

EXHIBIT 2

From: Steve Ravel <steve.ravel@kellyhart.com>
Sent: Thursday, March 03, 2022 4:12 PM
To: TXWDml_LawClerks_WA_JudgeAlbright
Cc: rak_aire@raklaw.com; Radsch, Andrew; Thomases, Andrew; Roth, Cassandra; Steve Ravel; Batchelder, James R.; Apple-Aire-Ropes-SERVICE
Subject: Aire v. Apple--6:21-cv-001101-ADA

[EXTERNAL]

Learned Law Clerks,

The table below sets out a procedural dispute whereby Defendant Apple challenges the adequacy of Plaintiff Aire's Infringement contentions. The parties have met and conferred extensively and are impasse. "Movant" Apple believes a hearing would be helpful to the Court in resolving this dispute

Thank you.

Issue	Apple's Position	Aire's Position
Failure to Chart Each Accused Product	Aire charts only one product per patent but accuses 32 iPhone and Apple Watch models of infringing at least two of the three asserted patents. Aire provided no explanation or analysis about why the charted product is representative of all others, let alone explain why "changes [between products] are irrelevant for each uncharted product" as required. <i>WSOU v. OnePlus</i> , 2022 WL 174517, at *2. Nor could Aire make such showings. For example, Aire relies on Face ID functionality for many limitations, but Face ID is <i>not</i> available on many accused iPhones and any accused Watches—and therefore a phone with that functionality cannot be representative of all accused products. Aire also relies on iPhone NFC functionality for many limitations, but that functionality differs substantially on Apple Watches and even among iPhones—as public teardown reports would show. These differences materially impact, and prevent Apple from understanding, Aire's infringement theories. Aire should be	Aire's PICs provide Apple with more than sufficient notice of its infringement allegations. These allegations are consistent across all Accused Products, and it is proper to rely on a representative iPhone at this juncture. "[A]t the preliminary infringement contention stage, a plaintiff need only illustrate that the additional uncharted products are 'reasonably similar' to those specifically charted." <i>IGT</i> , 2022 WL 606719, at *2. Apple's cited <i>WSOU</i> decision relates to final infringement contentions. The Accused Products infringe the '706 and '249 Patents in reasonably similar ways through their use of Apple Pay, and Apple's public documentation does not identify any relevant differences between products in their use of Apple Pay. The fact that some of the Accused iPhones do not support Face ID is inapposite because the '249 allegations similarly apply to passcode/Touch ID. Apple is also wrong because the

	ordered to separately chart each accused product for each asserted patent.	<p>Watch is not accused of infringing the '249 Patent.</p> <p>Finally, the Accused Products all infringe the '360 Patent in reasonably similar ways by utilizing NFC chipsets with low power detection functionality.</p> <p>Aire has provided notice of its infringement theories which will be further detailed with discovery from Apple in its final infringement contentions.</p>
Doctrine of Equivalents	Aire's PIC cover pleading makes a single blanket assertion, without analysis, that each element is "necessarily ... met under" DOE which does not provide sufficient notice of Aire's DOE theories. <i>See, e.g., Sycamore IP v. AT&T</i> , 2017 WL 4517953, at *3 (E.D. Tex. Oct. 10, 2017) (collecting cases). Aire must specify which limitations it contends are met under DOE and why.	This issue is not ripe. <i>See WSOU</i> , 2022 WL 174517, at *3 (denying motion to strike DOE before final contentions). Upon receiving the Court's determination on claim construction and discovery from Apple, Aire will supplement its DOE theories.
Sufficiency of the Provided Chart	<p>Aire's charts don't inform Apple how Aire contends the accused products meet many limitations. Examples include:</p> <ul style="list-style-type: none"> • '706 Chart: Aire's citations to different general disclosures about Apple Wallet—a single application—do not articulate what it alleges are "two [...] applications" (elements [1pre], [11a], [18a], [20a]). Similarly, Aire's screenshots about Apple Pay and EMV contactless payments do not identify what signals Aire alleges are "communication-readiness signal[s]" ([1a]-[1b], [2], [3], [11c], [12], [18c], [20c]). • '249 Chart: Aire's general Apple Pay and transit-related citations do not specify what Aire alleges is a "security-establishing operation" ([1b], [6], [10pre]). Similarly, based on Aire's broad citations about information in Apple Pay, transit, and cardholder verification methods, Apple cannot determine what Aire specifically 	<p>Apple prematurely seeks final infringement contentions and expert report level detail. Aire has provided more than sufficient disclosures of its infringement theories based on publicly available information and its own testing.</p> <p>'706 Chart: Apple Wallet is capable of hosting multiple cards, such as credit, debit, transit, membership, rewards, etc. Aire has explained that these cards have unique application identifiers, which are contained in the "communication-readiness signals" communicated to a payment terminal.</p> <p>'249 Chart: Aire has explained that the Accused iPhones perform a security-establishing operation as part of Apple Pay transactions. The Accused iPhones create information about the user authentication method used in a transaction and communicate it to the terminal. For example, Aire explains that Apple</p>

	<p>alleges is the “result of the security-establishing operation” to which certain information is attached ([1a], [10c]), “[authentication] quality information” ([1a], [10c]), or a “digital signature” ([2], [11]). It is also unclear whether Aire alleges not requiring authentication is a “different quality user authentication method” ([1pre], [10pre]).</p> <ul style="list-style-type: none"> • ’360 Chart: Aire relies on a component it does not contend is in any accused product as meeting the claimed “measuring device” and “switching apparatus” in [1c]-[1d], [15a]/[15c]. For “search signals,” Aire shows oscilloscope measurements without providing any information needed to understand what they purport to show. <p>Aire must identify, separately for each accused product and each asserted claim, what specifically it contends meets each element.</p>	<p>Pay typically requires a user to authenticate using a passcode, Touch ID, or Face ID. Aire cannot provide the level of detail that Apple requests without the forthcoming discovery (including source code).</p> <p>’360 Chart: The specific datasheets for the NFC chipsets in the Accused Products are not publicly available. As such, Aire cites to datasheets for similar chipsets and testing conducted on the Accused Products to explain why each claim limitation is met. Aire will provide further detail with (or before) final infringement contentions after receiving the forthcoming discovery.</p>
Requested Relief	Order Aire to, within 14 days, serve supplemental PICs addressing these deficiencies, which impact Apple’s ability to provide fulsome contentions and discovery about accused products. These deficiencies are apparent from information Aire already has, and cannot be cured based on later-identified material. <i>Cf.</i> OGP n.6.	Apple has received more than sufficient disclosures which provide extensive detail about Aire’s infringement theories. The information Apple seeks is premature and will be provided with (or before) final infringement contentions. Aire looks forward to Apple’s initial production of technical documents and source code on March 31.

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