

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SRC LABS LLC and SAINT REGIS
MOHAWK TRIBE,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

Case No. 2:18-cv-00321-JLR

**MICROSOFT CORPORATION'S
PRELIMINARY INVALIDITY
CONTENTIONS**

Pursuant to Local Patent Rule 121 and this Court’s Standing Order for Patent Cases, defendant Microsoft Corporation (“Microsoft”), by and through counsel, hereby serves its Preliminary Invalidity Contentions (“Invalidity Contentions”) on plaintiffs SRC Labs, LLC and Saint Regis Mohawk Tribe (collectively, “SRC”) regarding: claims 1-7, 11, 12, 15, and 21 of U.S. Patent No. 6,076,152 (“152 Patent”); claims 1-7, 11, 12, 15, and 21 of U.S. Patent No. 6,247,110 (“110 Patent”); claims 1-5, 10-13, 18, and 25 of U.S. Patent No. 6,434,687 (“687 Patent”); claims 1, 8, 9, 17, 18, 21, 22, and 23 of U.S. Patent No. 7,225,324 (“324 Patent”); claims 1, 2, 13, and 15 of U.S. Patent No. 7,421,524 (“524 Patent”); and claims 1, 8, 9, 17, 18, 21, 22, and 23 of U.S. Patent No. 7,620,800 (“800 Patent”) (collectively, the “Asserted Claims” of the “Asserted Patents”). Pursuant to Local Patent Rule 122, Microsoft also serves its accompanying document production concurrently herewith.

I. INVALIDITY CONTENTIONS

The Court has not yet construed any of the terms in the Asserted Patents. Accordingly, these contentions are based on Microsoft’s present understanding of the Asserted Claims and, where possible, SRC’s apparent construction of the claims in its Infringement Contentions, dated June 15, 2018. Microsoft’s Invalidity Contentions, including the attached invalidity claim charts, may reflect alternative positions dependent upon claim construction and scope. These Invalidity Contentions are not an admission by Microsoft that the accused products, including any current or past versions of these products or Microsoft’s technology, are covered by the asserted claims under any reasonable or even conceivable construction or that the accused technology infringes even if SRC’s current contentions were accepted. Further, by including prior art that anticipates or renders obvious claims based on SRC’s claim construction or any other claim construction, Microsoft is not adopting SRC’s claim construction or any other claim construction. Microsoft’s Invalidity Contentions are made in a

variety of alternatives and do not represent Microsoft's agreement with SRC's apparent applications or view as to the meaning, definiteness, written description support for, or enablement of any claim contained therein.

Microsoft reserves the right to amend these disclosures and associated document production, should SRC provide any information that it failed to provide in its Local Patent Rule 120 disclosures, should SRC amend its disclosures in any way, should the Court's claim construction order make amendment necessary, should additional information about the prior art come to light, or should additional prior art come to light. To the extent that SRC's Local Patent Rule 120 disclosures lack the specificity required under the Local Patent Rules as to the specifics of certain aspects of SRC's infringement positions, Microsoft provides these Invalidity Contentions consistent with the case schedule currently in place but does so without waiving any right to receive from SRC such full and complete specific infringement disclosures as should have been provided from the outset. Microsoft's compliance with the current schedule should not be viewed as waiver of any rights pertaining to SRC's Local Patent Rule 120 disclosures. Furthermore, if SRC revises its Infringement Contentions to address any deficiencies that may be identified by Microsoft, Microsoft reserves the right to amend these Invalidity Contentions.

Moreover, Microsoft reserves the right to revise its ultimate contentions concerning the invalidity of the asserted claims, which may change depending upon the Court's construction of the asserted claims, discovery, any findings as to the priority date of the asserted claims, and/or positions that SRC may take concerning claim construction, infringement, and/or invalidity issues. Microsoft hereby provides disclosures and related documents pertaining only to the asserted claims as identified by SRC in its Local Patent Rule 120 disclosures.

Prior art not included in this disclosure, whether known or not known to Microsoft, may become relevant. In particular, Microsoft is currently unaware of the extent, if any, to which SRC

may contend that limitations of the Asserted Patents are not disclosed in the prior art identified by Microsoft. To the extent that such an issue arises, Microsoft reserves the right to identify other references that would explain or render obvious the allegedly missing limitation(s). Further, because discovery has begun only recently and because Microsoft has not yet completed its search for and analysis of relevant prior art, Microsoft reserves the right to revise, amend, and/or supplement the information provided herein, including identifying, charting, and relying on additional references, should Microsoft's further search and analysis yield additional information or references.

Additionally, Microsoft reserves the right to present additional prior art or evidence of prior art located during the course of third-party discovery or further investigation and to amend or supplement its Invalidity Contentions to the extent that such discovery or investigation or other case development yields information forming the basis for such amended or supplemental contentions.

These Invalidity Contentions are limited to Microsoft's current positions regarding the grounds of invalidity specifically called for in Local Patent Rule 121. Microsoft does not believe that it is required to include herein any explanation or contentions regarding any other defense that Microsoft may wish to assert in this action. Microsoft reserves the right to assert and pursue all other defenses that may be available, including all of the affirmative defenses pled in its answer, any future amended answer, or any other grounds.

A. Identity of Each Item of Prior Art

Subject to Microsoft's reservation of rights, Microsoft identifies each item of prior art that anticipates or renders obvious one or more of the Asserted Claims in the attached Prior Art Index submitted herewith. (*See Appendix A, infra.*)

Additionally, many of the prior art references are related patent applications and issued patents that contain substantially the same subject matter (e.g., published U.S. patent applications, and issued U.S. patents, foreign applications or issued patents). Any citation to or quotation from

any of these patent applications or patents, therefore, should be understood as encompassing any parallel citation to the same subject matter in other related or corresponding applications or patents. Microsoft also reserves the right to later rely upon all references or portions of references provided in Appendix A to supplement or amend its disclosures contained herein. Also, to the extent not expressly mentioned herein, Microsoft incorporates by reference (1) any and all prior art contained or identified in documents produced thus far by SRC to Microsoft in this case; (2) any and all additional materials regarding invalidity that should have been produced to Microsoft but have not been produced to date, to the extent that any exist; and (3) any prior art of which the named inventor(s) of the Asserted Patents are aware and/or on which they contend the alleged invention of the Asserted Patents build upon or improve.

Each disclosed item of prior art is evidence of a prior invention and making of the invention in the United States by another under 35 U.S.C. § 102(g), as evidenced by the named inventor, authors, organizations, and publishers involved with each such reference, with the circumstances described and reflected in each reference including publications and system implementation references. Microsoft further intends to rely on admissions of the named inventors concerning the prior art, including statements found in the Asserted Patents, their prosecution histories, related patents and/or patent applications, any deposition testimony, and the papers filed and any evidence submitted by SRC in conjunction with this litigation.

B. Whether Prior Art Anticipates or Renders Obvious

Subject to Microsoft's reservation of rights, Microsoft identifies in the attached Prior Art Invalidity Charts prior art references that anticipate the Asserted Claims under at least 35 U.S.C. §§ 102(a), (b), (e), and/or (g), either expressly or inherently, and/or render obvious the Asserted Claims under 35 U.S.C. § 103 either alone or in combination with other references. Each Asserted Claim is anticipated by, and/or obvious in view of, one or more items of prior art identified in these

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