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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

RFCYBER CORP. \*  
\* September 13, 2022  
VS. \*  
\* CIVIL ACTION NO. W-21-CV-916  
APPLE, INC. \*

BEFORE THE HONORABLE ALAN D ALBRIGHT  
MARKMAN HEARING (via Zoom)

APPEARANCES:

For the Plaintiff: Vincent J. Rubino, III, Esq.  
Fabricant LLP  
411 Theodore Fremd Av, S 206 South  
Rye, NY 10580

For the Defendant: Mark D. Fowler, Esq.  
DLA Piper LLP  
2000 University Ave.  
East Palo Alto, CA 94303-2214

John Michael Guaragna, Esq.  
Zachary Loney, Esq.  
DLA Piper LLP (US)  
401 Congress, Suite 2500  
Austin, TX 78701

Court Reporter: Kristie M. Davis, CRR, RMR  
PO Box 20994  
Waco, Texas 76702-0994  
(254) 340-6114

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10:41

10:41 1 (Hearing begins.)

10:50 2 DEPUTY CLERK: A civil action in Case  
10:50 3 6:21-CV-916, RFCyber Corp. versus Apple, Inc. Case  
10:50 4 called for a Markman hearing.

10:50 5 THE COURT: If I could have announcements  
10:50 6 from counsel, starting with plaintiff, please.

10:50 7 MR. RUBINO: Your Honor, Vincent Rubino  
10:50 8 from Fabricant LLP on behalf of the plaintiff.

10:50 9 THE COURT: I see Mr. Fowler and  
10:50 10 Mr. Guaragna.

10:50 11 MR. GUARAGNA: Good morning, Your Honor.  
10:50 12 It's John Guaragna from DLA Piper for Apple. With me  
10:50 13 this morning from DLA are Mark Fowler.

10:50 14 MR. FOWLER: Good morning, Your Honor.

10:50 15 THE COURT: Morning.

10:50 16 MR. GUARAGNA: And Zach Loney.

10:50 17 MR. LONEY: Good morning.

10:50 18 THE COURT: Welcome.

10:50 19 MR. GUARAGNA: Also on the line, Your  
10:51 20 Honor, are in-house counsel from Apple, Natalie Pous  
10:51 21 and Amy Walters.

10:51 22 THE COURT: Very much welcome to counsel  
10:51 23 and your clients for attending.

10:51 24 The first claim term I have is "e-purse,"  
10:51 25 e-purse or electronic purse.

10:51 1 I'll hear from counsel for Apple.

10:51 2 MR. GUARAGNA: Your Honor, if I may, just  
10:51 3 before we start the argument, I understand the Court  
10:51 4 wants to be informed when there are pending transfer  
10:51 5 motions so the Court can have an opportunity to address  
10:51 6 those before Markman.

10:51 7 In this case, Apple does have a pending  
10:51 8 motion to transfer at Docket No. 93. The venue  
10:51 9 discovery that has been served on Apple has been  
10:51 10 responded to. So the briefing in that instance could  
10:51 11 be completed promptly and a decision could be done  
10:51 12 quickly in that regard.

10:51 13 THE COURT: Well, I typically -- maybe  
10:51 14 something happened here. I'm happy to reschedule the  
10:51 15 Markman till we take that up. I usually don't hold the  
10:51 16 Markman until we've -- when -- Mr. Guaragna, when do  
10:52 17 you anticipate the briefing to be done?

10:52 18 MR. GUARAGNA: We anticipate it could be  
10:52 19 done within the next month, Your Honor. The -- I think  
10:52 20 the plaintiff will have two weeks to respond to our  
10:52 21 motion, then we will have another two weeks. So we're  
10:52 22 looking at roughly four weeks of briefing schedule.  
10:52 23 And then the motion should be ripe for resolution.

10:52 24 THE COURT: Mr. Rubino, do you agree with  
10:52 25 that time estimate?

10:52 1 MR. RUBINO: Your Honor, while we may  
10:52 2 agree with the time frame, plaintiff's position, which  
10:52 3 this is a catching us a bit by surprise honestly, but  
10:52 4 plaintiff's position is and has been that Apple moved  
10:52 5 to transfer to the Northern District of California.  
10:52 6 That was an inter-district transfer. We briefed that.  
10:52 7 We spent considerable time dealing with that motion.

10:52 8 And then right at the end Apple decided  
10:52 9 to withdraw its motion and recast a new motion as a  
10:52 10 motion to transfer intra-district to the Austin  
10:52 11 Division.

10:52 12 We have two beliefs about how the law  
10:52 13 stands. One is that there's no requirement -- or that  
10:53 14 this Court -- we believe this Court hasn't had to do  
10:53 15 intra-district transfers before the Markman, and only  
10:53 16 inter-district transfers. I hope I said that right.

10:53 17 And in this case there's a bit more  
10:53 18 egregious conduct here, which is that, you know, we  
10:53 19 spent a lot of time, delayed the Markman from June all  
10:53 20 the way till now to get that initial motion decided.  
10:53 21 It got pulled.

10:53 22 We think there's probably even grounds to  
10:53 23 strike their new motion in view of this behavior. And  
10:53 24 we don't think the Markman should be postponed any  
10:53 25 longer. And this seems like pure delay tactics on the

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