

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

<p>RFCYBER CORP.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>APPLE, INC.,</p> <p style="text-align: center;">Defendant.</p>	§ § § § § § § § § §	<p>Case No. 6:21-cv-00916-ADA</p> <p><u>JURY TRIAL DEMANDED</u></p>
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ORDER REGARDING THE DECEMBER 13, 2022 DISCOVERY DISPUTE HEARING

Pursuant to the Standing Order Governing Proceedings (OGP) 4.2 - Patent Cases, the Minute Entry for proceedings held (ECF No. 119), and to the Court’s Standing Order for Discovery Hearings in Patent Cases, the parties jointly submit the below proposed order reflecting the Court’s rulings at the December 13, 2022 discovery hearing regarding Apple’s November 29, 2022, Objections and Responses to RFCyber’s November 2, 2022, 30(b)(6) Deposition Notice.

Issue: Apple’s objections and responses to RFCyber’s 30(b)(6) topics

RFCyber’s Position

Apple refuses to designate a witness for virtually any of RFCyber’s 30(b)(6) topics.

Apple either refuses to designate a witness entirely (for over 30 topics) or refuses to designate a witness for the full scope of RFCyber’s topics. Where it provides *any* designation, Apple crafted a small number of narrowed designations which it copy-pastes throughout its response. Apple’s objections are a clear refusal to prepare a witness to testify without a protective order, in violation of Fed. R. Civ. P. 30(b)(6). Even had Apple sought such an order, it could not

meet its burden because RFCyber's topics are proper. RFCyber respectfully requests that Apple be compelled to provide a designee for each topic.

Apple baselessly objects to many Topics based on scope, relevance, or privilege. RFCyber has accused devices including iPhones, Apple Watches, and Macs based on their implementation of Apple Wallet, and related hardware and software. Apple generally attempts to limit designations to the accused software, ignoring that the accused hardware, and other issues related to finances, marketing and distribution, are all relevant to infringement and damages. For example, Apple refuses to provide a witness regarding monetization of user information obtained through Accused Services (*see* Topic 25), and appears to take the untenable position that every aspect of information related to its patent monitoring is privileged.

Many of Apple's objections are also based on purported ambiguity of readily understandable terms. For example, in response to Topics 5, 11, 12, 13, 14, and 18, Apple variously objects based on the terms "install base," "transfer pricing," "Apple's business case and/or business plan," "derive value," "average dollar value attributed by Apple to each [install and/or activation]/[transaction]," "value... to Apple." Apple itself uses many of these terms, and they are directly relevant damages issues.

Even where Apple provides designations, they are largely unresponsive to the corresponding topic. For example, in response to topic 22 regarding "[a]ny agreements between Apple and banks, card-issuers, token service providers, and/or financial institutions ... related to the Accused Services (e.g., Apple Pay, Apple Cash, Apple Wallet, passkit, and/or passbook), and any revenue derived by Apple in connection with any such agreements," Apple only designates a witness "to testify regarding the financial metrics related to Apple Card." Apple proceeds similarly with virtually every topic in the notice, and merely copy-pastes most of these

designations even for very different topics. For example, Apple's 30(b)(6) witness on twelve marketing topics was only prepared for four designations under Apple's narrowed responses, rather than the topics RFCyber noticed.

Apple also limits the scope of every designation exclusively to "functionality specifically identified in RFCyber's infringement contentions." It is unclear exactly what Apple attempts to exclude with this language. But Apple's exclusion is improper, as the scope of relevant and discoverable material is not limited to infringement contentions.

Apple has not moved for a protective order, and even if it had, cannot meet its burden to show any objection should be sustained.

Relief Sought: An order compelling Apple to "provide a witness for the full scope of each of RFCyber's noticed 30(b)(6) topics"

Apple's Position

RFCyber's complaint that "Apple refuses to designate a witness for virtually any of RFCyber's 30(b)(6) topics" is wrong. RFCyber has already deposed two Apple 30(b)(6) witnesses designated on 19 of the 80 topics, RFCyber refused to take the offered December 13 deposition of a third 30(b)(6) witness on another 18 topics before he goes out on parental leave, and Apple has offered dates for six more deponents (four of whom RFCyber has confirmed) who will cover the remainder of RFCyber's non-objectionable topics. RFCyber should complete the remaining depositions, then the parties can discuss whether there are any proper deposition topics that have not been addressed. RFCyber's request to compel Apple to provide witnesses for RFCyber's improperly broad topics is therefore premature.

It is unclear what RFCyber means when it complains that Apple's Global Marketing Director for Payments and Commerce, was "only prepared for four designations," but the witness

was prepared on all designated topics and notably RFCyber (a) never said he was unprepared during the deposition and (b) cannot articulate which topics he was purportedly not prepared on. RFCyber may not have liked the witness's testimony, but that does not mean he was unprepared.

Many of RFCyber's topics are overbroad because they request information that has nothing to do with any claim or defense in this case. RFCyber takes the untenable position that it is entitled to information regarding all components and functionalities of all accused products, such as iPhone camera or LTE functionality, most of which are irrelevant to this case. RFCyber has told the Court that “[t]he Asserted Patents ... are directed to various aspects of a mobile payment system” (ECF 54 at 1), so the scope of Apple's corporate testimony should be commensurate with the scope of RFCyber's alleged inventions. Apple's witnesses were and are prepared to testify about the features implicated by RFCyber's infringement allegations.

To be clear, Apple has refused to provide testimony for only five topics, discussed below. For the remaining topics, Apple agreed to provide a witness or requested a narrower, non-objectionable scope.


1. 25 (monetization of user information)—whether Apple “monetizes” user information has nothing to do with the claims and defenses in this case, which relate to the operation of a “mobile payment system,” and RFCyber cannot articulate a cognizable infringement or damages theory based on this information.
2. 38 (average salary of Apple employees/contractors)—employee salaries are private and irrelevant to any issue in this case, including alleged witness bias.
3. 66 and 67 (underlying facts regarding invalidity and pre-suit damages contentions)—these topics call for expert testimony, and no Apple fact witness has firsthand knowledge of third-party prior art or Apple's “damages contentions.” Apple has offered 30(b)(6) testimony on more proper topics, such as financial information.
4. 73 (Apple's policies and practices relating to its investigation or monitoring of patents)—this topic calls for privileged information and Apple has properly asserted the privilege. RFCyber provides no valid reasons why it is entitled to such irrelevant or privileged information.

Relief Sought: Order that RFCyber's motion to compel witnesses for the full scope of each of RFCyber's noticed 30(b)(6) topics is DENIED as premature.

The Court's Ruling:

It is hereby ORDERED that RFCyber's motion to compel witnesses for the full scope of each of RFCyber's noticed 30(b)(6) topics is DENIED WITHOUT PREJUDICE. In addition, Apple is not required to present a witness regarding the following topics: 38, 66, 67 and 73.

SIGNED this 22nd day of December, 2022


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE