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

XR COMMUNICATIONS, LLC, dba, VIVATO TECHNOLOGIES, Plaintiff, v. AMAZON.COM, INC. et al. Defendants.	Civil Action No. 6:21-cv-00619-ADA **JURY TRIAL DEMANDED**
APPLE INC., DEFENDANT.	Civil Action No. 6:21-cv-00620-ADA **JURY TRIAL DEMANDED**
ASUSTEK COMPUTER INC. DEFENDANT.	Civil Action No. 6:21-cv-00622-ADA **JURY TRIAL DEMANDED**
GOOGLE LLC DEFENDANT.	Civil Action No. 6:21-cv-00625-ADA **JURY TRIAL DEMANDED**
SAMSUNG ELECTRONICS CO., LTD. et al. DEFENDANTS.	Civil Action No. 6:21-cv-00626-ADA **JURY TRIAL DEMANDED**
DELL TECHNOLOGIES INC. et al. DEFENDANTS.	Civil Action No. 6:21-cv-00646-ADA **JURY TRIAL DEMANDED**
HP INC., DEFENDANT.	Civil Action No. 6:21-cv-00694-ADA **JURY TRIAL DEMANDED**
MICROSOFT CORPORATION, DEFENDANT.	Civil Action No. 6:21-cv-00695-ADA **JURY TRIAL DEMANDED**

DEFENDANTS' PRELIMINARY INVALIDITY CONTENTIONS
FOR U.S. PATENT NO. 10,715,235

Pursuant to the Court's Order Governing Proceedings and the Court's Scheduling Order Defendants Amazon.com, Inc.; Amazon.com Services, Inc.; eero LLC; Apple Inc.; ASUSTeK Computer Inc.; Google LLC; Samsung Electronics America, Inc.; Samsung Electronics Co., Ltd.; Dell Inc.; Dell Technologies Inc.; HP Inc.; and Microsoft Corporation (collectively, "Defendants") respectfully submit these preliminary invalidity contentions with respect to the claims of U.S. Patent No. 10,715,235 (the "'235 Patent") identified by Plaintiff XR Communications LLC d/b/a Vivato Technologies, ("Plaintiff") in its Preliminary Infringement Contentions.

The currently Asserted Claims, as reflected in Plaintiff's Preliminary Infringement Contentions, are claims 1, 2, 4, 5, 8, 9, 11, 12, 15, and 16 of the '235 Patent (the "Asserted Claims"). As detailed further below, the '235 Patent is anticipated by, or obvious in view of, one more of the prior art references being produced at 235PRIORART_00000001 to 235PRIORART_00002069, as well as invalid under 35 U.S.C. §§ 101 and 112.

I. PRELIMINARY STATEMENT

These invalidity contentions are based on Defendants' current knowledge, understanding, and belief of the '235 Patent and prior art, of Plaintiff's infringement theories (inasmuch as they can be inferred from its Infringement Contentions), and of the facts and other information available as of the date of these invalidity contentions. Defendants' investigation, discovery, and analysis of information related to this action is ongoing. Additional discovery, elucidation of Plaintiff's impermissibly vague infringement contentions, and/or orders of the Court may require Defendants to amend or supplement these invalidity contentions, and Defendants expressly reserve the right to do so as their respective cases proceed. These contentions represent Defendants' good-faith effort to provide a comprehensive identification of prior art relevant to these cases, but Defendants

reserve the right to modify or supplement their prior art list and invalidity contentions at a later time with, or based upon, pertinent information that may be subsequently discovered.

A. No Waiver.

Nothing in these invalidity contentions is intended, nor should be construed, as a waiver of any noninfringement position or argument under 35 U.S.C. §§ 101 or 112. Defendants' statements herein (including the accompanying claim charts) reflect Defendants' present understanding of the purported scope of the claims as alleged by Plaintiff in its Infringement Contentions (as best those contentions can be understood in light of their present deficiencies).

The patent claims have yet to be construed. As a result, Defendants have based these invalidity contentions upon their knowledge and understanding of the potential scope of the Asserted Claims at this time, and, in part, upon the apparent interpretations of the Asserted Claims advanced by Plaintiff in its Infringement Contentions. Defendants may disagree with Plaintiff's interpretation of the meaning of many terms and phrases in the Asserted Claims. Defendants have provided these invalidity contentions based in part on their present understanding of Plaintiff's apparent constructions and interpretations of the Asserted Claims. These invalidity contentions do not represent Defendants' agreement or view as to the proper interpretation of any claim term contained therein. Any similarity between any apparent claim interpretation in any of Defendants' charts of prior art reference and Plaintiff's contentions is not an admission or agreement with Plaintiff about the meaning of any claim term, but rather a reflection of the fact that the subject matter Plaintiff believes is claimed is present in the prior art, or that the claims are otherwise invalid. These invalidity contentions are made in the alternative, and should not be interpreted to rely upon, or in any way affect, the non-infringement arguments Defendants may assert in their respective cases. Defendants reserve the right to amend, supplement, or materially modify its invalidity contentions as each case proceeds. Defendants also reserve the right to amend,

supplement, or materially modify their invalidity contentions based on any infringement and/or additional claim construction positions that Plaintiff may take in this case.

Defendants also reserve the right to amend, supplement, or materially modify their invalidity contentions in response to any claim construction or interpretation positions that Plaintiff may take. Defendants also reserve the right to assert that a claim is indefinite, not enabled, or fails to meet the written description requirement of 35 U.S.C. § 112 based on any claim construction or interpretation position Plaintiff may take in these cases or based on any claim construction the Court may further adopt in these cases.

B. No Admission.

Nothing disclosed herein is an admission or acknowledgement that any product accused of infringement by Plaintiff in its Infringement Contentions (the "Accused Products"), or any of Defendants' other products or services, infringes any of the Asserted Claims.

Defendants further note that Plaintiff appears to rely upon overly broad interpretations of the Asserted Claims. At the same time, Plaintiff's Infringement Contentions are in most places too general and vague to discern Plaintiff's infringement theories and how exactly Plaintiff contends each Accused Product meets or practices each element of the Asserted Claims. For example, Plaintiff's Infringement Contentions fail to clearly identify the aspects or features of the Accused Products that Plaintiff contends meet the elements of the Asserted Claims. As a result, Defendants have been prejudiced in their ability to prepare these preliminary invalidity contentions. In addition, Plaintiff's Infringement Contentions, in many cases, continue to fail to put Defendants on notice of Plaintiff's interpretation of the Asserted Claims, further prejudicing Defendants' ability to identify relevant prior art. In addition, Plaintiff has not identified any theories of infringement under the doctrine of equivalents. Defendants have relied on Plaintiff's apparent representation that it has no doctrine of equivalents theories in preparing these invalidity

contentions, and any attempt by Plaintiff to present an untimely doctrine of equivalents argument would be severely prejudicial to Defendants. To the extent that Plaintiff is later permitted by the Court to amend its contentions to cure the deficiencies of its current contentions or to pursue any currently undisclosed doctrine of equivalents theories, Defendants expressly reserve the right to supplement or amend these invalidity contentions to account for such amendments.

To the extent that any of the prior art references disclose the same functionality or feature of any of the Accused Products, Defendants reserve the right to argue that said feature or functionality does not practice any element of any of the Asserted Claims, and to argue, in the alternative, that if said feature or functionality is found to practice any element of any of the Asserted Claims, then the prior art reference demonstrates that the element is not novel, is obvious, and/or is otherwise not patentable.

Attached hereto are representative claim charts that identify where the elements of the Asserted Claims of the '235 Patent may be found in the prior art. The references cited in the attached claim charts may disclose the limitations of the Asserted Claims expressly and/or inherently. The suggested obviousness combinations may be presented in conjunction with or in the alternative to Defendants' contentions regarding anticipation. Where Defendants contend that an element or elements would have been obvious over a reference in combination with one or more additional references, additional information regarding the nature of the combinations and motivations to combine may be found in Section III.A.2 of this cover document. These obviousness combinations should not be construed to suggest that any reference included in any combination is not anticipatory in its own right. Further, to the extent that Plaintiff contends that any of the references identified do not constitute prior art under 35 U.S.C. § 102, Defendants

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