

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.

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

Member Case No. 2:23-cv-00062-JRG

TOUCHSTREAM TECHNOLOGIES, INC.,

Plaintiff,

v.

COMCAST CABLE COMMUNICATIONS,
LLC, D/B/A XFINITY, et al.,

Defendants.

JOINT PROPOSED PRETRIAL ORDER¹

Plaintiff Touchstream Technologies, Inc. (“Plaintiff” or “Touchstream”) and Defendants Comcast Cable Communications, LLC, d/b/a Xfinity; Comcast Corporation; Comcast Cable Communications Management, LLC; and Comcast of Houston, LLC (collectively “Comcast”) (Touchstream and Comcast 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

¹ Submissions that are agreed to by both Touchstream and Comcast are not highlighted. Submissions proposed by Touchstream that are not agreed to by Comcast are bracketed and highlighted in green. Submissions proposed by Comcast that are not agreed to by Touchstream are bracketed and highlighted in yellow.

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.

I. APPEARANCE OF COUNSEL

Attorneys for Plaintiff Touchstream Technologies, Inc.

Ryan D. Dykal (*pro hac vice*)
Jordan T. Bergsten (*pro hac vice*)
Mark Schafer (*pro hac vice*)
Philip A. Eckert (*pro hac vice*)
Anita Liu (TX State Bar No. 24134054)
BOIES SCHILLER FLEXNER LLP
1401 New York Ave, NW
Washington, DC, DC 20005
(t) 202-274-1109
rdykal@bsfllp.com
jbergsten@bsfllp.com
mschafer@bsfllp.com
peckert@bsfllp.com
aliu@bsfllp.com

John Michael Lyons (*pro hac vice*)
Sabina Mariella (*pro hac vice*)
Sophie Roytblat (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
55 Hudson Yards, 20th Floor
New York, NY 10001
jlyons@bsfllp.com
smariella@bsfllp.com
sroytblat@bsfllp.com

Melissa Smith (TX State Bar No. 24001351)
GILLAM & SMITH LLP
303 S. Washington Ave.
Marshall, TX 75670
(t) 903-934-8450
melissa@gillamsmithlaw.com

Attorneys for Comcast Defendants

Deron Dacus (State Bar No. 00790553)
THE DACUS FIRM, P.C.
821 ESE Loop 323, Suite 430
Tyler, TX 75701
(t) (903) 705-1117
ddacus@dacusfirm.com

DAVIS POLK & WARDWELL LLP
Ashok Ramani (CA Bar No. 200020)
David J. Lisson (CA Bar No. 250994)
James Y. Park (CA Bar No. 343659)
Micayla Hardisty (CA Bar No. 333246)
1600 El Camino Real
Menlo Park, CA 94025
ashok.ramani@davispolk.com
david.lisson@davispolk.com
james.park@davispolk.com
micayla.hardisty@davispolk.com

Alena Farber (NY Bar No. 5896170)
450 Lexington Avenue
New York, NY 10017
alena.farber@davispolk.com

WILMER CUTLER PICKERING HALE AND DORR LLP
Thomas G. Saunders (NY Bar No. 4429387)
2100 Pennsylvania Ave, NW
Washington, DC 20007
thomas.saunders@wilmerhale.com

Lauren E. Matlock-Colangelo (NY Bar No. 5771340)
7 World Trade Center
250 Greenwich St
New York, NY 10007
lauren.matlock-colangelo@wilmerhale.com

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.

III. JOINT STATEMENT OF THE CASE

This is a civil action for patent infringement in which Touchstream accuses Comcast of directly infringing claims 1, 5, 7, 8, and 9 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 Comcast has directly infringed each of the Asserted Claims. Comcast denies that it has infringed the Asserted Claims of the Asserted Patents and argues that the Asserted Claims are invalid.

Touchstream alleges Comcast infringes the Asserted Claims of the Asserted Patents by performing certain methods. In particular, Touchstream alleges that Comcast infringes when a subscriber uses the Xfinity TV Remote Application in conjunction with an X1 set-top box (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 Comcast’s alleged infringement of the ’251 patent was and continues to be willful. Touchstream also asserts that Comcast’s alleged infringement of the ’751 and ’934 patents has been willful after the filing of this lawsuit. Touchstream seeks enhanced damages as a result of Comcast’s alleged willful infringement, and any other relief the Court deems appropriate. Touchstream disagrees with each allegation, defense, and/or affirmative defense asserted by Comcast.

Comcast contends that it does not infringe the Asserted Claims and that the Asserted Claims are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112. Because Comcast does not

infringe any valid Asserted Claim, Touchstream is not entitled to any damages or equitable relief. Comcast further contends that it has not willfully infringed any of the Asserted Patents. Further, this case is exceptional under 35 U.S.C. § 285, and Comcast seeks its attorney's fees and costs thereunder, as well as any other relief the Court deems appropriate.

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 previously filed motions or previously lodged objections.

The contentions below do not include every detail underlying each contention. The Parties do not waive any issues raised in their pending, decided, or future motions, including any motions *in limine*, motions for summary judgment, *Daubert* motions, motions to strike, and any other future motions or objections that they may file.

A. Touchstream's Contentions

(1) Plaintiff Touchstream is the owner of all right, title, and interest in the '251 patent titled "Play Control of Content on a Display Device." Comcast has been and is infringing the '251 patent under 35 U.S.C. § 271 by using the methods of one or more claims of the '251 Patent within the United States through its Accused Functionalities. Touchstream accuses Comcast of infringing claims 1, 5, 7, 8, and 9 of the '251 patent.

(2) Plaintiff Touchstream is the owner of the '751 patent titled "Play Control of Content on a Display Device." Comcast has been and is infringing the '751 patent under 35 U.S.C. § 271 by using the methods of one or more claims of the '751 patent within the United States through its Accused Functionalities. Touchstream accuses Comcast of infringing claims 12, 13, and 14 of the '751 patent.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.