IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CARBYNE BIOMETRICS, LLC, **Plaintiff,** **vs.** **APPLE INC.,** **Defendant.**	**Civil Action No. 1:23-cv-00324** **JURY TRIAL**

PLAINTIFF CARBYNE BIOMETRICS, LLC'S SUR-REPLY TO
DEFENDANT APPLE INC.'S CLAIM CONSTRUCTIONS REPLY

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C	U.S. Patent No. 11,526,886
D	U.S. Patent No. 10,929,512
E	U.S. Patent No. 11,475,105
F	U.S. Patent No. 11,514,138
G	U.S. Patent Application No. 16/893,237 File Wrapper
H	Webster's New World Dictionary® of Computer Terms (5th Ed. 1994)
I	Jargon an Informal Dictionary of Computer Terms (1993)
J	Dictionary of Computer and Internet Terms (8th Ed. 2003)
K	*Samsung Electronics Co., Ltd. et al v. RightQuestion, LLC*, IPR2022-00251, Paper 11 (Patent Owner Preliminary Response) (PTAB Mar. 14, 2022)
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M	*RightQuestion, LLC v. Samsung Electronics Co., Ltd. et al*, Case No. 2-21-cv-238, Dkt. 39 (Joint Claim Construction Statement) (E.D. Tex. Jan. 14, 2022)
N	October 2, 2023 email from Cross to Burks and October 3, 2023 email from Burks to Cross
O	Carbyne's Response to Apple's Motion to Transfer (ECF No. 50)
P	*Images*, Merriam Webster's Collegiate Dictionary (11th Ed. 2011)
Q	*Samsung Electronics Co., Ltd. v. RightQuestion, LLC*, IPR2022-00251, Paper 17 (Decision Denying Institution of *Inter Partes* Review)(PTAB June 9, 2022)

I. INTRODUCTION

Apple's Reply (Dkt. 54) ("Reply") fails to explain why any of the terms at-issue—terms readily understandable to a layperson—need to be construed. Apple's proposed constructions and explanations in its Reply create ambiguity and continue to raise more question than answers.

"Configured to." Apple's proposed construction for this term is unnecessary and injects ambiguity that Apple will undoubtedly try to leverage to manufacture a non-infringement argument. Despite Apple's arguments to the contrary, the parties agree that "configured to" requires configuration, not merely the capability of being configured. There is no dispute for the Court to resolve. So no explicit construction is needed, and Apple's circular proposed construction would only create jury confusion that otherwise would not exist.

"Virtual likeness." Apple's arguments attempt to obscure the issues. "[W]hile these claims make reference to user selection, they do not explicitly claim the user's act of selection, but rather, claim the system's capability to receive and respond to user selection" of a virtual likeness. *Mastermine Software Inc. v. Microsoft Corp.*, 874 F.3d 1307, 1315-16 (Fed. Cir. 2017). The '886 Patent's claims clearly recite the system's ability to receive and respond to the virtual likeness indicated by the user. Basic principles of English grammar highlight that the '886 Patent's claims are analogous to those upheld in *Mastermine*, as both demonstrate that the subject of the claim is the system and not the user. Therefore, these claims are not indefinite but recite permissible functional language.

"Set of images." The Court should not restrict the "set of images" used for the aliveness determination in the '886 Patent claims to a "set of photographs." The patentee amended the claims specifically to replace "one or more photographs" with "set of images" as the biometric information used for the aliveness determination. Apple's arguments for its narrowed construction improperly rely on withdrawn claim language, restrict the claims to a single

embodiment, and give claim terms different meanings in independent and dependent claims. "Set of images" should therefore be given the full scope of its plain and ordinary meaning.

"Restricted interface." Apple's Reply arguments for "restricted interface" continue to fall flat. In its Response, Apple argues that there is some dispute as to the scope of restricted interface that this Court needs to address. But any dispute as to scope is of Apple's own making. Apple's construction (1) introduces terms not found in any of the Authentication Patents; (2) relies on a single embodiment from a *later* issuing patent, which calls into question whether the same construction can be applied to the earlier in time patents; and (3) misconstrues arguments made in a related IPR proceeding that plainly do not have to do with claim construction. The Court should not let Apple rewrite the claims on such an erroneous foundation.

II. ARGUMENT

A. Apple's proposed construction of "configured to" is unnecessary and would likely confuse the jury ('010 Patent Claim No. 1; '656 Patent Claim No. 1; '886 Patent Claim No. 1; '512 Patent Claim Nos. 1, 6, 11, 15, 21; '105 Patent Claim Nos. 1, 9; '138 Patent Claim No. 1)

The Court should reject Apple's circular proposed construction because it is unnecessary and will likely confuse the jury.

First, Apple's proposed construction is unnecessary because the parties agree that the plain meaning of "configured to" requires configuration and not merely being "capable of" performing a function. When, as here, parties have agreed that a term such as "configured to" has its plain meaning, courts have declined to provide an express construction. *See* Dkt. 49 ("Response") at 5-6 (citing *Ahern Rentals, Inc. v. EquipmentShare.com, Inc.*, No. 2:20-cv-333-JRG, 2021 WL 4891379; *Koninklijke KPN NV v. Telefonaktiebolaget LM Ericsson*, No. 2-22-cv-282, Dkt. 176 at 33-36 (E.D. Tex. Oct. 13, 2023)).

Despite what Apple claims in its Reply, Carbyne is not shifting its positions about the meaning of "configured to" and has not made arguments that reinforce the need for Apple's proposed construction. For starters, Carbyne does not contend that the limitation in the '886 Patent "one or more processors *configured to: render*, in one or more interfaces a virtual likeness of a face associated with an account holder, wherein the virtual likeness of the face was selected by the account holder as part of an enrollment" requires only capability and not configuration. Carbyne's position, explained in more detail below, is that this claim language refers the *functionality of the claimed configuration*—one or more processors configured to render a virtual likeness. *See Medline Indus., Inc. v. C.R. Bard, Inc.*, No. 17 C 7216, 2019 WL 337130, at *6 (N.D. Ill. Jan. 28, 2019) ("[F]unctional language 'configured to' in each of these claims is a clear indication that the claims refer to the functionality of the configuration."). Carbyne does not dispute that the processors are *configured* to render *a* virtual likeness.

Carbyne's arguments related to the functionality claimed by the '512 Patent also do not reinforce a need for Apple's construction. For example, Carbyne's argument that Apple infringes the "novel hardware configurations" of claim 1 of the '512 Patent by "including an Application Processor (first processor) and Secure Enclave Processor (second processor)" in the accused products does not implicate "mere capability" as Apple suggests. *See* Reply at 3 (citing Ex. O (Carbyne's Response to Apple's Motion to Transfer, ECF No. 50) at 2). Nor does Carbyne's argument advocate for any specific construction of "configuration." If anything, this argument supports that the *actual* configuration of Apple's hardware infringes the claims of the '512 Patent and the other Authentication Patents.

Second, Apple's proposed construction will confuse the jury, which is why Carbyne cannot agree to accept Apple's proposal. The parties agree that "configured to" requires configuration, not merely being capable of configuration. The term is not highly technical; lay

jurors understand and likely use "configured to" in their everyday lives. And Apple's proposed construction does not actually define the term. Rather, it uses "configured" to define itself—not once, but twice. So not only is this definition circular and unhelpful, but it also suggests that the term's meaning is plain and understood. *See United States v. Manatau*, 647 F.3d 1048, 1050 (10th Cir. 2011) (reviewing the plain meaning of "intended" in sentencing guidelines and noting the "definition is, of course, seriously circular, using the term 'intended' to define itself not just once but twice" and that "the commission's (repeated) use of the word 'intended' to define itself suggests that the commission thought the word's meaning was pretty plain").

Apple's inclusion of a negative example in its construction—"not merely being capable of being configured"—injects further confusion. Without this example, a lay jury would likely not associate "capable of" with the meaning of "configured to." If anything, Apple's proposed construction will lead jurors to ponder the meaning of "capable of" and try to decide how it might, or should, apply to the claims of the Asserted Patents—the exact situation Apple says its construction will prevent.

The cases Apple cites to support its assertion that its proposed construction will not confuse the jury are inapposite. All of these decisions address active disputes over the meaning of "configured to" (there is no such dispute here) and do not address potential jury confusion. It is not clear that parties in these cases even argued jury confusion during claim construction. *See* Reply at 4.

In sum, the parties in principle agree on the plain meaning of "configured to." The term is one that is well understood by both those skilled in the art and lay persons. Apple's proposed construction is therefore unnecessary, will confuse a jury, and should be rejected.

B. "Wherein the virtual likeness of the face was selected by the account holder as part of an enrollment" is not indefinite merely because it recites a functional limitation ('886 Patent Claim Nos. 1, 11)

Despite Apple's attempts to confuse the issues, "wherein the virtual likeness of the face was selected by the account holder as part of an enrollment" recites functional limitation language regarding the system's ability to respond to user action to generate a virtual likeness. The term is not indefinite and a POSITA would understand that infringement occurs when a device, which can render a virtual likeness based upon a response to user action, is manufactured. Apple's attempt at confusion by citing the "configured to" argument is irrelevant. The issue here is simple: the system cannot, at manufacture, know what the eventual user looks like, but it is configured to render, *at the time of manufacture*, a virtual likeness in response to user input. Simply, Apple's argument would require that any system claim requiring a password be indefinite because the device, at manufacture, would not know the user's password. This is illogical.

First, Carbyne is not suggesting that "the [c]ourt redraft the claims and read the words [selected by the account holder] out of the claims." *e-Watch Inc. v. Apple, Inc.*, No. 13-cv-1061, 2015 WL 1387947, at *4-7 (E.D. Tex. Mar. 25, 2015); Reply at 6. Indeed, this term is important to the claim in that it specifies that the device is functionally limited to only being able to render a virtual likeness identified at set-up, but it is able to render any specified virtual likeness *at the time that it is manufactured.* Removal of the term would result in an incomplete claim where the virtual likeness rendered is not specified or identified by the claim.

Second, this is distinguishable from *eWatch* and *H-W Tech.* where the only action claimed by the system is that of the user. *eWatch Inc.*, 2015 WL 1387947, at *4-7; *H-W Tech., L.C. v. Overstock.com, Inc.*, 758 F.3d 1329, 1335-36 (Fed. Cir. 2014). In both *eWatch* and *H-W Tech*, the systems complete no actions within the terms, but instead the claims rest solely upon

the actions of the user. *eWatch,* 2015 WL 1387947, at *6; *H-W Tech,*, 758 F.3d at 1336. Infringement does not occur until "a user actually operates the device," *eWatch,* 2015 WL 1387947, at *6, or until a user selects an offer. *H-W Tech.*, 758 F.3d at 1335. These actions are required every time the device is used in order to make the basic functions of the system work.

However, here, as in *Mastermine*, the system is reacting to user's actions on its own and it is the devices reaction that is described in the claims. Specifically, the system can "receive and respond to user selection" and the limitation is "specifically tied to a structure":

	A specific structure is…	**…responding to information…**	**…received by user selection.**
'886 Patent cl. 1	"one or more processors… in one or more interfaces"	"render… a virtual likeness of a face"	"selected by the account holder"
***Mastermine* ('850 Patent)**	"a reporting module installed within the CRM software application"	"generates a database query as a function of"	"the user selected database fields"

Mastermine, 874 F.3d at 1315-16. This reactivity of the system is what distinguishes *Mastermine* from *eWatch* and *H-W Tech.*: the systems in those cases are not reacting to the user, but instead depending upon the user. A permissible functional limitation is present where the system is not "claim[ing] activities performed by the user," but the system's ability to react to user input. *Mastermine*, 874 F.3d at 1316.

This turns upon basic English language principles: the object is "acted upon" by the subject. For instance, in "the device will be started by the user," the subject (user) is performing the verb or acting upon (starting) the object (device). In *eWatch*, the user is acting upon the device claimed by the system; the patent is claiming the verb or action performed by the user. *eWatch* Inc., 2015 WL 1387947, at *6. Similarly, in *H-W Tech.*, the patent claims the user's action upon the transaction and offer alone, with nothing in the step performed by the device. *H-W Tech.*, 758 F.3d at 1336.

Non-Analogous Indefinite Claims

eWatch (U.S. Patent No. 7,643,168 at claim 1)	*H-W Tech.* (U.S. Patent No. 7,525,955 at claim 17)
1. Apparatus comprising: A portable housing, the portable housing being wireless; … Movement by the user of the portable housing commonly moving the images collection devices; Movement by the user of the portable housing commonly moving the display.	17. A tangible computer readable medium encoded with computer program for performing contextual searches on an Internet Phone (IP) phone comprising the steps of: ... wherein said user completes a transaction with at least one of said merchants listed without the need to generate a voice call; wherein said information received by said user comprises a variety of offers, wherein said user selects one of said variety of offers associated with said one of said merchants listed…

Alternatively, in *Mastermine*, the device is acting upon the data fields, which are functionally limited by the need for input. *Mastermine*, 874 F.3d at 1316. The patent claims the device's actions, which are responses to received user selection. *Id*. at 1315-16. Similarly, in the '886 Patent, the processor is acting upon the virtual likeness, which is functionally limited by the need for user selection. The '886 Patent claims the processor's actions which is a response to received user selection.

Analogous Claims Found to be Definite

Mastermine (U.S. Patent No. 7,945,850 at claim 8)	'886 Patent at claim 1
8. A system comprising: …. wherein the reporting module installed within the CRM software application presents a set of user-selectable database fields as a function of the selected report template, receives from the user a selection of one or more of the user-selectable database fields, and generates a data base query as a function of the user selected database fields, …	1. A system, comprising: one or more processors configured to: render, in one or more interfaces, a virtual likeness of a face associated with an account holder, wherein the virtual likeness of the face was selected by the account holder as part of an enrollment; …

Finally, as Apple states, the '886 claim is "directed to what the software does-receives information from a particular source and generates [a virtual likeness] based on that

information." Reply at 11. Therefore, "while these claims make reference to user selection, they do not explicitly claim the user's act of selection, but rather, claim the system's capability to receive and respond to user selection" of a virtual likeness. *Mastermine*, 874 F.3d at 1316. Additionally, as in *Mastermine*, "the functional language here does not appear in isolation, but rather, is specifically tied to structure": one or more processors in one or more interfaces. *Id.*; '886 Patent at cl. 1. Apple's arguments ignore the plain language of the claims.

For these reasons, the claim is not indefinite as it uses permissible functional language.

C. There is no support in the intrinsic record for limiting "set of images" to "set of photographs" ('886 Patent Claim Nos. 1, 6, 11)

The term "images" is broader than "photographs." The claims and specification make clear that "photographs" are a subset of "images." *See* '886 Patent at cls. 4 and 9. Apple's proposed construction, which simply swaps the term "photographs" for "images," is an obvious attempt to narrow the scope of the claim. Apple's attempts to bend the intrinsic record to justify its construction are unavailing.

According to Apple, a POSITA reading the claims in light of the specification and prosecution history would have understood that "capturing the set of biometric information comprises capturing, using a camera, a set of images" refers to capturing a set of photographs, "where (i) the 'set of images' is used in the claims to determine if a user is alive, (ii) applicant acquiesced to the Examiner's statement that 'the aliveness check as recited in the specification is constrained to 'taking multiple photographs in rapid succession,' and (iii) the specification and prosecution history disclose one—and only one—way in which that aliveness check occurs: through the use of photographs." Reply at 9-10. But Apple's reading of the intrinsic record clashes with black-letter law of claim construction and should be rejected for three reasons.

First, the principle of consistent interpretation of claim terms ends Apple's argument at the outset. "[C]laim terms 'cannot be interpreted differently in different claims,' and 'must be interpreted consistently.'" *Spineology, Inc. v. Wright Med. Tech., Inc.*, 739 F. App'x 633, 637-38 (Fed. Cir. 2018) (quoting *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1579 (Fed. Cir. 1995)). As Carbyne pointed out in its Response and Apple concedes in its Reply, the term "images" is used in multiple dependent claims in the '886 Patent. *See* Resp. at 10; Reply at 10-11. Claims 4 and 9 specify that an "image" may be comprised of a "photograph," meaning that "image" is a broader characterization that includes and is not limited to a "photograph." *See also* Ex. P (*Images*, Merriam Webster's Collegiate Dictionary (11th Ed. 2011) ("a picture produced on an electronic display (as a television or computer screen)"). Because claim terms must be interpreted consistently throughout the patent, "set of images" in the independent claims is also broader and inclusive of a "set of photographs."

Apple tries to sidestep the principle of consistent interpretation by arguing that "images" in the disputed term and "images" in the dependent claims have different meanings based on context: biometric information in the disputed term and account holder enrollment in the dependent claims. See Dkt. 54 at 10-11. But a claim term is not given a separate meaning based on context. *See, e.g.*, *Inverness Medical Switzerland GmbH v. Princeton Biomeditech Corp.*, 309 F.3d 1365, 1371 (Fed. Cir. 2002) ("A claim term used in multiple claims should be construed consistently . . . and it makes no difference that claims 17 and 18 refer to 'mobility' facilitated respectively by polyvinyl alcohol and protein, rather than sugar.").

Second, the prosecution history does not evidence a "clear and unmistakable" intent to narrow the plain meaning of "set of images." "The patentee is free to choose a broad term and expect to obtain the full scope of its plain and ordinary meaning unless the patentee explicitly redefines the term or disavows its full scope." *Thorner v. Sony Comput. Entm't Am. LLC,* 669

F.3d 1362, 1366-67 (Fed. Cir. 2012). Apple's entire prosecution history argument hinges on the patentee's proposed, and ultimately withdrawn, amendment to the claims where the patentee proposed "captured biometric information comprises one or more photographs of the user" in supposed acquiescence to the examiner's statement that the specification references "taking multiple photographs" as the only technique for determining a user is alive. Reply at 9-10. But this withdrawn proposed amendment in no way limits "images" to "photographs."

For starters, the patentee withdrew the amendment Apple relies on and in doing so explicitly replaced "photographs of the user" with "set of images" as the biometric information captured and used in the fraud detection analysis. Response at 11 (citing Ex. G at 29, 63-66). So the patentee chose to expand the scope of the captured biometric information by using the broader term "images"—rather than narrow the scope of the claim, which Apple now asks the Court to do. There is no "clear and unmistakable disclaimer." The patentee also made this amendment after the examiner suggested remedying a § 101 rejection by "bringing in elements from the parent application [for the '010 Patent] directed towards the concept of fraud detection on the ***images*** to determine if the user is alive." Ex. G at 29, 63-66. Based on the language of claims 4 and 9 of the '886 Patent, the examiner and patentee both understood that "images" is a broader term of which "photographs" are a subset. And there are no statements from the examiner or the patentee to suggest that "images" used for the aliveness determination should be restricted to "photographs" for the aliveness determination based on language in the specification or the examiner's prior statement and patentee's withdrawn amendment that Apple relies on. So there is no "clear and unmistakable" disclaimer by the patentee to limit "images" to "photographs." *Cordis Corp. v. Bos. Sci. Corp.*, 561 F.3d 1319, 1329 (Fed. Cir. 2009) ("A disclaimer must be clear and unmistakable, and unclear prosecution history cannot be used to limit claims.") (citations omitted).

Third, the disclosure of one technique in the specification for determining aliveness does not support Apple's narrowing construction. Federal Circuit precedent emphasizes that "even where a patent describes only a single embodiment, claims will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using words or expressions of manifest exclusion or restriction." *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1117 (Fed. Cir. 2004) *see also Akamai Techs., Inc. v. Limelight Networks, Inc.*, 805 F.3d 1368, 1376 (Fed. Cir. 2015). Here, the specification discloses "taking multiple photographs in rapid succession" as *a technique* that can be used in "some embodiments" for confirming aliveness. '886 Patent at 8:66-9:6. But the specification does not restrict the "set of images" used for the aliveness determination to "photographs," which the patent makes clear are a subset of "images." *See id.* at cls. 4 and 9. *Info-Hold, Inc. v. Applied Media Techs. Corp.*, 783 F.3d 1262, 1267 (Fed. Cir. 2015) (explaining that an invention will only be limited to its preferred embodiment when "the patentee uses words that manifest a clear intention to restrict the scope of the claims to that embodiment").

For these reasons, the Court should reject Apple's proposed construction and give "set of images" its plain and ordinary meaning.

D. Apple's construction for "restricted interface" is rewrites the claim language to ambiguously narrow the scope of the term ('512 Patent Claim Nos. 1, 11, 21; '138 Patent Claim Nos. 1, 13, 25; '105 Patent Claim Nos. 1, 18, 35)

In its Response, Apple states that it seeks a construction for three reasons: (1) the parties dispute the scope of the term; (2) Carbyne's predecessor (RightQuestion) sought an express construction in an IPR proceeding; and (3) the PTAB denied institution in Part because the Petitioner and its expert did not provide a construction for restricted interface. Resp. at 3. Each of these reasons is flawed.

First, Apple contends that because the parties dispute the scope of the term the Court must construe it. But any dispute about the scope of restricted interface is due to Apple's insistence on rewriting the claim language. Apple proposes that the term be construed as a "physical or software interface with limited accessibility." There are outstanding questions about Apple's proposed construction, which demonstrate the scope dispute that Apple has created. For example, what is required to meet "limited accessibility?" Apple's extrinsic dictionary definitions (Dkts. 42-9, 42-10, and 42-11) do not answer these questions, and the term "limited accessibility" is not used in any of the Authentication Patents. Apple's attempts to point to an embodiment in the later issuing '105 Patent as support for its construction. But reliance on the later issuing patent creates more scope disputes for the earlier-issued '512 and '138 Patents, which do not include the embodiment Apple points to. *See* Reply at 13; Opening Brief at 14-15.

Apple also insists its construction does not narrow the scope of the claim language "but instead captures the full scope of it." Reply at 12-13. Not so. Apple's construction—"physical ***or*** software interface"— narrows the scope of restricted interface by ruling out a restricted interface that is a combination of hardware and software. *See SkinMedica, Inc. v. Histogen Inc.*, 727 F.3d 1187, 1199 (Fed. Cir. 2013) ("The disjunctive 'or' plainly designates that a series describes alternatives."); *Schumer v. Laboratory Comput. Sys., Inc.*, 308 F.3d 1304, 1311, (Fed. Cir. 2002) ("Webster's Third International Dictionary defines "or" as follows: 'used as a function word to indicate (1) an alternative between different or unlike things, states, or actions . . . (2) choice between alternative things, states, or courses.' We have consistently interpreted the word 'or' to mean that the items in the sequence are alternatives to each other.") (internal citation omitted).[1]

[1] Apple could have used "and/or" if it intended for "or" to include both a hardware and software interface. In any event, the use of "or" further demonstrates the scope dispute and confusion that is of Apple's own making.

Absent a definition or disavowal that eliminates a hardware-and-software interface, there is nothing that justifies limiting the ordinary meaning of "restricted interface." *See Hill-Rom Servs., Inc. v. Stryker Corporation*, 755 F.3d 1367, 1371 (Fed. Cir. 2014). Accordingly, the alleged scope dispute is of Apple's own making.

Regarding Apple's second and third points, Apple continues to argue that RightQuestion (Carbyne's predecessor) took a claim construction position related to the "restricted interface" in an IPR and that the PTAB accepted it. This is incorrect. In the IPR, RightQuestion argued that the petitioner (Samsung) failed to show that the cited prior art taught restricted interfaces:

> Petitioner later states the processors communicate via a "local interface, data bus, or another network." Pet. 28. None of these are a "restricted interface" and [P]etitioner has not offer a single piece of evidence to the contrary. Indeed, Petitioner's "expert" does not even opine on whether a POSITA would have viewed a local interface, data bus, or another network as a restricted interface.

Dkt. 49-2 (Patent Owners Preliminary Response to IPR2022-00251) at 38-39 (discussing Samsung's failure of proof with respect to the restricted interface). RightQuestion did not propose a construction or restrict the scope of a restricted interface—and, it certainly did not propose to define the term as Apple attempts here. Ex. Q ("Patent Owner also does not provide any express constructions for any claim terms."). RightQuestion simply pointed to Samsung's failure to meet its IPR burden, which require an IPR petitioner to identify "***with particularity***, each claim challenged, the grounds on which the challenge to each claim is based, ***and the evidence that supports the grounds for the challenge to each claim***." *See* 35 U.S.C. § 312(a)(3) (emphasis added). The Board agreed with RightQuestion that Samsung had failed to show the restricted interface was taught by its art because Samsung simply alleged the art met the limitation without anything else:

> ***Petitioner's entire alleged support for this contention*** is that "Johansson discloses that client 103 connects with portable data store 118, which 'may include a processor circuit comprising a processor and a memory,' by way of,

> e.g., 'a local interface, data bus, or another network 115.'" Pet. 28 (citing Ex. 1005, 2:15-17, 4:50-59) (emphasis added). Petitioner's declarant makes these same statements verbatim, without more, and with no additional citations to evidence. *See* Ex. 1002 ¶ 100.
>
> [. . .]
>
> Indeed, neither Petitioner nor its expert provides any express construction for what a "restricted interface" is in the context of the '512 patent, ***and as argued by Patent Owner (id.), neither explains sufficiently, let alone with particularity***, how or why Johansson's "local interface, data bus, or another network 115" discloses or teaches the claimed "restricted interface."
>
> [. . .]
>
> We find Petitioner's argument here reinforces our determination that ***Petitioner does not explain sufficiently*** how or why Johansson discloses or teaches the claimed "restricted interface."
>
> [. . .]
>
> Thus, we agree with Patent Owner that ***Petitioner does not explain sufficiently, let alone with particularity***, how or why Kesanupalli's secure communication using SSL v3 protocol (alone or in combination with Johansson) discloses or teaches the claimed "restricted interface."

Ex. Q. Contrary to Apple's arguments, RightQuestion did not argue a construction of restricted interface was necessary or provide a construction that the PTAB adopted—it simply pointed out Samsung's failure to carry its burden. Nothing RightQuestion did in the IPR is sufficient grounds to impose a narrowing, ambiguous construction in this case.

At bottom, Apple's argument continues to come up short. The alleged dispute about the scope of restricted interface is of Apple's own making and its reading of the previous IPR proceedings is flawed. The Court should reject Apple's construction and adopt the plain and ordinary meaning of the term.

III. CONCLUSION

The Court should refuse Apple's proposed constructions and give the "disputed"-by-Apple—but readily understandable—terms their plain and ordinary meanings.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on November 22, 2023.

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