

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

FUTURE LINK SYSTEMS, LLC,

Plaintiff,

Civil Action No. 6:20-cv-00263-ADA

v.

APPLE INC.,

JURY TRIAL DEMANDED

Defendant.

DEFENDANT’S PRELIMINARY INVALIDITY CONTENTIONS

I. INTRODUCTION

Pursuant to the Parties’ Proposed Scheduling Order, Dkt. 25, Defendant Apple Inc. (“Defendant” or “Apple”) provides these Preliminary Invalidity Contentions to Plaintiff Future Link Systems, LLC (“Plaintiff” or “Future Link”) for U.S. Patent Nos. 6,317,804 (the “’804 patent”), 7,917,680 (the “’680 patent”), 6,622,108 (the “’108 patent”), and 6,807,505 (the “’505 patent”), collectively, the “Patents-in-Suit” or “Asserted Patents.”

These Preliminary Invalidity Contentions are made as to only the claims of the Patents-in-Suit that Plaintiff has identified in Plaintiff’s Preliminary Infringement Contentions served on July 8, 2021 (the “Infringement Contentions”):

Patent	Asserted Claims
’804 Patent	1-5, 8-10, 14, 17, 21-22 (the “’804 patent Asserted Claims”)
’680 Patent	1, 7, 8, 15, and 20 (the “’680 patent Asserted Claims”)
’108 Patent	1, 3, 6, and 11-13 (“’108 patent Asserted Claims”)
’505 Patent	1, 6, and 8 (“’505 patent Asserted Claims”; collectively with the asserted claims of the other Asserted Patents, the “Asserted Claims”)

Defendant reserves the right to supplement these invalidity contentions to the extent Plaintiff is allowed to change its Asserted Claims.

These preliminary invalidity contentions are being made in the early stages of fact discovery. The parties have not yet started general discovery, and no general depositions have been noticed or taken. No third party discovery has been taken. Accordingly, Defendant reserves the right to supplement and amend these preliminary contentions to the extent additional information becomes available during discovery. For example, Defendant may serve third party discovery on companies that it believes are informed and have relevant prior art, and reserves the right to supplement or amend these disclosures as may be appropriate in the future. Defendant may also take third party discovery from the individuals named as inventors on the Asserted Patents. Defendant reserves the right to supplement and/or amend its invalidity contentions to include new prior art discovered from Plaintiff, from these third party sources, or other sources. Defendant may also serve additional third-party discovery in the future including, but not limited to, based on discovery received from Plaintiff and/or the above-referenced third parties, and reserve the right to supplement and/or amend its contentions accordingly.

Defendant also reserves the right to rely on its own products or source code, some of which may not become available for inspection until after these contentions have been served due to current national health conditions surrounding the Coronavirus, the highly sensitive nature of Defendant's source code, and the restrictions placed on any transfer or review of that source code.

Defendants hereby incorporate by reference the invalidity contentions served on Future Link in *Future Link Systems, LLC v. Advanced Micro Devices*, No. 6:20-cv-01176 (W.D. Tex.), *Future Link Systems, LLC v. Broadcom Inc.*, No. 6:21-cv-00264 (W.D. Tex.), *Future Link Systems, LLC v. Qualcomm Inc.*, No. 6:21-cv-00265 (W.D. Tex.), and *Future Link Systems, LLC v. Realtek Semiconductor Corp.*, No. 6:21-cv-00363 (W.D. Tex.), including all charts, cover

pleadings, exhibits, prior art, invalidity arguments including, but not limited to, arguments based on 35 U.S.C. §§ 101, 102, 103, 112, and otherwise.

II. RESERVATIONS

A. General Reservation of Rights

The information provided shall not be deemed an admission regarding the scope of any claims or the proper construction of those claims or any claim terms. Defendant does not waive the right to contest any claim constructions or to take the positions during claim construction proceedings that have yet to occur that may be inconsistent with the preliminary invalidity contentions herein.

In certain instances, Defendant has applied the claims to the prior art in view of Plaintiff's allegations, admissions, or positions for purposes of these preliminary invalidity contentions only. This disclosure of preliminary invalidity contentions is not intended to be, and is not, an admission that any Asserted Claim is infringed by any of Defendant's products, that any particular feature or aspect of any of the accused products practices any limitations of the Asserted Claims, or that any of the constructions implicit in Plaintiff's Infringement Contentions is reasonable, supportable, or proper. Rather, in some instances, Defendant's application of the claims to the prior art is intended to apply Plaintiff's apparent interpretation of the claims.

B. Plaintiff's Infringement Contentions

Plaintiff's infringement contentions are deficient in numerous respects. Defendant served a deficiency letter on Plaintiff on August 4, 2021 and reserves the right to supplement or amend these preliminary invalidity contentions in view of Plaintiff's response, if any. Because Plaintiff's response to such deficiencies may lead to further grounds for invalidity, Defendant specifically reserves the right to modify, amend, or supplement its contentions as Plaintiff modifies, amends, or supplements its disclosures and/or produces documents in discovery.

Additionally, Plaintiff has presented no substantive contentions of any alleged infringement under the doctrine of equivalents in its infringement contentions. It has provided boilerplate reservations of rights, and made general references to the doctrine of equivalents, but has provided no substantive allegation in its infringement contentions. As a result, Plaintiff has waived any doctrine of equivalents theory. If Plaintiff is permitted to provide any information relating to infringement under the doctrine of equivalents, Defendant may amend and supplement these preliminary invalidity contentions as appropriate.

C. The Intrinsic Record

Defendant further reserves the right to rely on applicable industry standards and prior art cited in the file histories of the Asserted Patents and any related U.S. and foreign patent applications as invalidating references or to show the state of the art. Defendant further reserves the right to rely on the patent applicant's admissions concerning the scope of the prior art relevant to the Asserted Patents found in, *inter alia*: the patent prosecution history for the Asserted Patents and any related patents and/or parent applications or reexaminations (or *inter partes* review or post-grant review proceedings); any deposition testimony of the named inventor of the Asserted Patents; any deposition testimony or other admissions by Plaintiff; and the papers filed and any evidence submitted by Plaintiff in connection with this litigation.

D. Rebuttal Evidence

Prior art not included in these preliminary invalidity contentions, whether known or not known to Defendant, may become relevant. In particular, Defendant is currently unaware of the extent, if any, to which Plaintiff will contend that limitations of the Asserted Claims of the Asserted Patents are not disclosed in the prior art identified herein or otherwise contend the Asserted Patents are not invalid. To the extent that such an issue arises, Defendant reserves the

right to identify other references that would render obvious the allegedly missing limitation(s) or the disclosed device or method, or otherwise rebut Plaintiff's argument(s).

E. Contextual Evidence

Defendant's claim charts cite particular teachings and disclosures of the prior art as applied to the limitations of each of the Asserted Claims. However, persons having ordinary skill in the art generally may view an item of prior art in the context of his or her experience and training, other publications, literature, products, and understandings. Moreover, common sense may be employed as part of the obviousness analysis. As such, Defendant may rely on the cited portions of the prior art references and on other publications, expert testimony, and common sense as aids in understanding and interpreting the cited portions, as providing context thereto, and as additional evidence that the prior art discloses a claim limitation or the claimed subject matter as a whole. Defendant further reserves the right to rely on uncited portions of the prior art references, other publications, and testimony, including expert testimony, to establish bases for combinations of certain cited references that render the asserted claims obvious. The references discussed in the claim charts may disclose the elements of the asserted claims explicitly and/or inherently, and/or they may be relied upon to show the state of the art in the relevant time frame. The suggested obviousness combinations are provided in the alternative to anticipation contentions and are not to be construed to suggest that any reference included in the combinations is not by itself anticipatory.

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