim 13: 7:24–15:31, 22:36–50, 24:36–39 Claim 18: 7:24–15:31, 25:34–47 Claim 19: 7:24–15:31, 25:34–47, 25:52–55 Claim 20: 7:24–15:31, 25:34–47, 25:56–59 Claim 22: 7:24–15:31, 26:15–28 Claim 23: 7:24–15:31, 26:15–28, 26:34–37 Claim 24: 7:24–15:31, 26:15–28, 26:38–41 In the alternative, insufficient structure to perform the claimed functions.
“bit rate change request transmission unit”	’809 Patent, claims 26, 27, 30, 31	Means-plus-function term governed by 35 U.S.C. § 112, ¶ 6 <u>Functions:</u>

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
		Claim 26: • Calculate, according to a predetermined correction amount calculation procedure, a correction amount for correcting the bit rate of the content data transmitted by the server device based on the acquired remaining reproduction time and a preset target value so as to approximate the remaining reproduction time to the target value • Transmit, to the server device, a bit rate change request for changing the bit rate based on the calculated correction amount • Calculate, when the bit rate is within a predetermined correction amount reducing range, a correction amount having a smaller magnitude than a magnitude of the correction amount calculated according to the correction amount calculation procedure Claim 27: • The functions cited in claim 26 • Determine the correction amount reducing range based on the acquired reception rate, the acquired remaining reproduction time, and the target value Claim 30: • Calculate, according to a predetermined correction amount calculation procedure, a correction amount for correcting the bit rate of the content data transmitted by the server device based on the acquired remaining reproduction time and a preset target value so as to approximate the remaining reproduction time to the target value • Transmit, to the server device, a bit rate change request for changing the bit

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
		rate based on the calculated correction amount - Calculate, when the bit rate is within a predetermined correction amount reducing range, a correction amount having a smaller magnitude than a magnitude of the correction amount calculated according to the correction amount calculation procedure Claim 31: - The functions cited in claim 30 - Determine the correction amount reducing range based on the acquired reception rate, the acquired remaining reproduction time, and the target value <u>Corresponding Structure:</u> A general purpose computer or microprocessor programmed to carry out the algorithm disclosed in the '809 Patent as follows: Claim 26: 7:24–15:31, 21:47–67, 26:66–27:13 Claim 27: 7:24–15:31, 21:47–67, 26:66–27:13, 27:17–21 Claim 30: 7:24–15:31, 21:47–67, 27:50–65 Claim 31: 7:24–15:31, 21:47–67, 27:50–65, 28:3–7 In the alternative, insufficient structure to perform the claimed functions.
“remaining reproduction time acquisition unit”	'809 Patent, claims 1, 26, 30	Means-plus-function term governed by 35 U.S.C. § 112, ¶ 6

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
		<u>Functions:</u> Claim 1: - Acquire remaining reproduction time that is a period of time during which the content can be reproduced based on a portion of the data stored in the storage device of the client device that has not been reproduced Claim 26: - Acquire remaining reproduction time that is a period of time during which the content can be reproduced based on a portion of the data stored in the storage device that has not been reproduced Claim 30: - Acquire remaining reproduction time that is a period of time during which the content can be reproduced based on a portion of the data stored in the storage device that has not been reproduced <u>Corresponding Structure:</u> A general purpose computer or microprocessor programmed to carry out the algorithm disclosed in the '809 Patent as follows: Claim 1: 6:46–7:5, 22:31–35 Claim 26: 6:46–7:5, 26:61–65 Claim 30: 6:46–7:5, 27:46–50

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
		In the alternative, insufficient structure to perform the claimed functions.
“remaining reproduction time receiving unit”	’809 Patent, claims 18, 22	Means-plus-function term governed by 35 U.S.C. § 112, ¶ 6 <u>Functions:</u> Claim 18: - Receive, from the client device, remaining reproduction time that is a period of time during which the content can be reproduced based on a portion of data stored in a storage device for storing data of the content data received by the client device, the portion having not been reproduced by the client device Claim 22: - Receive, from client device, remaining reproduction time that is a period of time during which the content can be reproduced based on a portion of the data stored in a storage device for storing data of the content data received by the client device, the portion having not been reproduced by the client device <u>Corresponding Structure:</u> A general purpose computer or microprocessor programmed to carry out the algorithm disclosed in the ’809 Patent as follows: Claim 18: 6:46–7:8, 7:24–29, 25:28–34 Claim 22: 6:46–7:8, 7:24–29, 26:9–15 In the alternative, insufficient structure to perform the claimed functions.

Claim Terms or Phrases	Patent/Claim(s)	Proposed Construction
“sub content” / “sub content data”	’427 Patent, claims 1, 4, 5, 14–18, 20, 22, 32, 34–36	advertisement / advertisement data
“sub content . . . is inserted in main content”	’427 Patent, claims 1, 14, 16, 18, 20, 22	sub content . . . is placed in between main content

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

OF COUNSEL:

/s/ Michael J. Flynn

Anupam Sharma
Robert T. Haslam
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto Square
Palo Alto, CA 94306
(650) 632-4700

Han Park
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000

Karen Jacobs (#2881)
Michael J. Flynn (#5333)
Cameron P. Clark (#6647)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
kjacobs@morrisnichols.com
mflynn@morrisnichols.com
cclark@morrisnichols.com

*Attorneys for Defendant
Peloton Interactive, Inc.*

September 13, 2023

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2023, copies of the foregoing were caused to be served upon the following in the manner indicated:

Kenneth L. Dorsney, Esquire
Cortlan S. Hitch, Esquire
MORRIS JAMES LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801
Attorneys for Plaintiff NEC Corporation

VIA ELECTRONIC MAIL

Robert L. Maier, Esquire
Jennifer C. Tempesta, Esquire
Michael E. Knierim, Esquire
Nick Palmieri, Esquire
BAKER BOTTS L.L.P.
30 Rockefeller Plaza
New York, NY 10112
Attorneys for Plaintiff NEC Corporation

VIA ELECTRONIC MAIL

Lance J. Goodman, Esquire
BAKER BOTTS L.L.P.
401 South 1st Street, Suite 1300
Austin, TX 78704
Attorneys for Plaintiff NEC Corporation

VIA ELECTRONIC MAIL

Sarah J. Guske, Esquire
BAKER BOTTS L.L.P.
101 California Street, Suite 3200
San Francisco, CA 94111
Attorneys for Plaintiff NEC Corporation

VIA ELECTRONIC MAIL

Kiyotoki Natsume, Esquire
BAKER BOTTS L.L.P.
Level 30 20 Fenchurch Street
London
EC3M 3BY
United Kingdom
Attorneys for Plaintiff NEC Corporation

VIA ELECTRONIC MAIL

/s/ Michael J. Flynn

Michael J. Flynn (#5333)