

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

BILLJCO, LLC,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

Case No. 2:21-cv-00181-JRG
(Lead Case)

BILLJCO, LLC,

Plaintiff,

v.

HEWLETT PACKARD ENTERPRISE
COMPANY, ARUBA NETWORKS, LLC

Defendants.

Case No. 2:21-cv-00183-JRG
(Member Case)

DEFENDANTS' PRELIMINARY INVALIDITY CONTENTIONS

Defendants Hewlett Packard Enterprise Company, Aruba Networks, LLC, and Cisco Systems, Inc. (collectively “Defendants”) hereby provide their Preliminary Invalidity Contentions pursuant to the Joint Scheduling Order entered by the Court on August 26, 2021 (Dkt. 28) and the Docket Control Order entered by the Court on October 26, 2021 (Dkt. 44). Based on their investigation to date, Defendants hereby produce the prior art references on which these Contentions are based and other documents as mandated by the Joint Scheduling Order, the Docket Control Order, and the Local Rules of the Eastern District of Texas.

I. INTRODUCTION

These Preliminary Invalidity Contentions address the asserted claims identified by Plaintiff BillJCo, LLC (“BillJCo”) in its Preliminary Infringement Contentions. Should the Court allow BillJCo to later assert infringement of additional claims not asserted in BillJCo’s Preliminary Infringement Contentions, or to supplement its infringement contentions with additional infringement theories with respect to the asserted claims, Defendants reserve the right to supplement their Preliminary Invalidity Contentions to assert invalidity of those additional claims and/or to assert invalidity based on the additional infringement theories. Defendants also reserve the right to supplement their Preliminary Invalidity Contentions in response to information learned in fact or expert discovery, including identification of additional prior art. Defendants’ Preliminary Invalidity Contentions are based in whole or in part on their present understanding of the asserted claims and BillJCo’s Infringement Contentions, including the priority date of the asserted patents identified by BillJCo in its Infringement Contentions, including 8,761,804 (“the ’804 patent”), 10,292,011 (“the ’011 patent”), and 10,477,994 (“the ’994 patent”) (collectively, the “Asserted Patents”). Defendants’ Invalidity Contentions are responsive at least to the same level of specificity of BillJCo’s Infringement Contentions.

Defendants' Invalidity Contentions may consider BillJCo's apparent claim constructions, to the extent BillJCo's constructions can be understood from BillJCo's Infringement Contentions. Such apparent constructions may be inconsistent with the constructions that Defendants ultimately will proffer in this case. By including prior art that would anticipate or render obvious the asserted claims of the Asserted Patents based on BillJCo's disclosed and apparent claim constructions, or based on any other particular claim construction, Defendants are not adopting BillJCo's claim constructions, nor are Defendants admitting to the correctness of any particular claim construction. The Court has established separate deadlines for the parties' proposed claim constructions, and Defendants will disclose their proposed constructions according to those deadlines. Solely for purpose of these Preliminary Invalidity Contentions, Defendants may, if necessary, apply alternative, and even inconsistent, claim construction positions. Defendants reserve all rights to amend these Preliminary Invalidity Contentions after the Court issues its claim construction ruling, or if the Court permits BillJCo to amend its Infringement Contentions.

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

II. RELATED INVALIDITY CONTENTIONS AND DISCLOSURES

Defendants expressly incorporate 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 any petitions for *inter partes* review filed by any party or third-party as to any asserted patent. Defendants also incorporate 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 any asserted patent and by any party in any other past, present, or future litigation involving many asserted patent or patents related to any asserted patent, including, without limitation, the following matter: *BillJCo, LLC v. Apple, Inc.*, Case No. 6:21-cv-00528 (W.D. Tex.). Defendants also incorporate by reference all grounds of invalidity identified in any present or future reexamination, covered business method (CBM) patent review, or other post-issuance review by the Patent and Trademark Office of any asserted patent. Defendants also incorporate by reference the production of documents associated with any grounds for invalidity for any asserted patent identified in this paragraph. Defendants also incorporate any grounds of invalidity known to BillJCo or any affiliated party whether or not disclosed. Defendants also request that all such contentions from every case involving any asserted patent be produced to Defendants as soon as possible after they are served on, or become known to, BillJCo.

Defendants' 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 Asserted Patents. Accordingly, Defendants' Preliminary Invalidity Contentions are subject to modification, amendment, or supplementation in accordance with the Joint Scheduling Order, the Local Rules of the Eastern District of Texas, and/or the Federal Rules of Civil Procedure as this action progresses and additional information is obtained.

III. IDENTIFICATION OF PRIOR ART

Defendants identify the following prior art to the Asserted Patents. Defendants contend that the prior art disclosed below generally all relate to the subject matter of one or more Asserted Patents and, collectively, they are all relevant at least as background of the art to each of the

Asserted Patents, irrespective of the sub-section in which they are expressly cited. Defendants expressly reserve the right to at least use and rely on any of the prior art cited herein to establish or otherwise support Defendants' contentions as to what was known in the state of the art during the pertinent time frame for the Asserted Patents. Defendants further incorporate by reference all references listed on the face of the Asserted Patents. The inclusion or omission of a reference that is listed on the face of one or more of the Asserted Patents should not be deemed a waiver to rely on such references.

A. Anticipation

Appendices 804-, 011- and 994- are claim charts that specifically identify prior art that anticipates and/or renders obvious each of the asserted claims of the Asserted Patents. In addition to the references specifically identified in the appendices, Defendants also reserve the right to rely on any of the patents or publications deriving from applications in the respective claimed priority chains of the Asserted Patents, the references cited on the face of the Asserted Patents and related patents, any admitted prior art references in the specifications of the Asserted Patents and related patents, the prosecution histories of the Asserted Patents and related patents, the references cited in any USPTO (including PTAB) proceedings related to any Asserted Patent or Related Patents, or any references known to BillJCo or any affiliated party and the references cited in any invalidity contentions that have been or will be submitted in any action or proceedings involving any Asserted Patents or Related Patents. Defendants may also rely on expert testimony and any additional prior art located or developed during the course of discovery. Furthermore, Defendants may rely on any of the prior art references in these Preliminary Invalidity Contentions to demonstrate a motivation to combine. Defendants may also rely on expert testimony to demonstrate a motivation to combine. Defendants may also rely on (i) foreign counterparts of U.S.

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