

09:32 1 (Hearing begins.)

09:32 2 DEPUTY CLERK: A civil action in Case
09:32 3 AU:25-CV-446, CardWare Incorporated, versus Apple
09:32 4 Incorporated. Case called for a Markman hearing.

09:32 5 THE COURT: Announcements from counsel,
09:32 6 please.

09:32 7 MR. FINDLAY: Good morning, Your Honor.
09:32 8 Eric Findlay on behalf of CardWare, Inc. Also with me
09:32 9 is Matt Berkowitz and Mr. Tim Trost. And Mr. Trost and
09:32 10 Mr. Berkowitz will be handling the argument for our
09:32 11 side, Judge.

09:32 12 THE COURT: Mr. Findlay, welcome back. I
09:32 13 haven't seen you in a while. So it's good to see you.

09:32 14 MR. FINDLAY: Good to be here, Judge.
09:32 15 Thank you.

09:32 16 THE COURT: Mr. Guaragna?

09:32 17 MR. GUARAGNA: Good morning, Your Honor.
09:32 18 John Guaragna from DLA Piper for Apple. With me --

09:32 19 THE COURT: Your background travels well.

09:32 20 MR. GUARAGNA: Thank you, Your Honor.
09:32 21 Got to keep them guessing.

09:32 22 THE COURT: Always makes me think you're
09:32 23 in Texas.

09:32 24 MR. GUARAGNA: Your Honor, with me from
09:32 25 DLA is Sean Cunningham.

CARDWARE EXHIBIT 2024

APPLE v. CARDWARE IPR2025-01147

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

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09:32 1 MR. CUNNINGHAM: Good morning, Your
09:32 2 Honor.

09:32 3 THE COURT: Good morning.

09:32 4 MR. GUARAGNA: Rob Williams.

09:33 5 MR. WILLIAMS: Good morning, Your Honor.

09:33 6 MR. GUARAGNA: Nandan Padmanabhan.

7 MR. PADMANABHAN: Good morning, Your
8 Honor.

09:33 9 MR. GUARAGNA: Zach Loney and Mike
10 Saulnier.

11 THE COURT: Morning.

09:33 12 MR. GUARAGNA: Also with us, Your Honor,
09:33 13 from Apple in-house counsel Natalie Pous. And
09:33 14 Mr. Williams and Mr. Padmanabhan will be handling the
09:33 15 argument for Apple today.

09:33 16 THE COURT: Okey dokey.

09:33 17 Give me one second.

09:33 18 The first claim term is "the payment
09:33 19 information." I'll hear from defendant as to why they
09:33 20 believe it's indefinite.

09:33 21 MR. PADMANABHAN: Good morning, Your
09:33 22 Honor. This is Nandan Padmanabhan on behalf of Apple.

09:33 23 THE COURT: Which office are you in?

09:33 24 MR. PADMANABHAN: I'm in Austin, Your
09:33 25 Honor.

09:33 1 THE COURT: I don't know that we've met.
09:33 2 It's a pleasure.

09:33 3 MR. PADMANABHAN: Thank you. Likewise.

09:33 4 Apple is submitting on the papers --
09:33 5 sorry, on the preliminary construction for "the payment
09:33 6 information" term.

09:33 7 THE COURT: Okay. Give me one second.

09:34 8 Okay. I'm going to maintain -- I'll put
09:34 9 on the record, typically when I find something
09:34 10 indefinite, it's the result of something that's a
09:34 11 grammatical, meaning someone says several widgets
09:34 12 wherein the widget does X, and I just think it's
09:34 13 indefinite grammatically.

09:34 14 But here, I didn't think there was a
09:34 15 problem.

09:34 16 But we'll take up next "Markush Group
09:34 17 Claim Terms." Is this yours as well?

09:34 18 MR. PADMANABHAN: Yes, Your Honor. May I
09:34 19 proceed?

09:34 20 THE COURT: Please.

09:34 21 MR. PADMANABHAN: So the Markush group
09:34 22 format allows a patentee to draft a claim in a way that
09:34 23 the limitation can list several different alternatives
09:34 24 where each different alternative can satisfy that claim
09:34 25 limitation.

09:34 1 The benefit of this drafting format is
09:34 2 that it allows a patentee to draft one claim to cover
09:34 3 all the alternatives instead of having to draft
09:34 4 multiple different claims for each different
09:35 5 alternative.

09:35 6 So for example, if a patentee has three
09:35 7 different claims where the first one says a system
09:35 8 comprising A, B, C, and D, and the second claim says a
09:35 9 system comprising A, B, C, and E, and the third claim
09:35 10 says a system comprising A, B, C and E -- sorry, A, B,
09:35 11 C, and F, that can be replaced with a Markush group
09:35 12 where one claim says a system comprising A, B, C, and
09:35 13 one of a set consisting of D, E, and F.

09:35 14 Now, the trade-off with this format of
09:35 15 drafting is that the patentee has to set forward a
09:35 16 closed set of alternatives so that a person of skill
09:35 17 reading that claim knows what all of the alternatives
09:35 18 are that can satisfy a claim limitation.

09:35 19 Now, we understand from the Court's
09:35 20 preliminary construction that the Court considers it
09:35 21 not indefinite for all the Markush group terms and that
09:35 22 the plain and ordinary meaning controls for each of
09:35 23 these terms.

09:36 24 While we respectfully disagree with the
09:36 25 construction, we would greatly appreciate if the Court

09:36 1 has any clarification to provide regarding whether the
09:36 2 plain and ordinary meaning of the term recites an open
09:36 3 or closed set for each of the identified groups.

09:36 4 Thank you, Your Honor.

09:36 5 THE COURT: A response?

09:36 6 MR. BERKOWITZ: Yeah. Good morning, Your
09:36 7 Honor. Matt Berkowitz for CardWare.

09:36 8 Your Honor, I think the preliminary is
09:36 9 correct and there are a few reasons here.

09:36 10 Apple wants to frame the indefinite
09:36 11 analysis for a Markush group different than what is
09:36 12 otherwise applied for all other claims.

09:36 13 The Supreme Court has told us how to look
09:36 14 at indefiniteness. And the Federal Circuit in
09:36 15 Lexington Luminance, which is unpublished but I think
09:36 16 the lead case on this nonetheless, says that just like
09:36 17 all other claims, we look at whether it's indefinite in
09:36 18 view of the -- in view of the written description in
09:36 19 the specification.

09:37 20 There is no two-step analysis for this to
09:37 21 say, first, is it consisting of or comprising and then
09:37 22 we apply some presumption of open ended or closed
09:37 23 ended. The question remains whether one of ordinary
09:37 24 skill in the art would understand with reasonable
09:37 25 certainty what the scope of the claim is.

09:37 1 And we submitted an expert declaration
09:37 2 that explains that and identified the particular claims
09:37 3 that Apple calls out and looks at the specification and
09:37 4 opines that there's nothing else that's ambiguous as to
09:37 5 what might be within the set.

09:37 6 So I think -- just to respond to Apple's
09:37 7 point, I think it's a false construct, Your Honor, to
09:37 8 set up this decision as if we first determine whether
09:37 9 it's opened or closed ended. It's not a relevant
09:37 10 question here.

09:37 11 Thank you.

09:37 12 THE COURT: Anything else from Apple?

09:37 13 MR. PADMANABHAN: I'll add, Your Honor,
09:38 14 that we're not asking for some special different
09:38 15 treatment of the indefiniteness analysis here. There
09:38 16 is Federal Circuit case law that talks about if a claim
09:38 17 limitation lists various alternatives, each of which
09:38 18 can meet that limitation, that is a Markush group.

09:38 19 Now, in the papers, you will have seen a
09:38 20 lot of back and forth regarding specific format and
09:38 21 specific language being used, but the -- at bottom, it
09:38 22 is does it list alternatives, each of which can satisfy
09:38 23 limitation?

09:38 24 And if that is the case, we have to
09:38 25 determine, can we figure out all of the alternatives or

09:38 1 not, and that is where this analysis of the written
09:38 2 description and the intrinsic evidence comes into play
09:38 3 to see can we figure out the bounds of that set.

09:38 4 Counsel mentioned the Lexington Luminance
09:38 5 case. And consistent with what I'm describing, that
09:38 6 case did a written description analysis to see whether
09:38 7 or not they could understand the full set of options
09:38 8 that were satisfying that claim limitation.

09:39 9 And in that case, the Court did find that
09:39 10 the written description provided sufficient bounds
09:39 11 regarding various substrates that were claimed in the
09:39 12 claims at issue there.

09:39 13 So unlike Lexington Luminance, we do not
09:39 14 think that the claims here have those kinds of bounds
09:39 15 that are easily understood by a person of skill.

09:39 16 Thank you.

09:39 17 THE COURT: Anything else from plaintiff?

09:39 18 MR. BERKOWITZ: The only thing I would
09:39 19 add, Your Honor, is that I think Lexington Luminance
09:39 20 reversed the district court for doing exactly what
09:39 21 Apple is articulating here, and there's a distinction
09:39 22 in the case law between Patent Office procedure and
09:39 23 appeals from rejections in the Patent Office and what
09:39 24 the proper Markush claiming is under the MPEP as
09:39 25 opposed to the -- the test under Nautilus for issued

09:39 1 patents.

09:39 2 That's all, Your Honor. Thank you.

09:39 3 THE COURT: I'll be back in a few

09:39 4 seconds.

09:39 5 (Pause in proceedings.)

09:41 6 THE COURT: The Court -- I don't really
09:41 7 share your concern -- Apple's concern, but of course, I
09:41 8 could be wrong. Gosh knows.

09:41 9 And so if once Apple receives the
09:41 10 plaintiff's expert report on infringement, if you
09:41 11 believe that there is an issue raised by the Markush
09:41 12 group issue, let me know as soon as you get the
09:41 13 infringement report and we'll have a mini Markman if we
09:41 14 need to to make sure that we're all on the same page
09:41 15 and that there's no problem for either party.

09:41 16 Next up, I have "limited-use." Court's
09:41 17 going to adopt its preliminary construction.

09:41 18 And I have "Printed Matter Terms." I'll
09:41 19 hear from Apple on that.

09:41 20 MR. WILLIAMS: Yes, Your Honor. This is
09:41 21 Rob Williams with DLA on behalf of Apple. And I'll be
09:42 22 addressing the -- I guess one category of the printed
09:42 23 matter terms raised in our brief, namely the category
09:42 24 of the terms reciting content not disposed on the
09:42 25 device.

09:42 1 And as Your Honor is aware, the printed
09:42 2 matter doctrine involves a two-step analysis. The
09:42 3 first step is to determine whether the term is directed
09:42 4 to the contents of communication. And if so, it's
09:42 5 considered printed matter.

09:42 6 The second step is to determine whether
09:42 7 there's any functional or structural relationship
09:42 8 between the printed matter and the physical substrate.
09:42 9 If not, printed matter doctrine applies and the
09:42 10 limitation's not entitled to patentable (audio
09:42 11 distortion).

09:42 12 So let's take a look at one of the claims
09:42 13 at issue. I'll put a slide up on the screen.

09:42 14 Hopefully that works. Can everybody see
09:43 15 the Claim 2 of the '820 patent?

09:43 16 THE COURT: Yes.

09:43 17 MR. WILLIAMS: Okay. So Claim 2 of the
09:43 18 '820 patent is a good example of the printed matter
09:43 19 terms in dispute here. The entire claim is directed to
09:43 20 information disposed or not disposed on the body of the
09:43 21 device. And I've highlighted two portions of the claim
09:43 22 in green and yellow.

09:43 23 CardWare concedes that the limitation
09:43 24 highlighted in green is printed matter. And that makes
09:43 25 sense because the green limitation is clearly directed

09:43 1 to matter claimed for what it communicates. It recites
09:43 2 specific information printed on the device like a
09:43 3 cardholder name, a payment issuing logo, and a card
09:43 4 payment network logo.

09:43 5 The yellow limitation is one of the terms
09:43 6 that's in dispute here. It recites a negative
09:43 7 limitation that the body is free of certain information
09:43 8 including account numbers or other fixed payment
09:43 9 numbers.

09:43 10 But it's still directed to communicative
09:44 11 content, in this case, that's not printed on the
09:44 12 device.

09:44 13 So this raises an interesting legal
09:44 14 question of whether the printed matter doctrine applies
09:44 15 to negative limitations. And as far as I can tell,
09:44 16 this is an issue of first impression for Your Honor to
09:44 17 decide.

09:44 18 CardWare faults us for not citing
09:44 19 precedent that the printed matter doctrine applies to
09:44 20 negative limitations. But at the same time, CardWare
09:44 21 cites no authority that negative limitations are
09:44 22 somehow exempt from the printed matter doctrine.

09:44 23 So to answer the question of whether the
09:44 24 printed matter doctrine applies to negative
09:44 25 limitations, I think it would be helpful to consider

09:44 1 the rationale behind the printed matter doctrine.

09:44 2 It's intended to prevent getting a claim
09:44 3 on an existing invention by simply adding printed
09:44 4 matter with no functional or structural relationship to
09:44 5 the substrate on which it's printed.

09:44 6 So to give a simple example, if
09:44 7 MasterCard had an invention on a credit card, Visa
09:45 8 couldn't get a claim -- an identical claim that simply
09:45 9 adds the limitation wherein the card has a Visa logo
09:45 10 disposed thereon. That makes sense because merely
09:45 11 adding a Visa logo to an existing invention doesn't
09:45 12 somehow create a new invention.

09:45 13 So how should that rationale apply to
09:45 14 negative limitations? Should Visa be able to get a
09:45 15 patent identical to the MasterCard claim that merely
09:45 16 adds the limitation wherein the card does not have a
09:45 17 MasterCard logo disposed thereon?

09:45 18 I would submit the answer is no, Your
09:45 19 Honor. That would defeat the entire purpose of the
09:45 20 printed matter doctrine. Clever patent drafters could
09:45 21 avoid the printed matter doctrine altogether by simply
09:45 22 drafting their printed matter limitations in the
09:45 23 negative.

09:45 24 Just like adding a limitation that a Visa
09:45 25 logo's printed on the card, adding -- doesn't create a

09:45 1 new invention, adding a limitation that there's no
09:46 2 MasterCard logo printed on the card doesn't somehow
09:46 3 create a new invention either.

09:46 4 So in our view, Your Honor, negative
09:46 5 limitations, just like limitations drafted in the
09:46 6 affirmative, if they're directed to communicative
09:46 7 content, should be subject to the printed matter
09:46 8 doctrine.

09:46 9 And if we look at the yellow highlighted
09:46 10 limitation in Claim 2, we can see that this limitation,
09:46 11 like the others we've identified in our briefing, is
09:46 12 directed to specific information that is printed or not
09:46 13 printed on the device. And just because the
09:46 14 limitations are drafted in the negative doesn't mean
09:46 15 they should be exempt from the printed matter doctrine.

09:46 16 So as I mentioned, there's a two-step
09:46 17 process here for this analysis, right? There's, first,
09:46 18 is the limitation directed to printed matter? In our
09:46 19 view these negative limitations are.

09:46 20 The second step is to determine whether
09:47 21 there's any functional relationship between the
09:47 22 limitation and the physical substrate on which it's
09:47 23 disposed.

09:47 24 And again, taking a look at Claim 2 of
09:47 25 the '820 patent as an example, there's no dispute that

09:47 1 printing a name or a payment issuing logo or a card
09:47 2 payment logo on the device has any functional
09:47 3 relationship to the physical substrate on which it's
09:47 4 printed, the body of the device. CardWare concedes
09:47 5 that.

09:47 6 Similarly, not printing information on
09:47 7 the device has no functional relationship to the device
09:47 8 either.

09:47 9 CardWare argues that not printing fixed
09:47 10 numbers on the device provides an additional
09:47 11 complementary security function to the claimed
09:47 12 inventions. But the patents don't support CardWare's
09:47 13 argument.

09:47 14 And I'll pull up --

09:48 15 THE COURT: I'm not following you exactly
09:48 16 on how it's directed to communicative content. Could
09:48 17 you help me with that?

09:48 18 MR. WILLIAMS: Sure. So pulling Claim 2
09:48 19 back up. So the communicative content is certain
09:48 20 information that would be communicated. Whether -- in
09:48 21 this case, the yellow limitation is --

09:48 22 THE COURT: That's kind of -- that's --
09:48 23 maybe that's what I'm missing. That's kind of a
09:48 24 tautology to say communicative content is content
09:48 25 that's communicated.

09:48 1 I get that. I'm not following your
09:48 2 argument how it -- what the problem is here.

09:48 3 MR. WILLIAMS: Yeah. Well, so, Your
09:48 4 Honor, if the limitation was written the body --
09:48 5 wherein any account number is disposed on the body, I
09:49 6 don't think there would be any dispute between the
09:49 7 parties that that is communicative content or printed
09:49 8 matter under the printed matter doctrine.

09:49 9 This limitation recites the same
09:49 10 communicative content in the negative, phrased in the
09:49 11 negative. Right? It says the body doesn't have an
09:49 12 account number disposed on it.

09:49 13 And, you know, as I just explained, if --
09:49 14 if the printed matter doctrine did not apply to
09:49 15 negative limitations like this, that would defeat the
09:49 16 entire purpose of the printed matter doctrine. You
09:49 17 could just draft a -- you know, a clever patent drafter
09:49 18 could draft claims that are in the negative.

09:49 19 And -- is that addressing your question,
09:49 20 Your Honor?

09:49 21 THE COURT: Sure. Yes, sir. Thank you.

09:49 22 MR. WILLIAMS: Okay. Yeah. So, you
09:49 23 know, just to put a finer point on it, an account
09:49 24 number, if it was printed on the device, would
09:49 25 communicate certain information to the, you know, a

09:50 1 user of the device. And that's why we believe that
09:50 2 it's, you know, content claimed for what it
09:50 3 communicates, namely an account number. Or an
09:50 4 expiration date or a card security code.

09:50 5 THE COURT: Were you finished? If you
09:50 6 were done, I couldn't tell.

09:50 7 MR. WILLIAMS: Yes. Yes, Your Honor,
09:50 8 with that point and --

09:50 9 THE COURT: Anything else?

09:50 10 MR. WILLIAMS: Yes, Your Honor.

09:50 11 Turning to the second step of the
09:50 12 analysis, I'll bring up a portion of the patent
09:50 13 specification.

09:50 14 Okay. So the second step of the analysis
09:50 15 is whether there's any functional or structural
09:50 16 relationship between the limitation and the physical
09:51 17 substrate on which it's disposed.

09:51 18 And CardWare argues that not printing
09:51 19 fixed numbers on the device provides an additional
09:51 20 complementary security function to the claimed
09:51 21 invention. But the patents don't support CardWare's
09:51 22 argument.

09:51 23 The key aspects of the CardWare patents
09:51 24 is the use of a limited use number or limited duration
09:51 25 number in place of fixed payment information. And we

09:51 1 can see that here in summary of the invention of the
2 '820 patent.

09:51 3 Column 2, starting at Line 28, the patent
09:51 4 describes the invention as including methods, quote,
09:51 5 for generating a limited duration credit card number
09:51 6 when performing a transaction for the purpose of
09:51 7 creating a limited use credit card number which is
09:51 8 limited in scope of use to a predetermined number of
09:51 9 authorized transactions.

09:51 10 This is really the crux of the purported
09:52 11 inventions here. And it's no surprise that the use of
09:52 12 a limited use number is recited in every single
09:52 13 independent claim of the CardWare patents.

09:52 14 It's this use of a limited use number
09:52 15 that the patent describes as providing the enhanced
09:52 16 security for transactions, not whether any other
09:52 17 numbers are printed or not printed on the card.

09:52 18 And apologies. Bear with me while I
09:52 19 bring up one more slide.

09:52 20 We can see that, Your Honor, in the
09:52 21 specification passages that CardWare relies on in its
09:52 22 briefing. And on this slide I've included the '820
09:52 23 patent at Column 11, Lines 36 to 45, and Column 18,
09:52 24 Lines 1 through 6.

09:52 25 In both passages, the patent explains

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09:53 1 that only the number generated at the instant of the
09:53 2 credit card transaction -- in other words, the limited
09:53 3 use number -- matters.

09:53 4 In other words, it doesn't matter whether
09:53 5 payment numbers -- fixed payment numbers are printed on
09:53 6 the card or not because it's the limited use number or
09:53 7 the number generated at the instant the card is being
09:53 8 used that's actually used for the transactions. And
09:53 9 that's why only that number matters.

09:53 10 Whether or not fixed numbers are printed
09:53 11 or not printed on the device is, therefore, irrelevant.
09:53 12 And there can't be any functional relationship between
09:53 13 fixed numbers printed or not printed on the device in
09:53 14 the claimed inventions. They simply wouldn't be used.
09:53 15 As the patent repeatedly tells us, only the number
09:53 16 generated at the instant the card is being used
09:53 17 matters.

09:53 18 Thank you, Your Honor. Happy to answer
09:53 19 any further questions you might have.

09:53 20 THE COURT: I'm good. Thank you.

09:54 21 A response?

09:54 22 MR. TROST: Good morning, Your Honor.

09:54 23 This is Tim Trost for plaintiff CardWare. I'd like to
24 respond to a couple points that Apple's raised.

09:54 25 CardWare agrees that this would be an

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09:54 1 expansion of the printed matter doctrine to expand from
09:54 2 a positive limitation that's printed matter. It would
09:54 3 just include negative limitations that are printed
09:54 4 matter. But such an expansion is warranted here.

09:54 5 And it also has ramifications for other
09:54 6 fields of endeavor. We can easily think of a more
09:54 7 efficient software system that would claim the lack of
09:54 8 specific code or the lack of specific information as
09:54 9 the reason it's more efficient.

09:54 10 If a negative limitation is the same as a
09:54 11 positive limitation, then such an invention just
09:54 12 couldn't be claimed. And so that's the issue. That's
09:54 13 one of the issues there.

09:54 14 And the second issue is that I think -- I
09:54 15 think Your Honor kind of keyed in on this, is that
09:54 16 Apple can't identify what information is communicated
09:54 17 because no information is communicated. That's one of
09:54 18 the points is that there is no fixed payment
09:55 19 information to communicate.

09:55 20 And so in addition to this not being
09:55 21 printed matter, it also adds a functional aspect to the
09:55 22 invention.

09:55 23 So we can easily think of the -- so the
09:55 24 whole point of the invention is to create a secure
09:55 25 credit card, right? It does this by using a limited --

09:55 1 a generated limited use payment information. But in
09:55 2 addition, the lack of fixed payment information adds a
09:55 3 security benefit. And the invention is pretty clear on
09:55 4 that in the specification as well.

09:55 5 I'm just going to share one slide with
09:55 6 Your Honor.

09:55 7 So counsel for Apple previously showed
09:55 8 this exact same quote and highlighted different
09:55 9 portions. The previous sentence says that the device
09:55 10 has no fixed number and, therefore, the account cannot
09:55 11 be compromised.

09:55 12 That the account cannot be comprised also
09:56 13 because of limited numbers generated is irrelevant.
09:56 14 The focus is on does this aspect add functionality? It
09:56 15 does. And it's a complementary benefit to the
09:56 16 generation of limited use payment information.

09:56 17 I'd also note that this sentence says,
09:56 18 therefore, the account cannot be comprised and only the
09:56 19 number generated at the instant matters. Implying in
09:56 20 fact that if there were a fixed payment information,
09:56 21 that information could matter. But that's not here.
09:56 22 And for that reason, there's added functionality.

09:56 23 And so that's all I have to add.

09:56 24 THE COURT: Anything else -- anything
09:56 25 else from Apple?

09:56 1 MR. WILLIAMS: Yes, Your Honor. Just to
09:56 2 address counsel's points about the software patent and
09:56 3 whether the printed matter doctrine should apply to
09:56 4 negative limitations.

09:56 5 The printed matter doctrine would not
09:56 6 apply in that situation because a claim that recited
09:56 7 software that did not include certain limitations that
09:56 8 provided some functionality benefits to the invention
09:57 9 wouldn't pass the second step of the analysis.

09:57 10 And again, returning to my example of the
09:57 11 MasterCard patent and a Visa patent, if the printed
09:57 12 matter doctrine didn't apply to negative limitations,
09:57 13 as counsel for CardWare suggests, then Visa could get a
09:57 14 patent that says a -- the -- on exactly the same claim
09:57 15 of -- identical claim to a MasterCard claim that simply
09:57 16 adds the limitation wherein no MasterCard logo is
09:57 17 disposed thereon. And that -- that -- that simply does
09:57 18 not make sense with the rationale of the printed matter
09:57 19 doctrine.

09:57 20 Just as Visa would not be able to get a
09:57 21 claim that says, you know, an identical claim to the
09:57 22 MasterCard patents wherein a Visa logo is disposed
09:57 23 thereon, similarly, for the same reason, Visa should
09:57 24 not be able to get a claim that says, you know, the
09:58 25 identical claim to the MasterCard claim wherein no

09:58 1 MasterCard logo's disposed thereon.

09:58 2 It's printed matter regardless of whether
09:58 3 the limitation's phrased in the affirmative or the
09:58 4 negative.

09:58 5 Thank you, Your Honor.

09:58 6 THE COURT: Anything else from plaintiff?

09:58 7 MR. TROST: No, Your Honor.

09:58 8 THE COURT: I'll be back in a second.

09:58 9 (Pause in proceedings.)

09:59 10 THE COURT: The Court is going to
09:59 11 maintain its preliminary construction of plain and
09:59 12 ordinary meaning, not subject to the printed matter
09:59 13 doctrine.

09:59 14 With regard to the other claim terms that
09:59 15 the parties submitted that they're not going to argue
09:59 16 on, the Court is going to maintain its preliminary
09:59 17 constructions.

09:59 18 Anything else we need to take up?

09:59 19 MR. GUARAGNA: Not from Apple, Your
09:59 20 Honor.

09:59 21 MR. BERKOWITZ: Not from CardWare either,
09:59 22 Your Honor. Thank you very much.

09:59 23 THE COURT: I'm good. It's not quite the
09:59 24 weekend, but have a good weekend when it gets here.
09:59 25 Take care.

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(Hearing adjourned.)

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2 WESTERN DISTRICT OF TEXAS)
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4

5 I, Kristie M. Davis, Official Court
6 Reporter for the United States District Court, Western
7 District of Texas, do certify that the foregoing is a
8 correct transcript from the record of proceedings in
9 the above-entitled matter.

10 I certify that the transcript fees and
11 format comply with those prescribed by the Court and
12 Judicial Conference of the United States.

13 Certified to by me this 2nd day of
14 September 2025.

15
16 /s/ Kristie M. Davis
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