

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

QUEST NETTECH CORPORATION,	§	
	§	Case No. 2:19-cv-00118-JRG
	§	
Plaintiff,	§	
	§	<b><u>JURY TRIAL DEMANDED</u></b>
v.	§	
	§	
APPLE INC.,	§	
	§	
Defendant.	§	
	§	
	§	

**PLAINTIFF QUEST NETTECH CORPORATION'S RESPONSE  
IN OPPOSITION TO APPLE INC.'S MOTION FOR  
LEAVE TO SUPPLEMENT ITS INVALIDITY CONTENTIONS (DKT. 58)**

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Plaintiff Quest NetTech Corporation (“NetTech” or “Plaintiff”) respectfully submits this Response in Opposition to Apple Inc.’s (“Apple” or “Defendant”) Motion for Leave to Supplement Its Invalidity Contentions (Dkt. 58).

## **I. INTRODUCTION**

Apple does not have good cause to supplement its invalidity contentions because it did not act diligently in discovering U.S. Patent No. 5,590,038 (the “Pitroda patent”) and has not shown that the Pitroda patent is important to its invalidity case. Having no valid excuse for failing to locate the Pitroda patent, Apple resorts to blaming NetTech’s infringement contentions even though Apple has never challenged the sufficiency of the contentions in this Court. The supposedly deficient contentions did not prevent Apple from locating dozens of other prior art references, several of which Apple contends anticipate all of the asserted claims. Given that this case involves only one asserted patent and Apple was given an extra month to complete its contentions, Apple did not act diligently by locating the Pitroda patent until three months after the deadline for invalidity contentions.

Apple fails to show that supplementing its invalidity contentions with the Pitroda patent would be important because the Pitroda patent would be merely cumulative of the five purportedly anticipating references already included in its invalidity contentions. Apple also refuses to commit to litigating invalidity under the Pitroda patent in this Court rather than the Patent Office. Apple cannot argue that the Pitroda patent is so important to this case that it must be excused for missing its deadline by three months, if it intends to file a petition for *inter partes* review based on the Pitroda patent, and seeks to stay this case in favor of that proceeding.

Unable to prove diligence or importance, Apple cannot establish good cause to supplement its invalidity contentions. This motion should be denied.

## II. BACKGROUND

NetTech filed its complaint in this case on April 12, 2019. *See* Dkt. No. 1. NetTech timely served its infringement contentions on June 27, 2019, asserting infringement of 28 claims of U.S. Patent No. RE38,137 (the “’137 Patent”). Under P.R. 3-3, Apple’s invalidity contentions would have been due on August 12, 2019, but Apple requested an additional month to serve its contentions, and NetTech agreed to extend the deadline for invalidity contentions to September 12, 2019.

Apple’s invalidity contentions identify five patent references as anticipating all of the asserted claims of the ’137 Patent. Dkt. 58-9 at 11<sup>1</sup>. The contentions include charts showing how each of these references purportedly anticipates every asserted claim of the ’137 Patent. *Id.* at 11. In addition, Apple’s invalidity contentions identify approximately 18 prior art products that anticipate at least one claim of the ’137 Patent. *Id.* at 11-20. The contentions also include nine charts which map obviousness references against claimed functionality. *Id.* at 28. Finally, the contentions identify approximately 146 patent references and 32 publications as additional background references that Apple intends to rely upon to establish the state of the art and the knowledge of one of ordinary skill in the art. *Id.* at 43-50.

Nearly three months after serving its infringement contentions, on December 4, 2019, Apple disclosed to NetTech that it had located the Pitroda patent and requested a meet-and-confer concerning its motion to supplement invalidity contentions. Apple was unable to agree that the Pitroda patent would not be used in a USPTO proceeding. In other words, Apple is unable to commit to litigating invalidity under Pitroda at the District Court level. The filing of this motion followed on December 17, 2019.

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<sup>1</sup> Page references in “Dkt.” citations refer to the page numbers assigned by the ECF system.

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