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

SCRAMOGE TECHNOLOGY LTD.,	§	Civil Action No. 6:21-cv-00579-ADA
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
APPLE INC.,	§	
	§	
Defendant.	§	**DEMAND FOR JURY TRIAL**

APPLE INC.'S FIRST AMENDED PRELIMINARY INVALIDITY CONTENTIONS

I. INTRODUCTION

Defendant Apple Inc. ("Apple") hereby makes the following Preliminary disclosure of Invalidity Contentions ("Preliminary Invalidity Contentions") to Plaintiff Scramoge Technology Ltd. ("Scramoge").

These contentions address only the claims of U.S. Patent Nos. 10,622,842 ("the '842 Patent"), 9,806,565 ("the '565 Patent"), 10,804,740 ("the '740 Patent"), 9,843,215 ("the '215 Patent"), 10,424,941 ("the '941 Patent"), and 9,997,962 ("the '962 Patent") (collectively, the "Asserted Patents") asserted in Scramoge's Amended Preliminary Disclosure of Asserted Claims and Infringement Contentions ("Amended Infringement Contentions") served on October 22, 2021.

Scramoge has asserted the following claims (collectively, the "asserted claims") against Apple:

- **The '842 Patent:** Claims 1, 2, 5, 6, 7, 14, 15, 16, 19, and 20.
- **The '565 Patent:** Claims 1, 2, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, and 20.
- **The '740 Patent:** Claims 6, 7, 16, 17, 19, and 20.
- **The '215 Patent:** Claims 1, 5, 8, 9, 10, 11, 12, 13, 17, 18, 19, 20, 21, and 22.
- **The '941 Patent:** Claims 1, 2, 3, 4, 6, and 7.
- **The '962 Patent:** Claims 1, 2, 3, 4, 7, 8, 18, and 19.

With respect to each asserted claim and based on its investigation to date, Apple hereby: (a) identifies each item of prior art that anticipates and/or renders obvious each asserted claim; (b) specifies whether each such item of prior art anticipates each asserted claim and/or renders it obvious, and, if it renders it obvious, explains why the prior art renders the asserted claim

obvious and identifies any combinations of prior art showing obviousness; (c) submits a chart identifying where specifically in each item of prior art each limitation of each asserted claim is found; (d) identifies the grounds of invalidity based on 35 U.S.C. § 112; and (e) identifies the claims that are directed to patent-ineligible subject matter under 35 U.S.C. § 101.

In addition, pursuant to the Standing Order Governing Patent Proceedings, and based on its investigation to date, Apple has produced or is producing documents concurrently with these Preliminary Invalidity Contentions.

II. RESERVATIONS

Apple reserves the right to amend these Preliminary Invalidity Contentions. The information and documents that Apple produces are based on information available to date and are subject to further revision. Apple expressly reserves the right to amend these disclosures and the accompanying document production should Scramoge provide any additional information that it failed to provide in its Amended Infringement Contentions.

Further, because discovery (including discovery from third parties) has not yet begun, Apple reserves the right to revise, amend, and/or supplement the information provided herein, including identifying and relying on additional references, should Apple's further search and analysis yield additional information or references, consistent with the Standing Order Governing Patent Cases and the Federal Rules of Civil Procedure. Apple reserves the right to rely on additional prior art; further analysis of prior art; application of prior art to new or different claims; depositions and discovery from prior art sources and authors; analysis of prior art products; combinations of references; expert opinion and/or testimony; evidence supporting invalidity of any asserted claim; and any additional relevant information that may result from its further investigation and discovery. Additionally, Apple reserves the right to rely on additional information, testimony, and/or analysis concerning operation of prior art systems.

Moreover, Apple reserves the right to revise its ultimate contentions concerning the invalidity of the asserted claims, which may change depending upon the Court's construction of the asserted claims, any findings as to the priority or invention date of the asserted claims, and/or positions that Scramoge or its expert witness(es) may take concerning claim construction, infringement, and/or invalidity issues.

Prior art not included in this disclosure, whether known or unknown to Apple, may become relevant. In particular, Apple is currently unaware of the extent, if any, to which Scramoge will contend that limitations of the asserted claims are not disclosed in the prior art identified by Apple, or will contend that any of the identified references do not qualify as prior art. The identification of any patent or patent publication shall be deemed to include any counterpart patent or application filed, published, or issued anywhere in the world.

The information and documents that Apple produces are based on Apple's present understanding of Scramoge's infringement theories as advanced by Scramoge in its Amended Infringement Contentions. Scramoge's Amended Infringement Contentions are deficient in numerous respects. For example, Scramoge has failed to specifically identify where each element of each Asserted Claim is found within each accused instrumentality, and does not identify a specific mapping from components of the accused instrumentalities to the elements of the asserted claims. Scramoge has also failed to present any contentions for infringement under the doctrine of equivalents. Scramoge has not provided detailed infringement contentions that identify each specific claim limitation allegedly infringed under the doctrine of equivalents and its alleged equivalent element in the accused instrumentalities, or the basis for purported insubstantial differences between each such limitation and its alleged equivalent. If Scramoge attempts or is permitted to cure such deficiencies, doing so may lead to further

grounds for invalidity, and thus Apple specifically reserves the right to modify, amend, or supplement its contentions. Apple has provided notice to Scramoge regarding the deficiencies in its Amended Infringement Contentions. It has failed to cure the deficiencies and has not undertaken reasonable efforts to prepare preliminary contentions to put Apple on notice of its theories of infringement. Thus, it no longer has the opportunity to amend as of right under OGP 3.5, unless "the amendment is based on material identified after those preliminary contentions were served." OGP 3.5 at 8 n.7. However, if it is granted leave to amend its contentions, or other additional information regarding Scramoge's infringement theories becomes available, Apple anticipates that it will provide corresponding invalidity contentions which establish that, under Scramoge's interpretation of the claim scope as set forth in its Amended Infringement Contentions, the asserted patents read on the prior art.

Further, Scramoge has not produced prior art known to it, including regarding any known prior art products. As discovery in this action provides Apple with additional information, Apple may serve subpoenas on third parties believed to have knowledge, documentation, and/or corroborating evidence relating to invalidity and/or prior art. It is therefore likely that Apple will discover additional prior art pertinent to the invalidity of the asserted claims and Apple reserves the right to supplement these contentions after becoming aware of additional prior art or information. Apple further reserves the right to introduce and use such supplemental materials at trial.

Apple's claim charts in Exhibits A-F cite particular teachings and disclosures of the prior art as applied to features of the asserted claims. However, persons having ordinary skill in the art may view an item of prior art generally in the context of other publications, literature, products, and understanding. Accordingly, the cited portions are only exemplary, and Apple

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