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

DODOTS LICENSING SOLUTIONS LLC, Plaintiff, v. APPLE INC., BEST BUY STORES, L.P., BESTBUY.COM, LLC, and BEST BUY TEXAS.COM, LLC, Defendants.	Case No.: 6:22-cv-00533-ADA
DODOTS LICENSING SOLUTIONS LLC, Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., BESTBUY.COM, LLC, and BEST BUY TEXAS.COM, LLC, Defendants.	Case No.: 6:22-cv-00535-ADA

PLAINTIFF DODOTS LICENSING SOLUTIONS LLC'S
SUR-REPLY CLAIM CONSTRUCTION BRIEF

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I. Introduction

Defendants fail to rebut DoDots' arguments. Instead, they gloss over them. Not only have Defendants now *changed* positions but they base their entire brief on the *false* premise that DoDots is attempting to broaden the claims. Not so. Indeed, most of the terms contain straight-forward English words that a jury can readily understand. They have no special meaning and, thus, should be given their plain and ordinary meaning. Nor do the terms require the addition of *non-exhaustive* lists of *examples* that Defendants seek to jam into their constructions. And for the remainder of the terms, DoDots simply uses the patentees' clear *lexicography*.

Lastly, Defendants attempt to improperly seek narrow claim scope by arguing for a disclaimer that does not exist. Accordingly, the Court should adopt DoDots' constructions and reject Defendants' constructions.

II. Disputed terms

A. "is accessible"/"is available" ('083 patent, claims 1, 4, 9, 12; '407 patent, claims 1, 13)

DoDots' Proposed Construction	Defendants' Proposed Construction
Plain and ordinary meaning	"can be transmitted at the time the content is requested"

Defendants do not dispute that these terms are easily understandable. Nevertheless, Defendants seek to inject a temporal limitation to limit *when* content "is available" or "is accessible."[1] *See* D.I. 93[2] at 2 (Defendants' Reply Brief). Worse yet, Defendants' language adds *ambiguity*—what constitutes "at the time" of a request? There is, however, absolutely nothing in

[1] The claims only recite *where* content is retrieved from (a "network location") and *how* content is retrieved ("via a TCP/IP protocol"). *See* '083 patent, 47:42-48:8; '407 patent, 42:37-40.

[2] Docket citations are to *DoDots Licensing Solutions LLC v. Apple Inc. et al.,* Case No.: 6:22-cv-00533-ADA.

the claims or specification that limits the timing regarding content availability/accessibility.

Indeed, Defendants *admit* that the claims are silent as to timing. *Id*. So Defendants manufacture an issue where none exists, stating that the "claims as issue require that content either 'is accessible' or 'is available', but do ***not*** resolve a fundamental question: *when*?" *Id*. But no such question needs to be resolved. The claims were drafted and issued *without* a temporal limitation. The claims' silence about *when* content is available/accessible is dispositive. There is no reason to now add such a limitation. The fact that *nothing* is claimed about timing is not an invitation to add limitations that don't exist. *See, e.g., Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1346 (Fed. Cir. 2015) (finding reversible error where the court construed terms as requiring a "pictorial map," when "the claim language itself contains no such 'pictorial map' limitation.")

Nor is there anything in the specification that requires inserting a temporal limitation into the claims. Recognizing they have nothing of substance to argue, Defendants resort to mischaracterizing the record, stating that DoDots "provides no response" and fails to "refute" their "evidence" citing to passages mentioning the words "present invention." *See* '083 patent, 11:15-21. But Defendants did not present any evidence for DoDots to refute (because there is no evidence). As DoDots already pointed out in its Responsive brief (D.I. 88 at 6-7), none of the specification passages that Defendants cite mentions the words "accessible" or "available." Moreover, none of the passages imposes any restriction on the timing of content retrieval. Indeed, there is simply no discussion whatsoever in the specification about specifically sequencing the steps that Defendants would like this Court to read into the claims. And many of the claims are device claims that describe structure and functional capabilities which cannot logically be ordered.

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