

## EXHIBIT 10

**From:** Richard Cowell <[rcowell@fabricantllp.com](mailto:rcowell@fabricantllp.com)>

**Sent:** Monday, May 23, 2022 7:54 PM

**To:** Katie Prescott <[prescott@fr.com](mailto:prescott@fr.com)>; Jacob Ostling <[jostling@fabricantllp.com](mailto:jostling@fabricantllp.com)>; Jawbone <[jawbone@fabricantllp.com](mailto:jawbone@fabricantllp.com)>; Ray Mort <[raymort@austinlaw.com](mailto:raymort@austinlaw.com)>; Fred Fabricant <[ffabricant@fabricantllp.com](mailto:ffabricant@fabricantllp.com)>; Peter Lambrianakos <[plambrianakos@fabricantllp.com](mailto:plambrianakos@fabricantllp.com)>; Vincent Rubino <[vrubino@fabricantllp.com](mailto:vrubino@fabricantllp.com)>

**Cc:** Betty Chen <[bchen@fr.com](mailto:bchen@fr.com)>; Benjamin C. Elacqua <[Elacqua@fr.com](mailto:Elacqua@fr.com)>; Ricardo Bonilla <[rbonilla@fr.com](mailto:rbonilla@fr.com)>; Daniel Gopenko <[gopenko@fr.com](mailto:gopenko@fr.com)>; Autumn Wu <[qwu@fr.com](mailto:qwu@fr.com)>; [google-jawbone-ext@keker.com](mailto:google-jawbone-ext@keker.com)

**Subject:** RE: Jawbone v Apple | 6:21-cv-984: Defendant's Disclosure of Preliminary Claim Constructions

Counsel,

We disagree that claim 18 of the '543 patent is indefinite. However, the dispute appears to be purely academic, as Jawbone has not asserted that claim against either Apple or Google.

Regards,  
Rich

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**From:** Katie Prescott <[prescott@fr.com](mailto:prescott@fr.com)>

**Sent:** Friday, May 20, 2022 10:57 PM

**To:** Jacob Ostling <[jostling@fabricantllp.com](mailto:jostling@fabricantllp.com)>; Richard Cowell <[rcowell@fabricantllp.com](mailto:rcowell@fabricantllp.com)>; Jawbone <[jawbone@fabricantllp.com](mailto:jawbone@fabricantllp.com)>; Ray Mort <[raymort@austinlaw.com](mailto:raymort@austinlaw.com)>; Fred Fabricant <[ffabricant@fabricantllp.com](mailto:ffabricant@fabricantllp.com)>; Peter Lambrianakos <[plambrianakos@fabricantllp.com](mailto:plambrianakos@fabricantllp.com)>; Vincent Rubino <[vrubino@fabricantllp.com](mailto:vrubino@fabricantllp.com)>

**Cc:** Betty Chen <[bchen@fr.com](mailto:bchen@fr.com)>; Benjamin C. Elacqua <[Elacqua@fr.com](mailto:Elacqua@fr.com)>; Ricardo Bonilla <[rbonilla@fr.com](mailto:rbonilla@fr.com)>; Daniel Gopenko <[gopenko@fr.com](mailto:gopenko@fr.com)>; Autumn Wu <[qwu@fr.com](mailto:qwu@fr.com)>; [google-jawbone-ext@keker.com](mailto:google-jawbone-ext@keker.com)

**Subject:** RE: Jawbone v Apple | 6:21-cv-984: Defendant's Disclosure of Preliminary Claim Constructions

Counsel,

Further to the email below, as it relates to the "angle" term in claim 18 of the '543 patent, we again ask that Jawbone drop that claim to obviate the need to construe this claim as indefinite. Claim 18 is indefinite on its face because it does not "inform those skilled in the art about the scope of the invention with reasonable certainty." *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). One reading of the claim is "wherein the angle is in a range of approximately greater than zero (0) and greater than 90 degrees." This reading does not provide a definite range at least because the angle is both greater than zero *and* greater than 90 degrees. No upper limit is set to define the range. As a result, it does not and cannot inform one of ordinary skill in the art as to what range of angles is being claimed.

With respect to the term "transfer function," the parties remain in disagreement.

With respect to the "acoustic signal" and "receiver" terms, we appreciate Jawbone's proposal that the "acoustic signals" terms refer to "some set of the acoustic signals received by the [at least two microphones that receive the acoustic signals] / [two receivers]" as recited in claims 1 and 2 respectively. However, that does not solve the indefiniteness issue for claim 1 for two reasons. First, the term "the acoustic signals" in claim 1 lacks an antecedent basis. Second, it is impossible to determine what the terms "the one receiver" and "the two receivers" mean in the context of claim 1.

Apple and Google agree to the compromise construction of "acoustic microphone" as "physical microphone." In sum, we understand that the parties are currently in agreement on the following construction:

Terms	Agreed-Upon Construction	Patents
“acoustic microphone”	“physical microphone”	’091 Patent
“virtual microphone”	“microphone constructed using two or more omnidirectional microphones and associated signal processing”	’072 Patent ’213 Patent ’611 Patent ’080 Patent ’357 Patent ’691 Patent
“voice activity”	“user speech”	’213 Patent ’611 Patent
“null”	“zero or minima in the spatial response of a physical or virtual directional microphone”	’691 Patent

Please let us know Plaintiff’s position on the outstanding claim construction issues in this email, as well as the issues raised in my email of 5/18 at 9:40PM PT. If necessary, we are available for a call to discuss.

Regards,  
Katie

**Katherine D Prescott** :: Fish & Richardson P.C. :: 650 839 5180

**From:** Katie Prescott

**Sent:** Wednesday, May 18, 2022 9:40 PM

**To:** Jacob Ostling <[jostling@fabricantllp.com](mailto:jostling@fabricantllp.com)>; Richard Cowell <[rcowell@fabricantllp.com](mailto:rcowell@fabricantllp.com)>; Jawbone <[jawbone@fabricantllp.com](mailto:jawbone@fabricantllp.com)>; Ray Mort <[raymort@austinlaw.com](mailto:raymort@austinlaw.com)>; Fred Fabricant <[ffabricant@fabricantllp.com](mailto:ffabricant@fabricantllp.com)>; Peter Lambrianakos <[plambrianakos@fabricantllp.com](mailto:plambrianakos@fabricantllp.com)>; Vincent Rubino <[vrubino@fabricantllp.com](mailto:vrubino@fabricantllp.com)>

**Cc:** Betty Chen <[bchen@fr.com](mailto:bchen@fr.com)>; Benjamin C. Elacqua <[Elacqua@fr.com](mailto:Elacqua@fr.com)>; Ricardo Bonilla <[rbonilla@fr.com](mailto:rbonilla@fr.com)>; Daniel Gopenko <[gopenko@fr.com](mailto:gopenko@fr.com)>; Autumn Wu <[qwu@fr.com](mailto:qwu@fr.com)>; [google-jawbone-ext@keker.com](mailto:google-jawbone-ext@keker.com)

**Subject:** RE: Jawbone v Apple | 6:21-cv-984: Defendant’s Disclosure of Preliminary Claim Constructions

Jacob,

Thank you for setting forth Jawbone’s proposed compromises. Apple is considering them.

In the meantime, as it relates to the “microphone” term in the ’058 and ’543 patents, Jawbone agreed to consider whether it could agree to Defendants’ proposed construction, or a construction of “physical microphone,” for either patent. *See, e.g.*, ’543 patent at 4:28-32 (“the use of **these physical microphone configurations** includes but is not limited to applications such as communications, speech recognition, and voice-feature control of applications and/or devices”), ’543 patent at 6:44-65 (discussing microphone hardware and noting that “configurations described herein have been constructed using inexpensive off-the-shelf microphones”); ’543 patent at 7:12-26 (identifying microphones are traditional physical microphones sold by the Shure microphone company); ’058 patent at 3:39-49, 4:49-63, 7:52-57, 9:18-33, Fig. 7 (discussing physical hardware considerations and the physical configuration of the microphones with respect to a user’s mouth, ear, and one another). Notably, neither patent mentions virtual microphones or omnidirectional microphones with the corresponding software to configure virtual microphones. To the extent Jawbone contends that the “microphone” term in either patent should be construed to cover physical and virtual microphones, please identify any supporting intrinsic evidence so that Apple can evaluate it.

Additionally, as it relates to the “angle” terms in the ’543 patent dependent claims, we again ask that Jawbone drop those four dependent claims to obviate the need to construe these indefinite terms. It strains credulity to suggest that Jawbone would pick these claims for trial, whereas dropping them now—before the parties and the Court expend resources on construing those claims—would support a just, speedy, and inexpensive determination of this proceeding. *See* Rule 1.

**Katherine D Prescott** :: Fish & Richardson P.C. :: 650 839 5180

**From:** Jacob Ostling <[jostling@fabricantllp.com](mailto:jostling@fabricantllp.com)>

**Sent:** Wednesday, May 18, 2022 10:27 AM

**To:** Katie Prescott <[prescott@fr.com](mailto:prescott@fr.com)>; Richard Cowell <[rcowell@fabricantllp.com](mailto:rcowell@fabricantllp.com)>; Jawbone <[jawbone@fabricantllp.com](mailto:jawbone@fabricantllp.com)>; Ray Mort <[raymort@austinlaw.com](mailto:raymort@austinlaw.com)>; Fred Fabricant <[ffabricant@fabricantllp.com](mailto:ffabricant@fabricantllp.com)>; Peter Lambrianakos <[plambrianakos@fabricantllp.com](mailto:plambrianakos@fabricantllp.com)>; Vincent Rubino <[vrubino@fabricantllp.com](mailto:vrubino@fabricantllp.com)>

**Cc:** Betty Chen <[bchen@fr.com](mailto:bchen@fr.com)>; Benjamin C. Elacqua <[Elacqua@fr.com](mailto:Elacqua@fr.com)>; Ricardo Bonilla <[rbonilla@fr.com](mailto:rbonilla@fr.com)>; Daniel Gopenko <[gopenko@fr.com](mailto:gopenko@fr.com)>; Autumn Wu <[qw@fr.com](mailto:qwu@fr.com)>; [google-jawbone-ext@keker.com](mailto:google-jawbone-ext@keker.com)

**Subject:** RE: Jawbone v Apple | 6:21-cv-984: Defendant's Disclosure of Preliminary Claim Constructions

Counsel,

Thank you for your time on yesterday's call.

In view of our discussion regarding the "acoustic signal" terms, and with the understanding that Defendants' proposal is not intended to require the acoustic signals referenced throughout claims 1-2 of the '058 patent to be identical to one another, we could agree to a construction that the "acoustic signals" terms refer to "some set of the acoustic signals received by the [at least two microphones that receive the acoustic signals]/[two receivers]" as recited in claims 1 and 2 respectively.

In the interests of compromise, we would also agree to construe "acoustic microphone" recited in claims 1, 10, 11, and 17 of the '091 Patent as "physical microphone."

We would also agree to construe the term "transfer function[s]" as "a mathematical expression that specifies the relationship between an output signal and an input signal," and have updated our position on this term as we discussed.

We also agree to Defendants' proposal to construe "voice activity" as "user speech" in claims 1, 29, and 44 of the '611 Patent and in claims 1, 14, and 42 of the '213 Patent.

Finally, in the interests of narrowing the parties' dispute, Jawbone will no longer be asserting claims 7-13 of the '080 Patent against Apple or Google.

Please let us know Defendants' positions on the proposed compromises.

Best,  
Jacob

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**From:** Katie Prescott <[prescott@fr.com](mailto:prescott@fr.com)>

**Sent:** Monday, May 16, 2022 5:16 PM

**To:** Richard Cowell <[rcowell@fabricantllp.com](mailto:rcowell@fabricantllp.com)>; Jawbone <[jawbone@fabricantllp.com](mailto:jawbone@fabricantllp.com)>; Ray Mort <[raymort@austinlaw.com](mailto:raymort@austinlaw.com)>; Fred Fabricant <[ffabricant@fabricantllp.com](mailto:ffabricant@fabricantllp.com)>; Peter Lambrianakos <[plambrianakos@fabricantllp.com](mailto:plambrianakos@fabricantllp.com)>; Vincent Rubino <[vrubino@fabricantllp.com](mailto:vrubino@fabricantllp.com)>; Jacob Ostling <[jostling@fabricantllp.com](mailto:jostling@fabricantllp.com)>

**Cc:** Betty Chen <[bchen@fr.com](mailto:bchen@fr.com)>; Benjamin C. Elacqua <[Elacqua@fr.com](mailto:Elacqua@fr.com)>; Ricardo Bonilla <[rbonilla@fr.com](mailto:rbonilla@fr.com)>; Daniel Gopenko <[gopenko@fr.com](mailto:gopenko@fr.com)>; Autumn Wu <[qw@fr.com](mailto:qwu@fr.com)>; [google-jawbone-ext@keker.com](mailto:google-jawbone-ext@keker.com)

**Subject:** RE: Jawbone v Apple | 6:21-cv-984: Defendant's Disclosure of Preliminary Claim Constructions

Hi Richard,

Noon ET / 9 am PT tomorrow works for the Apple and Google teams.

Thanks,  
Katie

**Katherine D Prescott** :: Fish & Richardson P.C. :: 650 839 5180

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**From:** Richard Cowell <[rcowell@fabricantllp.com](mailto:rcowell@fabricantllp.com)>  
**Sent:** Monday, May 16, 2022 7:29 AM  
**To:** Katie Prescott <[prescott@fr.com](mailto:prescott@fr.com)>; Jawbone <[jawbone@fabricantllp.com](mailto:jawbone@fabricantllp.com)>; Ray Mort <[raymort@austinlaw.com](mailto:raymort@austinlaw.com)>; Fred Fabricant <[ffabricant@fabricantllp.com](mailto:ffabricant@fabricantllp.com)>; Peter Lambrianakos <[plambrianakos@fabricantllp.com](mailto:plambrianakos@fabricantllp.com)>; Vincent Rubino <[vrubino@fabricantllp.com](mailto:vrubino@fabricantllp.com)>; Jacob Ostling <[jostling@fabricantllp.com](mailto:jostling@fabricantllp.com)>  
**Cc:** Betty Chen <[bchen@fr.com](mailto:bchen@fr.com)>; Benjamin C. Elacqua <[Elacqua@fr.com](mailto:Elacqua@fr.com)>; Ricardo Bonilla <[rbonilla@fr.com](mailto:rbonilla@fr.com)>; Daniel Gopenko <[gopenko@fr.com](mailto:gopenko@fr.com)>; Autumn Wu <[qw@fr.com](mailto:qw@fr.com)>; [google-jawbone-ext@keker.com](mailto:google-jawbone-ext@keker.com)  
**Subject:** RE: Jawbone v Apple | 6:21-cv-984: Defendant's Disclosure of Preliminary Claim Constructions

Katie et al.,

We are available to meet and confer tomorrow between 10am and 2pm eastern. We are willing to discuss a schedule for a reduction in asserted claims and invalidity references.

Regards,  
Rich

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**From:** Katie Prescott <[prescott@fr.com](mailto:prescott@fr.com)>  
**Sent:** Thursday, May 12, 2022 7:34 PM  
**To:** Richard Cowell <[rcowell@fabricantllp.com](mailto:rcowell@fabricantllp.com)>; Jawbone <[jawbone@fabricantllp.com](mailto:jawbone@fabricantllp.com)>; Ray Mort <[raymort@austinlaw.com](mailto:raymort@austinlaw.com)>; Fred Fabricant <[ffabricant@fabricantllp.com](mailto:ffabricant@fabricantllp.com)>; Peter Lambrianakos <[plambrianakos@fabricantllp.com](mailto:plambrianakos@fabricantllp.com)>; Vincent Rubino <[vrubino@fabricantllp.com](mailto:vrubino@fabricantllp.com)>; Jacob Ostling <[jostling@fabricantllp.com](mailto:jostling@fabricantllp.com)>  
**Cc:** Betty Chen <[bchen@fr.com](mailto:bchen@fr.com)>; Benjamin C. Elacqua <[Elacqua@fr.com](mailto:Elacqua@fr.com)>; Ricardo Bonilla <[rbonilla@fr.com](mailto:rbonilla@fr.com)>; Daniel Gopenko <[gopenko@fr.com](mailto:gopenko@fr.com)>; Autumn Wu <[qw@fr.com](mailto:qw@fr.com)>; [google-jawbone-ext@keker.com](mailto:google-jawbone-ext@keker.com)  
**Subject:** RE: Jawbone v Apple | 6:21-cv-984: Defendant's Disclosure of Preliminary Claim Constructions

Hi Rich,

As part of its commitment to a just, speedy, and inexpensive resolution, Apple has narrowed the disputed terms. With the minor corrections noted below, your summary of that narrowing is correct. We expect that Jawbone will similarly narrow the issues in this case. With more than 200 asserted claims across nine patents with dozens of disputed terms, this case remains unwieldy. For example, dropping '543 patent dependent claims 18 and 21-23 now would resolve the need to construe their four angle limitations.

Please let us know what times you are available to meet and confer concerning claim construction next Tuesday or Wednesday afternoon. To narrow the set of disputed terms, it would be helpful to know which claims Jawbone will no longer be asserting. Additionally, in light of pending motions to transfer, we would like to discuss extending certain Markman briefing deadlines.

Finally, it would be most effective to coordinate the meet and confer concerning claim construction with counsel for Google. We have copied them on this email.

Regards,  
Katie

**Katherine D Prescott** :: Fish & Richardson P.C. :: 650 839 5180

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