

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SMARTFLASH LLC, *et al.*,

Plaintiffs,

v.

APPLE INC., *et al.*,

Defendants.

Case No. 6:13-cv-447-MHS-KNM

JURY TRIAL DEMANDED

**DEFENDANTS' P.R. 4-2 PRELIMINARY CLAIM
CONSTRUCTIONS AND EXTRINSIC EVIDENCE**

Pursuant to Patent Rule ("P.R.") 4-2 and the Court's Docket Control Order (Dkt. No. 70), Defendants Apple Inc., Game Circus LLC,¹ KingsIsle Entertainment Incorporated and Robot Entertainment, Inc. (collectively, "Defendants"), by their attorneys, make the following disclosure of preliminary claim constructions and extrinsic evidence, attached hereto as Exhibit A, for the asserted claims of the patents-in-suit: U.S. Patent No. 7,334,720 (the "'720 patent") claims 1, 11, 13, 14, and 15; U.S. Patent No. 7,942,317 (the "'317 patent") claims 6, 7, 8, 13, 14, 16, and 18; U.S. Patent No. 8,033,458 (the "'458 patent") claims 7, 8, 10, 11; U.S. Patent No.

¹ Game Circus LLC also adopts and incorporates these same preliminary claim constructions and extrinsic evidence in Civil Action No. 6:13-cv-448. In addition, to the extent that there is extrinsic evidence set forth in Defendants' P.R. 4-2 Preliminary Claim Constructions and Identification of Extrinsic Evidence in Civil Action No. 6:13-cv-448 which is not included in Defendants' P.R. 4-2 Preliminary Claim Constructions and Extrinsic Evidence in Civil Action No. 6:13-cv-447, Game Circus LLC, Robot Entertainment, Inc., and KingsIsle Entertainment Incorporated join in and adopt such extrinsic evidence here. Game Circus LLC, Robot Entertainment, Inc., and KingsIsle Entertainment Incorporated also join in and adopt any reservation of rights made by Defendants in Defendants' P.R. 4-2 Preliminary Claim Constructions and Identification of Extrinsic Evidence in Civil Action No. 6:13-cv-448.

8,061,598 (the “598 patent”) claims 2, 7, 13, 15, 26, and 31; U.S. Patent No. 8,118,221 (the “221 patent”) claims 2, 11, 14, and 32; and U.S. Patent No. 8,336,772 (the “772 patent”) claims 5, 10, 14, 22, 26, and 32.

Defendants have logically grouped the claim terms, phrases, and clauses in Exhibit A based on commonalities in legal and/or technical analysis relevant to claim construction, in an effort to streamline the issues for the Court’s resolution.

Defendants reserve the right to amend and/or supplement this disclosure, including the right to add to, or remove from or otherwise modify or amend Exhibit A to the extent allowed by applicable law, rule, order, or other practice or agreement. Defendants may further amend and/or supplement this disclosure in light of the positions that plaintiffs take in this litigation and/or in the event this litigation is transferred to the Northern District of California. Such positions may require the Court to construe other claim terms in addition to the ones identified in Exhibits A. Further, for the terms in Exhibit A identified as indefinite, Defendants intend to file a letter brief asking the court for permission to file a Motion of Summary Judgment of Indefiniteness, pursuant to the Docket Control Order (Dkt. No. 70).

Defendants may also offer the testimony of Dr. Andrew Cromarty. Dr. Cromarty may provide testimony regarding the technology that underlies the alleged inventions, the level of ordinary skill in the art, how the patent, claims and intrinsic or extrinsic evidence would be understood by one of ordinary skill in the art, the alleged inventions claimed in the patents-in-suit, and the meaning of the disputed claim terms, phrases and clauses to one of ordinary skill in the art, or any other opinions or testimony useful to the Court in conducting the requisite claim construction. Apple may also offer Dr. Cromarty for any tutorial the Court may wish to conduct.

Dr. Cromarty may also rebut any extrinsic evidence offered by plaintiffs, including any expert opinions.

In addition to the extrinsic evidence identified herein, Defendants further reserve the right to rely on any extrinsic evidence identified by Plaintiffs in this matter or by any party in the related litigation, *Smartflash LLC, et al., v. Samsung Electronics Co., Ltd., et al.*, Case No. 6:13-cv-448-MHS-KNM.

Pursuant to P.R. 4-2(c), Defendants are prepared to meet and confer with Plaintiffs SmartFlash LLC and SmartFlash Technologies Limited (collectively, "Plaintiffs") at a mutually agreeable time to narrow the issues and finalize preparation of a Joint Claim Construction and Prehearing Statement.

Dated: April 1, 2014

By: 

Ching-Lee Fukuda
NY Bar No. 2884088
(Eastern District of Texas Member)
Ching-Lee.Fukuda@ropesgray.com
Kevin J. Post (*pro hac vice*)
Kevin.Post@ropesgray.com
Josef B. Schenker (*pro hac vice pending*)
Josef.Schenker@ropesgray.com
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036-8704
T: (212) 596-9000
F: (212) 596-9050

James R. Batchelder
CA Bar No. 136347
(Eastern District of Texas Member)
James.Batchelder@ropesgray.com
ROPES & GRAY LLP
1900 University Ave 6th Floor
East Palo Alto, CA 94303-2284
T: (650) 617-4000
F: (650) 617-4090

Eric M. Albritton
Texas State Bar No. 00790215
ema@emafirm.com
ALBRITTON LAW FIRM
P.O. Box 2649
Longview, Texas 75606
Telephone: (903) 757-8449
Facsimile: (903) 758-7397

Attorneys for Defendant
APPLE INC.

By:/s/ Andrew T. Gorham (with permission)
Andrew T. Gorham
Texas Bar No. 24012715 gorham@fr.com
Thomas B. Walsh, IV
walsh@fr.com
Texas Bar No. 00785173
FISH & RICHARDSON P.C.
1717 Main Street, Suite 5000
Dallas, Texas 75201
Tel: (214) 747-5070
Fax: (214) 747-2091

Attorneys for Defendants
**GAME CIRCUS LLC, KINGSISLE
ENTERTAINMENT INCORPORATED,
AND ROBOT ENTERTAINMENT, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2014, I caused a copy of the foregoing document to be served on counsel of record via electronic mail.

/s/ Ching-Lee Fukuda
Ching-Lee Fukuda

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