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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CORTEX MCP, INC., Plaintiff, v. VISA INC., Defendant.	CASE NO.: 5:23-CV-05720-EJD **DEFENDANT VISA INC.'S PRELIMINARY CLAIM CONSTRUCTIONS AND EVIDENCE PURSUANT TO PATENT L.R. 4-2** **DEMAND FOR JURY TRIAL**

Pursuant to the Patent Scheduling Order (Dkt. No. 73) and Patent L.R. 4-2, Defendant Visa Inc. ("Visa") hereby provides its preliminary claim construction and extrinsic evidence for the proposed claim terms that require constructions for claims 1, 2, 4, 5, 6, 7, 8, 9, 10, 14, 15, 17, 18, 20, 21, 23, 24, 25, 27, and 28 of U.S. Patent No. 9,251,531 (the "'531 Patent"), claims 1, 2, 3, 8, 9, 10, 15, 16, and 17 of U.S. Patent No. 9,954,854 (the "'854 Patent"), claims 1, 2, 4, 5, 9, 10, 12, 13, 18, 19, 20, and 21 of U.S. Patent No. 10,749,859 (the "'859 Patent"), and claims 1, 2, 4, 8, 9, 11, 16, and 17 of U.S. Patent No. 11,329,973 (the "'973 Patent"), collectively the "Asserted Claims" and "Asserted Patents," respectively.

Visa's preliminary claim constructions are set forth in Exhibit A and address only those claim terms that the parties have exchanged and that Visa currently believes are, or will be, disputed based on discovery to date. Visa reserves the right to supplement and/or amend the constructions in Exhibit A once Plaintiff Cortex MCP, Inc. ("Cortex") identifies its proposed constructions and as part of the meet and confer process required under Patent L.R. 4-2(c).

Visa's investigation and discovery are ongoing, and Visa therefore reserves the right to seek construction of other terms based on further discovery and its continuing analysis. For example, Visa reserves the right to seek further constructions based on any responses Cortex may provide to Visa's discovery requests or any other future disclosures. Visa further reserves the right to supplement this disclosure in light of the positions that Cortex takes in this litigation. Such positions may require the Court to construe other claim terms in addition to the ones listed in this disclosure.

In support of its preliminary claim construction positions, Visa intends to rely upon the intrinsic evidence of the Asserted Patents as well as the extrinsic evidence cited in Exhibit A. Visa's citations to a particular figure in a reference should be understood to encompass the caption and description of the figure and the text relating to and/or describing the figure. Visa's citations to a particular portion of the text referring to a figure should be understood to include the figure and related figures as well.

Visa further reserves the right to rely on any pleadings in this case, the parties' contentions, discovery in this case, testimony provided by experts in the field, if any, and any evidence cited by

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Cortex in any claim construction proceeding and pleadings. Visa may also rely on filings and Cortex's position taken in related proceedings, including the following *inter partes* review proceedings before the Patent Trial and Appeal Board: IPR2024-00486, IPR2024-00487, IPR2024-00488, IPR2024-00489, and IPR2024-00490. Visa also reserves the right to rely on any intrinsic or extrinsic evidence (including expert witness testimony) identified by Cortex in its Patent L.R. 4-2 disclosures.

The terms, phrases, or clauses set forth in Exhibit A are identified for construction wherever they appear in any claim or element, including all dependent claims or claims where multiple terms appear in combination. To the extent that the Asserted Claims of any of the Asserted Patents contain identical claim terms, phrases, or clauses, Visa's proposed constructions below shall apply equally to each of Cortex's Asserted Patents. Visa contends that all terms not identified should be given the ordinary and customary meaning that the term would have to a person of ordinary skill in the art in question reading the Asserted Patents at the time of the invention, i.e., as of the effective filing date of the patent application. In addition, Visa's proposal of a construction for any claim terms, phrases, or clauses in Exhibit A does not mean that the claim term or claim element is valid or construable under 35 U.S.C. § 112, and Visa reserves the right to so assert that such claim term or claim element is invalid or not construable under 35 U.S.C. § 112 and makes no admission or contention herein.

Dated: April 19, 2024

By: */s/ James C. Yoon*

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the foregoing document was served on all counsel of record via electronic mail on April 19, 2024.

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EXHIBIT A

EXHIBIT A

Visa's Preliminary Claim Constructions and Evidence

#	Claim(s) Impacted	Term	Initial Construction	Evidence
1	All Asserted Claims of the '531 and '854 Patents	(verb) "OVER file is ***scanned***" ('531 Patent, Claim 16) (verb) "the [first/second] OVER file ***scanned***" ('854 Patent, Claims 1, 8, 15) (noun) "a [first/second] ***scan*** associated with the [first/second] OVER file" ('531 Patent, Claims 1, 12, 21)	(verb) "scanned" means "read using a light sensitive device to convert information displayed into data to be interpreted by a computer" (noun) "scan" means "file generated from scanning"	Intrinsic Evidence Visa identifies the following references from the specification and the prosecution history that support the preliminary proposed construction: the asserted patents and related patents and their corresponding prosecution histories, including without limitation: • All Asserted Claims *'531 Patent:* • Abstract; Figure 1; Figure 2; Figure 3; Figure 7; Figure 8; Figure 11; 4:10-12; 5:9-25; 5:37-42; 6:5-11; 7:59-8:3; 11:26-33; 12:7-19; 13:13-20; 13:64-14:6; 18:1-2. *'531 Prosecution history:* • Original claim 19. • 5/27/2015 Office Action Response. • 7/6/2015 Final Office Action. • 9/8/2015 Office Action Response. *'854 Prosecution history:* • 4/21/17 Non-Final Office Action. • 7/27/2017 Applicant-Initiated Interview Summary, Agenda. • 10/23/2017 Office Action Response. • 1/11/2018 Notice of Allowance. • 12/12/2017 Notice of Allowance.

#	Claim(s) Impacted	Term	Initial Construction	Evidence
				Extrinsic Evidence • *scan*, New Oxford American Dictionary (3rd ed. 2010) ("convert (a document or picture) into digital form for storage or processing on a computer"). VISA_00035726-35729. • *scan*, Merriam-Webster Dictionary, available at https://www.merriam-webster.com/dictionary/scan (last visited Apr. 17, 2024) ("to pass over in the formation of an image" or "an image formed by scanning something"). VISA_00035001-35008. • *Scan*, Microsoft Computer Dictionary (5th ed. 2002) at 464, available at https://burmastarrecords.wordpress.com/wp-content/uploads/2009/12/microsoft_computer_dictionary__fifth_edition1.pdf (last visited Apr. 17, 2024) ("In facsimile and other optical technologies, to move a light-sensitive device across an image-bearing surface such as a page of text, converting the light and dark areas on the surface to binary digits that can be interpreted by a computer."). VISA_00035032-35679. • *scan*, Cambridge Dictionary, available at https://dictionary.cambridge.org/dictionary/english/scan (last visited Apr. 17, 2024) ("to use a machine to put a picture of a document into a computer, or to take a picture of the inside of something"). VISA_00035014-35019. • *scan*, Oxford English Dictionary, available at https://www.oed.com/dictionary/scan_v (last visited Apr. 17, 2024) ("To cause (an area, object, or image) to be systematically traversed by a beam or detector; to convert (an image) into a linear sequence of signals in this way for purposes of transmission or processing."), https://www.oed.com/dictionary/scan_n (last visited Apr. 17, 2024) ("An image, diagram, etc., obtained by scanning."). VISA_00035687-35710; VISA_00035711-35717.

#	Claim(s) Impacted	Term	Initial Construction	Evidence
				Expert testimony: Visa may rely on expert opinion and testimony of Henry Dreifus as to the level of skill of one of ordinary skill in the art, the relevant field of the invention, and further concerning the meaning of this term.
2	All Asserted Claims	"credential"	"form of evidence or documentation that attests to an individual's identity or certifications, such as a driver's license or professional license"	<u>Intrinsic Evidence</u> Visa identifies the following references from the specification and the prosecution history that support the preliminary proposed construction: the asserted patents and related patents and their corresponding prosecution histories, including without limitation: • All Asserted Claims *'531 Patent:* • Abstract; Figure 2; Figure 3; Figure 5; Figure 6; 3:64-4:6; 8:41-46; 9:48-50; 10:4-26; 10:40-59; 12:43-44; 12:48-55; 13:1-6. *'531 Prosecution history:* • 05/27/2015, Office Action Response. • 09/08/2015, Office Action Response. • 09/08/2015, Office Action Response. *'859 Prosecution history:* • 03/18/2020, Office Action Response. *'973 Prosecution history:* • 01/27/2022, Office Action Response.

#	Claim(s) Impacted	Term	Initial Construction	Evidence
				Extrinsic Evidence • *credential*, New Oxford American Dictionary (3rd ed. 2010) ("a document or certificate proving a person's identity or qualifications."). VISA_00035726-35729. • *credentials*, P.H. Collin, Webster's Student Dictionary, Barnes & Noble, Inc. (1999) ("papers which prove your identity or rank so that people can trust you"). VISA_00035683-35686. • *credential*, Britannica, available at https://www.britannica.com/dictionary/credential (last visited Apr. 17, 2024) ("document which shows that a person is qualified to do a particular job"). VISA_00035680. • *credentials*, Oxford Learners Dictionaries, available at https://www.oxfordlearnersdictionaries.com/us/definition/english/credentials (last visited Apr. 17, 2024) ("documents such as letters that prove that you are who you claim to be, and can therefore be trusted"). VISA_00035681-35682. • *credential*, Your Dictionary, available at https://www.yourdictionary.com/credential (last visited Apr. 17, 2024) ("A document that serves as official proof of a person's position, authority, etc.; specif., letters of credence.") (citing Webster's New World College Dictionary (2014)). VISA_00035028-35031. *Expert testimony:* • Visa may rely on expert opinion and testimony of Henry Dreifus as to the level of skill of one of ordinary skill in the art, the relevant field of the invention, and further concerning the meaning of this term.

#	Claim(s) Impacted	Term	Initial Construction	Evidence
3	’531 Patent, Claims 1, 2, 4, 5, 6, 7, 8, 9, 10, 14, 15, 17, 18, 20; ’854 Patent, All Asserted Claims; ’859 Patent, All Asserted Claims and ’973 Patent, Claims 1, 2, 4, 16 and 17	“qualification”	Indefinite.	<u>Intrinsic Evidence</u> Visa identifies the following references from the specification and the prosecution history that support the preliminary proposed construction: the asserted patents and related patents and their corresponding prosecution histories, including without limitation: • All Asserted Claims *’531 Patent Prosecution history:* • 05/27/2015, Office Action Response. • 09/08/2015, Office Action Response. • 09/08/2015, Office Action Response. *’859 Prosecution history:* • 03/18/2020, Office Action Response. *’973 Prosecution history:* • 01/27/2022, Office Action Response. <u>Extrinsic Evidence</u> • *qualification*, Cambridge Dictionary of American English (2nd ed. 2008) (1: knowledge, skill, or some other characteristic that gives a person the ability or right to do or have something. 2: A qualification is also a level of skill or ability that you have to achieve to be allowed to do something.). VISA_00035730-35732. • *qualification,* YourDictionary.com, available at https://www.yourdictionary.com/qualification (last visited Apr. 18, 2024) (1: A qualifying or being qualified. 2: Any quality, skill, knowledge, experience,

#	Claim(s) Impacted	Term	Initial Construction	Evidence
				etc. that fits a person for a person, position, office, profession, etc.; requisite. 3: A modification or restriction; limiting condition. 4: A condition that must be met in order to exercise certain rights.) (citing Webster's New World College Dictionary (2014)). VISA_00035718-35725. • *qualification*, Merriam-Webster Dictionary, available at https://www.merriam-webster.com/dictionary/qualification (last visited Apr. 17, 2024) (1. A restriction in meaning or application: a limiting modification. 2a. Nature. 2b. Characteristic. 3a. A quality or skill that fits a person (as for an office). 3b. A condition or standard that must be complied with (as for the attainment of a privilege).). VISA_00035009-5013. • *qualification*, Dictionary.com, available at https://www.dictionary.com/browse/qualification (last visited Apr. 17, 2024) (1. A quality, accomplishment, etc., that fits a person for some function, office, or the like. 2. a circumstance or condition required by law or custom for getting, having, or exercising a right, holding an office, or the like.). VISA_00035020-35027. *Expert testimony:* • Visa may rely on expert opinion and testimony of Henry Dreifus as to the level of skill of one of ordinary skill in the art, the relevant field of the invention, and further concerning the meaning of this term.
4	All Asserted Claims	"a virtual representation of the credential ***that has been verified by an issuing agency*** to be an official representation [of] the	"a [first/second] virtual representation of the [original] credential, ***where the virtual representation has been***	Intrinsic Evidence Visa identifies the following references from the specification and the prosecution history that support the preliminary proposed construction: the asserted patents and related patents and their corresponding prosecution histories, including without limitation:

#	Claim(s) Impacted	Term	Initial Construction	Evidence
		credential" ('531 Patent, Claims 1, 15, 21; '859 Patent, Claims 1, 9, 18, 20; '973 Patent, Claims 1, 8, 16) "a first virtual representation of [an/the] original credential ***that has been verified by an issuing agency*** to be a first official representation of the original credential" ('854 Patent, Claims 1, 8, 15) "a second virtual representation of the [original] credential ***that has been verified by the issuing agency*** to be a second official representation of the [original] credential" ('854 Patent, Claims 1,	***verified by [an/the] issuing agency*** to be [an/a] [first/second] official representation of the [original] credential"	*'531 Patent:* • Abstract; Figure 2 (110, 112, 128, 130); Figure 7; Figure 11 (828, 830); 3:50-4:6; 4:25-41; 5:7-25; 5:60-6:11; 6:12-36; 10:60-11:25; 13:61-14:33. *'531 Patent Prosecution history:* • 7/6/2015 Final Office Action. • 8/25/2015 Applicant-Initiated Interview Summary, Agenda. • 9/9/2015 Office Action Response. • 9/30/2015 Notice of Allowance. *'854 Patent Prosecution history:* • 4/21/2017 Non-Final Office Action. • 7/27/2017 Applicant-Initiated Interview Summary, Agenda. • 10/23/2017 Office Action Response. • 1/11/2018 Notice of Allowance. • 12/12/2017 Notice of Allowance. *'859 Patent Prosecution history:* • 9/19/2019 Non-Final Office Action. • 3/13/2020 Applicant-Initiated Interview Summary, Agenda. • 3/18/2020 Office Action Response. *'973 Patent Prosecution history:* • 11/20/2021 Non-Final Office Action. • 11/27/2022 Office Action Response.

#	Claim(s) Impacted	Term	Initial Construction	Evidence
		8, 15; ’859 Patent, Claims 2, 10, 19, 21; ’973 Patent, Claims 2, 9, 17)		<u>Extrinsic Evidence</u> *Expert testimony:* Visa may rely on expert opinion and testimony of Henry Dreifus as to the level of skill of one of ordinary skill in the art, the relevant field of the invention, and further concerning the meaning of this term.
5	All Asserted Claims of the ’854 Patent	“wherein the first OVER file is itself a first new credential of the user” (’854 Patent, Claims 1, 8) “wherein the second OVER file is itself a second new credential over the first OVER file and the original credential” (’854 Patent, Claims 1, 8, 15) “wherein the first OVER file is itself a first credential of the user” (’854 Patent, Claim 15)	Indefinite.	<u>Intrinsic Evidence</u> Visa identifies the following references from the specification and the prosecution history that support the preliminary proposed construction: the asserted patents and related patents and their corresponding prosecution histories, including without limitation: *’854 Patent:* • All Asserted Claims *’854 Prosecution history:* • 10/21/2017 Office Action Response. <u>Extrinsic Evidence</u> *Expert testimony:* • Visa may rely on expert opinion and testimony of Henry Dreifus as to the level of skill of one of ordinary skill in the art, the relevant field of the invention, and further concerning the meaning of this term.

#	Claim(s) Impacted	Term	Initial Construction	Evidence
6	’854 Patent, Claim 16	“the OVER file” (’854 Patent, Claim 16)	Indefinite.	<u>Intrinsic Evidence</u> Visa identifies the following references from the specification and the prosecution history that support the preliminary proposed construction: the asserted patents and related patents and their corresponding prosecution histories, including without limitation: *’854 Patent:* • Claims 15, 16 <u>Extrinsic Evidence</u> *Expert testimony:* • Visa may rely on expert opinion and testimony of Henry Dreifus as to the level of skill of one of ordinary skill in the art, the relevant field of the invention, and further concerning the meaning of this term.
7	’531 Patent, Claim 14	“the stored credential” (’531 Patent, Claim 14)	Indefinite.	<u>Intrinsic Evidence</u> Visa identifies the following references from the specification and the prosecution history that support the preliminary proposed construction: the asserted patents and related patents and their corresponding prosecution histories, including without limitation: *’531 Patent:* • Claims 1, 14

#	Claim(s) Impacted	Term	Initial Construction	Evidence
				Extrinsic Evidence *Expert testimony:* Visa may rely on expert opinion and testimony of Henry Dreifus as to the level of skill of one of ordinary skill in the art, the relevant field of the invention, and further concerning the meaning of this term.