

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

**TOUCHSTREAM TECHNOLOGIES, INC.,**

*Plaintiff,*

v.

**CHARTER COMMUNICATIONS, INC. et  
al.,**

*Defendants.*

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**TOUCHSTREAM TECHNOLOGIES, INC.,**

*Plaintiff,*

v.

**COMCAST CABLE COMMUNICATIONS,  
LLC, D/B/A XFINITY, et al.,**

*Defendants.*

Lead Case No. 2:23-cv-00059-JRG

**Member Case No. 2:23-cv-00062-JRG**

**JOINT PROPOSED PRETRIAL ORDER<sup>1</sup>**

Plaintiff Touchstream Technologies, Inc. (“Plaintiff” or “Touchstream”) and Defendants Comcast Cable Communications, LLC, d/b/a Xfinity; Comcast Corporation; Comcast Cable Communications Management, LLC; and Comcast of Houston, LLC (collectively “Comcast”) (Touchstream and Comcast collectively, “the Parties”) submit the following proposed Joint Pretrial Order pursuant to the Court’s Third Amended Docket Control Order (Dkt. 205), the Federal Rules of Civil Procedure, and Local Rules of this Court. This case is scheduled for a

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<sup>1</sup> Submissions that are agreed to by both Touchstream and Comcast are not highlighted. Submissions proposed by Touchstream that are not agreed to by Comcast are bracketed and highlighted in green. Submissions proposed by Comcast that are not agreed to by Touchstream are bracketed and highlighted in yellow.

pretrial management conference on December 2, 2024, pursuant to Local Rule CV-16 and Rule 16 of the Federal Rules of Civil Procedure. The Parties have stipulated to various matters identified herein and having identified exhibits, witnesses, factual contentions, and triable issues.

**I. APPEARANCE OF COUNSEL**

**Attorneys for Plaintiff Touchstream Technologies, Inc.**

Ryan D. Dykal (*pro hac vice*)  
Jordan T. Bergsten (*pro hac vice*)  
Mark Schafer (*pro hac vice*)  
Philip A. Eckert (*pro hac vice*)  
Anita Liu (TX State Bar No. 24134054)  
**BOIES SCHILLER FLEXNER LLP**  
1401 New York Ave, NW  
Washington, DC, DC 20005  
(t) 202-274-1109  
rdykal@bsflp.com  
jbergsten@bsflp.com  
mschafer@bsflp.com  
peckert@bsflp.com  
aliu@bsflp.com

John Michael Lyons (*pro hac vice*)  
Sabina Mariella (*pro hac vice*)  
Sophie Roytblat (*pro hac vice*)  
**BOIES SCHILLER FLEXNER LLP**  
55 Hudson Yards, 20<sup>th</sup> Floor  
New York, NY 10001  
jlyons@bsflp.com  
smariella@bsflp.com  
sroytblat@bsflp.com

Melissa Smith (TX State Bar No. 24001351)  
**GILLAM & SMITH LLP**  
303 S. Washington Ave.  
Marshall, TX 75670  
(t) 903-934-8450  
melissa@gillamsmithlaw.com

**Attorneys for Comcast Defendants**

Deron Dacus (State Bar No. 00790553)  
**THE DACUS FIRM, P.C.**  
821 ESE Loop 323, Suite 430  
Tyler, TX 75701  
(t) (903) 705-1117  
ddacus@dacusfirm.com

**DAVIS POLK & WARDWELL LLP**  
Ashok Ramani (CA Bar No. 200020)  
David J. Lisson (CA Bar No. 250994)  
James Y. Park (CA Bar No. 343659)  
Micayla Hardisty (CA Bar No. 333246)  
1600 El Camino Real  
Menlo Park, CA 94025  
ashok.ramani@davispolk.com  
david.lisson@davispolk.com  
james.park@davispolk.com  
micayla.hardisty@davispolk.com

Alena Farber (NY Bar No. 5896170)  
450 Lexington Avenue  
New York, NY 10017  
alena.farber@davispolk.com

**WILMER CUTLER PICKERING HALE AND DORR LLP**  
Thomas G. Saunders (NY Bar No. 4429387)  
2100 Pennsylvania Ave, NW  
Washington, DC 20007  
thomas.saunders@wilmerhale.com

Lauren E. Matlock-Colangelo (NY Bar No. 5771340)  
7 World Trade Center  
250 Greenwich St  
New York, NY 10007  
lauren.matlock-colangelo@wilmerhale.com

## II. STATEMENT OF JURISDICTION

This Court has subject-matter jurisdiction under Title 28, U.S.C. §§ 1331 and 1338(a), because this action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* The parties do not dispute subject-matter jurisdiction or personal jurisdiction for purposes of this action only.

### III. JOINT STATEMENT OF THE CASE

This is a civil action for patent infringement in which Touchstream accuses Comcast of directly infringing claims 1, 5, 7, 8, and 9 of U.S. Patent No. 8,356,251 (“’251 patent”); claims 12, 13, and 14 of U.S. Patent No. 11,048,751 (“’751 patent”); and claims 17, 18, 19 and 20 of U.S. Patent No. 11,086,934 (“’934 patent”) (collectively the “Asserted Claims” of the “Asserted Patents”). Touchstream alleges that Comcast has directly infringed each of the Asserted Claims. Comcast denies that it has infringed the Asserted Claims of the Asserted Patents and argues that the Asserted Claims are invalid.

Touchstream alleges Comcast infringes the Asserted Claims of the Asserted Patents by performing certain methods. In particular, Touchstream alleges that Comcast infringes when a subscriber uses the Xfinity TV Remote Application in conjunction with an X1 set-top box (the “Accused Functionalities”). Touchstream seeks monetary damages in the form of a reasonable royalty for past damages, an ongoing reasonable royalty for future damages, pre- and post-judgment interest, costs, and an award of its fees under 35 U.S.C. §§ 284 and 285, as well as any other relief the Court deems appropriate. Touchstream also seeks a permanent injunction to prevent further infringement of the Asserted Patents. Touchstream asserts that Comcast’s alleged infringement of the ’251 patent was and continues to be willful. Touchstream also asserts that Comcast’s alleged infringement of the ’751 and ’934 patents has been willful after the filing of this lawsuit. Touchstream seeks enhanced damages as a result of Comcast’s alleged willful infringement, and any other relief the Court deems appropriate. Touchstream disagrees with each allegation, defense, and/or affirmative defense asserted by Comcast.

Comcast contends that it does not infringe the Asserted Claims and that the Asserted Claims are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112. Because Comcast does not

infringe any valid Asserted Claim, Touchstream is not entitled to any damages or equitable relief. Comcast further contends that it has not willfully infringed any of the Asserted Patents. Further, this case is exceptional under 35 U.S.C. § 285, and Comcast seeks its attorney's fees and costs thereunder, as well as any other relief the Court deems appropriate.

#### **IV. CONTENTIONS OF THE PARTIES**

By providing these statements, the Parties do not concede that any of the following issues are appropriately presented at trial. The Parties also do not waive any issues raised by their previously filed motions or previously lodged objections.

The contentions below do not include every detail underlying each contention. The Parties do not waive any issues raised in their pending, decided, or future motions, including any motions *in limine*, motions for summary judgment, *Daubert* motions, motions to strike, and any other future motions or objections that they may file.

##### **A. Touchstream's Contentions**

(1) Plaintiff Touchstream is the owner of all right, title, and interest in the '251 patent titled "Play Control of Content on a Display Device." Comcast has been and is infringing the '251 patent under 35 U.S.C. § 271 by using the methods of one or more claims of the '251 Patent within the United States through its Accused Functionalities. Touchstream accuses Comcast of infringing claims 1, 5, 7, 8, and 9 of the '251 patent.

(2) Plaintiff Touchstream is the owner of the '751 patent titled "Play Control of Content on a Display Device." Comcast has been and is infringing the '751 patent under 35 U.S.C. § 271 by using the methods of one or more claims of the '751 patent within the United States through its Accused Functionalities. Touchstream accuses Comcast of infringing claims 12, 13, and 14 of the '751 patent.

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