

EXHIBIT A

1 George C. Lombardi (*pro hac vice*)
glombardi@winston.com
2 WINSTON & STRAWN LLP
35 West Wacker Drive
3 Chicago, IL 60601-9703
Telephone: (312) 558-5600
4 Facsimile: (312) 558-5700

5 E. Danielle T. Williams (*pro hac vice*)
dwilliams@winston.com
6 WINSTON & STRAWN LLP
300 South Tryon Street, 16th Floor
7 Charlotte, NC 28202
Telephone: (704) 350-7700
8 Facsimile: (704) 350-7800

9 Michael S. Elkin (*pro hac vice*)
melkin@winston.com
10 WINSTON & STRAWN LLP
200 Park Avenue
11 New York, NY 10166
Telephone: (212) 294-6700
12 Facsimile: (212) 294-4700

13 *Attorneys for Defendants*
14 BANK OF AMERICA CORPORATION
and BANK OF AMERICA, N.A.

Dustin J. Edwards (*pro hac vice*)
dedwards@winston.com
WINSTON & STRAWN LLP
800 Capital St., Suite 2400
Houston, TX 77002-2925
Telephone: (713) 651-2600
Facsimile: (713) 651-2700

Michael A. Tomasulo (SBN: 179389)
mtomasulo@winston.com
Diana Hughes Leiden (SBN: 267606)
dhleiden@winston.com
WINSTON & STRAWN LLP
333 S. Grand Avenue, 38th Floor
Los Angeles, CA 90071-1543
Telephone: (213) 615-1700
Facsimile: (213) 615-1750

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17 NANTWORKS, LLC, a Delaware
limited liability company, and
18 NANT HOLDINGS IP, LLC, a
Delaware limited liability company,

19 Plaintiffs,

20 vs.

21 BANK OF AMERICA
22 CORPORATION, a Delaware
corporation, and BANK OF
23 AMERICA, N.A., a national banking
association,

24 Defendants.
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26
27
28

Case No. 2:20-cv-07872-GW-PVC

**DEFENDANTS' FINAL ELECTION OF
ASSERTED PRIOR ART**

1 **I. INTRODUCTION**

2 Pursuant to the Court’s Scheduling Order (Dkt. Nos. 155, 157, 160), Defendants
3 Bank of America Corporation and Bank of America, N.A. (collectively “Bank of
4 America” or “Defendants”) hereby provide their Final Election of Asserted Prior Art.

5 **II. NANTWORKS’S FINAL ELECTION OF ASSERTED CLAIMS**

6 On January 14, 2022, NantWorks, LLC and Nant Holdings IP, LLC
7 (“NantWorks” or “Plaintiffs”) served their Final Election of Asserted Claims limiting
8 the asserted claims to eighteen (18) total claims and no more than five claims per
9 Asserted Patents follows:¹

| 10 Asserted Patents | Asserted Claims |
|--|------------------------------|
| 11 U.S. Pat. No. 7,881,529 (“’529 patent”) | Claims 4 and 20 |
| 12 U.S. Pat. No. 7,899,252 (“’252 Patent”) | Claims 18, 27, 29, and 31 |
| 13 U.S. Pat. No. 8,478,036 (“’036 Patent”) | Claim 1 |
| 14 U.S. Pat. No. 8,520,897 (“’897 Patent”) | Claims 25, 30, 33–34, and 39 |
| 15 U.S. Pat. No. 9,324,004 (“’004 Patent”) | Claims 1, 6, and 18 |
| 16 U.S. Pat. No. 9,031,278 (“’278 Patent”) | Claims 1 and 4–5 |

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23 ¹ Plaintiffs dropped their infringement allegations asserting U.S. Pat. No. 8,463,030
24 (“’030 Patent”) and U.S. Pat. No. 8,326,038 (“’038 Patent”) (including Counts III and
25 IV of their First Amended Complaint). The parties are working on an agreement, which
26 includes a stipulated motion to dismiss, to resolve the claims related to the ’030 Patent
27 and ’038 Patent in this case. Bank of America anticipates that motion will be filed in
28 short order for the Court’s consideration. To the extent that the parties fail to reach
agreement, Bank of America reserves the right to continue to maintain its counterclaims
of non-infringement and invalidity of the ’030 Patent and ’038 Patent and to amend this
Final Election to include prior art references that invalidate the claims of the ’030 Patent
and ’038 Patent.

1 **III. DEFENDANTS' FINAL ELECTION OF ASSERTED PRIOR ART**

2 Bank of America elects no more than five (5) asserted prior art references² per
3 Asserted Patent and eighteen (18) total references. Bank of America may amend these
4 limits on prior art references on agreement of the parties or by leave of Court for good
5 cause shown. For each Asserted Patent, Bank of America elects the following prior art
6 references:³

7 **U.S. Pat. No. 7,881,529**

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| No. | Prior Art Reference Asserted to Render the Asserted Claims Invalid |
|------|--|
| 9 1 | Rhoads and QBIC System |
| 10 2 | Rhoads, QBIC System, and Krouse |
| 11 3 | Ehrhart, QBIC System, and Krouse |
| 12 4 | Cooltown System and QBIC System |
| 13 5 | Cooltown System, QBIC System, and Krouse |

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16 **U.S. Pat. No. 7,899,252**

17

| No. | Prior Art Reference Asserted to Render the Asserted Claims Invalid |
|------|--|
| 18 1 | Rhoads and QBIC System |

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20 ² A “prior art reference” is a single prior art reference that is asserted to anticipate a
21 claim, or a combination of prior art references asserted to render a claim obvious. A
22 prior art instrumentality (such as a device or process) and associated references that
23 describe that instrumentality shall count as one “prior art reference.” By way of
24 example, if Bank of America asserts an invalidity theory that System X is prior art and
25 supports that theory with Document A, B, C, etc., that collection of evidence (System
26 X + Document A, B, C, etc.) would constitute one prior art reference. The same prior
27 art reference or obviousness combination asserted against multiple patents counts only
28 as a single prior art reference with respect to the overall limit of 18 references or
obviousness combinations.

³ Bank of America reserves the right to rely on any materials, including any of the
references disclosed in its Preliminary or Supplemental Invalidity Contentions, for
background or to show the state of the art or knowledge of one of ordinary skill in the
art. Bank of America further reserves the right to rely on any of the KSR theories /
explanations under S.P.R. 2.5.2 disclosed in its Preliminary or Supplemental Invalidity
Contentions to support obviousness.

| No. | Prior Art Reference Asserted to Render the Asserted Claims Invalid |
|-----|--|
| 2 | Mault and QBIC System |
| 3 | Harris and QBIC System |
| 4 | Ehrhart and QBIC System |
| 5 | Cooltown System and QBIC System |

U.S. Pat. No. 8,478,036

| No. | Prior Art Reference Asserted to Render the Asserted Claims Invalid |
|-----|--|
| 1 | Rhoads and QBIC System |
| 2 | Mault, QBIC System, and Sizer |
| 3 | Harris and QBIC System |
| 4 | Ehrhart and QBIC System |
| 5 | Cooltown System and QBIC System |

U.S. Pat. No. 8,520,897

| No. | Prior Art Reference Asserted to Render the Asserted Claims Invalid |
|-----|--|
| 1 | Rhoads and QBIC System |
| 2 | Rhoads, QBIC System, and Krouse |
| 3 | Sizer and QBIC System |
| 4 | Sizer, QBIC System, and Krouse |
| 5 | Harris, QBIC System, and Krouse |

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