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Attorneys for Cortex MCP., Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CORTEX MCP, INC., Plaintiff, v. VISA, INC. Defendant.	CASE NO. 5:23-CV-05720-EJD

PARTIES' JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT PURSUANT TO PATENT L.R. 4-3

Pursuant to Patent L.R. 4-3, Plaintiff Cortex MCP, Inc. ("Cortex") and Defendant Visa Inc. ("Visa") submit this Joint Claim Construction and Prehearing Statement.

I. PATENT L.R. 4-3(A): AGREED CLAIM CONSTRUCTIONS

The parties do not agree on any claim constructions.

II. PATENT L.R. 4-3(B): DISPUTED CLAIM CONSTRUCTIONS

The parties dispute the construction of the claim terms as set forth in Exhibit A.

Each party reserves the right to rely on any intrinsic or extrinsic evidence identified by the other party. In addition, each party reserves the right to amend, correct, or supplement its claim construction positions and supporting evidence in response to any change of position by the other

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party, including any amendments to Cortex's infringement contentions, Visa's invalidity contentions, or for other good cause.

III. PATENT L.R. 4-3(C): IDENTIFICATION OF MOST SIGNIFICANT TERMS

The parties identify "scan" / "scanned," and "credential" as the most significant terms. The construction of term "scan" / "scanned" may be dispositive of Cortex's claims for infringement of the '531 and '854 patent. The construction of the term "credential" may be case dispositive. Visa also identifies "qualifications" to be a significant term. The construction of the term "qualifications" may be dispositive for a majority of the asserted claims in all asserted patents.

IV. PATENT L.R. 4-3(D): ANTICIPATED LENGTH OF TIME FOR HEARING

The parties anticipate the length of time necessary for the claim construction hearing will be two hours, divided equally between the parties.

V. PATENT L.R. 4-3(E): ANTICIPATED WITNESSES AT THE HEARING

The parties do not propose to call any live witnesses, including expert witnesses, at the claim construction hearing.

VI. PATENT L.R. 4-3(F): REQUESTED FACTUAL FINDINGS

The parties do not request any factual findings from the Court related to claim construction.

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Dated: May 7, 2024

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ATTESTATION

Pursuant to Local Rule 5-1(h)(3), I hereby attest all persons whose signatures are listed here, and on whose behalf this filing is submitted, concur in this filing's content and have authorized this filing.

Dated: May 7, 2024

/s/ Tyler Finn
Tyler Finn

EXHIBIT A – Proposed Construction of Disputed Terms

JOINT CLAIM CONSTRUCTION STATEMENT

Term #	Claim Language (Disputed Terms in **Bold**)	Plaintiff's Proposed Claim Construction and Evidence in Support	Defendant's Proposed Claim Construction and Evidence in Support
1	"**scanned**" (verb) Or "**scan**" (noun) Found in: '531 Patent (All Asserted Claims) '854 Patent (All Asserted Claims) Visa Inc.'s: 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	PROPOSED CONSTRUCTION: (verb) "scanned" means "<u>transmitted as represented data via an electronic device</u>" (noun) "scan" means "<u>the result of the process of transmitting represented data via an electronic device</u>" INTRINSIC EVIDENCE: '531 Patent, Figs. 1, 2, 3, 7, 8; Col. 4:6-11, 5:9-42; 6:2-11; 6:62-7:3; 7:56-8:3; 11:26-44; 12:7-32; 13:16-24; 14:2-10; 15:66-16:1, 18:1-4; Claims 1-33; '854 Patent, Figs. 1, 2, 3, 7, 8; Col. 4:15-20, 5:17-53; 6:10-12; 7:9-16; 8:3-16; 11:45-63; 12:27-50; 13:40-44; 14:24-35; 18:31-34; Claims 1-16; '859 Patent, Figs. 1, 2, 3, 7, 8; Col. 4:15-20, 5:17-53; 6:10-12; 7:9-16; 8:3-16; 11:45-63; 12:27-50; 13:40-44; 14:24-35; 18:31-34; '973 Patent, Figs. 1, 2, 3, 7, 8; Col. 5:30-48; 6:23-42; 8:2-29; 11:58-12:9; 12:40-53. File History for '531 Patent (CORT0000026-CORT0000271);	<u>PROPOSED CONTRUCTION</u> (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" <u>INTRINSIC EVIDENCE</u> 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. • 05/27/2015 Office Action Response. • 07/06/2015 Final Office Action. • 09/07/2015 Office Action Response. *'854 Prosecution history:* • 04/21/2017 Non-Final Office Action. • 07/27/2017 Applicant-Initiated Interview Summary, Agenda. • 10/21/2017 Office Action Response.

EXHIBIT A – Proposed Construction of Disputed Terms

Term #	Claim Language (Disputed Terms in **Bold**)	Plaintiff's Proposed Claim Construction and Evidence in Support	Defendant's Proposed Claim Construction and Evidence in Support
	Patent, Claims 1, 8, 15) (noun) "a [first/second] ***scan*** associated with the [first/second] OVER file" ('531 Patent, Claims 1, 12, 21)	File History for '854 Patent (CORT0000272-CORT0000649); File History for '859 Patent (CORT0000650-CORT0000823); File History for '973 patent (CORT0000824-CORT0001022); EXTRINSIC EVIDENCE: CORT0001023 ("iOS apps running on supported devices can use NFC scanning to read data from electronic tags attached to real-world objects.") CORT0001026 ("NFC is short for 'Near-field communication' and technically is a subset of RFID ('Radio-frequency Technology'). It allows two devise to communicate at close distance without contact. The most popular application for NFC is for one device to act as a 'scanner' and another device to act as a 'tag' or 'identity card.' This is how systems such as Apple Pay work- the payment terminal in a shop is a scanner and scans your phone (which is set to work as a payment identity card).") CORT0001029: ("Use NFC to share data with other devices, such as videos, photos, web page addresses, music files, or contacts. You can also use NFC to scan tags that give you more information	• 12/12/2017 Notice of Allowance. • 01/11/2018 Notice of Allowance. EXTRINSIC EVIDENCE *Dictionaries:* • *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

EXHIBIT A – Proposed Construction of Disputed Terms

Term #	Claim Language (Disputed Terms in **Bold**)	Plaintiff's Proposed Claim Construction and Evidence in Support	Defendant's Proposed Claim Construction and Evidence in Support
		about a product or service, and tags that activate certain functions on your device.") CORT0001031: ("Near Field Communication (NFC) is a short-range protocol of communication between devices, typically between an NFC tag and a scanner.")	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. *Party Document:* • CORT0000010-25. *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. Visa will provide a claim construction expert report for its expert witness pursuant to Patent L. R. 4-3 on May 14, 2024.

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2	"**credential**" Found in: All Asserted Claims Visa Inc.: All Asserted Claims	PROPOSED CONSTRUCTION: <u>No construction necessary</u>	<u>PROPOSED CONSTRUCTION</u> "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> All Asserted Claims *'531 Patent:* • Abstract; Figure 2; Figure 3; Figure 4; Figure 5; Figure 6; Figure 7; Figure 8; 3:64-4:6; 8:41-46; 9:48-10:3; 10:4-26; 10:40-59; 12:43-44; 12:48-55; 13:1-6; 13:9-24. • U.S. Patent Application Ser. No. 11/851,215 (incorporated by reference by the '531 Patent at 9:66-10:3) at Abstract; Figure 2; Figure 12; Paragraphs [0001]-[0010]; [0013]; [0024]; [0063], [0066]; [0186]-[0189]; [0221]; [0231]. *'531 Prosecution history:* • 05/27/2015, Office Action Response. • 09/07/2015, Office Action Response. *'859 Prosecution history:* • 03/16/2020, Office Action Response. *'973 Prosecution history:* • 01/27/2022, Office Action Response. <u>EXTRINSIC EVIDENCE</u> *Dictionaries:* • *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. *Party Document:* • CORT0000010-25. *Expert testimony:* • Visa may rely on expert opinion and testimony of Henry Dreifus as to the level of skill of one

EXHIBIT A – Proposed Construction of Disputed Terms

			of ordinary skill in the art, the relevant field of the invention, and further concerning the meaning of this term. Visa will provide a claim construction expert report for its expert witness pursuant to Patent L. R. 4-3 on May 14, 2024.
3	"**qualification**" Found in: '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) '973 Patent, (Claims 1, 2, 4, 16 and 17)	PROPOSED CONSTRUCTION: <u>No construction necessary</u>	<u>PROPOSED CONSTRUCTION</u> Indefinite. <u>INTRINSIC EVIDENCE</u> All Asserted Claims *'531 File History:* • 05/27/2015, Office Action Response. • 09/07/2015, Office Action Response. *'859 Prosecution history:* • 03/16/2020, Office Action Response. *'973 Prosecution history:* • 01/27/2022, Office Action Response. <u>Extrinsic Evidence</u> *Dictionaries:* • *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, 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. *Party Document:* • CORT0000010-25. *Expert testimony:*

EXHIBIT A – Proposed Construction of Disputed Terms

			• 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. Visa will provide a claim construction expert report for its expert witness pursuant to Patent L. R. 4-3 on May 14, 2024.
4	"a virtual representation of the credential **that has been verified by an issuing agency** to be an official representation [of] the credential" Found in: '531 Patent (Claims 1, 15, 21) '859 Patent (Claims 1, 9, 18, 20) '973 Patent, Claims 1, 8, 16) "a first virtual representation of	PROPOSED CONSTRUCTION: <u>No construction necessary</u>	<u>PROPOSED CONSTRUCTION</u> "a [first/second] virtual representation of the [original] credential, ***<u>where the virtual representation has been verified by [an/the] issuing agency</u>*** to be [an/a] [first/second] official representation of the [original] credential" <u>INTRINSIC EVIDENCE</u> All Asserted Claims *'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 File History:* • 07/06/2015 Final Office Action. • 08/25/2015 Applicant-Initiated Interview Summary, Agenda. • 09/07/2015 Office Action Response. • 09/30/2015 Notice of Allowance. • 05/06/2024 Patent Owner's Preliminary Response, IPR2024-00486.

	[an/the] original credential **that has been verified by an issuing agency** to be a first official representation of the original credential" Found in: '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" Found in: '854 Patent (Claims 1, 8, 15) '859 Patent (Claims 2, 10, 19, 21)		• 05/06/2024 Patent Owner's Preliminary Response, IPR2024-00487. *'854 File History:* • 04/21/2017 Non-Final Office Action. • 07/27/2017 Applicant-Initiated Interview Summary, Agenda. • 10/21/2017 Office Action Response. • 12/12/2017 Notice of Allowance. • 01/11/2018 Notice of Allowance. • 05/06/2024 Patent Owner's Preliminary Response, IPR2024-00488. *'859 File History:* • 09/19/2019 Non-Final Office Action. • 03/13/2020 Applicant-Initiated Interview Summary, Agenda. • 03/16/2020 Office Action Response. • 05/06/2024 Patent Owner's Preliminary Response, IPR2024-00489. *'973 File History:* • 11/10/2021 Non-Final Office Action. • 01/27/2022 Office Action Response. • 05/06/2024 Patent Owner's Preliminary Response, IPR2024-00490.

EXHIBIT A – Proposed Construction of Disputed Terms

	’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. Visa will provide a claim construction expert report for its expert witness pursuant to Patent L. R. 4-3 on May 14, 2024.
5	“wherein the first OVER file is itself a first new credential of the user” / “wherein the second OVER file is itself a second new credential over the first OVER file and the original credential” / “wherein the first OVER file is itself a first credential of the user” Found in: ‘854 Patent (All Asserted Claims)	PROPOSED CONSTRUCTION: <u>No construction necessary</u>	<u>PROPOSED CONSTRUCTION</u> Indefinite. <u>INTRINSIC EVIDENCE</u> *’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. Visa will provide a claim construction expert report for its expert witness pursuant to Patent L. R. 4-3 on May 14, 2024.

EXHIBIT A – Proposed Construction of Disputed Terms

	Visa Inc.: Found in: ('854 Patent, Claims 1, 8) ('854 Patent, Claims 1, 8, 15) ('854 Patent, Claim 15)		
6	"the OVER file" Found in: '854 Patent (Claim 16)	PROPOSED CONSTRUCTION: <u>No construction necessary</u>	<u>PROPOSED CONSTRUCTION</u> Indefinite. <u>INTRINSIC EVIDENCE</u> *'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. Visa will provide a claim construction expert report for its expert witness pursuant to Patent L. R. 4-3 on May 14, 2024.
7	"the stored credential" Found in:	PROPOSED CONSTRUCTION: <u>No construction necessary</u>	<u>PROPOSED CONSTRUCTION</u> Indefinite. <u>INTRINSIC EVIDENCE</u> *'531 Patent:*

	’531 Patent (Claim 14)		• Claims 1, 14 <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. Visa will provide a claim construction expert report for its expert witness pursuant to Patent L. R. 4-3 on May 14, 2024.