UNILOC 2017 LLC,
 	
       Plaintiff,
 	
  v.
 	
APPLE INC.,
 	
       Defendant.
	Case No. 6:19-CV-00532-ADA

APPLE INC.'S PRELIMINARY INVALIDITY CONTENTIONS AND
ADDITIONAL DISCLOSURES PURSUANT TO AGREED SCHEDULING ORDER

Pursuant to the Agreed Scheduling Order (Dkt. No. 18) and the Court's Order Governing Proceedings – Patent Case (Dkt. No. 11), Defendant Apple Inc. ("Apple") submits the following Preliminary Invalidity Contentions and additional disclosures to Plaintiff Uniloc 2017 LLC ("Uniloc").

I.   PRELIMINARY MATTERS

The Preliminary Invalidity Contentions address claims 1, 2, 3, 6, 7, 8, 10, 11, 12, 13, 14, 16, 17, 18, 20, and 21 of U.S. Patent No. 6,467,088 (the "'088 patent"), which are the only claims alleged by Uniloc to be infringed by Apple in Uniloc's Preliminary Infringement Contentions. Should the Court allow Uniloc to later assert infringement of additional claims not asserted in Uniloc's Preliminary Infringement Contentions, or to supplement its infringement contentions with additional infringement theories with respect to the asserted claims, Apple reserves the right to supplement its Preliminary Invalidity Contentions to assert invalidity of those additional claims and/or to assert invalidity based on the additional infringement theories. Apple also reserves the right to supplement its Preliminary Invalidity Contentions in response to information learned in fact or expert discovery, including identification of additional prior art. Apple's Preliminary Invalidity Contentions are based in whole or in part on its present understanding of the asserted claims and Uniloc's Infringement Contentions, including the priority date of the '088 patent as asserted by Uniloc in its Infringement Contentions. Apple's Invalidity Contentions are responsive at least to the same level of specificity of Uniloc's Infringement Contentions. Apple's Invalidity Contentions may also take into account Uniloc's apparent claim constructions, to the extent Uniloc's constructions can be gleaned from Uniloc's Infringement Contentions. Such apparent constructions may be inconsistent with the constructions that Apple ultimately will proffer in this case. By including prior art that would anticipate or render obvious the asserted claims of the '088 patent based on Uniloc's disclosed and apparent claim constructions,

or based on any other particular claim construction, Apple is not adopting Uniloc's claim constructions, nor is Apple admitting to the accuracy of any particular claim construction. The Court has established separate deadlines for the parties' proposed claim constructions, and Apple will disclose its proposed constructions according to those deadlines. Solely for purpose of these Preliminary Invalidity Contentions, Apple may, if necessary, apply alternative, and even inconsistent, claim construction positions. Apple reserves all rights to amend these Invalidity Contentions after the Court issues its claim construction ruling, or if the Court permits Uniloc to amend its Infringement Contentions.

Apple, however, does not concede that Uniloc's Infringement Contentions provide the requisite level of specificity, and Apple provides these Invalidity Contentions without waiving any right to receive from Uniloc full and complete specific infringement contentions. Moreover, nothing herein admits in any way that any of the accused products, or any of Apple's other products, infringe any of the asserted claims.

A. Incorporation by Reference of Related Invalidity Contentions and Disclosures

Apple expressly incorporates by reference as if fully set forth herein, and intends to rely on, each of the contentions, charts, prior art references, and other statements made or disclosed in the following petitions for *inter partes* review, including but not limited to the documents produced as APL-UNILOC532-PA-0000001 - APL-UNILOC532-PA-0000898:

Case	Petitioners	Filing Date
IPR2020-00023	Microsoft Corporation	October 11, 2019
IPR2019-00056	Apple Inc.	October 17, 2018

Apple also incorporates by reference as if fully set forth herein all contentions, charts, prior art references, and other statements relating to any ground of invalidity identified by any potential or actual licensee to the '088 patent and by any party in any other past, present, or

future litigation involving the '088 patent or patents related to the '088 patent. Apple also incorporates by reference all grounds of invalidity identified in any present or future reexamination, *inter partes* review, covered business method (CBM) patent review, or other post-issuance review by the Patent and Trademark Office of the '088 patent. Apple also incorporates by reference the production of documents associated with any grounds for invalidity for the '088 patent identified in this paragraph. Apple also incorporates any grounds of invalidity known to Uniloc or any affiliated party whether or not disclosed.

Apple also requests that all such contentions from every case involving the '088 patent be produced to Apple as soon as possible after they are served on, or become known to, Uniloc.

B. Ongoing Investigation

Apple's discovery and investigation in connection with this lawsuit is continuing. Thus, these Invalidity Contentions are based on information obtained to date. Among other things, discovery is still underway, witnesses remain to be deposed, and the Court has not yet construed any terms of the '088 patent. Accordingly, Apple's Invalidity Contentions are subject to modification, amendment, or supplementation in accordance with the Agreed Scheduling Order (Dkt. No. 18), the Local Rules of the Western District of Texas, and/or the Federal Rules of Civil Procedure as this action progresses and additional information is obtained.

II. LEVEL OF PERSON OF ORDINARY SKILL IN THE ART

A person of ordinary skill in the art as of the claimed priority date of the '088 patent would have had a at least a Bachelor's Degree in computer science, computer engineering, or a related subject or the equivalent, and two years of experience working with databases, computer networks, and related technologies.

III. IDENTIFICATION OF PRIOR ART

Apple identifies the following prior art to the '088 patent. Apple contends that the prior

art disclosed below generally all relate to methods and systems for updating or reconfiguring software and/or hardware components in an electronic device and collectively, they are all relevant at least as background of the art to each of the '088 patent asserted claims, irrespective of the sub-section in which they are expressly cited. Apple expressly reserves the right to at least use and rely on any of the prior art cited herein to establish or otherwise support Apple's contentions as to what was known in the state of the art during the pertinent time frame for the '088 patent.

A.   Prior Art Patents and Published Patent Applications

The following prior art patents and published patent applications invalidate the asserted claims of the '088 patent:

No.	Number	Origin	Title	Named Inventors	Date of Issue or Publication
1.	5,124,909	US	Software Program for Providing Cooperative Processing Between Personal Computers and a Host Computer	Frank W. Blakely, et al.	June 23, 1992
2.	5,175,800	US	Expert and Data Base System and Method for Communications Network	Alexandru Galis, et al.	December 29, 1992
3.	5,317,722	US	Dynamically Adapting Multiple Versions on System Commands to a Single Operating System	Wayne O. Evans	May 31, 1994
4.	5,319,770	US	Data Processing Method and Apparatus for Verifying Adapter Description File Choices	Christopher T. Lehman	June 7, 1994
5.	5,359,730	US	Method of Operating a Data Processing System Having a Dynamic Software Update Facility	Assaf Marron	October 25, 1994

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