

# Exhibit 3

**From:** Radsch, Andrew Andrew.Radsch@ropesgray.com

**Subject:** RE: Aire v. Apple - Motion to Amend Preliminary Infringement Contentions

**Date:** September 28, 2022 at 9:34 PM

**To:** Drew Hollander dhollander@bc-lawgroup.com, Apple-Aire-Ropes-SERVICE Apple-Aire-Ropes-SERVICE@ropesgray.com, Steve Ravel steve.ravel@kellyhart.com

**Cc:** Aire Counsel Aire\_Counsel@b-clg.com

AR

Drew,

Thank you for the email. In view of the information you provided, and also didn't provide, at our meet and confer, Apple will oppose Aire's motion to amend its contentions. To the extent Aire is permitted leave to amend, then Apple intends to request additional time to serve its final invalidity contentions so that the prejudice to Apple is not magnified by having a significantly shortened period of time to investigate and prepare its contentions.

Thanks,  
Andrew

**Andrew T. Radsch**

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**From:** Drew Hollander <dhollander@bc-lawgroup.com>

**Sent:** Tuesday, September 27, 2022 11:38 AM

**To:** Radsch, Andrew <Andrew.Radsch@ropesgray.com>; Apple-Aire-Ropes-SERVICE <Apple-Aire-Ropes-SERVICE@ropesgray.com>; Steve Ravel <steve.ravel@kellyhart.com>

**Cc:** Aire Counsel <Aire\_Counsel@b-clg.com>

**Subject:** Re: Aire v. Apple - Motion to Amend Preliminary Infringement Contentions

Andrew –

Thanks again for taking the time to meet and confer on Friday. While you have generally captured the substance of our conversation, I have clarified Aire's positions below in **RED** where necessary.

Please let us know by close of business tomorrow (Wednesday, September 28) if Apple opposes the motion and/or whether Apple has a proposal to add claim 13 of the '249 Patent to the case without the need for motion practice.

Thanks.

Drew

\* \* \*

First, we discussed what Aire is accusing of infringement, and you stated that Aire is accusing only those iPhones that contain the Tap to Pay functionality. **AIRE: Correct.**

Second, we discussed that claim 13 recites both a terminal, and a portable data carrier arranged in a particular way. You agreed that the recited portable data carrier and its recited features are in fact limitations of claim 13, and therefore must be satisfied. **AIRE: Aire agrees that claim 13 (1) recites a “terminal” and a “portable data carrier” and (2) any limitations recited in claim 13 must be met in order for a finding infringement.**

Third, we discussed the claim 13’ limitation of a device “arranged to cause a user to select one of at least two possible different quality authentication methods.” You stated that Aire currently believes this term should be given its plain and ordinary meaning. In response to my questions, you stated that it is Aire’s position that both a user being presented the ability to select one possible user authentication method, as well as being presented with the ability to select more than one authentication method, are within the scope of claim 13. **Aire: Correct.**

Fourth, regarding the “security establishing operation” recited in claim 13, you explained that Aire is applying that term consistently across the claims of the patent. **Aire: Correct.**

Finally, regarding our questions about Aire’s testing of the accused Tap to Pay functionality in relation to Aire’s allegations of diligence, you said that Aire’s diligence included more than just reliance on publicly available information, but did not describe any particulars, and did not yet know if Aire would rely upon any testing in connection with its motion to amend. As I reiterated, it is our belief that such particulars should be disclosed now if Aire intends to rely on them in its motion, so that Apple can evaluate them. **AIRE: The particulars of Aire’s investigation were conducted at the direction of counsel and are privileged. However, as you note, Aire has not merely relied on publicly available information as part of its investigation. Aire disagrees that it must divulge the particulars of its investigation to Apple in order for Apple to determine whether to oppose Aire’s motion.**

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**From:** "Radsch, Andrew" <[Andrew.Radsch@ropesgray.com](mailto:Andrew.Radsch@ropesgray.com)>

**Date:** Friday, September 23, 2022 at 6:38 PM

**To:** Drew Hollander <[dhollander@bc-lawgroup.com](mailto:dhollander@bc-lawgroup.com)>, Apple-Aire-Ropes-SERVICE <[Apple-Aire-Ropes-SERVICE@ropesgray.com](mailto:Apple-Aire-Ropes-SERVICE@ropesgray.com)>, Steve Ravel

<[steve.ravel@kellyhart.com](mailto:steve.ravel@kellyhart.com)>

**Cc:** Aire Counsel <[Aire\\_Counsel@b-clg.com](mailto:Aire_Counsel@b-clg.com)>

**Subject:** RE: Aire v. Apple - Motion to Amend Preliminary Infringement Contentions

Drew,

Thank you to you and Seth for meeting with me and David earlier today. I write here to memorialize our discussion to ensure that we have an accurate understanding of Aire's positions, so that we can promptly advise whether Apple opposes Aire's motion to amend. Please let us know if anything below is incorrect.

First, we discussed what Aire is accusing of infringement, and you stated that Aire is accusing only those iPhones that contain the Tap to Pay functionality.

Second, we discussed that claim 13 recites both a terminal, and a portable data carrier arranged in a particular way. You agreed that the recited portable data carrier and its recited features are in fact limitations of claim 13, and therefore must be satisfied.

Third, we discussed the claim 13' limitation of a device "arranged to cause a user to select one of at least two possible different quality authentication methods." You stated that Aire currently believes this term should be given its plain and ordinary meaning. In response to my questions, you stated that it is Aire's position that both a user being presented the ability to select one possible user authentication method, as well as being presented with the ability to select more than one authentication method, are within the scope of claim 13.

Fourth, regarding the "security establishing operation" recited in claim 13, you explained that Aire is applying that term consistently across the claims of the patent.

Finally, regarding our questions about Aire's testing of the accused Tap to Pay functionality in relation to Aire's allegations of diligence, you said that Aire's diligence included more than just reliance on publicly available information, but did not describe any particulars, and did not yet know if Aire would rely upon any testing in connection with its motion to amend. As I reiterated, it is our belief that such particulars should be disclosed now if Aire intends to rely on them in its motion, so that Apple can evaluate them.

As promised, we will consider the information provided during today's call and follow up promptly with whether Apple opposes the motion. We appreciate Aire's willingness to extend Apple's final contentions deadline, if needed.

Best,  
Andrew

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**From:** Drew Hollander <[dhollander@bc-lawgroup.com](mailto:dhollander@bc-lawgroup.com)>  
**Sent:** Thursday, September 22, 2022 5:36 PM  
**To:** Radsch, Andrew <[Andrew.Radsch@ropesgray.com](mailto:Andrew.Radsch@ropesgray.com)>; Apple-Aire-Ropes-SERVICE <[Apple-Aire-Ropes-SERVICE@ropesgray.com](mailto:Apple-Aire-Ropes-SERVICE@ropesgray.com)>; Steve Ravel <[steve.ravel@kellyhart.com](mailto:steve.ravel@kellyhart.com)>  
**Cc:** Aire Counsel <[Aire\\_Counsel@b-clg.com](mailto:Aire_Counsel@b-clg.com)>  
**Subject:** Re: Aire v. Apple - Motion to Amend Preliminary Infringement Contentions

Andrew –

Let's touch base at 1:30PT. I will circulate an invite.

Thanks.

Drew

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**From:** "Radsch, Andrew" <[Andrew.Radsch@ropesgray.com](mailto:Andrew.Radsch@ropesgray.com)>  
**Date:** Thursday, September 22, 2022 at 6:32 PM  
**To:** Drew Hollander <[dhollander@bc-lawgroup.com](mailto:dhollander@bc-lawgroup.com)>, Apple-Aire-Ropes-SERVICE <[Apple-Aire-Ropes-SERVICE@ropesgray.com](mailto:Apple-Aire-Ropes-SERVICE@ropesgray.com)>, Steve Ravel <[steve.ravel@kellyhart.com](mailto:steve.ravel@kellyhart.com)>  
**Cc:** Aire Counsel <[Aire\\_Counsel@b-clg.com](mailto:Aire_Counsel@b-clg.com)>  
**Subject:** RE: Aire v. Apple - Motion to Amend Preliminary Infringement Contentions

Drew,

Tomorrow from 1:30-3:30pm PT works best for us.

Thanks,  
Andrew

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