

EXHIBIT B



Outlook

Re: Touchstream v. Charter | Joint Exhibit List

From Philip Eckert <peckert@bsfllp.com>**Date** Thu 2/20/2025 10:53 AM**To** Anderson, Carson <Carson.Anderson@arnoldporter.com>; Anita Liu <aliu@bsfllp.com>; A&P_EDTX60_Charter <A&P_EDTX60_Charter@arnoldporter.com>; Brown, Melissa <melissa.brown@arnoldporter.com>; Reisner, Daniel <daniel.reisner@arnoldporter.com>; ddacus@dacusfirm.com <ddacus@dacusfirm.com>; Hayes, Dina <dina.hayes@arnoldporter.com>**Cc** Touchstream <Touchstream@bsfllp.com>; Tom Gorham <Tom@gillamsmithlaw.com>; melissa@gillamsmithlaw.com <melissa@gillamsmithlaw.com>; McKellar Karr <McKellar@gillamsmithlaw.com>

Thanks Carson, let's plan to discuss tomorrow at Noon ET. I will circulate an invite shortly.

Best,
Phil

From: Anderson, Carson <Carson.Anderson@arnoldporter.com>**Sent:** Thursday, February 20, 2025 10:32 AM**To:** Philip Eckert <peckert@bsfllp.com>; Anita Liu <aliu@bsfllp.com>; A&P_EDTX60_Charter <A&P_EDTX60_Charter@arnoldporter.com>; Brown, Melissa <Melissa.Brown@arnoldporter.com>; Reisner, Daniel <Daniel.Reisner@arnoldporter.com>; ddacus@dacusfirm.com <ddacus@dacusfirm.com>; Hayes, Dina <Dina.Hayes@arnoldporter.com>**Cc:** Touchstream <Touchstream@bsfllp.com>; Tom Gorham <Tom@gillamsmithlaw.com>; melissa@gillamsmithlaw.com <melissa@gillamsmithlaw.com>; McKellar Karr <McKellar@gillamsmithlaw.com>**Subject:** RE: Touchstream v. Charter | Joint Exhibit List

CAUTION: External email. Please do not respond to or click on links/attachments unless you recognize the sender.

Philip,

This is the exact issue that was discussed at the December 19 Pretrial Conference. You specifically said to the Court “[i]t's called background art, but it looks a lot like invalidity, and that's exactly why we think it's confusing.” Charter responded by explaining “the importance of this, Your Honor, is that the Plaintiff is going to claim to have solved a problem that had not been solved, and that's what they contend is the value proposition of their invention. It goes to damages.” The Court sided with Charter and denied Touchstream’s MIL No. 3. See December 19, 2024, Tr. at 74:9-79:22; *see also* Dkt. 275 at 2 (“Plaintiff’s MIL No. 3 ... This motion *in limine* is **DENIED** as overbroad. Defendants are bound by their representations that they will not use unelected prior art to show the jury that the prior art meets the limitations of a claim.”) (emphasis in original).

This exact issue has already been briefed, and Touchstream lost. As we explained at the pretrial conference and in the email below, Charter will not use these trial exhibits to argue invalidity, but they are nonetheless relevant to other issues, such as damages. Contrary to your allegation, Charter is not using these references to “backdoor[] invalidity arguments” into the case.

Finally, your case, *Mojo v. Samsung*, is not on point. The Court gave Samsung the same instruction that it gave Charter regarding not comparing unelected prior art references to the claim limitations of the asserted patents, but did not strike the use of those references *in toto*, specifically explaining that there are permissible uses of the unelected references. *See Mojo v. Samsung*, Case No. 2:22-cv-00398-JRG-RSP, Dkt. 251 at 8-9 (July 23, 2024 E.D. Tex.).

If necessary, we are available to discuss on Friday, February 21 at noon ET.

Best,
Carson

Carson Anderson
Senior Associate | [Bio](#)

Arnold & Porter

3000 El Camino Real | Suite 500
Palo Alto, CA 94306-2112
T: +1 650.319.4578
Carson.Anderson@arnoldporter.com
www.arnoldporter.com | [LinkedIn](#)

From: Philip Eckert <peckert@bsfllp.com>
Sent: Wednesday, February 19, 2025 3:59 PM
To: Anderson, Carson <Carson.Anderson@arnoldporter.com>; Anita Liu <aliu@bsfllp.com>; A&P_EDTX60_Charter <A&P_EDTX60_Charter@arnoldporter.com>; Brown, Melissa <Melissa.Brown@arnoldporter.com>; Reisner, Daniel <Daniel.Reisner@arnoldporter.com>; zzz.External.ddacus@dacusfirm.com <ddacus@dacusfirm.com>; Hayes, Dina <Dina.Hayes@arnoldporter.com>
Cc: Touchstream <Touchstream@bsfllp.com>; Tom Gorham <Tom@gillamsmithlaw.com>; zzz.External.melissa@gillamsmithlaw.com <melissa@gillamsmithlaw.com>; McKellar Karr <McKellar@gillamsmithlaw.com>
Subject: Re: Touchstream v. Charter I Joint Exhibit List

External E-mail

Counsel, please let us know when we may expect a response to the below.

From: Philip Eckert <peckert@bsfllp.com>
Sent: Monday, February 17, 2025 2:56 PM
To: Anderson, Carson <Carson.Anderson@arnoldporter.com>; Anita Liu <aliu@bsfllp.com>; A&P_EDTX60_Charter <A&P_EDTX60_Charter@arnoldporter.com>; Brown, Melissa <Melissa.Brown@arnoldporter.com>; Reisner, Daniel <daniel.reisner@arnoldporter.com>; ddacus@dacusfirm.com <ddacus@dacusfirm.com>; Hayes, Dina <dina.hayes@arnoldporter.com>
Cc: Touchstream <Touchstream@bsfllp.com>; Tom Gorham <Tom@gillamsmithlaw.com>; melissa@gillamsmithlaw.com <melissa@gillamsmithlaw.com>; McKellar Karr <McKellar@gillamsmithlaw.com>
Subject: Re: Touchstream v. Charter I Joint Exhibit List

Thanks, Carson. We disagree that is what the Court said at the December 19 pretrial conference, or that the Court "specifically sanctioned" the use of these references in this manner. At any rate, neither the Court nor Touchstream could have considered this issue at that pretrial conference, as that hearing occurred before Charter narrowed its invalidity theories on January 6.

sections at §§ VII-VIII, IX-XII. Both are problematic—the background art was raised with the Court, which, as noted below, restricted their use to those references you actually elect in a prior art combination. 12/19/24 Pretrial Conf. Tr. 79:14-15 ("That showing should be limited to the elected prior art."). And your citations to § XIII of Dr. Shamos's report, which just refers back to the invalidity sections of his report, show that the use of these exhibits must rely on unelected invalidity opinions at trial.

Using these references as exhibits is improper where you have not elected to use them in a prior art combination, and will confuse the jury. Your proposed use for damages purposes simply backdoors invalidity arguments without the legal standard of proving invalidity on a limitation by limitation basis and by clear and convincing evidence.

I'm attaching more authority on the subject, at 7-9. We would like to avoid burdening the Court with this, but if we are truly at an impasse we intend to seek relief soon. If you are not prepared to remove these exhibits from the exhibit list, please let us know some times this week that your team is available to discuss and hopefully avoid motion practice.

Best,
Philip Eckert
Associate

BOIES SCHILLER FLEXNER LLP

1401 New York Avenue, N.W., Washington, DC 20005
(t) +1 202 274 1141 | (m) +1 816 716 4153 | peckert@bsfllp.com

From: Anderson, Carson <Carson.Anderson@arnoldporter.com>
Sent: Friday, February 14, 2025 11:41 AM
To: Anita Liu <aliu@bsfllp.com>; Philip Eckert <peckert@bsfllp.com>; A&P_EDTX60_Charter <A&P_EDTX60_Charter@arnoldporter.com>; Brown, Melissa <Melissa.Brown@arnoldporter.com>; Reisner, Daniel <Daniel.Reisner@arnoldporter.com>; ddacus@dacusfirm.com <ddacus@dacusfirm.com>; Hayes, Dina <Dina.Hayes@arnoldporter.com>
Cc: Touchstream <Touchstream@bsfllp.com>; Tom Gorham <Tom@gillamsmithlaw.com>; melissa@gillamsmithlaw.com <melissa@gillamsmithlaw.com>; McKellar Karr <McKellar@gillamsmithlaw.com>
Subject: RE: Touchstream v. Charter I Joint Exhibit List

CAUTION: External email. Please do not respond to or click on links/attachments unless you recognize the sender.

Anita,

The trial exhibits referenced in Mr. Eckert's email are relevant to issues outside of invalidity, and Charter's Disclosure of Final Invalidity Theories has no impact on whether these exhibits should be included on the joint exhibit list. For instance, each of the trial exhibits referenced in Mr. Eckert's email are relevant to damages, including at least *Georgia-Pacific* factor 9, and they are cited in §XVI of Dr. Shamos' Rebuttal Report titled "Minimal Technical Value of the Asserted Claims;" see also §XIII of Dr. Shamos' Opening Report regarding the "Value of The Claimed Invention and The Asserted Claims Over the Prior Art." To this end, Mr. Bakewell specifically cites Dr. Shamos in his discussion of *Georgia-Pacific* Factor 9 and the "incremental benefit provided by the patents-in-suit, particularly over prior art." See Mr. Bakewell's Rebuttal Report, §5.10.

As Charter explained during the December 19, 2024 Pretrial Conference, "the importance of

been solved, and that's what they contend is the value proposition of their invention. It goes to damages." December 19, 2024, Tr. at 77:13-17. The Court specifically sanctioned this use of these trial exhibits. See *id.*, 79:14-22.

Inclusion of these trial exhibits on the joint exhibit list is not inconsistent with Judge Payne's ruling on this issue or the Court's Standing MIL No. 4.

Best,
Carson

Carson Anderson
Senior Associate | [Bio](#)

Arnold & Porter

3000 El Camino Real | Suite 500
Palo Alto, CA 94306-2112
T: +1 650.319.4578
Carson.Anderson@arnoldporter.com
www.arnoldporter.com | [LinkedIn](#)

From: Anita Liu <aliu@bsfillp.com>
Sent: Wednesday, February 12, 2025 2:20 PM
To: Philip Eckert <peckert@bsfillp.com>; A&P_EDTX60_Charter <A&P_EDTX60_Charter@arnoldporter.com>; Anderson, Carson <Carson.Anderson@arnoldporter.com>; Brown, Melissa <Melissa.Brown@arnoldporter.com>; Reisner, Daniel <Daniel.Reisner@arnoldporter.com>; zzz.External.ddacus@dacusfirm.com <ddacus@dacusfirm.com>; Hayes, Dina <Dina.Hayes@arnoldporter.com>
Cc: Touchstream <Touchstream@bsfillp.com>; Tom Gorham <Tom@gillamsmithlaw.com>; zzz.External.melissa@gillamsmithlaw.com <melissa@gillamsmithlaw.com>; McKellar Karr <McKellar@gillamsmithlaw.com>
Subject: Re: Touchstream v. Charter I Joint Exhibit List

External E-mail

Counsel,

It's our understanding that Charter is not currently prepared to make any changes to the parties' joint exhibit list. Given Charter's narrowed invalidity theories, the exhibits listed in Phil's email below reflect prior art that is no longer relevant to any claim or defense. As such, they are only potentially relevant as background references. It's our position that these exhibits are excluded under the Court's standing MIL No. 4. Further, Charter counsel agreed to limit the use of unelected prior art to just background at the pretrial conference on December 19, 2024 (see Tr. pp. 77-79). Based on our understanding of Judge Payne's prior rulings (in this and other cases), background art references are not exhibits and should not go back to the jury.

Please let us know Charter's rationale for keeping unelected prior art references on the JTX list.

Thanks,
Anita

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.