

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

TOGAIL TECHNOLOGIES LTD.,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 6:22-cv-00326-ADA

JURY TRIAL DEMANDED

**PLAINTIFF’S PRELIMINARY DISCLOSURE OF ASSERTED CLAIMS AND
INFRINGEMENT CONTENTIONS TO DEFENDANT APPLE INC.**

Togail Technologies Ltd. (“Plaintiff” or “Togail”) submits the following Preliminary Disclosure of Asserted Claims and Infringement Contentions to Defendant Apple Inc. (“Defendant” or “Apple”). This disclosure is based on the information available to Togail as of the date of this disclosure, and Togail reserves the right to amend this disclosure to the full extent consistent with the Court’s Rules and Orders.

I. Asserted Claims

Togail asserts that Apple has infringed and continues to infringe at least the following claims of Togail’s patents (collectively, the “Asserted Claims”):

A. U.S. Patent No. 10,743,238 (“the ’238 Patent”): Claims 1, 2, 3, 4, 5, 11, 12, 13, 14 and 15.

B. U.S. Patent No. 10,791,502 (“the ’502 Patent”): Claims 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, and 19.

C. U.S. Patent No. 10,972,972 (“the ’972 Patent”): Claims 1, 8, 11, 12, 13, 14, 15, 22, 25, 26, 27, and 28.

D. U.S. Patent No. 11,115,165 (“the ’165 Patent”): Claims 1, 2, 3, 5, 6, 7, 8, 9, 11 and 12.

Togail reserves the right to seek leave of court to add, delete, substitute, or otherwise amend this list of asserted claims should further discovery, the Court’s claim construction, or other circumstances so merit.

II. Accused Products

Togail contends that the Asserted Claims are infringed by the various apparatuses used, made, sold, offered for sale, or imported into the United States by Apple (the “Accused Products”). The Accused Products include at least the following, as well as products with reasonably similar functionality:

- iPhone 12, iPhone 12 Mini, iPhone 12 Pro, iPhone 12 Pro Max, iPhone SE (3rd Generation), iPhone 13, iPhone 13 Mini, iPhone 13 Pro, iPhone 13 Pro Max, iPhone 14, iPhone 14 Plus, iPhone 14 Pro, iPhone 14 Pro Max, iPad Pro (5th Generation), iPad Air (5th Generation), iPad Mini (6th Generation), and any other products with 5G functionality.

Togail reserves the right to amend this list of Accused Products, as well as other information contained in this document and the exhibits hereto, to incorporate new information learned during the course of discovery, including, but not limited to, the inclusion of newly released products, versions, or any other equivalent devices ascertained through discovery. Further, to the extent any accused infringing products have gone through or will go through name changes, but were or will be used or sold with the same accused features, earlier corresponding products under different names also are accused.

III. Claim Charts

Claim charts identifying a location of every element of every asserted claim of the asserted Togail Patents within accused products are attached hereto as Exhibits A-D. Togail's analysis of the Accused Products is based on limited publicly available information and based on Togail's own investigation prior to any discovery in this action. In an effort to focus the issues, Togail identifies exemplary evidence for each claim limitation. The evidence cited for a particular limitation should be considered in light of the additional evidence cited for the other claim limitations. Togail reserves the right to rely on evidence cited for any particular limitation of an asserted claim for any other limitation asserted for that claim. Unless otherwise indicated, the information provided that corresponds to each claim element is considered to indicate that each claim element is found within each of the different variations of each respective Accused Products described above.

These infringement contentions are prepared with public information and have not been prepared with the benefit of discovery. The references provided in the attached charts may cite particular versions of a given 3GPP or other technical specification. It should be understood that references and citations are exemplary in nature and do not limit infringement assertions to only those releases or versions. Togail's citation of portions of the 3GPP standards herein should not be interpreted to limit Togail's infringement proof in expert reports or at trial in any way. Togail's citation of portions of the 3GPP standards herein provides detailed notice of Togail's theory of infringement, but Togail intends to rely on additional evidence including, but not limited to, data sheets, design specifications, source code, testing information, reference designs, implementation and utilization information, and/or schematics as proof of infringement in expert reports and at trial.

Togail reserves the right to amend these claim charts, as well as other information contained in this document and the exhibits hereto. Togail further reserves the right to amend these claim charts to incorporate new information learned during the course of discovery, including, but not limited to, information that is not publicly available or readily discernible without discovery or undue burden.

IV. Literal Infringement / Doctrine of Equivalents

Togail asserts that Apple infringes the Asserted Claims listed above under at least 35 U.S.C. § 271(a), (b), (c), and/or (f). Togail contends that Apple has directly infringed and continues to directly infringe the asserted claims by making, using, offering for sale, selling, and importing into the United States the Accused Products. Togail also contends that Apple (i) induces end users of the Accused Products to directly infringe the Asserted Claims and (ii) contributes to end users' direct infringement of the Asserted Claims. Togail asserts that, under the proper construction of the Asserted Claims and their claim terms, the limitations of the asserted claims of the asserted Togail patents are literally present in the Accused Products, as set forth in the claim charts attached hereto as Exhibits A-D. Togail contends that any and all elements found not to be literally infringed are infringed under the doctrine of equivalents because the differences between the claimed inventions and the Accused Products, if any, are insubstantial.

Togail's contention is that each limitation is literally met, and necessarily also would be met under the doctrine of equivalents because there are no substantial differences between the Accused Products and the claims, in function, way, or result. If Apple attempts to argue that there is no infringement literally and also no infringement under doctrine of equivalents and attempts to draw any distinction between the claimed functionality and the functionality in the Accused Products, then Togail reserves its right to rebut the alleged distinction as a matter of literal

infringement and/or as to whether any such distinction is substantial under the doctrine of equivalents.

Togail reserves the right to amend its Infringement Contentions as to literal infringement or infringement under the doctrine of equivalents in light of new information learned during the course of discovery and the Court's claim construction.

V. Priority Dates

The Asserted Claims are entitled to a priority date of at least the following:

A. U.S. Patent No. 10,743,238: Each asserted claim of the '238 Patent is entitled to at least a priority date of November 15, 2017.

B. U.S. Patent No. 10,791,502: Each asserted claim of the '502 Patent is entitled to at least a priority date of April 2, 2018.

C. U.S. Patent No. 10,972,972: Each asserted claim of the '972 Patent is entitled to at least a priority date of July 17, 2018.

D. U.S. Patent No. 11,115,165: Each asserted claim of the '165 Patent is entitled to at least a priority date of November 2, 2018.

VI. Identification of Instrumentalities Practicing the Claimed Inventions

At this time, Togail is not relying on any assertion that any of its own instrumentalities practice the claims of the Asserted Patents.

VII. Document Production Accompanying Disclosure

Togail submits the following Document Production Accompanying Disclosure, along with an identification of the categories to which each of the documents corresponds.

Togail is presently unaware of any documents sufficient to evidence any discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the inventions

recited in the Asserted Claims of the asserted patents prior to the application date or priority date for the asserted patents. A diligent search continues for documents and Togail reserves the right to supplement this response.

Togail is presently unaware of documents regarding the conception, reduction to practice, design, and development of each claimed invention of the asserted patents, which were created before the date of application for the asserted patent or the priority date identified above. A diligent search continues for documents and Togail reserves the right to supplement this response.

Togail identifies the following documents as being the file histories for the Asserted Patents: TOGAIL-APPLE_00000033 - TOGAIL-APPLE_00001914.

Dated: October 3, 2022

Respectfully submitted,

By: /s/ Brett E. Cooper

Brett E. Cooper (NY SBN 4011011)

bcooper@bc-lawgroup.com

Seth Hasenour (TX SBN 24059910)

shasenour@bc-lawgroup.com

Drew B. Hollander (NY SBN 5378096)

dhollander@bc-lawgroup.com

BC LAW GROUP, P.C.

200 Madison Avenue, 24th Floor

New York, NY 10016

Phone: (516) 359-9968

***Attorneys for Plaintiff Togail Technologies
Limited***

CERTIFICATE OF SERVICE

I certify that this document is being served upon counsel of record for Defendant via electronic service.

/s/Drew B. Hollander
Drew B. Hollander