

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

RFCYBER CORP.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 2:20-cv-00274-JRG
(Lead Case)

JURY TRIAL REQUESTED

RFCYBER CORP.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.,
and SAMSUNG ELECTRONICS
AMERICA, INC.,

Defendants.

Case No. 2:20-cv-00335-JRG
(Member Case)

JURY TRIAL REQUESTED

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to Local Patent Rule 4-3 and the Docket Control Order (Dkt. 63), Plaintiff RFCyber Corp. and Defendant Google LLC (“Google”) and Defendants Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc. (“Samsung”) (collectively, “Defendants”), hereby submit this Joint Claim Construction and Prehearing Statement. In accordance with Patent Rule 4-2(c), the parties met and conferred on several occasions for the purposes of narrowing the issues and finalizing preparation of this Joint Claim Construction and Prehearing Statement.

A. Agreed-Upon Constructions

The parties conducted meet-and-confers and have been able to reach agreement regarding the construction of the following claim terms/phrases in the Asserted Patents.¹ The chart below provides the construction of those claim terms, phrases, or clauses on which the parties agree:

Claim Term	Construction
“emulator” ² ’218 patent – all claims ’855 patent – all claims ’787 patent – all claims	“hardware device or program that pretends to be another particular device or program that other components expect to interact with”
“midlet” ’218 patent – all claims ’855 patent – all claims ’787 patent – all claims	“software component suitable for being executed on a portable device”
“payment gateway” ’046 patent – all claims	“server or collection of servers for settling a payment”

B. Disputed Claim Constructions

Exhibits A and B, attached hereto, identify the disputed claim terms.

Exhibit A provides Plaintiff’s identification of intrinsic and extrinsic evidence supporting its proposed constructions, as required by P.R. 4-3(b).

¹ The Asserted Patents are U.S. Patent Nos. 8,118,218 (the “’218 patent”), 8,448,855 (the “’855 patent”), 9,189,787 (the “’787 patent”), 9,240,009 (the “’009 patent”) and 10,600,046 (the “’046 patent”).

² Google states as follows: In its IPR petitions, Google proposed a substantially similar construction of the term “emulator”—namely, “hardware device or a program providing security that pretends to be another particular device or program that other components expect to interact with.” To narrow the issues to be decided by the Court, Google agrees to the construction advanced by Plaintiff and Samsung.

Exhibit B provides Defendants' identification of intrinsic and extrinsic evidence supporting their proposed constructions, as required by P.R. 4-3(b).

C. Anticipated Length of Time for the Claim Construction Hearing

The Parties anticipate that the Claim Construction Hearing will take no longer than six hours, or an amount of time to be determined by the Court. The parties do not expect to present live testimony.

D. Identification of Witnesses

1. Statement by Plaintiff

Plaintiffs may rely on the testimony of Mark Jones as an expert witness regarding the proposed constructions or to address disputes or constructions raised by Defendants. Such testimony could include, *inter alia*, an explanation of the meaning of claim terms in the context of the subject matter disclosed in the Asserted Patents, a discussion and tutorial regarding the state of the technology relating to the alleged inventions claimed in the Asserted Patents, how a person of ordinary skill in the art would interpret the identified claim terms or phrases at the time the applications for the Asserted Patents were filed in light of their specifications, prosecution histories, and the knowledge of one of ordinary skill in the art, and an explanation as to why certain terms or phrases are not indefinite. Pursuant to Local Patent Rule 4-3(d), a summary of each opinion to be offered by Mark Jones is identified in the charts in Exhibit A.

2. Statement by Google

Defendants may rely on the testimony of Randy J. Vanderhoof as an expert witness regarding the proposed constructions or to address disputes or constructions raised by Plaintiff. Such testimony could include, *inter alia*, an explanation of the meaning of claim terms in the context of the subject matter disclosed in the Asserted Patents, a discussion and tutorial regarding the state of the technology relating to the alleged inventions claimed in the Asserted

Patents, how a person of ordinary skill in the art would interpret the identified claim terms or phrases at the time the applications for the Asserted Patents were filed in light of their specifications, prosecution histories, and the knowledge of one of ordinary skill in the art, and an explanation as to why certain terms or phrases are indefinite. Pursuant to Local Patent Rule 4-3(d), a summary of each opinion to be offered by Mr. Vanderhoof is identified in the charts in Exhibit B.

3. Statement by Samsung

Defendants may rely on the testimony of Gerald W. Smith as an expert witness regarding the proposed constructions or to address disputes or constructions raised by Plaintiff. Such testimony could include, *inter alia*, an explanation of the meaning of claim terms in the context of the subject matter disclosed in the Asserted Patents, a discussion and tutorial regarding the state of the technology relating to the alleged inventions claimed in the Asserted Patents, how a person of ordinary skill in the art would interpret the identified claim terms or phrases at the time the applications for the Asserted Patents were filed in light of their specifications, prosecution histories, and the knowledge of one of ordinary skill in the art. Pursuant to Local Patent Rule 4-3(d), a summary of each opinion to be offered by Mr. Smith is identified in the charts in Exhibit B.

E. Other Issues

At present, the parties are unaware of any additional issues that would require the scheduling of a pre-hearing conference.

F. P.R. 4-3(b) Service of Expert Testimony

In accordance with Patent Rule 4-3(b) the parties will each, simultaneous with this filing, serve a disclosure of expert testimony consistent with Fed. R. Civ. P. 26(a)(2)(B)(i)-(ii) or 26(a)(2)(C) for any expert on which it intends to rely to support its proposed claim construction

or indefiniteness position or to oppose any other party's proposed claim construction or indefiniteness position.

Dated: August 19, 2021

Respectfully submitted,

By:

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By: /s/ Allan A. Kassenoff (with permission)

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