

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

EMERGING AUTOMOTIVE LLC,	§	CIVIL ACTION NO. 2:23-cv-00437-JRG
	§	(Lead Case)
Plaintiff,	§	
	§	Jury Trial Demanded
vs.	§	
	§	
KIA CORP., <i>et al.</i> ,	§	
	§	
Defendants.	§	
EMERGING AUTOMOTIVE LLC,	§	CIVIL ACTION NO. 2:23-cv-00434-JRG
	§	(Member Case)
Plaintiff,	§	
	§	Jury Trial Demanded
vs.	§	
	§	
TOYOTA MOTOR CORP., <i>et al.</i> ,	§	
	§	
Defendants.	§	

PLAINTIFF’S PATENT RULE 4-2 DISCLOSURES

In accordance with Patent Rule 4-2 and the Court’s Docket Control Order (Dkt. 40), Plaintiff Emerging Automotive LLC (“Emerging Auto” or “Plaintiff”) hereby identifies the proposed construction of each claim term, phrase, or clause that has been identified for claim construction purposes with respect to the asserted claims of U.S. Pat. Nos. 10,407,026 (the “’026 patent”), 11,738,659 (the “’659 patent”) 9,365,188 (the “’188 patent”), and 9,171,268 (the “’268 patent”), collectively, the “Asserted Patents.” Emerging Auto reserves the right to supplement, amend, or modify the following preliminary claim constructions for any reason, including in response to the identification by Defendants of preliminary terms including in response to the

identification by Defendants of terms purportedly requiring construction, revised or additional proposed claim constructions, or extrinsic evidence, and to facilitate ultimate preparation of the Joint Claim Construction and Prehearing Statement. Claim terms not expressly defined below should be accorded their plain meaning to persons of ordinary skill in the art. Emerging Auto further reserves the right to rely on any evidence cited by any other party as well as any expert declarations regarding claim construction offered by any party to support its claim constructions, including all intrinsic and extrinsic evidence cited therein.

1) Expert Witnesses

In support of its claim construction briefing, Plaintiff intends to submit and rely upon the expert declaration of Dr. Sam Malek. Dr. Malek is qualified to opine on the understanding those skilled in the art would have in the field of technology of the Asserted Patents. As such, he will offer expert declaration testimony regarding the topics described below. Dr. Malek may provide details regarding his training, background and experience, and will explain what he believes should be the applicable level of educational and professional training and experience of one skilled in the art. For each of the Asserted Patents, the date of the earliest claim of priority for the claim of the patent is the date as of which the level of ordinary skill in the art is to be measured.

Dr. Malek may explain why he is at least one of such ordinary skill. Dr. Malek may also offer information and opinion describing and placing in context the inventions claimed in the Asserted Patents, as well as a helpful background and overview of the technology at the time of invention. Additionally, Dr. Malek expects to provide opinions relating to his understanding, as one skilled in the relevant art, of the claims of the Asserted Patents, of the disclosures and teachings of the specification of the Asserted Patents, and of the procedural and substantive aspects of the Asserted Patents' respective file histories, and the histories of related patents, before the Patent

and Trademark Office that may be relevant to and helpful for analyzing and understanding the proper constructions of the disputed claim terms. Dr. Malek also expects to provide opinions directed to each of the disputed claim terms that should be given a particularized construction in support of Plaintiff's proposed constructions, as noted in **Attachment A**. In doing so, he intends to rely upon the claims themselves, the intrinsic evidence, the extrinsic evidence available to him, and his knowledge and expertise. Dr. Malek may also explain why, in his opinion, no particularized construction need be given for certain of the proposed constructions offered by Defendants, because the plain language of such terms would be readily understood by one skilled in the art at the time of invention. As a result, Dr. Malek may opine that no particularized construction for these terms is necessary or appropriate and that the plain and ordinary meaning should apply. Further, Dr. Malek may explain why, in his opinion, Defendants' proposed constructions for terms and phrases diverge from the plain and ordinary meaning without justification, are artificially narrow, or do not adequately capture the proper scope of the patent terms as claimed. Dr. Malek may also opine as to why, in his opinion, Defendants' contentions, if any, that certain claim terms set forth below are indefinite do not pass muster, and why such claim terms are not indefinite. Each term, when viewed in light of the claims, specification and prosecution histories, inform those skilled in the art about the scope of the invention with reasonable certainty, including by providing objective boundaries for those of skill in the art. As Defendants have not yet articulated any basis or support for any indefinite contention, Plaintiff reserves the right to address such contentions in the first instance in connection with its responsive claim construction brief(s). Should Defendants offer their own expert declaration(s) in support of their claim construction briefing, Dr. Malek reserves the right to review, analyze, and respond to such opinions, to the extent necessary, in connection with Plaintiff's responsive and/or reply claim construction briefs.

Dr. Malek also reserves the right to assess, and opine on, any extrinsic evidence Defendants choose to identify, produce, disclose, or rely upon in support of any of their claim construction briefs, and to identify, produce, disclose, or rely upon additional extrinsic evidence in support of such further analysis and opinion and identify or discuss extrinsic evidence relevant to respond to any of Defendants' proposed constructions, which have yet to be disclosed. Finally, Dr. Malek, and/or other expert(s) retained by Plaintiff, may also offer testimony in rebuttal to any expert testimony offered by Defendants including without limitations with respect to the level of ordinary skill in the art, the technology described in the asserted patents, technical background concerning any claim term and what one of ordinary skill in the art would understand the claim term to mean in view of the specifications, the prosecution histories, the claim language, and/or the extrinsic evidence.

By identifying Dr. Malek, Plaintiff does not waive any right and is not precluded from relying on other experts with similar qualifications who may provide a declaration or testimony addressing these issues.

Dated: October 3, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2024, counsel of record for the Defendants are being served with a copy of the foregoing document via email.

By: /s/ Marc Belloli
Marc Belloli

ATTACHMENT A

I. PROPOSED CLAIM CONSTRUCTIONS AND EVIDENCE FOR THE '026, '659 AND '188 PATENTS

No.	Claim Term or Phrase	Proposed Construction	Extrinsic Evidence
1	“electronic key” / “eKey” / “e-key” ('026 claims 1, 2, 6, 10, 13, 15, 19; '659 claims 1, 3, 4, 6-8, 11, 13-14*, 17, 18, 20-21; '188 claims 1, 3, 7, 9-12, 16-17) *Defendants indicated that these terms appear in claim 15, but that claim does not include any term quoted above.	No construction necessary	Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff's expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff's expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff's expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.
2	“the unique access code is associated with privileges for use of the vehicle, the privileges are defined for the unique access code” ('026 claim 1*)	No construction necessary	Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981

No.	Claim Term or Phrase	Proposed Construction	Extrinsic Evidence
	*Defendants indicated that this term appears in claims 2, 7, 11, 14, but those claims do not include the term as quoted above. “the e-key being assigned with the condition of use for the vehicle” / “the e-key being associated with the condition of use of the vehicle” (’188 claims 1, 16)		Expert Declaration: Plaintiff’s expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff’s expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff’s expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.
3	“privileges for use of the vehicle” (’026 claim 1) “privilege settings for use of the vehicle” (’659 claim 18) “condition of use of the vehicle” (’188 claims 1, 16)	No construction necessary	Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff’s expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff’s expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience.

No.	Claim Term or Phrase	Proposed Construction	Extrinsic Evidence
			Plaintiff's expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.
4	"communications circuitry of the vehicle . . . programmable to communicate with the server of the cloud system and communicate with a mobile device" ('026 claim 1) "the vehicle having wireless communication systems for communicating with the server or other servers and for communicating with devices local to the vehicle" ('188 claim 1)	No construction necessary	Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff's expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff's expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff's expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.
5	"communications circuitry of the vehicle . . . configured to process program instructions to enable communication with a server, the communications circuitry includes wireless communication circuitry for enabling local connection with a mobile device" ('659 claims 1,		Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff's expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the

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	11, 18)		term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff's expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff's expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.
6	"transmitting, by the server, the e-key to the recipient using the identifying information so that a device of the recipient is implemented to use the e-key" ('188,claim 1)	No construction necessary	Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff's expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff's expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff's expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.

No.	Claim Term or Phrase	Proposed Construction	Extrinsic Evidence
7	“a server” / “the server” / “said server” (’026 claims 1, 2, 6, 13, 15; ’659 claims 1, 3, 4, 12, 13, 20; ’188 claims 1, 11, 16, 17)	No construction necessary	Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff’s expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff’s expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff’s expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.
8	“the vehicle is configured to receive information from the server to authenticate the request by the mobile device, and if the request is authentic, and the mobile device is provided with data to enable an electronic key to use the vehicle and the electronics of the vehicle instructs the subsystem of the vehicle to enable unlocking of the vehicle and enable starting of	No construction necessary	Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff’s expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto.

No.	Claim Term or Phrase	Proposed Construction	Extrinsic Evidence
	the vehicle for use of the vehicle via the electronic key consistent with the privileges of the unique access code” (’026 claim 1)		Plaintiff’s expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff’s expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.
9	“a subsystem of the vehicle for enabling unlocking of the vehicle . . . a subsystem of the vehicle for enabling starting of the vehicle for use of the vehicle . . . the electronics of the vehicle instructs the subsystem of the vehicle to enable unlocking of the vehicle and enable starting of the vehicle” (’026 claim 1)		Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff’s expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff’s expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff’s expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.

No.	Claim Term or Phrase	Proposed Construction	Extrinsic Evidence
10	“the vehicle sends data to the server during the use of the electronic key on the vehicle, the data including at least use metrics of the vehicle, the use metrics being stored by the server as history of use for the electronic key” (’026 claim 13) “use of the vehicle using the eKey is tracked to identify and log actions taken using the vehicle while the eKey is used” (’659 claim 1) “use data regarding use of the vehicle for when the vehicle is used via the e-key” (’188 claims 1, 16)	No construction necessary	Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff’s expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff’s expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff’s expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.
11	“the vehicle receives deactivation instructions to one or both of the mobile device and the vehicle” (’026 claim 13)	No construction necessary	Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff’s expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the

No.	Claim Term or Phrase	Proposed Construction	Extrinsic Evidence
			term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff's expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff's expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.
12	"warnings of when the use of the vehicle may exceed, has exceeded, or is about to exceed the condition of use" ('188 claim 8)	No construction necessary	Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff's expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff's expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff's expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.

No.	Claim Term or Phrase	Proposed Construction	Extrinsic Evidence
13	“settings that should or may be made to the vehicle when using the e-key” (’188 claim 17)	No construction necessary	Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff’s expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff’s expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff’s expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.
14	“wherein the vehicle is configured to receive or securely store information from the server to perform authentication or verification that the coded data received from the mobile device should activate the eKey” (’659 claim 3)	No construction necessary	Documents in IPR2024-00785 Documents in IPR2024-01167 Documents in IPR2024-00981 Expert Declaration: Plaintiff’s expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto.

No.	Claim Term or Phrase	Proposed Construction	Extrinsic Evidence
			Plaintiff's expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff's expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendants.

II. PROPOSED CLAIM CONSTRUCTIONS AND EVIDENCE FOR THE '268 PATENT

No.	Claim Term or Phrase	Proposed Construction	Extrinsic Evidence
1	“identifying a selected vehicle for applying the user profile, the selected vehicle having a plurality of settable settings, the selected vehicle being one of a plurality of vehicles identified as available by the server” ('268 claim 10)	No construction necessary	Documents in IPR2024-00786 Expert Declaration: Plaintiff’s expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff’s expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff’s expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendant.
2	“a server,” “the server” ('268 claims 10, 18)	No construction necessary	Documents in IPR2024-00786 Documents in IPR2024-00814 Expert Declaration: Plaintiff’s expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff’s expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein,

No.	Claim Term or Phrase	Proposed Construction	Extrinsic Evidence
			as well as based on his experience. Plaintiff's expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendant.
3	"determining, by the server, applicable settings for the selected vehicle, the applicable settings being settings that are preferred to be set as identified from the user profile and are compatible with settings that are settable in the selected vehicle" ('268 claim 10) "the user profile having user settings for the vehicle, wherein certain of the user settings are determined to be compatible for use with the vehicle" ('268 claim 20)	No construction necessary	Documents in IPR2024-00786 Expert Declaration: Plaintiff's expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction proffered by Emerging Auto. Plaintiff's expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff's expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendant.
4	"information for a user profile of a user" ('268 claim 10)	No construction necessary	Documents in IPR2024-00786 Expert Declaration: Plaintiff's expert may offer opinions as discussed in the cover pleading, including that no particularized construction is necessary and/or the term should be construed consistent with any construction

No.	Claim Term or Phrase	Proposed Construction	Extrinsic Evidence
			proffered by Emerging Auto. Plaintiff's expert may explain the plain and ordinary meaning of this term in light of the intrinsic evidence, extrinsic evidence cited herein, as well as based on his experience. Plaintiff's expert may provide rebuttal opinions based on any opinions or evidence cited by the Defendant.