

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

FINTIV, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

Civil Action No. 1:19-cv-01238-ADA

**DEFENDANT APPLE INC.'S MOTION FOR SUMMARY JUDGMENT  
OF NONINFRINGEMENT**

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## I. INTRODUCTION

Apple moves for summary judgment of noninfringement on four independent and equally compelling grounds.

First, Apple seeks summary judgment of noninfringement as to Fintiv's claim that foreign users who provision cards using Apple Pay infringe the wallet management system recited in independent claim 18. As a matter of law, these foreign users do not "use" the accused system "within the United States," so their allegedly infringing activities are beyond the territorial scope of 35 U.S.C. § 271(a). Granting summary judgment on this ground will remove [REDACTED] of damages based on "foreign provisions" from Fintiv's [REDACTED] damages demand.

Second, Apple requests summary judgment of noninfringement as to all asserted claims (claims 11, 13, 14, 18, 20, 23, 24, and 25) because Fintiv and its technical expert, Dr. Michael Shamos, failed to identify any software code in the accused products that constitutes a "widget" under the Court's construction of that term, which is a requirement of all asserted claims. The undisputed evidence demonstrates the Apple accused products do not use a "widget" as construed, and granting summary judgment on this ground will be case dispositive.

Third, Apple seeks summary judgment that the accused iPads and Macs do not infringe asserted claims 11 and 23 and their dependent claims, because the accused iPads and Macs do not meet the "contactless card applet" limitations of those claims. As construed by the Court, "contactless" transactions are not equivalent to "wireless" transactions, but for iPads and Macs, Fintiv and its expert point to purely wireless transactions. Granting summary judgment on this ground will remove the accused iPads and Macs from this case.

Fourth, Apple requests summary judgment that the pairing of an iPhone and an Apple Watch does not satisfy the Court's construction of "mobile device" as "a single mobile device."

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