

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

SEVEN NETWORKS, LLC

Plaintiff,

v.

APPLE INC.

Defendant.

Civil Action No. 2:19-cv-00115-JRG

**JURY TRIAL DEMANDED**

**APPLE INC.'S P.R. 3-3 AND 3-4 INVALIDITY CONTENTIONS**

Pursuant to Patent Rules 3-3 and 3-4, and pursuant to the Docket Control Order entered by the Court (Dkt. 39), Defendant Apple Inc. (“Apple”) respectfully submits these invalidity contentions and accompanying document production with respect to the claims identified by Plaintiff SEVEN Networks, LLC (“SEVEN”) in its Patent Rule 3-1 Disclosure of Asserted Claims, Accused Instrumentalities, and Infringement Contentions. The Asserted Claims include claims 1, 3-7, 9-13, 15-17 of U.S. Patent No. 9,369,539 (“the ’539 patent”); claims 1-2, 4, 8-15, 18, 20-21, 25-40 of U.S. Patent No. 9,438,550 (“the ’550 patent”); claims 1-5, 7-9, 11-15, 17-19, 21-25, and 27-39 of U.S. Patent No. 9,473,914 (“the ’914 patent”); claims 24-50 of U.S. Patent No. 9,516,127 (“the ’127 patent”); claims 1-19 of U.S. Patent No. 9,603,056 (“the ’056 patent”); claims 1-9, 11-14, 16-29, 31, 33, 35-38 of U.S. Patent No. 9,608,968 (“the ’968 patent”); claims 1-28 of U.S. Patent No. 9,648,557 (“the ’557 patent”); claims 1-44 of U.S. Patent No. 9,712,476 (“the ’476 patent”); claims 1-29 of U.S. Patent No. 9,712,986 (“the ’986 patent”); claims 1-26 of U.S. Patent No. 9,769,176 (“the ’176 patent”); claims 22-28, 32, 33, 36-42, 46, 50-52 of U.S. Patent No. 10,027,619 (“the ’619 patent”); claims 1-24 of U.S. Patent No. 10,039,029 (“the ’029 patent”); claims 1-14 of U.S. Patent No. 10,091,734 (“the ’734 patent”); claims 1-20 of U.S.

Patent No. 10,110,534 (“the ’534 patent”); claims 1-30 of U.S. Patent No. 10,135,771 (“the ’771 patent”); and claims 1-44 of U.S. Patent No. 10,243,962 (“the ’962 patent”) (collectively, “the Asserted Claims” of “the Asserted Patents”).

### **PATENT LOCAL RULE 3-3 DISCLOSURES**

1. This disclosure is directed to preliminary invalidity and unenforceability issues only and does not address claim construction or noninfringement. Apple reserves all rights with respect to such issues, including but not limited to its position that claims of the Asserted Patents are to be construed in a particular manner and are not infringed.

2. These invalidity contentions are preliminary and are based on Apple’s current knowledge, understanding, and belief as to the facts and information available as of the date of these contentions. Apple has not yet completed its investigation, discovery, or analysis of information related to this action, and additional discovery may require Apple to supplement or amend its invalidity contentions. Apple reserves the right to amend or supplement its contentions once it gains access to relevant materials SEVEN has not yet produced. While Apple has made a good-faith effort to provide a comprehensive list of prior art relevant to this case, it reserves the right to modify or supplement its prior art list and invalidity contentions at a later time with or based upon pertinent information that may be subsequently discovered from SEVEN or third parties. In particular, Apple is currently unaware of the extent, if any, to which SEVEN will contend that limitations of the Asserted Claims of the Asserted Patents are not disclosed in the prior art identified in these Invalidity Contentions. Accordingly, Apple reserves the right to identify other references that would disclose the allegedly missing limitation(s) of the claimed method, device, or system. Moreover, discovery is ongoing and Apple reserves the right to pursue all other defenses that may be available to it, including but not limited to defenses that

the Asserted Patents are unenforceable based on laches, estoppel, waiver, acquiescence, inequitable conduct, patent misuse, patent exhaustion, unfair competition, unclean hands, express or implied license, or any other grounds.

3. Any invalidity analysis depends, ultimately, upon claim construction, which is a question of law reserved for the Court. The Asserted Claims have not yet been construed by the Court in this case and, thus, Apple has not yet had the opportunity to compare the Asserted Claims of the Asserted Patents (as construed by the Court) with the prior art. Apple reserves the right to amend, supplement, or materially modify its invalidity contentions after the claims have been construed by the Court. Apple also reserves the right to amend, supplement, or materially modify its invalidity contentions in response to any claim construction positions that SEVEN may take in this case. Apple also reserves the right to assert that a claim is indefinite, not enabled, or fails to meet the written description requirement based on any claim construction position SEVEN may take in this case or based on any claim construction the Court may adopt in this case.

4. Apple's invalidity contentions are directed to the claims asserted by SEVEN that are identified in SEVEN's P.R. 3-1 & 3-2 Disclosures to Apple. Apple reserves the right to modify, amend, supplement or otherwise alter its invalidity contentions in the event that SEVEN supplements or amends its infringement contentions or takes a claim construction position that is different than or in addition to those set forth in its infringement contentions, or for any other reason constituting good cause to modify, amend, supplement or otherwise alter these invalidity contentions.

5. The Court's Patent Rules and the Court's Docket Control Order (Dkt. No. 39) contemplate that these Invalidity Contentions be prepared and served in response to SEVEN's

Infringement Contentions. However, SEVEN's Infringement Contentions are insufficient, e.g., because they lack proper and complete disclosure as to how SEVEN contends that Apple allegedly infringes the Asserted Claims. Apple wrote to SEVEN regarding these deficiencies, requesting that SEVEN promptly cure them, on July 24, 2019. To date, SEVEN has not cured the defects in its contentions. Due to SEVEN's failure to provide proper and complete disclosure of its Infringement Contentions under P.R. 3-1, Apple reserves the right to seek leave from the Court to modify, amend, and/or supplement these Invalidity Contentions should SEVEN be allowed by the Court to correct, clarify, amend, and/or supplement its Infringement Contentions, or their inherent claim constructions, or following the Court's claim construction.

6. Apple further contends that SEVEN appears to be pursuing overly broad constructions of the Asserted Claims of the Asserted Patents in an effort to piece together an infringement claim where none exists and to accuse products that do not practice the claims as properly construed. At the same time, SEVEN's infringement contentions are in many places too general and vague to discern exactly how SEVEN contends each accused product practices each element of the Asserted Claims. Accordingly, these invalidity contentions are not intended to be, and are not, an admission that the Asserted Claims are infringed by any of Apple's products or technology, that any particular feature or aspect of any of the accused products practices any elements of the Asserted Claims, or that any of SEVEN's proposed constructions are supportable or proper. To the extent that any of the prior art references disclose the same functionality or feature of any of the accused products, Apple reserves the right to argue that said feature or functionality does not practice any element of any of the Asserted Claims, and to argue, in the alternative, that if said feature or functionality is found to practice any element of any of the Asserted Claims of the Asserted Patents, then the prior art reference demonstrates that

that element is not novel, is obvious, or is not patentable. These documents are not intended to reflect Apple's claim construction contentions, which will be disclosed in due course in accordance with the Patent Rules and the Court's Docket Control Order. Instead, the citation of prior art herein and the accompanying exhibits are being disclosed as, and should be construed as, nothing more than Apple's Invalidity Contentions.

7. Attached hereto are representative claim charts that demonstrate how the Asserted Claims of the Asserted Patents are invalid in view of certain prior art. The references cited in the attached claim charts may disclose the limitations of the Asserted Claims of the Asserted Patents expressly and/or inherently, and/or they may be relied upon to show the state of the art in the relevant time frame. Moreover, the suggested obviousness combinations are in the alternative to Apple's contentions regarding anticipation. These obviousness combinations should not be construed to suggest that any reference included in any combination is not anticipatory in its own right.

8. In addition to the references listed below and in the accompanying exhibits, Apple may rely upon any reference cited in the prosecution histories of the Asserted Patents as well as any additional references cited by SEVEN. Identification of elements or limitations in the contentions and the accompanying exhibits is exemplary, not exhaustive or limiting. In its contentions below and in the accompanying claim charts, Apple has endeavored to cite to the most relevant portions of the identified prior art. However, other portions of the identified prior art may additionally disclose, either expressly or inherently, and/or render obvious one or more elements of the Asserted Claims. Apple reserves the right to rely on uncited portions of the identified prior art to establish the invalidity of the Asserted Claims. Moreover, Apple reserves the right to rely on uncited portions of the identified prior art, other prior art, or expert testimony

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