

# EXHIBIT 1

---

**From:** Ray Mort <raymort@austinlaw.com>  
**Sent:** Friday, September 2, 2022 10:54 AM  
**To:** Guaragna, John; Mark Scott; Rebecca Jahnke  
**Cc:** Jawbone; DLA RFCyber-Apple; 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

 EXTERNAL MESSAGE

All,

Respectfully, the Second Amended Standing Order only applies to Inter-District Transfer motions – not Intra-District Transfer Motions. The language regarding not holding a Markman hearing pertains to only motions to transfer based on Inter-District Transfer motions. Because Apple has withdrawn its Inter-District Transfer motion, the Markman hearing is properly set, albeit 4 months after it should have been held.

The Court should hold the Markman hearing as presently set and deny Apple’s request to further delay this case.

- Ray



RAYMOND W. MORT, III

THE MORT LAW FIRM, PLLC

501 CONGRESS AVE · SUITE 150  
AUSTIN · TEXAS · 78701

---

[AustinLaw.com](http://AustinLaw.com) · [\(512\)-677-6825](tel:(512)677-6825) · [RayMort@AustinLaw.com](mailto:RayMort@AustinLaw.com)

The statements contained herein are not intended to and do not constitute an opinion as to any tax or other matter. They are not intended or written to be used, and may not be relied upon, by you or any other person for the purpose of avoiding penalties that may be imposed under any Federal tax law or otherwise.

CONFIDENTIALITY NOTE: The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and as such is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

---

**From:** Guaragna, John <John.Guaragna@us.dlapiper.com>  
**Sent:** Friday, September 2, 2022 11:51 AM  
**To:** Mark Scott <Mark\_Scott@txwd.uscourts.gov>; Rebecca Jahnke <Rebecca\_Jahnke@txwd.uscourts.gov>  
**Cc:** Jawbone <jawbone@fabricantllp.com>; DLA RFCyber-Apple <dlarfcyber-apple@dlapiper.com>; Ray Mort <raymort@austinlaw.com>; Maggiore, Peter <peter.maggiore@us.dlapiper.com>; Loney, Zachary <Zachary.Loney@us.dlapiper.com>; Cunningham, Sean <Sean.Cunningham@us.dlapiper.com>; Gibson, Erin <Erin.Gibson@us.dlapiper.com>; Lim, Stephanie <stephanie.lim@us.dlapiper.com>; Richard Cowell <rcowell@fabricantllp.com>  
**Subject:** RE: RFCyber Corp. v. Apple, Inc., 6:21-cv-00916-ADA-DTG - Markman Hearing

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

T +1 512 457 7125

[john.guaragna@us.dlapiper.com](mailto:john.guaragna@us.dlapiper.com)

DLA Piper LLP (US)  
303 Colorado Street  
Suite 3000  
Austin, TX 78701



[dlapiper.com](http://dlapiper.com)

**From:** Mark Scott <[Mark\\_Scott@txwd.uscourts.gov](mailto:Mark_Scott@txwd.uscourts.gov)>

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

**To:** Richard Cowell <[rcowell@fabricantllp.com](mailto:rcowell@fabricantllp.com)>; William Melsheimer <[William\\_Melsheimer@txwd.uscourts.gov](mailto:William_Melsheimer@txwd.uscourts.gov)>;

Rebecca Jahnke <[Rebecca\\_Jahnke@txwd.uscourts.gov](mailto:Rebecca_Jahnke@txwd.uscourts.gov)>

**Cc:** Jawbone <[jawbone@fabricantllp.com](mailto:jawbone@fabricantllp.com)>; DLA RfCyber-Apple <[dlarfcyber-apple@dlapiper.com](mailto:dlarfcyber-apple@dlapiper.com)>;

[raymort@austinlaw.com](mailto:raymort@austinlaw.com); Guaragna, John <[John.Guaragna@us.dlapiper.com](mailto:John.Guaragna@us.dlapiper.com)>; Maggiore, Peter

<[peter.maggiore@us.dlapiper.com](mailto:peter.maggiore@us.dlapiper.com)>; Loney, Zachary <[Zachary.Loney@us.dlapiper.com](mailto:Zachary.Loney@us.dlapiper.com)>; Cunningham, Sean

<[Sean.Cunningham@us.dlapiper.com](mailto:Sean.Cunningham@us.dlapiper.com)>; Gibson, Erin <[Erin.Gibson@us.dlapiper.com](mailto:Erin.Gibson@us.dlapiper.com)>; Lim, Stephanie

<[stephanie.lim@us.dlapiper.com](mailto:stephanie.lim@us.dlapiper.com)>

**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**

Law Clerk to the Honorable Derek T. Gilliland

U.S. District Court, Western District of Texas

Office: **254-340-6151**

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please reply to the sender and destroy all copies of the message. To contact us directly, send to [postmaster@dlapiper.com](mailto:postmaster@dlapiper.com). Thank you.