

# EXHIBIT 5

**From:** [Guaragna, John](#)  
**To:** [Mark Scott](#); [Rebecca Jahnke](#)  
**Cc:** [Jawbone](#); [DLA RFCyber-Apple](#); [raymort@austinlaw.com](mailto:raymort@austinlaw.com); [Maggiore, Peter](#); [Loney, Zachary](#); [Cunningham, Sean](#); [Gibson, Erin](#); [Lim, Stephanie](#); [Richard Cowell](#)  
**Subject:** RE: RFCyber Corp. v. Apple, Inc., 6:21-cv-00916-ADA-DTG - Markman Hearing  
**Date:** Friday, September 2, 2022 12:51:27 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Mark and Becca: Thank you for this update and, Becca, welcome to the Court.

In light of Apple's pending Motion for Intra-District Transfer (ECF No. 93) and pursuant to Section VI of the Apr. 14, 2022 OGP and the Court's Second Amended Standing Order Regarding Motions for Inter-District Transfer, Apple respectfully requests that the *Markman* hearing be stayed until Apple's transfer motion is resolved. See Second Amended Standing Order at 1 ("The Court will not conduct a Markman hearing until it has resolved the pending motion to transfer.").

Apple timely filed its original motion to transfer to the Northern District of California (ECF No. 41), followed by extensive venue discovery of Apple. During venue discovery, RFCyber took the position that its infringement theories are much broader than what is apparent from its infringement contentions. The new and broader scope of RFCyber's infringement theories implicated Apple employees in Austin, prompting Apple's offer to stipulate to transfer the case to the Austin Division. RFCyber refused that stipulation, so Apple withdrew its motion to transfer to NDCA and filed a motion for intra-district transfer to the Austin Division (ECF No. 93).

Apple's motion for intra-district transfer is neither untimely nor prejudicial to RFCyber. The parties are engaged in fact discovery, which will continue while the Court considers the transfer motion. Furthermore, Apple contends that further venue discovery is unnecessary in light of the extensive venue discovery RFCyber has already conducted, and RFCyber has yet to serve any further venue discovery requests on Apple.

In light of the pending motion to transfer, Apple respectfully requests that the Court stay the *Markman Hearing* until Apple's transfer motion is resolved. If

the Court wishes, Apple will file a formal motion to stay the *Markman* hearing, which can be briefed on an expedited basis.

We appreciate the Court's consideration of this request.

Sincerely,  
-john

**John M. Guaragna**  
Partner

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**From:** Mark Scott <Mark\_Scott@txwd.uscourts.gov>

**Sent:** Monday, August 29, 2022 9:45 AM

**To:** Richard Cowell <rcowell@fabricantllp.com>; William Melsheimer <William\_Melsheimer@txwd.uscourts.gov>; Rebecca Jahnke <Rebecca\_Jahnke@txwd.uscourts.gov>

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**Subject:** RE: RFCyber Corp. v. Apple, Inc., 6:21-cv-00916-ADA-DTG - Copy of Joint Claim Construction Statement

 EXTERNAL MESSAGE

Good morning,

The Markman will be on September 20 at 10:00AM before Judge Alan Albright. Becca Jahnke (cc'd) will be the new clerk assigned to this matter, so please be in touch with her if any issues arise.

Thanks,  
Mark



**Mark J. Scott**  
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U.S. District Court, Western District of Texas  
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