

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

AUDIOEYE, INC.,

Plaintiff,

v.

ACCESSIBE LTD.,

Defendant.

Case No. 6:21-cv-726-ADA

JOINT CLAIM CONSTRUCTION STATMENT

AudioEye, Inc. and accessiBe Ltd. respectfully submit this Joint Claim Construction Statement. The table in Attachment A lists the terms proposed by accessiBe for construction, along with the parties' competing constructions. As outlined in the briefing, AudioEye contends that one of accessiBe's identified "terms" is improper because accessiBe identified entire claims for construction rather than a claim term. accessiBe contends that its disclosure of claim terms for construction properly identified the most relevant limitations that render the claim indefinite. AudioEye has identified no terms for construction.

Also, the parties in this case are also parties in a co-pending case that was previously in this Court (No. 6:20-cv-997-ADA) ("the Related Case"). While the Related Case was recently transferred to the Western District of New York, the Court in the Related Case construed certain terms before it was transferred. The parties in this case have outlined their understanding on how the Court's constructions from the Related Case would apply in this case. A table outlining the terms and the parties' understanding is included in Attachment B. Both parties expressly reserve all right to challenge and appeal the constructions from the Related Case.

March 30, 2022

Respectfully submitted,

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No.	Term	Patent	Claim(s)	AudioEye's Proposed Construction	accessiBe's Proposed Construction
1	"untagged image"	10,997,361	1, 14, 16	No construction is necessary, the plain and ordinary meaning should apply. To the extent the Court concludes a construction is necessary, it should be construed as follows: "an image/element lacking an alternative text tag"	Indefinite
	"untagged element"	10,997,361 11,029,815 11,061,532	11 1 1		
2	"subject matter of the untagged image"	10,997,361	1	No construction is necessary, the plain and ordinary meaning should apply. To the extent the Court concludes a construction is necessary, it should be construed as follows: "subject matter of the image/element lacking an alternative text tag."	Indefinite
	"subject matter associated with the [untagged] element"	11,029,815	1, 11		

No.	Term	Patent	Claim(s)	AudioEye's Proposed Construction	accessiBe's Proposed Construction
3	"image recognition algorithm"	10,997,361	1	No construction is necessary, the plain and ordinary meaning should apply.	Indefinite
4	"one or more descriptive attributes that is erroneous"	10,997,361	9	No construction is necessary, the plain and ordinary meaning should apply.	Indefinite
	"an erroneous tag"	10,997,361	15		
	"one or more descriptive HTML attributes of the image are erroneous"	11,029,815	7, 17		
	"one or more descriptive attributes of the untaged element are erroneous"	11,061,532	6, 16		

5	Entirety of claim, particularly as it relates to: “applying one or more pre-existing remediations to the one or more compliance issues, wherein the one or more pre-existing remediations is generated by a remote server system performing at least: analyzing, by the remote server system, the [untagged] element to determine a subject matter associated with the [untagged] element; generating, by the remote server system, a descriptive HTML attribute to be associated with the [untagged] element based on the determined subject matter of the [untagged] element; and periodically analyzing, by the	11,029,815	1, 11	AudioEye objects to accessiBe’s improper identification of entire claims and reserves its right to request the Court strike accessiBe’s improper arguments and oppose any arguments relating to indefiniteness.	Indefinite
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No.	Term	Patent	Claim(s)	AudioEye's Proposed Construction	accessiBe's Proposed Construction
	remote server system, the code associated with the web page to assess validity of the assigned descriptive HTML attribute; assigning, by the computer system, the generated descriptive HTML attribute to the [untagged] element in the code of the web page . . .”				
6	“a non-programmatically fixable compliance issue”	11,061,532	1, 11	No construction is necessary, the plain and ordinary meaning should apply. To the extent the Court concludes a construction is necessary, it should be construed as follows: “a compliance issue that requires manual remediation”	Indefinite

ATTACHMENT B. Table outlining the parties’ understanding how the Court’s constructions from the Related Case would apply in this case. Both parties expressly reserve all right to challenge and appeal the constructions from the Related Case.

Claim Term	Patent	Claims	Parties’ Understanding on How The Court’s Constructions from the Related Case Would Apply in this Case
“heuristic engine”	10,896,286	8, 20	Indefinite
“machine learning algorithm”	10,896,286	1, 13	Plain and ordinary meaning
“[the element in the web page] lacking an adequate descriptive attribute”	10,928,978	1, 11	Indefinite except for claims 10 and 13: “descriptive attribute describing a nature of the graphic”
	10,997,361	11	Indefinite except for claim 14: “descriptive attribute describing a nature of the image” ¹
“the [untagged] element lacking an adequate descriptive attribute”	11,029,815	1, 11	Indefinite except for claims 6, 7, 16, and 17: “descriptive attribute describing a nature of the image”
“the [untagged] element lacking an adequate descriptive HTML attribute”	11,061,532	1, 11	Indefinite except for claims 4 and 14: “descriptive HTML attribute describing a nature of the image”
“artificial intelligence algorithm”	10,928,978	16	“alternative text [tag/label]”
	11,061,532	9, 19	
	10,928,978	17	
	10,997,361	10, 19	
“mapping”	11,029,815	6, 16	Plain and ordinary meaning.
	10,997,361	1	
	10,997,361	7	
“contextual cues”			Plain and ordinary meaning.

¹ The parties dispute whether Claim 16 of the ’361 patent would be included.

Claim Term	Patent	Claims	Parties' Understanding on How The Court's Constructions from the Related Case Would Apply in this Case
"assess validity of the assigned descriptive HTML attribute"	11,029,815	1, 11	"assess whether an HTML element of a web page, which was assigned a descriptive HTML attribute, is still there or has been changed"

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2022, all counsel of record who are deemed to have consented to electronic service were served with a copy of the foregoing via the Court's CM/ECF System.

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/s/ Jared C. Bunker