

From: Michael Saulnier <Michael_Saulnier@txwd.uscourts.gov>
Sent: Monday, December 11, 2023 10:52 AM
To: Apple-Carbyne-Ropes-Service; Carbyne_Apple; Melissa Smith; Tom Gorham; James Travis Underwood
Cc: Kristie Davis
Subject: Preliminary Constructions 1:23-cv-324 Carbyne Biometrics v. Apple

[EXTERNAL]

Counselors,

The Court provides the following preliminary constructions before the 2 PM Markman hearing tomorrow (the zoom link is provided again below). Just to note, the opinion on the motion to transfer is forthcoming.

Although the parties may argue for their originally proposed construction, the Court will usually not adopt a party's originally proposed construction over the preliminary construction. Instead, the Court encourages arguments that fine-tune the preliminary constructions. The Court may change some preliminary constructions based on the arguments at the hearing.

Of the below terms, please let me know which terms each side would like to argue by noon tomorrow.

To assist our wonderful court reporter (Kristie Davis), please email her a copy of your slides by 9 AM tomorrow, even if only a draft. When you email the court reporter, no need to CC the other side or the Court.

If you plan to have any younger associates argue a claim term, please introduce them when you state your appearances.

Please let me know if you have any questions.

Claims	Terms	Plaintiff's Proposed Construction	Defendant's Proposed Construction	Court's Preliminary Construction
'512 Patent Claim Nos. 1, 6, 11, 15, 21; '138 Patent Claim No. 1; '105 Patent Claim Nos. 1, 9; '010 Patent Claim No. 1; '656 Patent	"configured to"	Plain and Ordinary Meaning	Plain and Ordinary Meaning, which requires not merely being capable of being configured but rather actually being configured	Plain and Ordinary Meaning.

Claim No. 1; '886 Patent Claim No. 1				
'512 Patent Claim Nos. 1, 11, 21; '138 Patent Claim Nos. 11, 23; '105 Patent Claim Nos. 9, 11, 28, 30	"restricted interface"	Plain and Ordinary Meaning	"a physical or software interface with limited accessibility"	Plain and Ordinary Meaning
'886 Patent Claim Nos. 1, 6, 11	"captur[e/ing] a set of biometric information, wherein capturing the set of biometric information comprises capturing, using a camera, a set of images"	Plain and Ordinary Meaning	"captur[e/ing] a set of biometric information, wherein capturing the set of biometric information comprises capturing, using a camera, a set of photographs"	Plain and ordinary meaning.
'886 Patent Claim Nos. 1, 11	"wherein the virtual likeness of the face was selected by the account holder as part of an enrollment"	No Construction Necessary	Indefinite as a Mixed System/Method Claim	No construction necessary

Michael Saulnier

Law Clerk to the Honorable Alan D Albright
United States District Court, Western District of Texas

Non-Public Zoom:

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