

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

AIRE TECHNOLOGY LTD.,

Plaintiff,

v.

APPLE INC.,

Defendant.

CIVIL ACTION NO. 6:21-cv-01101

DEFENDANT'S PRELIMINARY INVALIDITY CONTENTIONS

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I. INTRODUCTION

Pursuant to the Court’s Scheduling Order (D.I. 23) and Standing Order Governing Proceedings – Patent Cases (“OGP”), Defendant Apple Inc. (“Defendant”) hereby discloses its Preliminary Invalidity Contentions. Defendant contends that each of the claims asserted by Plaintiff Aire Technology Ltd. (“Plaintiff” or “Aire”) is invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112, for at least the reasons set forth herein. In addition, based on its investigation to date, Defendant hereby produces the prior art references on which these Preliminary Invalidity Contentions are based, and technical documents sufficient to show the operation of the accused products.

In Aire’s Preliminary Infringement Contentions, Aire asserts that Defendant infringes the following claims (“Asserted Claims”) of United States Patent Nos. 8,174,360 (“the ’360 Patent”), 8,205,249 (the “’249 Patent”), 8,581,706 (the “’706 Patent”), (collectively, the “Patents-in-Suit” or the “Asserted Patents”):

Patent Number	Claims
8,174,360	1, 2, 3, 8, 9, 10, 11, and 15
8,205,249	1-12
8,581,706	1, 2, 3, 11, 12, 16, 18, and 20

With respect to each of the Asserted Claims and based on its investigation to date, Defendant hereby provides (1) charts setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations that are indefinite or lack written description under 35 U.S.C. § 112, and (3) an identification of any claims that are directed to ineligible subject matter under 35 U.S.C. § 101. These contentions are subject to the Defendant’s reservation of rights as set forth below.

Defendant's invalidity contentions address only the claims asserted in Aire's Preliminary Infringement Contentions. To the extent that Aire asserts additional claims against Defendant, Defendant reserves the right to disclose new or supplemental invalidity contentions regarding such claims.

II. RESERVATION OF RIGHTS AND OBJECTIONS

Consistent with the OGP and the Scheduling Order, Defendant reserves the right to amend these Preliminary Invalidity Contentions.

Discovery in this case is ongoing and Defendant's investigations are continuing. While Defendant has made diligent efforts, Defendant has not yet completed its search for and analysis of relevant prior art and other information, some of which may be in the possession of third parties, and some of which was unavailable to, or not yet known by, Defendant. Defendant bases these Preliminary Invalidity Contentions on its current knowledge and understanding of Plaintiff's Infringement Contentions, the prior art, and other facts and information available as of the date of these contentions. Defendant further reserves the right to revise, amend, or supplement the information provided herein, including by identifying, charting, and relying on additional information, references, systems, and devices, should Defendant's further search and analysis yield such additional information, references, systems, or devices, consistent with the Court's Scheduling Order and the Federal Rules of Civil Procedure. The OGP and Scheduling Order contemplate that these Preliminary Invalidity Contentions would be prepared and served in response to Plaintiff's Preliminary Infringement Contentions. However, Plaintiff's Preliminary Infringement Contentions are inadequate and fail to provide proper and complete disclosure of Plaintiff's infringement theories, and Plaintiff's inadequate disclosure has prejudiced Defendant's ability to prepare these Preliminary Invalidity Contentions. Due to Plaintiff's failure to provide proper and complete disclosure of its Preliminary Infringement Contentions, Defendant reserves

the right to amend these Preliminary Invalidity Contentions should Plaintiff amend or supplement its Preliminary Infringement Contentions and/or its apparent claim constructions. Defendant also reserves the right to amend these Preliminary Invalidity Contentions in light of positions that Plaintiff and/or its expert witnesses may assert concerning claim construction, infringement, invalidity, and/or subject matter eligibility. In addition, Defendant reserves the right to supplement, amend, or alter the positions taken and information disclosed in these Preliminary Invalidity Contentions, including without limitation, the prior art and grounds of invalidity set forth herein under 35 U.S.C. §§ 101, 102, 103 or 112, to take into account information or defenses that may come to light as a result of Defendant's discovery efforts; additional information obtained as to the priority date(s) of the asserted claim; testimony or documents produced by a party or non-party; and positions that Aire may take concerning infringement or invalidity issues. For example, Defendant may seek further discovery from third parties believed to have knowledge, documentation, or corroborating evidence concerning items of prior art, including prior art listed in the Exhibits hereto. Such third parties may include, without limitation, the authors, inventors, assignees, owners, or developers of the references and technologies listed in these disclosures. Defendant further reserves the right to amend these Preliminary Invalidity Contentions to incorporate information in Aire's possession that Aire has not yet disclosed, including any claim charts, prior art references, invalidity theories, or other information related to invalidity received from any third parties in response to allegations of infringement of the Patents-in-Suit or related patents. Defendant may also rely upon corroborating documents, products, testimony, and other evidence, including materials obtained through further investigation and third-party discovery of the prior art identified herein, that describe the invalidating features identified in these Preliminary Invalidity Contentions; evidence

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