UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

EMBLAZE LTD., Plaintiff, v. APPLE INC., Defendant.	Case No. 5:11-cv-01079-PSG **CLAIM CONSTRUCTION ORDER** **(Re: Docket No. 169)**

In this patent infringement suit, Plaintiff Emblaze Ltd. ("Emblaze") alleges that Defendant Apple, Inc. ("Apple") infringes U.S. Patent No. 6,389,473. The parties submitted 16 claim construction disputes for resolution by the court. Two days after the hearing, the court issued a summary construction order and explained that a more complete order would follow providing the court's reasoning.[1] The court now provides that reasoning.

I. BACKGROUND

A. The Parties and Disputed Technology

Emblaze is an Israeli corporation dedicated to the "development and marketing of innovative high-tech technologies and products."[2] Apple is a California-based corporation that,

[1] *See* Docket No. 169.

[2] Docket No. 143 at ¶ 1.

among other things, markets phones, tablets and computers that incorporate "HTTP Live Streaming technology" capable of "real-time" broadcasting.[3] Emblaze owns the sole patent at issue in this case: U.S. Patent No. 6,389,473 ("the '473 patent").[4]

The '473 patent claims methods and apparatuses that allow "transmission of live audio and video to multiple devices" without requiring "devoted streaming servers" and permitting adjustment to "different bandwidths" where necessary.[5] As the abstract of the '473 patent puts it, the invention disclosed is:

> A method for real-time broadcasting from a transmitting computer to one or more client computers over a network, including providing at the transmitting computer a data stream having a given data rate, and dividing the stream into a sequence of slices, each slice having a predetermined data size associated therewith. The slices are encoded in a corresponding sequence of files, each file having a respective index, and the sequence is uploaded to a server at an upload rate generally equal to the data rate of the stream, such that the one or more client computers can download the sequence over the network from the server at a download rate generally equal to the data rate.

Independent Claim 1 of the '473 patent is representative:

> A method for real-time broadcasting from a transmitting computer to one or more client computers over a network, comprising:
>
> providing at the transmitting computer a data stream having a given data rate;
>
> dividing the stream into a sequence of slices, each slice having a predetermined data size associated therewith;
>
> encoding the slices in a corresponding sequence of files, each file having a respective index; and
>
> uploading the sequence to a server at an upload rate generally equal to the data rate of the stream, such that the one or more client computers can download the sequence over the network from the server at a download rate generally equal to the data rate.[6]

Emblaze claims that Apple's HTTP Live Streaming, which Apple introduced into its products around 2009,[7] infringes asserted '473 patent claims 23, 28, 37, and 40.

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[3] *Id.* at ¶ 11.

[4] *See id.* at ¶ 6; Docket No. 143-1, Ex. A.

[5] *See* Docket No. 143 at ¶ 9.

[6] *See* Docket No. 143-1, Ex. A at 14:18-32.

[7] *See* Docket No. 143 at ¶ 12.

B. Procedural History

Emblaze kicked off this case by filing a complaint for patent infringement in the Southern District of New York.[8] Several months later, the case was transferred to this district.[9] After the parties initially declined to consent to magistrate judge jurisdiction, the case was assigned to United States District Judge Saundra Brown Armstrong.[10] Emblaze thereafter sought leave to amend its complaint to:

(1) amend the list of claims of the '473 Patent that are asserted by Emblaze so as to conform the allegations to what Emblaze has asserted in its Infringement Contentions;

(2) amend the products that Emblaze is accusing of infringement so as to conform the allegations of the complaint to what Emblaze has learned in its ongoing investigation and from discovery thus far;

(3) remove certain allegations concerning Apple's presence in the Southern District of New York (no longer relevant now that the action has been transferred to the Northern District of California);

(4) update the firm affiliation of counsel for Emblaze and the change of venue from the Southern District of New York to the Northern District of California; and

(5) make minor editing changes to the text.[11]

After Apple filed a statement of non-opposition, Judge Armstrong granted Emblaze's motion for leave to amend the complaint. Apple then moved to dismiss the amended complaint pursuant to Fed. R. Civ. P. 12(b)(6). Judge Armstrong dismissed Emblaze's indirect infringement claims with leave to amend, but denied Apple's related request to dismiss Emblaze's direct infringement or willfulness claims.[12] Emblaze's responded with a second amended complaint claiming direct, induced, contributory and willful infringement.[13]

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[8] *See* Docket No. 1.

[9] *See* Docket No. 24.

[10] *See* Docket No. 31.

[11] *See* Docket No. 75 at 2-3 (verb tenses modified).

[12] *See* Docket No. 137.

[13] *See* Docket No. 143.

Pursuant to the parties' stipulation, the case was reassigned to the undersigned.[14] Following this latest reassignment and a tutorial and hearing, the court construed the disputed claim terms as follows:[15]

[14] *See* Docket No. 150.

[15] *See* Docket No. 169 at 1-3.

CLAIM TERM	CONSTRUCTION
"real-time broadcasting"	simultaneous transmission of data to one or more clients matching the human perception of time or proceeding at the same rate as a physical or external process
"providing at the transmitting computer a data stream having a given data rate"	the transmitting computer provides a data stream having a given amount of data per unit of time
"data stream having a given data rate"	a data stream having a given amount of data per unit of time
"slice"	a discrete segment of the data stream
"each slice having a predetermined data size associated therewith"	each slice having a data size, which may be a time duration, assigned in advance of the stream being divided
"encoding the slices in a corresponding sequence of files"	forming each slice as a file, wherein a file includes compressed data from the slice and a file descriptor, and wherein the sequence of files corresponds to the sequence of slices
"sequence of files, each file having a respective index"	sequence of files, wherein each file has an indicator that represents a respective slice's location in the sequence
"uploading the sequence to a server at an upload rate generally equal to the data rate of the stream"	transmitting the files from the transmitting computer to the server at an upload rate generally equal to the data rate of the stream
"such that one or more client computers can download the sequence over the network from the server at a download rate generally equal to the data rate"	such that one or more client computers are able to select individual files corresponding to the slices for download over the network at a download rate generally equal to the data rate
"decode the sequence"	decompressing any compressed data in the sequence
"play back the data stream responsive to the indices of the files"	playing back the data stream based on the indices of the files to be played back
"at a replay rate generally equal to the data rate"	the rate at which the client plays back the data stream is generally equal to the data rate of the stream
"uploading and updating an index file containing the index of the file in the sequence that was most recently uploaded"	uploading to a server an index file, and updating the index file with the index of the most recently uploaded file
"encoding slices at a different plurality of different quality levels"	forming slices at more than one quality level
"determining a data bandwidth of the network between the server and the client computer"	the client determines a data rate at which a client can download a file from the server
"wherein dividing the stream into the sequence of slices comprises dividing the stream into a sequence of time slices, each having a predetermined duration associated therewith"	the stream is divided into a sequence of slices, where the predetermined data size of the slices is established by setting the time duration of the slices

A few months later, Apple moved the court to reconsider or clarify its prior construction that the term "each slice having a predetermined data size associated therewith" means "each slice having a data size, which may be a time duration, assigned in advance of the stream being

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