

# EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF TEXAS

3 MARSHALL DIVISION

4 TOUCHSTREAM TECHNOLOGIES, INC., ) (  
PLAINTIFF, ) ( CIVIL ACTION NO.  
5 ) ( 2:23-CV-59-JRG-RSP  
VS. ) ( MARSHALL, TEXAS  
6 ) (  
CHARTER COMMUNICATIONS, INC., ) (  
7 ET AL., ) ( DECEMBER 19, 2024  
DEFENDANTS. ) ( 9:01 A.M.

8  
9 PRETRIAL HEARING

10 BEFORE THE HONORABLE ROY S. PAYNE

11 UNITED STATES MAGISTRATE JUDGE

12  
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01:48:25 1 significant differences between the applications, and the  
01:48:28 2 fact witnesses confirmed as much.

01:48:30 3 So there's nothing in the record to suggest that  
01:48:33 4 the X1 Remote app is relevant.

01:48:37 5 THE COURT: All right. Thank you, Ms. Farber.

01:48:40 6 I'll deny Motion in Limine No. 2.

01:48:42 7 That takes us to No. 3.

01:48:55 8 MR. SAUNDERS: Good afternoon, Your Honor. Tom  
01:48:58 9 Saunders for Comcast.

01:48:58 10 So Motion in Limine No. 3 goes to the issue of  
01:49:01 11 testimony, evidence, and argument regarding alleged  
01:49:04 12 willfulness before the damages period. And willfulness can  
01:49:09 13 only be relevant to the issue of enhanced damages under  
01:49:13 14 Section 284. And enhancement of damages is only relevant  
01:49:18 15 during the damages period when there would be damages to  
01:49:21 16 enhance.

01:49:22 17 THE COURT: What I see as the central issue on  
01:49:24 18 this motion is that I don't think the law is that evidence  
01:49:34 19 from before the period in suit can't be considered in  
01:49:41 20 determining whether the infringement during the relevant  
01:49:45 21 period was willful.

01:49:52 22 MR. SAUNDERS: So, Your Honor, it's -- we're not  
01:49:53 23 arguing for a per se rule here. We're arguing under Rule  
01:49:57 24 403 and that when you have a much later damages period --  
01:49:59 25 you know, they want to reach back at least to 2011, six

01:50:03 1 years before the earliest damages period, two years before  
01:50:05 2 the issuance of the earliest patent in this suit, and when  
01:50:10 3 you have to be measuring culpability as of the relevant  
01:50:14 4 period, which for here is going to be the damages period,  
01:50:18 5 means the concern is that the jury's attention is going to  
01:50:20 6 be focused on the wrong period of time. It's not the  
01:50:24 7 operative period it needs to be determining.

01:50:26 8 And we submit, Your Honor, that the prejudice  
01:50:28 9 really sort of steps up the further back you go in time and  
01:50:32 10 the more attenuated this gets.

01:50:34 11 And so, you know, there's no allegation in that  
01:50:39 12 part that there's an accusation of infringement even before  
01:50:43 13 this suit is filed. But as we understand their evidence,  
01:50:47 14 their communication of the patent number that allegedly  
01:50:50 15 occurred here was in 2016.

01:50:53 16 But they also want to bring in a lot of more  
01:50:55 17 evidence before that in which no patent number is  
01:50:58 18 communicated. They would have very little, if any,  
01:51:02 19 probative value in light of that. But it's prejudicial  
01:51:06 20 because it's focusing the jury on the wrong time period.

01:51:09 21 And so this problem gets worse the further back  
01:51:11 22 you go, the further back you go. And then we have, you  
01:51:14 23 know, the period where you have communications with Comcast  
01:51:17 24 that are six years before the damages period even began and  
01:51:22 25 before there is even a patent. And under those

01:51:26 1 circumstances, it's getting so attenuated. The fact that  
01:51:30 2 there may be a pending patent doesn't tell you if one's  
01:51:33 3 going to issue. It doesn't tell you what the claims are  
01:51:35 4 going to be. And so in those circumstances, the balance  
01:51:39 5 should be struck in favor of excluding that evidence.

01:51:42 6 And the final thing I'll say is this does also --  
01:51:46 7 part of our concern here ties in with an instructional  
01:51:48 8 issue which is that Touchstream is resisting any  
01:51:53 9 instructions that would give the jury the relevant time  
01:51:57 10 period for willfulness. They just want to say we're  
01:52:03 11 presenting a pre-suit willfulness argument with no starting  
01:52:06 12 time period.

01:52:06 13 So part of the concern about the evidentiary mixes  
01:52:08 14 in front of the jury also goes to their position on that  
01:52:13 15 and whether they're going to essentially be arguing  
01:52:16 16 willfulness in 2013 when at most they could be arguing  
01:52:20 17 earlier evidence with respect to willfulness in a later  
01:52:24 18 time period, because only that later willfulness would be  
01:52:30 19 relevant.

01:52:30 20 THE COURT: All right. Thank you, Mr. Saunders.

01:52:41 21 MR. SCHAFER: Mark Schafer for Touchstream.

01:52:42 22 So as a threshold issue, Comcast did not move for  
01:52:47 23 summary judgment of no willfulness. So that is -- that is  
01:52:49 24 an issue that's in the case.

01:52:51 25 Touchstream is prepared to offer evidence that

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