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

REMBRANDT WIRELESS TECHNOLOGIES, LP, Plaintiff, v. APPLE INC., Defendant.	Case No. 2:19-cv-00025-JRG Hon. Rodney R. Gilstrap **JURY TRIAL DEMANDED**

APPLE'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

I. INTRODUCTION

Although Apple accepts the language used by this Court and affirmed by the Federal Circuit to construe the claim terms "modulation method[] of a different type" and "different types of modulation methods," that language should be supplemented to address a dispute between the parties here about claim scope that was neither raised nor resolved during claim construction in the *Samsung* litigation (No. 2:13-cv-00213-JRG-RSP (E.D. Tex.)). Specifically, Apple's proposed construction maintains this Court's previous construction—"different families of modulation techniques, such as the FSK family of modulation methods and the QAM family of modulation methods"—but adds the clarification that "different families" of modulation "may have overlapping characteristics."

The dispute about claim scope before the Court is clear-cut. A "modulation method" is a way of varying one or more characteristics (e.g., phase, frequency, and amplitude) of an electromagnetic wave (a "carrier wave") so that the wave carries data. The claim language at issue requires at least two modulation methods of a "different type." Rembrandt says the two modulation methods cannot be "different" unless they vary different characteristics of a carrier wave. So, in Rembrandt's view, if two modulation methods both varied the amplitude of a carrier wave, they would not qualify as "different types," even if one of those modulation methods also varied the phase and/or frequency of the carrier wave. In other words, Rembrandt restricts the scope of this claim language to exclude modulation methods with ***any*** overlapping characteristic, even if those methods also use non-overlapping characteristics. Apple's view, however, is that such modulation methods can still be of "different types."

This claim construction dispute was neither raised nor resolved during claim construction in the *Samsung* litigation. It should be decided now. *O2 Micro Int'l. Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008) ("When the parties raise an actual dispute

The Court should not permit Rembrandt to improperly restrict the scope of "different types" of modulation methods. Indeed, its restriction conflicts with the intrinsic evidence, excludes preferred embodiments, and renders certain claims nonsensical. Further, the premise of Rembrandt's argument conflicts with the Court's prior construction of "different types." Apple's proposal suffers none of these flaws, and stays true to the Court's previous construction, giving it its full breadth. Accordingly, Apple respectfully requests that the Court adopt Apple's proposed construction of this single disputed claim phrase.

II. THE PARTIES HAVE AN ACTUAL DISPUTE REGARDING CLAIM SCOPE THAT THE COURT, NOT THE JURY, SHOULD RESOLVE

Whether or not "different types" of modulation methods may have overlapping characteristics is a claim scope dispute between the parties here for the Court to resolve during claim construction. This dispute arises because Rembrandt has taken the position, as a matter of claim construction, that the "different types" language excludes modulation methods having overlapping characteristics.

Consider for example, PSK modulation and QAM modulation. PSK (phase shift keying) modulation varies the phase of a carrier wave and QAM (quadrature amplitude modulation) varies the amplitudes of two carrier waves that are added together.[1] *See, e.g.*, Ex. A (Newnes Communications Technology Handbook), at 188-189. Rembrandt told the Patent Office during claim construction in a prior *inter partes* review proceeding related to the *Samsung* litigation that there are three families, and that "three characteristics, phase, amplitude and frequency of the carrier wave, define these three families…There is some intersections where some modulation techniques use more than one characteristic…our contention is that they are not of different types. They are different in the sense that they are different methods, like QAM and PSK, but

[1]According to Rembrandt, QAM varies both phase and amplitude characteristics of a carrier

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.