

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

FINTIV, INC.

Plaintiff,

v.

APPLE, INC.,

Defendant.

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Civil Action No.: 6:18-cv-372-ADA

JURY TRIAL DEMANDED

**PLAINTIFF FINTIV, INC.'S INITIAL DISCLOSURE OF ASSERTED CLAIMS,
ACCUSED INSTRUMENTALITIES, AND INFRINGEMENT CONTENTIONS**

Pursuant to the Order Governing Proceedings – Patent Case, Plaintiff Fintiv, Inc. (“Plaintiff”) hereby serves its Initial Disclosure of Asserted Claims, Accused Instrumentalities, and Infringement Contentions on Defendant Apple, Inc. (“Defendant”).

I. INITIAL INFRINGEMENT CONTENTIONS

A. Identification of Asserted Claims

Plaintiff asserts that the Defendant infringes the following claims of U.S. Patent No. 8,843,125: claims 11, 13, 14, 16, 17, 18, 20, 21, 22, 23, 24, and 25.

The foregoing is based upon Plaintiff’s investigation to date, without the benefit of any discovery from the Defendant and without the benefit of the Court’s claim construction. Plaintiff reserves the right to add, delete, substitute or otherwise amend this list of Asserted Claims based on discovery, the Court’s claim construction, or other circumstances, in a manner consistent with the Federal Rules of Civil Procedures and the Local Rules of the Western District of Texas.

B. Identification of Accused Instrumentalities

For each Asserted Claim, Plaintiff identifies the following Accused Instrumentalities of which it is aware. For each Accused Instrumentality identified below, Plaintiff’s contentions apply to the Accused Instrumentality and any other similar past, present, or future products, as well as systems incorporating the Accused Instrumentalities or other products with the same or substantially similar features.

This identification of Accused Instrumentalities is based on Plaintiff’s investigation to date, without the benefit of any discovery from the Defendant and without the benefit of the Court’s claim construction. Plaintiff reserves the right to add, delete, substitute or otherwise amend this list of Accused Instrumentalities based on discovery, the Court’s claim construction, or other circumstances, in a manner consistent with the Federal Rules of Civil Procedure and the Court’s rule, including the Local Rules of the Western District of Texas.

U.S. Patent No. 8,843,125: Apple iPhone devices (including, at least, iPhone 6, 6 Plus, 6s, 6s Plus, SE, 7, 7 Plus, 8, 8 Plus, X, XR, XS, XS Max) and Apple Watch devices (including, at least, Series 1, Series 2, Series 3, and Series 4) implementing the Apple Wallet Application and any other devices that include functionality that is substantially similar to that described in Exhibit A.

C. Claim Charts

Exhibit A, attached hereto and incorporated by reference, is a claim chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality.

Plaintiff asserts that Defendant has directly infringed and continues to directly infringe the Asserted Claims through Defendant's Wallet Application as implemented in Apple iPhone devices (including, at least, iPhone 6, 6 Plus, 6s, 6s Plus, SE, 7, 7 Plus, 8, 8 Plus, X, XR, XS, XS Max) and Apple Watch devices (including, at least, Series 1, Series 2, Series 3, and Series 4).

Plaintiff further asserts that Defendant has indirectly infringed and continues to indirectly infringe by contributing to and actively inducing infringement of one or more of the claims of the Asserted Patent through Apple Wallet by users and developers. Plaintiff asserts that these third-parties directly infringe at least one or more of the claims of the Asserted Patent through its use of, implementation of, and/or integration with Apple Wallet. Defendant has notice of the Asserted Patent at least as of the filing of the complaint in this matter. The Apple Wallet Application is known by Defendant to be especially made or especially adapted for use to infringe the Asserted Patent, and is not a staple article or commodity of commerce suitable for substantial non-infringing uses. Defendant contributes to the infringement of the Asserted Patent by offering for sale, selling, and importing the infringing devices to third parties, who use the infringing devices and/or practice one or more claims of the Asserted Patent. Defendant actively induces infringement by

encouraging the use of the infringing devices in ways that infringe one or more claims of the Asserted Patent. Defendant knew or should have known that such encouragement would induce infringement. Such induced and/or contributory infringement has occurred at least since Defendant became aware of the Asserted Patent.

As indicated in Exhibit A, Plaintiff asserts that some claim elements are hardware and software limitations. Plaintiff reserves the right to supplement its contentions for those limitations after it receives production of hardware specifications and source code from Defendant.

These preliminary infringement contentions are based upon publicly-available information, the limited discovery provided to date by Defendant, and Plaintiff's investigation to date, without the benefit of any substantial discovery from Defendant and without the benefit of the Court's claim construction. The Accused Instrumentalities involve confidential, proprietary designs that are not publicly available, and Defendant has not yet provided discovery in this case regarding the structure or operation of any of the Accused Instrumentalities. Discovery is ongoing, and Plaintiff anticipates that the subject matter of these infringement contentions will be the subject of further extensive expert discovery. Plaintiff anticipates that discovery may provide additional evidence of Defendant's infringement, may lead to the discovery of additional instances of infringement, and may also enable identification of additional claims that are infringed by Defendant. Plaintiff reserves the right to add, delete, substitute, or otherwise amend these contentions based on discovery, the Court's claim construction, or other circumstances, in a manner consistent with the Federal Rules of Civil Procedure and the Court's rules, including the Local Rules of the Western District of Texas. Plaintiff reserves the right to further modify and/or supplement these contentions with additional or different theories and/or additional or different evidence.

D. Literal Infringement or Infringement Under the Doctrine of Equivalents

Plaintiff alleges that each element of the Asserted Claims is found literally in the Accused Instrumentalities. To the extent that Defendant alleges that one or more elements of the Asserted Claims are not literally in the Accused Instrumentalities and/or to the extent the Court's claim construction alters our infringement analysis, Plaintiff alleges that the Accused Instrumentalities infringe under the doctrine of equivalents and reserves the right to amend and/or supplement the information and contentions in the accompanying Exhibit A accordingly.

These assertions are based upon Plaintiff's investigation to date, without the benefit of any discovery from the Defendant and without the benefit of the Court's claim construction. Plaintiff reserves the right to add, delete, substitute or otherwise amend this list of Asserted Claims based on discovery, the Court's claim construction, or other circumstances, in a manner consistent with the Federal Rules of Civil Procedures and the Local Rules of the Western District of Texas.

E. Priority Dates

Each of the Asserted Claims of the '125 Patent is entitled to a priority date of no later than December 30, 2010. The subject matter described by the Asserted Claims, however, may have been conceived and reduced to practice prior to this priority date. Plaintiff's investigation is ongoing and Plaintiff reserves the right to assert that the claims are entitled to an invention date that is earlier than the above date.

II. PRODUCTION OF DOCUMENTS

Plaintiff's investigation is ongoing and Plaintiff will supplement its document production in the event additional responsive documents are located.

Plaintiff reserves the right to amend or supplement these Initial Infringement Contentions and any exhibits attached hereto should further discovery, the Court's claim construction, or other circumstances so require.

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