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

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|---|---|---|
| REMBRANDT WIRELESS TECHNOLOGIES, LP, | § | |
| Plaintiff, | § | Case No. 2:19-cv-00025-JRG |
| v. | § | |
| APPLE INC., | § | **Jury Trial Requested** |
| Defendant. | § | |

**PLAINTIFF REMBRANDT WIRELESS TECHNOLOGIES, LP'S**
**OPENING CLAIM CONSTRUCTION BRIEF**

Rembrandt Wireless

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## I. INTRODUCTION

The Rembrandt patents (U.S. Patent Nos. 8,023,580 (Ex. 1) and 8,457,228 (Ex. 2)) cover a device that communicates using different types of modulation methods. Apple infringes the patents because its products practice the Bluetooth "Enhanced Data Rate" (EDR) standard, which requires multiple modulation methods. Rembrandt previously asserted the same patents against Samsung and BlackBerry for infringing the same Bluetooth EDR standard before this same Court (2:13-CV-213-JRG-RSP, the "*Samsung* litigation"). The jury in the *Samsung* litigation found infringement and validity, and the Federal Circuit affirmed. *See Rembrandt Wireless Techs., LP v. Samsung Elecs. Co.*, 853 F.3d 1370 (Fed. Cir. 2017).

There is only one disputed term presented in this case—modulation methods "of a different type." Rembrandt proposes the same construction adopted by this Court in the *Samsung* litigation that was affirmed by the Federal Circuit (*i.e.*, "different families of modulation techniques, such as the FSK family of modulation methods and the QAM family of modulation methods"). This construction is a direct quote from the patentee during prosecution. Apple seeks to tack on additional language to the end of Rembrandt's construction—"***wherein different families may have overlapping characteristics***." Apple's additional language is a significant departure from the prior construction, and it is motivated by an invalidity argument this Court and the Federal Circuit rejected in the *Samsung* litigation. It also seeks to resolve a fact question reserved for the jury.

## II. LEGAL STANDARDS

Patents are written for persons skilled in the field of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*). For that reason, disputed claim terms are interpreted as understood by a skilled artisan at the time of the invention. *Innova/Pure Water, Inc.*

*v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004). In determining a term's proper meaning, "[a] court looks to 'those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean,'" including "'the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.'" *Phillips*, 415 F.3d at 1314 (quoting *Innova*, 381 F.3d at 1116).

Although the specification, prosecution history, and extrinsic evidence are available as tools for construing disputed claim terms, "the claim construction inquiry . . . begins and ends in all cases with the actual words of the claim." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998) (citations omitted). The specification may inform the meaning of claim terms, but it does not change those meanings unless the patentee has chosen to be his own lexicographer by clearly setting out his intended meaning either expressly or by implication. *See Phillips*, 415 F.3d at 1321; *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Additionally, claims should not be interpreted by importing limitations from the specification into the claims. *See Kara Tech., Inc. v. Stamps.com, Inc.*, 582 F.3d 1341, 1348 (Fed. Cir. 2009).

Following from the above guidelines, several canons of construction emerge from the Federal Circuit's decisions. First, the "claims, not specification embodiments, define the scope of patent protection." *Kara Tech*, 582 F.3d at 1348. Similarly, claims are not limited to the preferred embodiment. *See id.* ("The patentee is entitled to the full scope of his claims, and we will not limit him to his preferred embodiment . . ."); *Phillips*, 415 F.3d at 1323 ("[A]lthough the specification often describes very specific embodiments of the invention, we have repeatedly warned against confining the claims to those embodiments."); *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d

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