

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

EMERGING AUTOMOTIVE LLC,

Plaintiff,

v.

KIA CORPORATION and KIA AMERICA,
INC.,

Defendants.

§
§
§
§
§
§
§
§

CASE NO. 2:23-CV-00437-JRG
(Lead Case)

PRELIMINARY CONSTRUCTION

Term	Disputed Term	The Court's Construction
A	“electronic key”/ “eKey”/ “e-key” (’026 patent, Claims 1, 2, 6, 13, 15; ’659 Patent, Claims 1, 3, 4, 12, 13, 20; ’188 Patent, Claims 1, 11, 16, 17; ’268 Patent, Claims 10, 18)	“electronic data that enables one or more functions of the vehicle”
B	“the unique access code is associated with privileges for use of the vehicle, the privileges are defined for the unique access code” (’026 Patent, Claim 1) “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 Patent, Claims 1, 16)	Plain and ordinary meaning
C	“privileges for use of the vehicle” (’026 Patent, Claim 1) “privilege settings for use of the vehicle” (’659 Patent, Claim 18) “condition of use of the vehicle” (’188 Patent, Claims 1, 16)	Plain and ordinary meaning

D	“communications circuitry of the vehicle . . . programmable to communicate with the server of the cloud system and communicate with a mobile device” (’026 Patent, 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 Patent, Claim 1)	Plain and ordinary meaning [NOTE: the “communications circuitry” and “wireless communication systems” must be able to communicate with both a server and a mobile device]
E	“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 Patent, Claim 1)	Plain and ordinary meaning [NOTE: not limited to locally communicating]
F	“a server” / “the server” / “said server” (’026 Patent, Claims 1, 2, 6, 13, 15; ’659 patent, Claims 1, 3, 4, 12, 13, 20; ’188 Patent, Claims 1, 11, 16, 17; ’268 Patent, Claims 10, 18)	Plain and ordinary meaning [NOTE: “the/said” refers to the same server]
G	“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 the vehicle for use of the vehicle via the electronic key consistent with the privileges of the unique access code” (’026 Patent, Claim 1)	“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 the vehicle for use of the vehicle via the electronic key consistent with the privileges of the unique access code”
H	“the electronics of the vehicle instructs the subsystem of the vehicle to enable unlocking of the vehicle and enable starting of the vehicle” (’026 Patent, Claim 1)	“the electronics of the vehicle instructs the respective subsystem of the vehicle to enable unlocking of the vehicle and enable starting of the vehicle”

I	“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 Patent, 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 Patent, Claim 1) “use data regarding use of the vehicle for when the vehicle is used via the e-key” (’188 Patent, Claims 1, 16)	Plain and ordinary meaning
J	“settings that should or may be made to the vehicle when using the e-key” (’188 Patent, Claim 17)	Plain and ordinary meaning
K	“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 Patent, Claim 3)	“wherein the vehicle is configured to receive or securely store information from the server to perform (1) authentication or (2) verification that the coded data received from the mobile device should activate the eKey”
L	“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 Patent, Claim 10)	“identifying, by the server, 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”

M	“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 Patent, 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 patent, claim 20)	Plain and ordinary meaning [NOTE: these limitations require a “compatibility check” where the server / cloud based system determines whether settings are compatible with the vehicle”)
N	“communicating to the cloud processing system by the vehicle, changes to user settings, the cloud processing system processing the changes and other changes to the user settings to learn behavior associated with the changes to the user settings; and receiving by the vehicle, from time to time, automatic changes to the user settings of the vehicle, wherein a repeat pattern of the changes is qualified as learned behavior before the automatic changes are sent to the vehicle for programming on the vehicle, wherein the user profile is configured to be updated to account for the automatic changes made to the user settings of the vehicle” (’268 Patent, Claim 20)	“communicating to the cloud processing system by the vehicle, changes to user settings, the cloud processing system processing the changes and other changes to the user settings to learn behavior associated with the communicated and other changes to the user settings; and receiving by the vehicle, from time to time, automatic changes to the user settings of the vehicle, wherein a repeat pattern of the communicated and other changes is qualified as learned behavior before the automatic changes are sent to the vehicle for programming on the vehicle, wherein the user profile is configured to be updated to account for the automatic changes made to the user settings of the vehicle”