

1 Edward R. Nelson III (*Admitted Pro Hac Vice*)
Texas Bar No. 00797142
2 Ryan P. Griffin (*Admitted Pro Hac Vice*)
Texas Bar No. 24053687
3 Christopher G. Granaghan (*Admitted Pro Hac*
Vice)
4 Texas Bar No. 24078585
ed@nbafirm.com
5 ryan@nbafirm.com
chris@nbafirm.com
6 NELSON BUMGARDNER ALBRITTON P.C.
3131 West Seventh Street, Suite 300
7 Fort Worth, Texas 76107
Telephone: (817) 377-9111
8 Facsimile: (817) 377-3485

STEFANI E. SHANBERG (State Bar No. 206717)
sshanberg@mofocom
NATHAN B. SABRI (State Bar No. 252216)
nsabri@mofocom
MADELEINE E. GULLY (State Bar No. 263120)
mgully@mofocom
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105
Telephone: (415) 268-7000
Facsimile: (415) 268-7522

Attorneys for Defendant
APPLE INC.

9 Christopher D. Banys (SBN 230038)
Richard C. Lin (SBN 209233)
10 Jennifer L. Gilbert (SBN 255820)
cdb@banyspc.com
11 rcl@banyspc.com
jlg@banyspc.com
12 BANYS, P.C.
1030 Duane Avenue
13 Santa Clara, CA 95054
Telephone: (650) 308-8505
14 Facsimile: (650) 353-2202

15 Attorneys for Plaintiff
FIRSTFACE CO., LTD.

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

21 FIRSTFACE CO., LTD.,
22 Plaintiff,
23 v.
24 APPLE INC.,
25 Defendant.

CASE NO. 3:18-cv-02245-JD
**JOINT CASE MANAGEMENT
STATEMENT**
Date: August 30, 2018
Time: 10:00 AM
Place: Courtroom 11, 19th Floor
Judge: Hon. James Donato

1 Plaintiff Firstface Co., Ltd. (“Firstface”) and Defendant Apple Inc. (“Apple”), hereby file this Joint
2 Case Management Statement.¹

3 **1. Jurisdiction and Service:** *The basis for the court’s subject matter jurisdiction over plaintiff’s*
4 *claims and defendant’s counterclaims, whether any issues exist regarding personal jurisdiction or*
5 *venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed*
6 *deadline for service.*

7 This case is an action for patent infringement and arises under the patent laws of the United States.
8 The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338(a). No issues exist regarding
9 personal jurisdiction or venue as to this case, and no parties remain to be served.

10 **2. Facts:** *A brief chronology of the facts and a statement of the principal factual issues in dispute.*

11 Firstface filed its Complaint against Apple on April 13, 2018. Firstface asserts the following patents
12 (collectively, the “asserted patents”):

- 13 (1) U.S. Patent No. 8,831,557 (the “’557 patent”);
- 14 (2) U.S. Patent No. 9,633,373 (the “’373 patent”); and
- 15 (3) U.S. Patent No. 9,779,419 (the “’419 patent”).

16 Firstface alleges that Apple directly infringes the asserted patents by making, using, offering for
17 sale, selling, and/or importing Apple mobile devices that support fingerprint authentication (for the ’557
18 patent) and Apple mobile devices that support fingerprint authentication and Siri functionality (for the ’373
19 and ’419 patents), including the iPhone 5s, iPhone 6, iPhone 6s, iPhone 6s Plus, iPhone SE, iPhone 7,
20 iPhone 7 Plus, iPhone 8, iPhone 8 Plus, iPad (2017 version, a/k/a the iPad (5th generation)), iPad (2018
21 version, a/k/a the iPad (6th generation)), iPad Air 2, iPad mini 3, iPad mini 4, iPad Pro (12.9 inch) (1st
22 generation), iPad Pro (9.7 inch) (1st generation), iPad Pro (12.9 inch) (2nd generation), and iPad Pro (10.5
23 inch) (2nd generation) (collectively, the “accused products”). Firstface also alleges that Apple induces the
24 infringement and contributes to the infringement of the ’557, ’363, and ’419 patents by its customers and
25

26 ¹ In preparing this joint statement, the parties coordinated with the parties in *Firstface Co., Ltd. v. Samsung*
27 *Electronics Co., Ltd. et al*, Case No. 3:18-cv-02243-JD, which was related to this case on June 28, 2018,
28 to propose a common procedural schedule, and will endeavor to coordinate where appropriate on other
29 issues, including on the submission of a common protective order and ESI order. There is one patent in
common among the cases

1 other end users of the accused products. Finally, Firstface alleges that, despite knowing of the '557 patent
2 since at least early 2015, Apple persisted in infringing, and accordingly has and continues to willfully
3 infringe the '557 patent.

4 On July 24, 2018, Apple filed a Motion to Dismiss Plaintiff Firstface Co., Ltd.'s Complaint
5 ("Apple's Motion") (Dkt. No. 36) under Federal Rule of Civil Procedure 12(b)(6), on the grounds that the
6 Complaint fails to provide adequate notice to Apple of the basis for Firstface's claims of direct
7 infringement, induced infringement, contributory infringement, and willful infringement. Firstface filed
8 an opposition to Apple's Motion on August 7, 2018 (Dkt. Nos. 40, 41). Apple filed a reply in support of
9 its Motion on August 14, 2018 (Dkt. No. 42). A hearing on Apple's Motion is set for August 30, 2018, at
10 10:00 a.m.

11 **3. Legal Issues:** *A brief statement, without extended legal argument, of the disputed points of law,*
12 *including reference to specific statutes and decisions.*

13 The principal disputed legal issues are:

- 14 (1) The proper construction of the asserted claims of the asserted patents;
- 15 (2) Whether Apple directly infringes any asserted claim of the asserted patents under 35 U.S.C.
16 § 271(a) and/or whether Apple is liable for indirect infringement of any asserted claim of
17 the asserted patents under 35 U.S.C. §§ 271(b) or (c);
- 18 (3) Whether any asserted claim of the asserted patents is invalid, including under 35 U.S.C. §§
19 101, 102, 103, 112 and/or 116;
- 20 (4) Whether any asserted claim of the asserted patents is unenforceable;
- 21 (5) Whether Firstface's claims of patent infringement are barred by equitable estoppel,
22 ensnarement, reverse doctrine of equivalents, and/or waiver;
- 23 (6) If liability is established, whether Firstface is entitled to any damages under 35 U.S.C. § 284,
24 and, if so, the amount of such damages;
- 25 (7) If liability and damages are established, whether such damages are limited by 35 U.S.C. §§
26 286-288 and/or 28 U.S.C. § 1498 and, if so, to what extent; and
27
28

1 (8) Whether this case is exceptional under 35 U.S.C. § 285, entitling the prevailing party to
2 attorneys' fees.

3 **4. Motions:** *All prior and pending motions, their current status, and any anticipated motions.*

4 As described above in Section 2, Apple's Motion to Dismiss is currently pending. Apple intends
5 to file dispositive motions on noninfringement and/or invalidity at an appropriate time in the case.

6 **5. Amendment of Pleadings:** *The extent to which parties, claims, or defenses are expected to be
7 added or dismissed and a proposed deadline for amending the pleadings.*

8 Aside from the answer, defenses, and counterclaims that Apple will file, the parties do not currently
9 expect to add or dismiss parties, claims, or defenses, but reserve the right to do so in accordance with Fed.
10 R. Civ. P. 15.

11 **6. Evidence Preservation:** *A brief report certifying that the parties have reviewed the Guidelines
12 Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"), and confirming
13 that the parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and
14 proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this
15 action. See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.*

16 The parties have reviewed the ESI Guidelines and have met and conferred regarding reasonable
17 and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action.

18 **7. Disclosures:** *Whether there has been full and timely compliance with the initial disclosure
19 requirements of Fed. R. Civ. P. 26, and a description of the disclosures made.*

20 The parties will make disclosures in accordance with Fed. R. Civ. P. 26(a)(1)(A) on September 6,
21 2018, as set forth in paragraph 17 below.

22 **8. Discovery:** *Discovery taken to date, if any, the scope of anticipated discovery, any proposed
23 limitations or modifications of the discovery rules, a brief report on whether the parties have
24 considered entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed.
25 R. Civ. P. 26(f), and any identified discovery disputes.*

26 The parties have not yet served any discovery and have not identified any discovery disputes.

27 a. *Changes to the timing, form, or requirement for disclosures (Fed. R. Civ. P. 26(f)(3)(A)):*

1 The parties propose serving initial disclosures by September 6, 2018. The parties do not propose
2 any change to the form or requirement for such disclosures.

3 *b. The subjects on which discovery may be needed (Fed. R. Civ. P. 26(f)(3)(B)):*

4 Plaintiff anticipates needing discovery on at least the following topics:

- 5 (1) Defendant's infringement of the asserted patents, including discovery related to the design,
6 development, and testing of the infringing features of the accused devices;
- 7 (2) The damages Defendant owes for infringing the asserted patents, including discovery
8 related to Defendant's marketing, costs, sales, revenues, and profits relating to the accused
9 products;
- 10 (3) Defendant's patent licenses and licensing policies;
- 11 (4) Defendant's claim constructions for the asserted patents;
- 12 (5) Defendant's willful infringement of the asserted patents, including discovery regarding
13 Defendant's pre-suit knowledge of the asserted patents; and
- 14 (6) Defendant's bases for its defenses and counterclaims.

15 Defendant anticipates seeking discovery on at least the following topics:

- 16 (1) The factual bases for Plaintiff's claims and defenses;
- 17 (2) The proper claim constructions for the asserted claims of the asserted patents;
- 18 (3) The asserted patents, including, but not limited to prior art, invalidity analyses,
19 unenforceability, conception, reduction to practice, prosecution history, assignment history,
20 financial or ownership interests, and alleged infringement analyses;
- 21 (4) Any actual or potential licenses of the asserted patents, or comparable licenses, and the
22 practices of the licensees that allegedly embody the asserted patents;
- 23 (5) Plaintiff's cease and desist or demand correspondence regarding the asserted patents; and
- 24 (6) Plaintiff's allegations of damages, including, but not limited to license agreements,
25 royalties, market conditions, and profits.

26 Defendant reserves the right to amend the subjects for discovery pending further discovery in this
27 matter.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.