

1 Courtland L. Reichman
California State Bar No. 268873
2 creichman@mckoolsmith.com
MCKOOL SMITH, P.C.
3 255 Shoreline Drive, Suite 510
Redwood Shores, CA 94065
4 Telephone: (650) 394-1400
Fax: (650) 394-1422

5 Theodore Stevenson III
6 Texas State Bar No. 19196650
tstevenson@mckoolsmith.com
7 300 Crescent Court, Suite 1500
MCKOOL SMITH, P.C.
8 Dallas, Texas 75201
Telephone (214) 978-4000
9 Fax: (214) 978-4044

10 Kevin Burgess
Texas State Bar No 24006927
11 kburgess@mckoolsmith.com
John Campbell
12 Texas State Bar No. 24036314
jcampbell@mckoolsmith.com
13 MCKOOL SMITH, P.C.
200 W. 6th St., Suite 1700
14 Austin, Texas 78701
Telephone: (512) 692-8700
15 Fax: (512) 692-8744

16 *Attorneys for Plaintiff*

17 JOSH KREVITT, SBN 208552
jkrevitt@gibsondunn.com
18 GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
19 New York, NY 10166-0193
Telephone: 212.351.4000
20 Facsimile: 212.351.4035

21 H. MARK LYON, SBN 162061
mlyon@gibsondunn.com
22 Y. ERNEST HSIN, SBN 201668
ehsin@gibsondunn.com
23 STUART M. ROSENBERG, SBN 239926
srosenberg@gibsondunn.com
24 GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Road
25 Palo Alto, CA 94304-1211
Telephone: 650.849.5300
26 Facsimile: 650.849.5333

27 *Attorneys for Defendant Apple Inc.*
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNWIRED PLANET LLC, a Nevada
limited liability company,

Plaintiff,

vs.

APPLE INC., a California corporation,

Defendant.

Case No. 4:13-cv-4134-YGR

**JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED] ORDER**

Hearing:

Date: January 6, 2014

Time: 2:00 pm

Place: Courtroom 5

Judge: Hon. Yvonne Gonzalez
Rogers

Pursuant to this Court's Civil Local Rule 16-9 and the Standing Order for all Judges of the Northern District of California dated July 1, 2011, the parties jointly submit this Case Management Statement and Proposed Order. Counsel for Unwired Planet LLC ("Unwired Planet") and counsel for Apple Inc. ("Apple") met and conferred on December 13, 2013.

1. Jurisdiction and Service

This is an action arising under the patent laws of the United States, 35 U.S.C. § 101 *et seq.* The parties agree that this court has subject matter jurisdiction over this case at least under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (any Act of Congress relating to Patents). The parties agree that no issues exist regarding personal jurisdiction. All named parties have been served and there are no unresolved issues relating to service of process.

2. Facts

a. Unwired Planet's Statement

Unwired Planet alleges that Apple infringes the following ten patents:

- United States Letters Patent No. 6,317,594 ("the '594 patent"), entitled "System and Method for Providing Data to a Wireless Device upon Detection of Activity of the

1 Device on a Wireless Network,” issued to inventors William E. Gossman and Peter J.
2 Hartmaier on Nov. 13, 2001.

- 3 • United States Letters Patent No. 6,317,831 (“the ’831 patent”), entitled “Method and
4 Apparatus for Establishing a Secure Connection over a One-way Data Path,” issued
5 to inventor Peter F. King on Nov. 13, 2001.
- 6 • United States Letters Patent No. 6,321,092 (“the ’092 patent”), entitled “Multiple
7 Input Data Management for Wireless Location-based Applications,” issued to
8 inventors James Fitch, David L. Hose, and Michael McKnight on Nov. 20, 2001.
- 9 • United States Letters Patent No. 6,532,446 (“the ’446 patent”), entitled “Server Based
10 Speech Recognition User Interface for Wireless Devices,” issued to inventor Peter F.
11 King on Mar. 11, 2003.
- 12 • United States Letters Patent No. 6,647,260 (“the ’260 patent”), entitled “Method and
13 System Facilitating Web Based Provisioning of Two-Way Mobile Communications
14 Devices,” issued to inventors Steve Dusse, Peter F. King, Bruce V. Schwartz, and
15 Bruce K. Martin, Jr. on November 11, 2003.
- 16 • United States Letters Patent No. 6,813,491 (“the ’491 patent”), entitled “Method and
17 Apparatus for Adapting Settings of Wireless Communication Devices in Accordance
18 with User Proximity,” issued to inventor Aldan Martin McKinney on Nov. 2, 2004.
- 19 • United States Letters Patent No. 7,020,685 (“the ’685 patent”), entitled “Method and
20 Apparatus for Providing Internet Content to SMS-based Wireless Devices,” issued to
21 inventors David A. Chen and Piyush Patel on Mar. 28, 2006.
- 22 • United States Letters Patent No. 7,233,790 (“the ’790 patent”), entitled “Device
23 Capability based Discovery, Packaging and Provisioning of Content for Wireless
24 Mobile Devices,” issued to inventors Rikard M. Kjellberg, Sheng Liang, Tomas G.
25 Lund, William Chan, Ramakrishna Chinta, and Xinbi Chen on Jun. 19, 2007.
- 26 • United States Reissued Patent No. US RE43,113 E (“the ’113 patent”), entitled
27 Domain-based management of distribution of digital content from multiple suppliers
28

1 to multiple wireless services subscribers,” issued to inventors Rikard M. Kjellberg,
2 Sheng Liang, Tomas G. Lund, and William Chan.

- 3 • United States Letters Patent No. 7,522,927 (“the ’927 patent”), entitled “Interface for
4 Wireless Location Information,” issued to inventors James Fitch, David Hose, and
5 Michael McKnight on Apr. 21, 2009.

6 Unwired Planet states that the ’594, ’831, ’092, ’446, ’260, ’491, ’685, ’790, ’113, and ’927
7 patents (collectively, the Asserted Patents) cover inventions relating to wireless devices,
8 management of wireless devices, management of messages and data for wireless devices, location
9 services, and speech recognition.

10 Unwired Planet asserts three bases for infringement of the Asserted Patents. First, Unwired
11 Planet alleges that Apple directly infringes one or more claims of each of the Asserted Patents under
12 35 U.S.C. § 271. Second, Unwired Planet alleges that Apple indirectly infringes one or more claims
13 of each of the Asserted Patents under 35 U.S.C. § 271(b). Third, Unwired Planet alleges that Apple
14 indirectly infringes one or more claims of the Asserted Patents by contributory infringement under
15 35 U.S.C. § 271(c).

16 Unwired Planet also alleges that Apple’s acts of direct, contributory and induced
17 infringement have caused damage to Unwired Planet, and Unwired Planet is entitled to recover
18 compensatory damages sustained as a result of Apple’s wrongful acts. Unwired Planet alleges that,
19 unless enjoined by this Court, Apple will continue to infringe the Asserted Patents, continuing to
20 damage Unwired Planet and causing irreparable harm.

21 Unwired Planet further alleges that Apple has known about each of the Asserted Patents.
22 Unwired Planet alleges that Apple lacks justifiable belief that there is no infringement, or that the
23 infringed claims are invalid, and has acted with objective recklessness in its infringing activity.
24 Unwired Planet alleges that Apple’s infringement is therefore willful.

25 **b. Apple’s Statement**

26 Apple asserts nine affirmative defenses and parallel counterclaims against Unwired Planet.
27 First, Apple alleges that one or more claims of the Asserted Patents are invalid and unpatentable
28

under 35 U.S.C. § 101 *et seq.* Second, Apple alleges that it has not and does not infringe any valid and enforceable claim of the Asserted Patents, directly or indirectly, literally or under the doctrine of equivalents. Third, Apple alleges that Unwired Planet's claims for relief are barred in whole or in part by the equitable doctrines of laches, estoppel, and/or waiver. Fourth, Apple alleges that Unwired Planet's claim for damages is limited by 35 U.S.C. § 286. Fifth, Apple alleges that, to the extent Unwired Planet seeks damages for any infringement occurring prior to its giving actual notice of the alleged infringement of the Asserted Patents to Apple, Unwired Planet's claims are barred pursuant to 35 U.S.C. § 287. Sixth, Apple alleges that Unwired Planet's claims are barred, in whole or in part, to the extent Apple has an express and/or implied license under one or more of the Asserted Patents and/or by the doctrine of patent exhaustion. Seventh, Apple alleges that Unwired Planet is barred from recovering costs in connection with this action under 35 U.S.C. § 288. Eighth, Apple alleges that the Complaint fails to state any claim against Apple upon which relief can be granted. Ninth, Apple alleges that four of the Asserted Patents—the '033, '790, '685, and '260 patents—are unenforceable because in each case individuals associated with prosecution of the patent committed inequitable conduct in its procurement.

3. Legal Issues

The key legal issues are as follows:

- The proper construction of disputed claim terms;
- Whether Apple has infringed and continues to infringe any valid claim of the Asserted Patents;
- Whether the claims of the Asserted Patents are invalid;
- Whether the claims of the Asserted Patents are unenforceable;
- Whether Unwired Planet's claims for relief concerning the Asserted Patents are barred by laches, estoppel, and/or waiver;
- If Apple infringes the Asserted Patents, the appropriate damages;
- If the Asserted Patents are not infringed and/or valid and/or enforceable, whether Apple is entitled to its costs, expenses, and fees.

1 **4. Motions**

2 There are no currently pending motions. The parties contemplate potential summary
3 judgment, *Daubert*, and *in limine* motions upon the close of discovery. The parties have agreed that
4 any dispositive or *Daubert* motions must be filed by the deadline set in the Scheduling Order.
5 Further, the parties agree that any motions *in limine* are by the deadline set in the Scheduling Order.

6 **5. Amendment of Pleadings**

7 The parties do not currently expect any parties, claims, or defenses to be added or dismissed,
8 but reserve the right to do so as discovery progresses. Because the deadline to add parties or to
9 amend pleadings had already passed in the District of Nevada before the case was transferred, the
10 parties do not believe a new deadline needs to be set.

11 **6. Evidence Preservation**

12 The parties confirm that they have reviewed the Guidelines Relating to the Discovery of
13 Electronically Stored Information (“ESI Guidelines”) and have met and conferred pursuant to Fed.
14 R. Civ. P. 26(f) regarding reasonable and proportional steps taken to preserve evidence relevant to
15 the issues reasonably evident in this action. Counsel for the parties have conferred with their
16 respective clients and have taken reasonable steps to preserve readily-accessible evidence in their
17 possession and control relevant to the claims or defenses in this action, including electronically-
18 stored information. Previously, the parties had stipulated to produce electronically-stored
19 information according to the Federal Circuit Advisory Council’s Model Order Regarding E-
20 Discovery In Patent Cases (“Model Order”). A copy of the Model Order is attached hereto as Exhibit
21 A. The Order on the parties’ stipulation from the District of Nevada is attached hereto as Exhibit B.

22 **7. Disclosures**

23 While in the District of Nevada, the parties exchanged initial disclosures pursuant to Rule 26
24 and according to the scheduling order in the District of Nevada, and have also supplemented those
25 disclosures to add individuals who were identified as potentially having relevant knowledge while
26 discovery was proceeding. The parties expect that they may further supplement those disclosures as
27 discovery proceeds.

1 **8. Discovery**

2 **a. Discovery taken to date**

3 All parties served initial disclosures on February 1, 2013. Since then, the parties have served
4 supplemental initial disclosures. On February 19, 2013, Unwired Planet served infringement
5 contentions. Apple served their invalidity contentions on May 22, 2013, with supplemental
6 contentions on June 19, 2013 and July 26, 2013.

7 The parties have served and responded to requests for production, requests for
8 admission, and interrogatories. Several depositions have taken place to date.

9 **b. Limitations on discovery**

10 While in the District of Nevada, the court previously approved the following limitations on
11 discovery.

12 1. Interrogatories: A maximum of 60 interrogatories per side, including
13 contention interrogatories.

14 2. Depositions: An initial approval of 100 hours of deposition per side, with
15 Unwired Planet having leave to request additional hours as discovery proceeds.

16 3. Third-party subpoenas: Any party that serves a subpoena upon a third-party
17 will simultaneously serve a copy of such subpoena upon all parties. Moreover, any party that
18 receives documents and/or correspondence from a third-party pursuant to a subpoena will, as soon as
19 possible, provide those documents and/or correspondence to each other party.

20 4. Materials relating to expert witnesses: The parties agree that draft expert
21 reports and notes of experts are not discoverable or admissible. This agreement applies to all such
22 items regardless of whether they are in paper or electronic form. This agreement does not apply to
23 any information an expert relies upon in forming his or her opinions.

24 **c. Additional Discovery**

25 1. Responses to Apple's Invalidity Contentions

26 2. Unwired Planet has agreed to serve responses to Apple's invalidity and
27 unenforceability contentions (previously due on September 5, 2013) on or before
28 January 20, 2014. Unwired Planet's Infringement Contentions

Apple contends that Unwired Planet's infringement contentions are deficient in certain respects for failure to identify what instrumentalities are being accused of infringement. Apple contends that, without this information, Apple cannot know which specific claim terms need to be construed by the Court. Unwired Planet has expressed that it may be willing to supplement its infringement contentions, pending its review of alleged deficiencies identified by Apple. Apple contends that any supplementation needs to occur prior to exchange of claim terms for construction.

d. Protective order

While in the District of Nevada, the parties entered into and the previous court signed a protective order in this case. The signed Protective Order is attached hereto as Exhibit C.

1. Unwired Planet's Position Regarding Source Code Printing

Unwired Planet requests paragraph 11(c)(v) of the District of Nevada Protective Order—limiting the number of source code pages that may be printed to no more than 250 pages—be modified to conform with paragraph 9(d) of the Northern District of California's Stipulated Protective Order for Litigation Involving Patents, Highly Sensitive Confidential Information and/or Trade Secrets. Paragraph 9(d) states: "The Receiving Party may request paper copies of limited portions of source code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing the source code other than electronically as set forth [above]." The Northern District of California's Stipulated Protective Order reflects a balanced approach—it expressly restricts printing source code for purposes of reviewing (the only concern raised by Apple) while allowing printing copies of the source code that are reasonably necessary for proving infringement. Unwired Planet believes this District's balanced approach should be followed in this case.

2. Apple's Position Regarding Source Code Printing

Apple does not agree that the modification Unwired Planet seeks is necessary or appropriate, and notes that this issue has already been briefed and argued by the Parties, and decided by the Nevada Court, before the case was transferred. The Parties met and conferred about this precise issue in March 2013 and were unable to reach a resolution. The Parties therefore briefed and argued

1 the issue before the Nevada Court. (D.I. 72). Unwired Planet is taking the same position here that it
2 did before the Nevada Court – that there should be no limit to the amount of source code that may be
3 printed, other than a limit of “reasonableness.” Due to its concerns about the handling of its highly
4 confidential and proprietary source code, Apple proposed a limit of 150 printed pages, rather than
5 having no pre-set numerical limit. Apple pointed out that the purpose of having a secure and
6 controlled source code review location is for Unwired Planet’s personnel to review Apple’s
7 proprietary source code at the location and print only the code needed to prove Unwired Planet’s
8 case (to be included in, e.g., expert reports or summary judgment motions), not for Unwired Planet
9 to be able to print large portions of code and review at unsecure locations. (D.I. 72, 73, 78).

10 The Nevada Court heard argument from both Parties, and found:

11 “Apple has established good cause to limit the amount of source code that Unwired
12 may print beyond that which is ‘reasonable.’ Having considered the parties’ positions,
13 the court orders that Unwired shall be limited to printing 250 pages of source code
14 and thirty continuous pages. Should Unwired require additional pages of source code,
15 the protective order shall include a provision that the parties shall first meet and
16 confer in good faith to reach a compromise. If they are unsuccessful, Unwired Planet
17 shall have leave to request an expedited hearing before the court to resolve this
18 issue.”

19 (D.I. 93 at 9-10). Thus, should Unwired Planet eventually need more than the 250 pages of printed
20 source code, it can explain the need for additional pages at that time. There is no need to remove
21 any and all numerical limits (and therefore any incentive for Unwired Planet to be judicious in its
22 printing of Apple’s proprietary source code) at this time. Unwired Planet has already been fully
23 heard on this issue, and Apple believes that it would be wasteful and inappropriate to revisit and alter
24 the decision of the Nevada Court when there has been no change in facts or circumstances.

25 **e. Issues related to claims of privilege or work product**

26 The parties jointly agree that privileged documents created after the filing of the original
27 Complaint (in the District of Nevada) in this action may be withheld without being identified to a
28

1 requesting party, unless the requesting party makes a particular request for post-Complaint
2 privileged documents, which request may be complied to or objected to, subject to review by the
3 Court if necessary.

4 **9. Class Actions**

5 This lawsuit does not involve a class action.

6 **10. Related Cases**

7 At this time, there are no related cases pending before other courts or other judges of this
8 Court. Unwired Planet notes that it has sued Google in the District of Nevada on different patents in
9 Case No. 3:12-cv-00504 LRH-VPC. In addition, an ongoing dispute between the parties exists in the
10 District of Delaware (Case No. 11-765-RGA) involving different patents than those asserted here.

11 **11. Relief**

12 Unwired Planet seeks damages not less than a reasonable royalty, enhanced damages for
13 willful infringement, costs, pre-judgment and post-judgment interest, attorney's fees pursuant to 35
14 U.S.C. § 285, injunctive relief, and a future compulsory royalty in the event injunctive relief is not
15 awarded. Unwired Planet expects to provide specific damages calculations through its expert
16 witnesses once it has received various financial and other documents from Apple during discovery.

17 Apple seeks a judicial declaration that it has not and does not infringe the Asserted Patents
18 and that the Asserted Patents are invalid and unenforceable. Apple also seeks attorney's fees
19 pursuant to 35 U.S.C. § 285.

20 **12. Settlement and ADR**

21 The parties will meet and confer from time to time and in good faith as instructed by the
22 Court and in accordance with the times outlined in the proposed scheduling order, outlined in § 17
23 below.

24 The parties agree to private mediation and have filed the Stipulation and [Proposed] Order
25 Selecting ADR Process.

13. Consent to Magistrate Judge For All Purposes

Unwired Planet consents to assignment of this case to a magistrate judge for all further proceedings, including trial and entry of judgment. Apple declines assignment of this case to a magistrate judge for all further proceedings, including trial and entry of judgment.

14. Other References

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

15. Narrowing of issues

Pursuant to the District of Nevada's Order on April 17, 2013, Unwired Planet limited the number of asserted claims to 70.

a. Unwired Planet's Position

Unwired Planet has already made a significant reduction of the number of asserted claims in this case, eliminating more than two thirds of the claims in the case by reducing the number of claims from 247 down to 70. While Unwired Planet agrees that the number of claims will need to be further reduced prior to trial, there must also be corresponding reductions in the amount of prior art identified by Apple.

Unwired Planet believes in good faith that Apple infringes the 247 claims originally asserted. Unwired Planet provided infringement contentions for each of those 247 claims on February 19, 2013. Pursuant to the Order from the District of Nevada, Unwired Planet reduced the asserted claims to 70. Apple requests that the Court order Unwired Planet to further reduce its asserted claims although discovery is not complete and Apple has made no discernable effort to reduce the complexity of the case on its own. Importantly, each claim reduction requires Unwired Planet to forego—at least for a time—asserting a property right, while Apple (assuming it's correct that each prior art reference it asserts invalidates the claims) gives up nothing by reducing the number of asserted prior art references.

While Apple has argued that it is contrary to case law to order reciprocal reductions in prior art, this is in fact commonly done and is the standard approach towards dealing with reductions in the number of claims. While the Nevada Court did not order Apple to reduce the prior art references

1 it asserted, this was because Apple argued to the Nevada Court successfully that the request was not
2 ripe for decision because invalidity contentions had not yet been served. (D.I. 133 at 2-3). The same
3 judge ordered a reciprocal reduction in prior art in a case between Unwired Planet and Google just a
4 few months later.

5 Apple's statement that it has asserted only an average of 12 references per patent is
6 inaccurate. Apple has asserted the following number of references per patent: '685 patent (29
7 references); '446 patent (35 references); '594 patent (50 references); RE 43,113 (48
8 references); '790 patent (28 references); '831 patent (16 references); '491 patent (16
9 references); '260 patent (42 references); '092 patent (26 references); '927 patent (26 references).
10 There is no patent-in-suit for which Apple has asserted only 12 references, and Apple appears to
11 have performed this calculation by excluding certain types of references (e.g., publications) and by
12 excluding references cited for obviousness purposes. Furthermore, for most of the patents-in-suit
13 Apple has reserved the right to assert that any combination of these references invalidate the patents
14 on obviousness grounds, without identifying those specific combinations. Given the number of
15 pieces of prior art Apple has asserted, the potential number of obviousness combinations is
16 incredibly large and functionally infinite.

17 The large number of references that Apple has identified makes further reductions in claims
18 difficult, and impedes Unwired Planet's ability to make an informed selection of claims in the event
19 of a further reduction. Unwired Planet contends that the next logical step in narrowing the case is to
20 order a reduction in the number of prior art references and combinations relied on by Apple before
21 attempting to further reduce the number of claims.

22 **b. Apple's Position**

23 Unwired Planet initially asserted 247 claims (across 10 patents) against Apple. Because this
24 was an absurdly large number of claims to litigate in any lawsuit, Apple sought reduction of claims
25 in April 2013. After considering briefing and oral argument from the Parties, the Nevada Court
26 ordered Unwired Planet to reduce the number of asserted claims in this case from 247 to 70, and
27 further indicated that additional narrowing of claims would be necessary before claim construction.

1 (D.I. 96). As the Nevada Court found, the court’s need to “assist in expediting the case and
2 managing its docket” justified limiting Unwired Planet to a more reasonable number of claims at that
3 stage in the case. (*Id.*).

4 After Unwired Planet was ordered to reduce its claims, it attempted to extract a reduction of
5 prior art asserted by Apple, arguing that it was only “fair” to force such a reduction in light of the
6 order requiring Unwired Planet’s narrowing of claims. Apple argued that conditioning reduction of
7 claims upon a “reciprocal” reduction of prior art references was contrary to case law and furthermore
8 that there was no reason to believe at that time, before Apple had even served its invalidity
9 contentions, that Apple would assert an unreasonably high number of prior art references. The
10 Nevada Court declined to order a reduction of any prior art references. Apple thereafter served its
11 invalidity contentions, and served an average of only about 12 primary references per *patent*.¹

12 Eight months have now gone by since Unwired Planet identified its 70 asserted claims. In
13 that time, Apple has provided detailed invalidity contentions identifying (a reasonable amount of)
14 prior art, as well as non-infringement contentions explaining why Apple believes its products do not
15 infringe the asserted claims. As the Nevada Court held, 70 claims are far too many for the Court or
16 the parties to handle at claim construction. Thus, Apple requests that the Court order Unwired Planet
17 to narrow its asserted claims to no more than 40 claims by no later than 14 days before the Parties
18 file their Joint Claim Construction Statement.

19 Apple furthermore objects to any attempt by Unwired Planet to condition a narrowing of
20 claims upon a narrowing of prior art, as (a) Apple has not asserted an unreasonable number of prior
21

22 ¹ Unwired Planet’s dispute of the number of prior art references asserted by Apple is not well taken.
23 Where Apple asserts that a prior art system (e.g., a product that was on sale or in public use prior to a
24 patent claim’s date of invention), Apple has identified multiple publications or other materials that
25 demonstrate how that system operated. In prior litigation between Unwired Planet and Apple,
26 Unwired Planet agreed that such materials collectively count as one reference, since only one system
27 was being asserted.
28

art references in this case (Apple has asserted an average of fewer than 12 primary prior art references per asserted patent), and (b) Unwired Planet has already been fully heard on its attempt to condition reduction of claims on a “reciprocal” reduction of prior art. Nevertheless, in the interest of compromise and cooperation, Apple is willing to agree to reduce its asserted prior art references to no more than 90 primary references within a week after Unwired Planet reduces its claims to 40 claims.

16. Expedited Trial Procedure

The parties agree that it is not appropriate to expedite this case under the Expedited Trial Procedure of General Order No. 64.

17. Scheduling

Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.

Event	Dates Proposed by Unwired Planet	Dates Proposed by Apple
Unwired Planet serves responses to Apple’s invalidity and unenforceability contentions	January 20, 2014	January 20, 2014
Unwired Planet serves supplemental infringement contentions	N/A	February 10, 2014
Unwired Planet reduces the number of asserted claims to 40	N/A	February 10, 2014
Apple reduces the number of primary prior art references to 90	N/A	February 17, 2014
Exchange of proposed terms for claim construction pursuant to Patent L.R. 4-1(a)	January 27, 2014	February 24, 2014
Parties to meet and confer regarding claim terms pursuant to Patent L.R. 4-1(b)	February 3, 2014	March 3, 2014
Document production to be substantially completed by all parties	February 14, 2014	March 14, 2014
Exchange of preliminary claim constructions and extrinsic evidence pursuant to Patent L.R. 4-2(a) and (b)	February 17, 2014	March 24, 2014

Event	Dates Proposed by Unwired Planet	Dates Proposed by Apple
Joint Claim Construction and Prehearing Statement to be submitted pursuant to Patent L.R. 4-3	March 10, 2014	April 7, 2014
Opening claim construction brief pursuant to Patent L.R. 4-5(a)	April 7, 2014	April 28, 2014 (both parties)
Responsive claim construction brief pursuant to Patent L.R. 4-5(b)	April 21, 2014	May 30, 2014 (both parties)
Reply claim construction brief pursuant to Patent L.R. 4-5(c)	April 28, 2014	N/A
Claim Construction Hearing	May 14, 2014	June 18, 2014
Close of fact discovery, including third-party discovery	September 19, 2014	September 19, 2014
Expert disclosures under Fed. R. Civ. P. 26(a) due	45 days after issuance of Markman Order on issues for which the parties bear the burden of proof; 45 days thereafter for rebuttal expert disclosures; 30 days thereafter for reply expert disclosures	45 days after issuance of Markman Order on issues for which the parties bear the burden of proof; 45 days thereafter for rebuttal expert disclosures; 30 days thereafter for reply expert disclosures
Completion of expert depositions	45 days after reply expert disclosures	45 days after reply expert disclosures
Dispositive motions due	30 days after the completion of expert discovery	30 days after the completion of expert discovery
Motions in limine due	30 days after the deadline for filing dispositive motions	30 days after the deadline for filing dispositive motions
Joint Pretrial Order due	30 days after the deadline for filing motions in limine	30 days after the deadline for filing motions in limine
Pretrial Conference	November 4, 2014	February 9, 2015
Trial	November 10, 2014	February 23, 2015

18. Trial

The parties have demanded jury trial. Unwired Planet expects the jury trial to take 2 weeks. Apple expects that the trial may last four weeks if all 10 asserted patents remain at issue. Less time may be necessary depending on the number of asserted patents and claims remaining at the time of trial.

19. Disclosure of Non-party Interested Entities or Persons

The parties have filed the “Certification of Interested Entities or Persons” required by Civil Local Rule 3-16.

Unwired Planet LLC certifies that the following corporations have an interest in the outcome of this case: Unwired Planet, Inc., a publicly held corporation that both directly and through its wholly-owned subsidiary, Unwired Planet IP Holdings, Inc., wholly owns Plaintiff Unwired Planet, LLC.

Apple certifies that Apple has no parent corporation and that no one owns more than 10 percent of Apple’s outstanding common stock. Apple further certifies that there are no known interested parties other than those participating in this case.

20. Other**a. E-mail service**

The parties have agreed that, to the extent possible in light of the volume of the submission, all court filings, to the extent not served through ECF (e.g., filings under seal), will be served via e-mail, and such service shall constitute proper service under Fed. R. Civ. P. 5(b)(2)(E). The parties have further agreed that each party may serve discovery, in lieu of other service methods, by e-mail under Fed. R. Civ. P. 5(b)(2)(E). The parties have further agreed that all service of written discovery and/or responses shall take place at or before 7:00 pm Pacific time. If transmission of voluminous materials as an e-mail attachment is impractical, those materials shall be sent via an FTP service or by overnight delivery. If service is by overnight delivery, the serving party must use a service having the ability to “track” deliveries and verify receipt.

21. Local Patent Rule 2-1(a)

1. Proposed modification of the obligations or deadlines set forth in the Patent Local Rules to ensure that they are suitable for the circumstances of this case.

a. Claim Construction Briefing Schedule

Because neither Party bears the burden of proof during claim construction, Apple proposes that the Parties submit simultaneous opening claim construction briefs and thereafter submit

1 simultaneous responsive claim construction briefs. No reply brief would be submitted. Unwired
2 Planet does not oppose this proposal.

3 **2. The scope and timing of any claim construction discovery including disclosure of**
4 **and discovery from expert witnesses.**

5 The Proposed Schedule, included in § 17, addresses the local patent rules and the timing of
6 claim construction discovery.

7 **3. The format of the Claim Construction Hearing, including whether the Court will**
8 **hear live testimony, the order of presentation, and the estimated length of the**
9 **hearing.**

10 The parties do not believe that live testimony will be necessary. The parties propose that the
11 Court permit the parties to present their arguments on a term-by-term basis.

12 a. Unwired Planet's Position

13 Unwired Planet believes that a three-hour claim construction hearing, with 90 minutes for
14 each party, is appropriate.

15 b. Apple's Position

16 Apple believes that the length of the claim construction hearing will necessarily depend on
17 the number of claims – and therefore the number of claim terms – at issue. With 70 claims currently
18 in the case, it is not unreasonable to assume that the parties will have dozens of legitimate disputes at
19 claim construction. That is why Apple believes that the number of claims needs to be reduced
20 *significantly* before claim construction. Assuming that Unwired Planet reduces the number of
21 asserted claims to 40, Apple estimates that a one-day Markman hearing, with 3.5 hours per party,
22 would be appropriate. If Unwired Planet is permitted to continue to assert 70 claims, Apple estimates
23 that a two-day *Markman* hearing, or two separate one-day *Markman* hearings, will be necessary.
24 Unwired Planet previously agreed with this estimated length of *Markman* hearing, as the parties'
25 joint scheduling proposal filed on June 14, 2013 proposed a two-day claim construction hearing.
26 (D.I. 128-29).

27 **4. How the parties intend to educate the court on the technologies at issue.**
28

1 The parties propose a technology tutorial in connection with the Claim Construction Hearing.

2 DATED: December 30, 2013

Respectfully Submitted,

3 By: /s/ John Campbell

4 Courtland L. Reichman
5 California State Bar No. 268873
6 creichman@mckoolsmith.com
7 MCKOOL SMITH, P.C.
8 255 Shoreline Drive, Suite 510
9 Redwood Shores, CA 94065
10 Telephone: (650) 394-1400
11 Fax: (650) 394-1422

12 Ted Stevenson III (*pro hac vice to be filed*)
13 Texas State Bar No. 19196650
14 tstevenson@mckoolsmith.com
15 MCKOOL SMITH, P.C.
16 300 Crescent Court Suite 1500
17 Dallas, TX 75201
18 Telephone: (214) 978-4000
19 Fax: (214) 978-4044

20 Kevin L. Burgess (*pro hac vice to be filed*)
21 Texas State Bar No. 2400069
22 kburgess@McKoolSmith.com
23 John B. Campbell (*pro hac vice filed*)
24 jcampbell@mckoolsmith.com
25 MCKOOL SMITH, P.C.
26 300 W. 6th St., Suite 1700
27 Austin, Texas 78701
28 Telephone: (512) 692-8700
Fax: (512) 692-8744

Michael D. Rounds (*pro hac vice to be filed*)
Nevada State Bar No. 4734
mrounds@watsonrounds.com
WATSON ROUNDS
5371 Kietzke Lane
Reno, NV 89511-2083
Telephone: (775) 324-4100
Fax: (775) 333-8171

Attorneys for UNWIRED PLANET LLC

By: /s/ Y. Ernest Hsin
Josh Krevitt
jkrevitt@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
200 Park Ave., New York, NY 10166-0193
Tel.: 212.351.4000; Fax: 212.351.4035

H. Mark Lyon
mlyon@gibsondunn.com
Y. Ernest Hsin
ehsin@gibsondunn.com
Stuart M. Rosenberg
srosenberg@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Rd., Palo Alto, CA 94304-1211
Tel.: 650.849.5300; Fax: 650.849.5333

Attorneys for APPLE INC.

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

UNITED STATES DISTRICT/MAGISTRATE JUDGE