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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

THX, LTD.,

Plaintiff,

v.

APPLE INC.,

Defendant.

JOINT CASE MANAGEMENT STATEMENT AND [PROPOSED] ORDER

Case No. 3:13-CV-01161-JSW

Hearing: Case Management Conference
Judge: Jeffrey S. White
Date: October 11, 2013

Pursuant to Civil L.R. 16-9 and Rule 26(f) of the Federal Rules of Civil Procedure, Plaintiff THX, Ltd. ("THX") and Defendant Apple Inc. ("Apple") hereby respectfully submit this Joint Case Management Statement in connection with the Case Management Conference scheduled for October 11, 2013.

1. JURISDICTION AND SERVICE

The parties agree that the Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a). The parties are not aware of any issues regarding personal jurisdiction or venue. No parties remain to be served.

2. FACTS

This is a patent infringement case wherein THX alleges infringement of U.S. Patent Nos. 7,433,483 ("the '483 patent") and 8,457,340 ("the '340 patent"). THX filed a Complaint alleging infringement of the '483 patent on March 14, 2013 (Dkt. No. 1) and an Amended Complaint on July 11, 2013 that added a claim for infringement of the '340 patent (Dkt. No. 12). The Amended Complaint alleges that Apple infringes the '483 and '340 patents by, among other things, making, using, importing, offering to sell, and/or selling in the United States products covered by one or more claims of the '483 and '340 patents in violation of 35 U.S.C. § 271, including but not limited to Apple's iPhone 4 and later models, as well as its iPad and iMac products. On August 1, 2013, Apple filed an Answer and Counterclaim denying infringement and asserting counterclaims for patent invalidity and non-infringement (Dkt. No. 26).

The issues set forth below are not intended to be final or exhaustive, and the parties reserve the right to reformulate these issues, dispute that they are issues, or include any other appropriate issues as they develop or become known to the parties through the course of discovery and investigation. Further, the characterization of an issue as "factual" or "legal" is not a concession that it is not the other or both.

The principal factual issues in dispute are:

(a) Whether any Apple products or services infringe the '483 and/or '340 patents, either literally or under the doctrine of equivalents;

(b) The identification of Apple products or services that allegedly infringe the '483 and/or '340 patents;

(c) Whether THX is entitled to damages for any alleged infringement;

(d) If THX is entitled to any damages, factors relevant to damages and the amount of damages;

(e) Whether this case is exceptional under 35 U.S.C. § 285, and, if so, whether either party is entitled to an award of attorney fees;

(f) Whether the '483 and '340 patents are invalid and unenforceable.[1]

The parties reserve the right to raise additional factual issues that may arise through the course of this action.

3. LEGAL ISSUES

The principal legal issues are expected to include:

(a) The proper construction of the asserted claims of the '483 and '340 patents (*Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996));

(b) Whether Apple has infringed any of the asserted claims of the '483 and/or '340 patents as construed by the Court, either literally or under the doctrine of equivalents;

(c) Whether THX is entitled to injunctive relief;

(d) Whether THX is entitled to damages or any other relief for any alleged infringement by Apple;

(e) Whether any party is entitled to attorneys' fees and costs (35 U.S.C. § 285);

(f) Whether THX is entitled to enhanced damages (35 U.S.C. § 284);

(g) Whether the '483 and '340 patents are invalid and unenforceable;

(h) Whether THX's claims are barred, precluded, or otherwise improper based on one or more of Apple's affirmative defenses;

[1] THX does not believe that Apple has properly pleaded unenforceability of the '483 and/or '340 patents.

(i) Whether THX's claims for damages are barred or limited based on 35 U.S.C. §§ 286 and/or 287 and 28 U.S.C. § 1498.

The parties reserve the right to raise additional legal issues that may arise through the course of this action.

4. MOTIONS

There are no prior or pending motions in this case.

The parties anticipate claim construction briefing under the Patent Local Rules and may file one or more dispositive motions. In particular, THX anticipates filing a motion for summary judgment of infringement.

5. AMENDMENT OF PLEADINGS

THX filed an Amended Complaint on July 11, 2013 (Dkt. No. 12). THX may also amend its pleadings to reflect information obtained through discovery, and to the extent that Apple releases new products or services that infringe the '483 and/or '340 patents. Apple may also amend its pleadings to reflect information obtained through discovery.

6. EVIDENCE PRESERVATION

The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"). The parties also confirm that they have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action.

7. DISCLOSURES

The parties have fully and timely complied with their initial disclosures requirements on October 4, 2013 by disclosing the information required in Fed. R. Civ. P. 26(f)(a)(1)(A).

8. DISCOVERY

A. Discovery Taken to Date

No discovery has been taken.

B. Scope of Anticipated Discovery

THX intends to pursue discovery relating to the factual and legal issues set forth herein above. THX also intends to pursue discovery from Apple and third parties regarding: (1) the

development, operation, make up, marketing and advertising of the products and services that allegedly infringe the '483 and '340 patents; (2) Apple's profits from the alleged infringement of the '483 and '340 patents; (3) Apple's basis for any of its affirmative defenses; (4) Apple's basis for any of its counterclaims; (5) Apple's knowledge of the '483 and '340 patents prior to the filing of THX's complaint; (6) any opinions of counsel regarding the '483 and '340 patents; and (7) any licenses regarding the technology that infringe the '483 and '340 patents.

Apple intends to pursue discovery relating to the factual and legal issues set forth herein above and in its Answer and Counterclaims. Apple anticipates that this discovery will include at least the following: (1) the conception, reduction to practice, and any alleged diligence in reduction to practice of the inventions claimed by the '483 and '340 patents; (2) prior art to the '483 and '340 patents; (3) the prosecution of the '483 and '340 patents, including the applicants' disclosure of prior art to the Patent Office; (4) title and ownership of the '483 and '340 patents; (5) licensing of the '483 and '340 patents; (6) any damages claimed by THX; (7) THX's basis for its claims of infringement; (8) the construction of any disputed claim terms of the '483 and '340 patents.

C. Proposed Limitations or Modifications of the Discovery Rules

The parties do not propose altering the discovery limits imposed by the Federal Rules of Civil Procedure and the Local Rules except as follows:

Interrogatories: 30

Requests for Production: 75

Requests for Admission: 100

***THX's Proposal Regarding Depositions*:** THX does not propose altering the deposition limits imposed by Fed. R. Civ. P. 30, *i.e.*, no more than 10 depositions absent leave of court.

***Apple's Proposal Regarding Depositions*:** 6 depositions of party witnesses. Depositions of third parties do not count towards this limit.

D. ESI Discovery

The parties intend on entering into a stipulated e-discovery order but have not yet agreed to such an order.

E. Discovery Plan

The parties jointly propose the schedule set forth in Section 20.C below.

9. CLASS ACTIONS

Not applicable.

10. RELATED CASES

There are currently no related cases or proceedings pending before another judge of this Court or before another court or administrative body.

11. RELIEF

THX seeks entry of judgment against Apple (1) declaring that Apple has infringed the '483 and '340 patents; (2) permanently enjoining Apple and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '483 and '340 patents; (3) awarding damages in an amount adequate to compensate THX for Apple's infringement, consisting of, *inter alia*, THX's lost profits, but in any event at least a reasonable royalty; and (4) awarding prejudgment interest, costs, attorney fees, and such other and further relief as the Court may deem just and proper. At this time, THX does not have sufficient information to estimate damages because documents and information necessary for computation of damages, costs, fees, and expenses are currently unavailable at this early stage and includes information possessed by Apple.

Apple seeks (1) a declaratory judgment that it has not infringed the '483 and '340 patents, directly or indirectly, and that the '483 and '340 patents are invalid and unenforceable, (2) an order dismissing the Amended Complaint with prejudice, and (3) an award of its attorney fees and costs pursuant to 35 U.S.C. § 285.

12. SETTLEMENT AND ADR

The parties have met-and-conferred pursuant to ADR L.R. 3-5 and have stipulated to private ADR to be held within 60 days from issuance of the Court's claim construction order (Dkt. No. 11).

13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

The parties decline to proceed before a magistrate judge.

14. OTHER REFERENCES

The parties do not believe that this case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. NARROWING OF ISSUES

The parties believe that it is premature to narrow the issues for trial other than to make the identifications required by the Patent Local Rules. The parties believe that they may be able to narrow the issues for trial after the Court issues its claim construction rulings.

16. EXPEDITED SCHEDULE

The parties do not presently believe that this is the type of case that can be handled on an expedited schedule.

17. SCHEDULING

Please see Section 20.C below for the parties' proposed schedule.

18. TRIAL

The trial will be a jury trial, and the parties preliminarily anticipate that the trial will be 5-10 full court days.

19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

On July 11, 2013, THX filed a "Certification of Interested Entities or Parties" as required by Civil Local Rule 3-16. (Dkt. No. 13.) In particular, THX certified that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

Name	Connection and Interest
Lucasfilm Ltd.	Holds no less than 10% interest in THX Ltd.

Archview Capital Ltd.	Holds no less than 10% interest in THX Ltd.

On August 1, 2013, Apple filed a Certification of Interested Entities or Parties pursuant to Local Rule 3-16. (Docket No. 27.) Apple has no parent corporation, and no publicly held company owns more than 10% of Apple stock.

20. OTHER MATTERS

A. Stipulated Protective Order

The parties anticipate lodging a Stipulated Protective Order.

B. Claim Construction Hearing

The Patent Local Rule 2-1(a) requires the parties to meet and confer about the manner in which the claim construction hearing will proceed. At this time, the parties do not expect any modifications of the deadlines set forth in the Patent Local Rules, other than the proposed scheduling as set forth below. The parties believe it is premature at this time to discuss the scope and timing of the claim construction discovery and the format of the Claim Construction Hearing. The parties intend to present a tutorial before the Clam Construction Hearing related to the technology at issue.

C. Proposed Case Schedule

The parties have agreed to follow the Patent Local Rules of this District. The parties have set forth their respective positions on the discovery and pretrial schedule in Attachment A. Although THX does not believe that dates should be set at this time with respect to events to occur after the issuance of the Court's claim construction order, THX proposes such dates in accordance with the Court's rules.

The parties specifically reserve their right to request that the schedule be amended due to changes occurring in the course of the case, such as amendments to the pleadings, additions of parties, professional or case conflicts, or other good cause, in accordance with Fed. R. Civ. P. 16(b).

DATED: October 4, 2013

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Attorneys for Defendant
APPLE INC.

Pursuant to Civil Local Rule 5-1(i)(3), counsel for THX has obtained the concurrence of Apple's counsel in the filing of this Stipulated Request.

Dated: October 4, 2013

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Attorneys for Plaintiff
THX LTD..

ATTACHMENT A

Party	Item	THX Proposed Due Date	Apple Proposed Due Date
All	File 26(f) Report; File Joint Case Management Statement and Proposed Order	October 4, 2013	October 4, 2013
All	Exchange Initial Disclosures	October 4, 2013	October 4, 2013
All	Case Management Conference	October 11, 2013	October 11, 2013
THX	Disclosure of Asserted Claims and Infringement Contentions, With Accompanying Doc Production (Patent L.R. 3-1 and 3-2)	October 25, 2013	October 25, 2013
Apple	Invalidity Contentions, With Accompanying Doc Production (Patent L.R. 3-3 and 3-4)	December 9, 2013	December 9, 2013
All	Exchange of Proposed Terms for Construction (Patent L.R. 4-1)	January 6, 2013	January 6, 2013
All	Exchange of Preliminary Claim Constructions and Extrinsic Evidence (Patent L.R. 4-2)	January 27, 2014	January 27, 2014
All	Joint Claim Construction and Pre-Hearing Statement (Patent L.R. 4-3)	February 21, 2014	February 21, 2014
All	Claim Construction Discovery Deadline (Patent L.R. 4-4)	March 24, 2014	March 24, 2014
THX	Claim Construction Opening Brief (Patent L.R. 4-5(a))	April 7, 2014	April 7, 2014
Apple	Claim Construction Opposition Brief (Patent L.R. 4-5(b))	April 21, 2014	April 21, 2014
THX	Claim Construction Reply Brief (Patent L.R. 4-5(c))	April 28, 2014	April 28, 2014
All	Claim Construction Tutorial	May 13, 2014 (subject to the	May 13, 2014 (subject to the

Party	Item	THX Proposed Due Date	Apple Proposed Due Date
		convenience of the court)	convenience of the Court)
All	Exchange exhibits for Claim Construction Hearing	Forty-eight hours prior to Claim Construction Hearing	Forty-eight hours prior to Claim Construction Hearing
All	Claim Construction Hearing (Patent L.R. 4-6)	May 20, 2014 (subject to the convenience of the court)	May 20, 2014 (subject to the convenience of the Court)
All	Status Conference with the Court	At Court's earliest convenience after the Claim Construction Order	At Court's earliest convenience after the Claim Construction Order
All	Non-Expert Discovery Cutoff	June 30, 2014	250 days after the Claim Construction Order
All	Deadline for Designating Experts	30 days after entry of Claim Construction Order	45 days after non-expert discovery cutoff (295 days after Claim Construction Order)
ALL	Completion of Private ADR (Dkt. No. 11)	60 days after entry of Claim Construction Order	60 days after entry of Claim Construction Order
All	Service of Opening Expert Reports	60 days after entry of Claim Construction Order	30 days after deadline for designating experts (325 days after Claim Construction Order)
All	Service of Rebuttal Expert Reports	90 days after entry of Claim Construction Order	30 days after service of opening reports (355 days after Claim Construction Order)
All	Expert Discovery Cutoff	120 days after entry of Claim Construction	30 days after service of rebuttal

Party	Item	THX Proposed Due Date	Apple Proposed Due Date
		Order	expert reports (385 days after Claim Construction Order)
All	Deadline for Filing Dispositive Motions	150 days after entry of Claim Construction Order	60 days after expert discovery cut-off (445 days after Claim Construction Order)
All	Hearing of Dispositive Motions	185 days after entry of Claim Construction Order	35 days after deadline for filing dispositive motions (480 days after Claim Construction Order)
All	Pretrial Conference	210 days after entry of Claim Construction Order	145 days after the hearing on dispositive motions (625 days after Claim Construction Order)
All	Trial	224 days after entry of Claim Construction Order	Begin 7 days after the pretrial conference (632 days after the Claim Construction Order)

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this order.

DATED: _____, 2013

_____
THE HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on October 4, 2013, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4.

/s/ Jennifer Ilas
Jennifer Ilas