

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

CPC PATENT TECHNOLOGIES PTY LTD.,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 6:21-cv-00165-ADA

JURY TRIAL DEMANDED

DEFENDANT’S FINAL INVALIDITY CONTENTIONS

I. INTRODUCTION

Pursuant to the Court’s Scheduling Order, Dkt. No. 37, Defendant Apple Inc. (“Defendant” or “Apple”) provides these Final Invalidity Contentions to Plaintiff CPC Patent Technologies Pty Ltd (“Plaintiff” or “CPC”) for the following patents (collectively, “Asserted Patents” or “Patents-in-Suit”) and claims (collectively, “Asserted Claims”) identified as asserted in Plaintiff’s Preliminary Infringement Contentions served on August 4, 2021 (“Infringement Contentions”), later limited in CPC’s Notice of Asserted Claims, Dkt. Not. 80, filed on February 15, 2022, and later again limited in CPC’s email to Apple on March 16, 2022:

- U.S. Patent No. 8,620,039 (“’039 Patent”): Claim 1 (“’039 Asserted Claim”)
- U.S. Patent No. 9,665,705 (“’705 Patent”): Claims 1, 10, 11, 15, 16, and 17 (“’705 Asserted Claims”)

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

These invalidity contentions are being made in the early stages of fact discovery. The

parties have not yet started document production, and no general depositions have been taken. No third party discovery has been taken. Accordingly, Defendant reserves the right to supplement and amend these contentions to the extent additional information becomes available during discovery. For example, Defendant has served and may continue to serve third party discovery requests on companies that they are informed and believe have relevant prior art, and reserve the right to supplement or amend these disclosures as may be appropriate in the future. Specifically, Defendant has served the following third parties with subpoenas for prior art:

- HP - served March 7, 2022
- BIO-Key - served February 15, 2022
- SecuGen - served March 14, 2022
- Security First - served March 14, 2022
- Ringdale - served March 14, 2022
- HID - served March 15, 2022
- Idemia Identity & Security USA - served March 15, 2022
- Old Round Rock - served March 14, 2022

Defendant will also be taking third party discovery from the individual named as inventor on CPC's patent filings and associated companies. Defendant reserves the right to supplement and/or amend its invalidity contentions to include new prior art discovered from CPC, 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.

Apple 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 shelter at home restrictions in California, the highly sensitive nature of Apple's source code, and the restrictions placed on any transfer or review of that source code.

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.

In certain instances, Defendant has applied the claims to the prior art in view of CPC's allegations, admissions, or positions for purposes of these invalidity contentions only. This disclosure of 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 CPC's Preliminary 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 CPC's apparent interpretation of the claims.

B. CPC's Preliminary Infringement Contentions

CPC's Preliminary Infringement Contentions are deficient in numerous respects. Apple served a deficiency letter on CPC on September 10, 2021, and reserves the right to supplement or amend these invalidity contentions in view of Plaintiff's response, if any. Because CPC's response to such deficiencies may lead to further grounds for invalidity, Defendant specifically reserves the right to modify, amend, or supplement their contentions as CPC modifies, amends, or supplements its disclosures and/or produces documents in discovery.

Additionally, CPC has presented no substantive contentions of any alleged infringement under the doctrine of equivalents in its Preliminary 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 Preliminary Infringement Contentions. As a result, CPC has waived any doctrine of equivalents theory. If CPC is permitted to provide any information relating to infringement under the doctrine of equivalents, Defendant may amend and supplement these invalidity contentions as appropriate.

The positions Apple takes in these invalidity contentions are based on the broad claim interpretations CPC takes in its Preliminary Infringement Contentions. Apple reserves the right to supplement these invalidity contentions with more narrow positions should CPC take more narrow claim interpretations in its Final Infringement Contentions.

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 CPC; and the papers filed and any evidence submitted by CPC in connection with this litigation.

D. Rebuttal Evidence

Prior art not included in these 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 CPC 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 CPC'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 as 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.

III. OVERVIEW OF THE TECHNOLOGY AS OF 2003

A. History of Fingerprint Technology

There is archaeological evidence that fingerprints as a form of identification have been

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