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Pursuant to the Court’s June 4, 2019 Docket Control Order (D.I. 39), and the Rules of Practice for Patent Cases for the Eastern District of Texas (“Patent Rules” or “P.R.”), Defendant Apple Inc. hereby discloses its Invalidity Contentions. Defendant contends that each of the claims asserted by Plaintiff Rembrandt Wireless Technologies, LP, (“Rembrandt”) is invalid under at least 35 U.S.C. §§ 101, 102, 103, and/or 112.

## **I. GENERAL STATEMENT AND RESERVATION OF RIGHTS**

### **A. General Reservation of Rights**

These Invalidity Contentions, along with the information and documents that Apple produces herewith, are provisional in nature and subject to further revision. Consistent with the Patent Rules, Apple reserves the right to amend these contentions should Rembrandt: (1) provide any information that it failed to provide in its P.R. 3-1 and 3-2 disclosures or otherwise properly produce; (2) amend its P.R. 3-1 and 3-2 disclosures in any way; or (3) attempt to rely upon any information during claim construction proceedings, at trial, in a hearing, or during a deposition that it failed to provide in its P.R. 3-1 and 3-2 disclosures or otherwise properly produce. Moreover, Apple further reserves the right to amend these contentions based on further discovery or Court rulings (or any other related reason) such as described herein. Apple provides these Invalidity Contentions, as well as the accompanying production of documents, for the sole purpose of complying with P.R. 3-3 and 3-4.

### **B. Asserted Claims**

In its Initial Infringement Contentions, dated April 26, 2019 (“Infringement Contentions”), Rembrandt asserts that Apple infringes the following claims (“Asserted Claims”) of U.S. Patent Nos. 8,023,580 (“the ’580 patent”) and 8,457,228 (“the ’228 patent”) (collectively, “the Patents-In-Suit”):

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<b>Patent Number</b>	<b>Claims</b>
<b>8,023,580</b>	2, 59
<b>8,457,228</b>	21

Apple's invalidity contentions do not address any claims not asserted in Rembrandt's Initial Infringement Contentions. To the extent that the Court or the Patent Rules permit Rembrandt to assert additional claims against Apple, Apple reserves the right to disclose new or supplemental invalidity contentions regarding such claims.

### **C. Claim Construction**

Claim construction proceedings for this action have not yet occurred. Accordingly, Apple reserves the right to modify, amend, or supplement their Invalidity Contentions in accordance with P.R. 3-6 following claim construction rulings from this Court, or to the extent permitted by this Court. Apple also reserves the right to modify, amend or supplement their invalidity contentions upon Rembrandt's modification of its asserted claim constructions, including as adopted by Rembrandt in its Infringement Contentions.

Apple's Invalidity Contentions are based in part on its present understanding of Rembrandt's Infringement Contentions. In some instances, Rembrandt's Infringement Contentions contradict the teachings of the Patents-In-Suit, contradict the understanding of the claim terms by a person of ordinary skill in the art, and are vague and conclusory concerning how the claim limitations supposedly read on the accused products or activities. In addition, Rembrandt fails (i) to specify where each limitation of the Asserted Claims is found in each accused

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instrumentality<sup>1</sup> and (ii) to identify corresponding structure in the patent and accused instrumentalities for terms it may contend require disclosure of an algorithm and therefore may be treated as means-plus-function terms. As a result, Apple is currently unable to fully discern Rembrandt's position regarding the construction of the patent claim limitations or terms. To the extent that Rembrandt is permitted to supplement its Infringement Contentions, Apple reserves the right to modify, amend, and/or supplement its Invalidity Contentions.

Apple's Invalidity Contentions do not represent their agreement or view as to the meaning of any claim term contained therein. By including prior art that is anticipatory or renders obvious claims based on the construction apparently applied by Rembrandt to its claims, Apple's Invalidity Contentions are not—and should not be interpreted as—admissions or admissions as to the accuracy of that scope or construction.

Nothing in Apple's Invalidity Contentions should be deemed an admission regarding the scope of any claims or the proper construction of those claims or any terms contained therein. Nor should anything contained herein be understood or deemed to be an express or implied admission or contention with respect to the proper construction of any terms in any asserted claim, or with respect to the alleged infringement of that claim.

Unless otherwise stated herein, Apple takes no position on any matter of claim construction in these Invalidity Contentions. Apple reserves the right to propose any claim construction it considers appropriate and to contest any claim construction it considers inappropriate. Apple also reserves the right to argue that certain claim terms, phrases, and elements are indefinite, lack

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<sup>1</sup> For example and without limitation, Rembrandt fails to identify what it considers to be the claimed transceiver in any given accused product, let alone within each accused product. Rembrandt also accuses dozens of Apple products but provided only a single claim chart that fails to include any information about how Apple's own products.

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