

**DECLARATION OF JOHN W. DOWNING IN SUPPORT OF PATENT
OWNER'S REQUEST FOR REHEARING PURSUANT TO 37 C.F.R. §§
42.71(b) and (d)**

I, John W. Downing, declare as follows:

I am an attorney with the law firm of Kasowitz Benson Torres LLP, am over eighteen years of age, and would be competent to testify as to the matters set forth herein if called upon to do so.

1. Apple and Fintiv met and conferred on November 25, 2019 and December 3, 2019 regarding Apple's request to supplement its IPR petition. Travis Jensen represented Apple and John Downing and Marcus Barber represented Fintiv.

2. During the meet-and confer discussions, counsel for Apple indicated that it planned to submit an "industry standard" to address the district court's construction of "OTA proxy." Counsel for Apple indicated that it planned to submit a few exhibits to show the knowledge of one skilled in the art, that it may submit an expert declaration, and would not share the proposed supplement with counsel for Fintiv because the submission was attorney work product. Counsel for Apple did not specify any statutory grounds that supported Apple's request to supplement during the meet-and-confer discussions.

3. Exhibit 2002 is an email dated November 20, 2019 from Travis Jensen to counsel for Fintiv notifying counsel for Fintiv that Apple intended to "notify the Board regarding the district court's oral claim construction rulings and would seek

leave to file the Markman order when it issues along with a short paper and accompanying exhibits that address how Apple contends the prior art satisfies the OTA proxy limitation as construed by the district court.”

4. Exhibit 2003 is an email dated November 22, 2019 from Travis Jensen to the Board requesting a “conference call with the Board to seek leave to file the Markman Order as well as a 5-page paper (and accompanying exhibits) that address how Apple contends the prior art satisfies one claim construction issued by the district court that was not proposed by either party.”

5. Ex. 2004 is an email dated December 3, 2019 from Travis Jensen to John Downing representing that Apple intended to rely on Section II.B.6 of the July 2019 Trial Practice Guide Update as statutory grounds for its proposed supplemental filing.

6. Ex. 2005 is an email dated December 3, 2019 from Travis Jensen to the Board confirming that the parties met and conferred and seeking a conference call to address Apple’s request to “file a 5-page paper (and accompanying exhibits) that address how Apple contends the prior art satisfies one claim construction issued by the district court that was not proposed by either party.”

7. Ex. 2006 is a true and correct copy of the July 2019 Trial Practice Guide Update.

Case No. IPR2020-00019

Patent No.: 8,843,125

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief, formed after reasonable inquiry under the circumstances.

Executed on the 20th day of December, 2019, in Redwood Shores, California.

Respectfully submitted,

/s/ John W. Downing
John W. Downing