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12 *Apple Inc.*

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15 **SAN DIEGO DIVISION**

16 APPLE INC.,

17 Plaintiff,

18 vs.

19 WI-LAN INC.

20 Defendant.

No.: 3:14-cv-2235-DMS-BLM;
Consolidated with 3:14-cv-01507-DMS-
BLM
DEMAND FOR JURY TRIAL

**AMENDED JOINT CLAIM
CONSTRUCTION HEARING
STATEMENT, CHART AND
WORKSHEET**

21
22 WI-LAN INC.,

23 Plaintiff,

24 vs.

25 APPLE INC.,

26 Defendant.
27

Department: 13A
Judge: Hon. Dana M. Sabraw
Magistrate Judge: Hon. Barbara L. Major
Complaint Filed: June 19, 2014

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 In anticipation of the upcoming claim construction hearing on October 30,
3 2017, and in accordance with the Court’s Amended Case Management Order and
4 the Local Rules, Apple Inc. (“Apple” or “Plaintiff”) and Wi-LAN Inc. (“Wi-LAN”
5 or “Defendant”) file this Amended Joint Claim Construction Hearing Statement,
6 Chart, and Worksheet.

7 **I. Anticipated Time for Hearing**

8 The parties request one half day for the hearing.

9 **II. Witnesses at the Hearing**

10 The parties will not call any witnesses, including experts, at the hearing.

11 **III. Order of Presentation**

12 The parties propose that Wi-LAN argue first, followed by Apple, followed
13 by Wi-LAN’s rebuttal argument.

14 The parties dispute whether or not a technology tutorial will be presented to
15 the Court, and ask the Court to resolve the issue.

16 **[Wi-LAN’s position:]**

17 Apple’s request for a technology tutorial at the Claim Construction Hearing
18 should be denied. Today, Friday, October 27, 2017, Apple indicated for the first
19 time that it intended to conduct a separate tutorial hearing in this case at the Claim
20 Construction Hearing. The parties submitted a JCCS on August 10, 2017, which
21 identified the structure, procedure, and timing for the Claim Construction Hearing.
22 At no point in the discussions regarding the JCCS (or at any time prior to today)
23 did Apple indicate that it intended to have a tutorial hearing at the Claim
24 Construction Hearing. Having a separate tutorial hearing and discussing the
25 structure, procedure, and timing of such a technology tutorial is certainly
26 something that should have been raised by Apple before today. Wi-LAN advised
27 Apple that such tutorial is unnecessary in light of the prior litigation, the Court’s
28

1 familiarity with the patents, and the time constraints given the number of terms and
2 issues to be resolved by the Court. Apple believes that this Court’s Amended Case
3 Management Order scheduled a technology tutorial. *See* Dkt. 116 at ¶9. However,
4 that Order makes clear that such technology tutorial is subject to Patent Local Rule
5 4.5 which states that “The Court *may also order in its discretion* a tutorial hearing
6 to occur before, or on the date of, the Claim Construction Hearing.” Here, the
7 Court did not order a tutorial, and Apple never raised this issue until today - the
8 last day before the hearing. To try to resolve the dispute, Wi-LAN requested that
9 Apple provide its tutorial slides so that Wi-LAN could determine the scope of
10 Apple’s proposed tutorial and whether it needs to prepare a separate tutorial in
11 response. Apple refused. Apple is free to explain the technology in the context of
12 oral argument regarding any one of the disputed terms, but a separate tutorial is
13 prejudicial and unnecessary.

14 **[Apple’s position:]**

15 For two reasons, Apple should be permitted to provide a short technical
16 tutorial to the Court before the parties begin their arguments on the disputed
17 terms. First, the Court’s Amended Case Management Order expressly orders that
18 the “Claim Construction and tutorial hearing will be held October 30, 2017, at 9:00
19 a.m.,” (Dkt. No. 116 at 2, emphasis added), thus contemplating that either or both
20 of the parties would provide a tutorial to the Court during the claim construction
21 hearing. The Court has not amended this Order, and nothing in the parties’ August
22 10 Joint Claim Construction Statement sought to take the tutorial hearing off
23 calendar. Dkt. No. 143. Second, Wi-LAN ignores the benefits of technical
24 tutorials, including the context for the claim construction arguments they
25 provide. Notably, both parties’ opening claim construction briefs provided a
26 background of the technology before arguing the specific terms in dispute. Apple
27
28

1 believes a similar tutorial on the background of the technology will be helpful for
2 the Court at the claim construction hearing, and is prepared to provide one.

3 **III. Significant Terms for Construction**

4 The parties agree to the following nine (9) disputed terms as among the ten
5 most significant terms for construction:

- 6 1. packing sub-header ('040 Patent);
- 7 2. queue(s) ('145 Patent; '723 Patent; '761 Patent; '020 Patent);
- 8 3. wireless subscriber unit / subscriber unit / subscriber radio unit /
9 subscriber station ('145 Patent; '723 Patent; '020 Patent; '761 Patent;
10 '757 Patent);¹
- 11 4. connections / uplink connections / a plurality of connections served by
12 the subscriber unit / connections established at a [or the] subscriber
13 unit [or subscriber station] ('145 Patent; '723 Patent; '020 Patent;
14 '761 Patent; '757 Patent); and
- 15 5. poll-me bit ('020 Patent);
- 16 6. poll-me message ('020 Patent);
- 17 7. frame map / sub-frame map ('723 Patent; '020 Patent; '757 Patent);
- 18 8. whether the preamble of independent claim 26 of the '145 Patent is
19 limiting;
- 20 9. fairness algorithm ('145 Patent).

21 Apple does not contend that the construction of any of these terms is case or
22 claim dispositive, as the claims are invalid and/or not infringed under either side's

23 _____
24 ¹ The parties dispute whether the term “subscriber radio unit” should be construed
25 by the Court. [**Apple statement:**] Apple contends that the incidence of the term
26 in claim 2 of U.S. Patent No. 8,462,723 is a scrivener’s error and the term should
27 be read “subscriber unit.” [**Wi-LAN statement:**] The Patentee used the terms
28 “wireless subscriber unit” and “subscriber radio unit” interchangeably, as the
intrinsic record shows, and the terms should be construed the same.

1 construction. Wi-LAN does not contend the construction of any of these terms are
2 case or claim dispositive, as the claims are valid and infringed under either side's
3 construction.

4 Since filing the original Joint Claim Construction materials, the parties have
5 agreed to the construction of the following term:

- 6 1. QoS ('145 patent; '723 patent)

7 Since filing the original Joint Claim Construction materials, Apple has
8 modified its proposed constructions for the following terms (as reflected in the
9 modified Amended Joint Claim Construction Chart attached as Exhibit A and the
10 Amended Joint Claim Construction Worksheet attached as Exhibit B):

- 11 1. Queue(s)
12 2. Frame map / sub-frame map
13 3. Poll-me bit / poll-me message

14 **IV. Joint Claim Construction Chart and Worksheet**

15 The parties have attached their Amended Joint Claim Construction Chart as
16 Exhibit A and the Amended Joint Claim Construction Worksheet as Exhibit B to
17 this statement.

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