

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

TOUCHSTREAM TECHNOLOGIES, INC.,

Plaintiff,

v.

**CHARTER COMMUNICATIONS, INC. et
al.,**

Defendants.

Case No. 2:23-cv-00059-JRG

JOINT PROPOSED PRETRIAL ORDER¹

Plaintiff Touchstream Technologies, Inc. (“Plaintiff” or “Touchstream”) and Defendants Charter Communications, Inc., Charter Communications Operating, LLC, Spectrum Management Holding Company, LLC, Time Warner Cable Enterprises, LLC, Spectrum Gulf Coast, LLC, and Charter Communications LLC (“Charter”) (Touchstream and Charter collectively, “the Parties”) submit the following proposed Joint Pretrial Order pursuant to the Court’s Third Amended Docket Control Order (Dkt. 205), the Federal Rules of Civil Procedure, and Local Rules of this Court. This case is scheduled for a pretrial management conference on December 2, 2024, pursuant to Local Rule CV-16 and Rule 16 of the Federal Rules of Civil Procedure. The Parties have stipulated to various matters identified herein and having identified exhibits, witnesses, factual contentions, and triable issues.

¹ Submissions that are agreed to by both Touchstream and Charter are not highlighted. Submissions proposed by Touchstream that are not agreed to by Charter are highlighted in green. Submissions proposed by Comcast that are not agreed to by Touchstream are highlighted in blue. The parties have entered their objections, explanations, citations, and commentary in footnotes only. The parties reserve their respective rights to further object or propose revisions to this joint pretrial order based on their pending motions or further development at trial.

It is hereby ORDERED as follows:

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II. STATEMENT OF JURISDICTION

This Court has subject-matter jurisdiction under Title 28, U.S.C. §§ 1331 and 1338(a), because this action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* The parties do not dispute subject-matter jurisdiction or personal jurisdiction for purposes of this

action only, and Charter disputes venue in this Court, as set forth in its Motion to Dismiss (2:23-cv-00060-JRG, Dkt. 82).

III. JOINT STATEMENT OF THE CASE

This is a civil action for patent infringement in which Touchstream accuses Charter of directly infringing claims 1, 5, 7, and 8 of U.S. Patent No. 8,356,251 (“251 patent”); claims 12, 13, and 14 of U.S. Patent No. 11,048,751 (“751 patent”); and claims 17, 18, 19 and 20 of U.S. Patent No. 11,086,934 (“934 patent”) (collectively the “Asserted Claims” of the “Asserted Patents”). Touchstream alleges that Charter has directly infringed each of the Asserted Claims. Charter denies that it has infringed the Asserted Claims of the Asserted Patents and argues that the Asserted Claims are invalid.

Touchstream alleges Charter infringes the Asserted Claims of the Asserted Patents by performing certain methods. In particular, Touchstream alleges that Charter infringes when a subscriber uses the Spectrum TV Mobile Application to initiate playback of video content, through Charter servers, on Charter set-top boxes running ODN Guide, MDN Guide, Spectrum Guide, and iGuide (the “Accused Functionalities”). Touchstream seeks monetary damages in the form of a reasonable royalty for past damages, an ongoing reasonable royalty for future damages, pre- and post-judgment interest, costs, and an award of its fees under 35 U.S.C. §§ 284 and 285, as well as any other relief the Court deems appropriate. Touchstream also seeks a permanent injunction to prevent further infringement of the Asserted Patents. Touchstream asserts that Charter’s alleged infringement of each Asserted Claim was and continues to be willful, and Touchstream seeks enhanced damages as a result of Charter’s alleged willful infringement occurring both before the filing of this lawsuit and thereafter, and any other relief the Court deems appropriate. Touchstream disagrees with each allegation, defense, and/or

affirmative defense asserted by Charter.

Charter asserts that the Touchstream Asserted Claims are invalid as anticipated and/or obvious under 35 U.S.C. §§ 102 and 103, invalid for inadequate written description and lack of enablement under 35 U.S.C. § 112, and invalid as being directed to ineligible subject matter under 35 U.S.C. § 101. Charter denies that it infringes any of the Asserted Claims because the Accused Functionalities, when used, does not perform the steps of these claims. Accordingly, Touchstream is not entitled to any damages (pre-verdict or post-verdict). Charter opposes Touchstream's claim for monetary damages in the form of a reasonable royalty, based exclusively on alleged infringement of method claims, arguing that Touchstream makes no attempt to correlate the damages it seeks to actual, estimated or expected use. Charter denies willful infringement at any time because it does not infringe and, even if it would be found to infringe, did not do so willfully. Charter contends it had no pre-suit knowledge of the patents and has developed and will present sound defenses to infringement and evidence of invalidity.

Charter opposes Touchstream's claims for pre- and post-judgment interest, expenses and costs, and attorneys' fees pursuant to 35 U.S.C. § 285. Charter disputes that Touchstream is entitled to a permanent injunction because Touchstream does not have any product offering or demonstrated capacity to provide such a product, and has not even attempted to make a showing of irreparable harm. Further, this case is exceptional under 35 U.S.C. § 285, and Charter seeks its attorney's fees and costs thereunder, as well as any other relief the Court deems appropriate. Charter disagrees with each allegation and claim asserted by Touchstream.

IV. CONTENTIONS OF THE PARTIES

By providing these statements, the Parties do not concede that any of the following issues are appropriately presented at trial. The Parties also do not waive any issues raised by their

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