

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

INGENIOSHARE, LLC,

Plaintiff,

v.

EPIC GAMES, INC.,

Defendant.

**Civil Action No. 6:21-cv-00663-ADA
JURY TRIAL DEMANDED**

EPIC GAMES INC.'S PRELIMINARY INVALIDITY CONTENTIONS

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I. INTRODUCTION

Defendant Epic Games, Inc. (“Epic Games”) hereby provides by and through its attorneys its Preliminary Invalidity Contentions for United States Patent Nos. 10,708,727 (“the ’727 Patent”), 10,492,038 (“the ’038 Patent”), 10,142,810 (“the ’810 Patent”), and 8,744,407 (“the ’407 Patent”) (collectively the “patents-in-suit”). The citation of prior art and the accompanying exhibits may, in part, be based on IngenioShare, LLC’s (“Plaintiff” or “IngenioShare”) apparent view as to the scope of the asserted claims as reflected in its Infringement Contentions. Epic Games does not accept Plaintiff’s apparent reading of the claims as reflecting the proper scope of the claims.

Epic Games’ Preliminary Invalidity Contentions reflect present knowledge and contentions, and Epic Games reserves the right, to the extent permitted by the Court and the applicable statutes and rules, to modify and supplement its Preliminary Invalidity Contentions in the event that additional invalidity grounds are identified, whether in response to any amendment by Plaintiff of its Infringement Contentions, otherwise becoming aware of additional prior art or further material information, including, without limitation, discovery from Plaintiff or third parties; discovery concerning the alleged priority, conception, and reduction to practice dates for any of the asserted claims; or any other basis in law or in fact. Additionally, Epic Games reserves the right to modify its contentions should IngenioShare change which claims it is asserting in this case.

Epic Games’ Preliminary Invalidity Contentions are made in a variety of alternatives and do not represent Epic Games’ agreement or view as to the meaning, definiteness, written description support for, or enablement of any claim contained therein. Epic Games’ contentions herein are not, and should in no way be seen as, admissions or adoptions as to any particular claim scope or construction, or as any admission that any particular claim element is met in any particular

way. Epic Games objects to any attempt to imply claim constructions from any identification of potential prior art. Additionally, Epic Games' Preliminary Invalidity Contentions may use Plaintiff's improper assertions of infringement and improper applications of the claims to understand Plaintiff's view of the scope of the asserted claims. Epic Games does not agree with Plaintiff's application of the claims and denies infringement. Further, to the extent an accused product or feature comprises or arises from prior art, Epic Games contends, without admitting purported infringement, that the patents-in-suit are anticipated and/or made obvious in light of that prior art and Plaintiff's own Infringement Contentions.

In those instances where Epic Games asserts that the claims are invalid under 35 U.S.C. § 112 (e.g., no written description, not enabled, and/or indefinite), Epic Games has applied the prior art in part in accordance with Epic Games' assumptions that IngenioShare: (1) contends those claims are definite, (2) finds written description support for those claims, and (3) contends that those claims are enabled. However, Epic Games' prior-art invalidity contentions do not necessarily represent Epic Games' agreement or view as to the meaning, definiteness, written description support for, or enablement of any claim contained therein, or that the patents-in-suit properly disclose structures corresponding to functions in claims governed by 35 U.S.C. § 112 ¶ 6. In fact, Epic Games notes numerous grounds for invalidity on such bases below.

Much of the art identified in the attached exhibits reflects common knowledge and the state of the art before the filing date of the patents-in-suit. In many instances where a particular contention calls for combining references, any one of a number of references can be combined. The inclusion of certain exemplary combinations of prior-art references does not exclude other combinations based upon the claim charts attached hereto.

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