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

TOGAIL TECHNOLOGIES LTD. **Plaintiff,** **v.** **APPLE INC.** **Defendant.**	**Civil Action No. 6:22-cv-00326-ADA** **JURY TRIAL DEMANDED**

DEFENDANT APPLE INC.'S
REPLY CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Togail's claim construction arguments ignore the unambiguous language of the claims and the intrinsic record, and contradict that record with expert opinions, and should be rejected. Apple's proposals should be adopted: the preambles of the '238 and '502 patents that provide antecedent bases to the claim terms and recite fundamental features of the purported inventions should be construed as limiting; the nonsensical and mixed method/apparatus claims of the '238 and '502 patents should be held indefinite; and the "leading time" term of the '972 patent should be construed based on the patentee's lexicography.

II. ARGUMENT

A. Disputed Terms of the '238 Patent

1. "A method for a user equipment (UE) of a connected state, the method comprising:" ('238 Patent Claim 1)

Togail's attempt to take the preamble piecemeal—arguing "the UE" is limiting but its property ("of a connected state") is not—is improper because (1) "the UE of a connected state," ***not just any UE***, is the UE to which the claim later refers and (2) the UE's connectedness is "structure or steps underscored as important by the specification." *Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002); Dkt. 54 (Togail's Resp. Br.) at 1.

The connected state of the UE is intertwined with the UE itself—it is ***that*** UE in ***that*** state that provides an antecedent basis to the claim's later reference to a UE. The preamble is similar to one construed as limiting in *Bio-Rad Labs., Inc. v. 10X Genomics Inc.* in that it could not be "neatly packaged into two separate portions" because the terms providing an antecedent basis were "intertwined" with the rest of the preamble. *See* 967 F.3d 1353, 1371-72 (Fed. Cir. 2020). Similarly, the phrase "of a connected state" directly modifies "a user equipment (UE)," the term that Togail agrees is limiting for providing an antecedent basis. (Dkt. 54 at 1.)

Moreover, the UE's connectedness is a "fundamental characteristic of the claimed invention" that renders the preamble limiting. *Deere & Co. v. Bush Hog, LLC*, 703 F.3d 1349, 1358 (Fed. Cir. 2012). Togail does not address in its Response the importance the specification places on the UE being "of a connected state." But the specification demonstrates that the patent is directed specifically to UEs "of a connected state" and not generally to all UEs. The Summary of the Invention describes two aspects of the invention with ***both*** describing ***only*** a UE of a connected state. *See* '238 Patent (Dkt. 49-2, Ex. A) at 1:49-2:14. And in the Brief Description of the Drawings and Detailed Description sections, figures 1-9 are repeatedly described as showing the operations of a "Connected_UE," "Connected UE," or "RRC_connected UE"; the only other figure, 10, is simply a block diagram of hardware. *See*, *e.g.*, *id.* at 2:23-58.

Moreover, the background section describes the problem to be solved as pertaining to a "Connected_UE." '238 Patent at 1:35-45. Given the focus on UEs of a connected state in describing the problem to be solved and throughout the specification, it would be "divorced from reality" to find that Claim 1 is directed generally to all UEs. *See Gen. Elec. Co. v. Nintendo Co.*, 179 F.3d 1350, 1361-62 (Fed. Cir. 1999) (construing a preamble as limiting where the "specification makes clear that the inventors were working on the particular problem" and the preamble limited the claim to addressing that problem); *Deere*, 703 F.3d at 1358 (citing specification's explanation of the problem to be solved as a basis for finding the preamble limiting). Where the specification is "replete" with references to a preamble limitation, the Federal Circuit has found that the limitation "does not state a purpose or an intended use of the invention, but rather discloses a fundamental characteristic of the claimed invention that is properly construed as a limitation of the claim itself." *Poly-Am., L.P. v. GSE Lining Tech., Inc.*, 383 F.3d 1303, 1310 (Fed. Cir. 2004). That is the case here.

Togail's cases are inapposite. In *Shoes by Firebug LLC v. Stride Rite Children's Grp., LLC*, the preamble's recitation of "textile footwear" was not limiting on the type of claimed footwear because the patent described "textile materials" as "just one possible material type"—unlike here, where the problem to be solved and summary of invention focus exclusively on UEs of a connected state. 962 F.3d 1362, 1368 (Fed. Cir. 2020). And *TomTom, Inc. v. Adolph*, cited by Togail, supports Apple; there, the preamble was "[a] method for generating and updating data for use in a *destination tracking system of at least one mobile unit*." 790 F.3d 1315, 1322 (Fed. Cir. 2015). The court found the italicized portion limiting because "the claims do not concern ***just any*** 'mobile unit.'" *Id.* at 1323 (emphasis added). The preamble in *Cochlear Bone Anchored Solutions AB v. Oticon Med. AB* is dissimilar because the non-limiting portion of the preamble, "for rehabilitation," was "merely a statement of intended use." *See* 958 F.3d 1348, 1355 (Fed. Cir. 2020). Moreover, the preamble in *Williams Mfg. Co. v. United Shoe Machinery Corp.* listed many mechanical parts where the patent was directed to only a subset—unlike the sole connected UE the '238 patent preamble recites. *See* 316 U.S. 364, 369 (1942).

Finally, Togail's reliance on its expert is entitled to no weight because the intrinsic record is unambiguous that the connected state is central to the invention. *See, e.g.*, *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996) ("In those cases where the public record unambiguously describes the scope of the patented invention, reliance on any extrinsic evidence is improper."). Moreover, Togail's expert's entire opinion as to how a POSITA "would understand . . . 'of a connected state'" is a single conclusory paragraph (Dkt. 54-2 (Madisetti Decl.) ¶ 47), offering nothing more than parroting attorney argument. *See, e.g.*, *Horizon Pharma, Inc. v. Dr. Reddy's Laboratories Inc.*, 839 Fed. Appx. 500, 503 (Fed. Cir. 2021) ("Addressing Appellants'

expert testimony in support of its proposed construction, the district court found it to be 'the kind of conclusory unsupported assertion that, under Phillips, is not useful in claim construction.'").

2. "receiving a system information (SI) change indication broadcasted by a paging" ('238 Patent Claim 11)

Claim 11 of the '238 patent is indefinite for claiming a mixed method and apparatus because this limitation of the apparatus claim describes an action—"broadcasted by a paging"—that is not taken by the claimed UE but instead by an unclaimed structure. Togail's brief and Togail's expert never assert that it is the claimed UE that performs "broadcasted by a paging" in Claim 11. (*See* Dkt. 54 at 3-6; Dkt. 54-2 ¶¶ 50-54.) Togail tries to sidestep the issue by focusing on the fact that the limitation starts with a verb ("receiving") pertaining to the UE, and by proceeding as if this immunizes the remainder of the limitation (*e.g.*, "broadcasted by a paging") from being understood as an act of an unclaimed structure. (Dkt. 54 at 3-5.) But Togail's oversimplification finds no support in the case law. Rather, what matters is that the limitation here recites action—"broadcasted by a paging"—by a structure other than the claimed UE. *See, e.g., Power Integrations, Inc. v. ON Semiconductor Corp.* No. 16-cv-06371-BLF, 2018 WL 5603631, at *17 (N.D. Cal. Oct. 26, 2018) (holding claim invalid under *IPXL* where it required a signal "be provided" because "[t]here is no recited structure in the claim that arguably provides that signal"). Nor, as Togail asserts, is "broadcasted by a paging" mere "background context"—it is a claimed requirement. (*See* Dkt. 54 at 3.)

Claim 11 does not resemble the claim in *HTC Corp. v. IPCom GmbH & Co., KG*, contrary to Togail's argument. 667 F.3d 1270 (Fed. Cir. 2012). There the Federal Circuit found the claim recited the description of the network environment in the ***preamble*** as separate from the claimed apparatus recited in the non-preamble limitations. *Id.* at 1276-1277 (referring to the claim's "'preamble-within-a-preamble' format"). Here, the improper functional language appears ***after***

the transition "UE of a connected state to perform operations comprising . . .", not as a prefatory description of the network environment before reciting the elements of the claimed apparatus. Togail's reliance on *Microprocessor Enhancement Corp. v. Texas Instruments Inc.* is distinguishable for the same reason. 520 F.3d 1367, 1374-75 (Fed. Cir. 2008) (addressing a "preamble within a preamble structure").

Togail's reliance on *MasterMine Software, Inc.v. Microsoft Corp.*, 874 F.3d 1307 (Fed. Cir. 2017), is inapposite. The claim at issue there only required "capabilities of the system" rather than "specific actions performed" by an unclaimed device. *Id.* at 1315. Here Claim 11 requires the SI change indication to be broadcasted by structure other than the UE. Claim 11 here also does not resemble those found to be definite in *SFA Sys., LLC v. 1-800-Flowers.com, Inc.*, because Claim 11 describes the unclaimed structure performing an action "*upon the system*" by broadcasting by a paging, rather than simply describing "capabilities *of the system*." 940 F. Supp. 2d 433, 455 (E.D. Tex. 2013) (emphasis in original). Finally, Togail attempts to distinguish its claims from those found invalid in cases cited by Apple on the ground that the limitation here does not require "user" action. (Dkt. 54 at 7.) But "the law is clear that user-action is not the only cause of indefiniteness under *IPXL*." *Power Integrations*, 2018 WL 5603631 at *16 (citing *Rembrandt Data Techs. v. AOL, LLC*, 641 F.3d 1331, 1339 (Fed. Cir. 2011)).

B. Disputed Terms of the '502 Patent

1. "A method of an on-demand system information (SI) request procedure performed by a user equipment (UE), the method comprising" ('502 Patent Claim 1)

Togail's attempt to carve the preamble into limiting and non-limiting bits should be rejected. Togail does not dispute the preamble serves as an antecedent basis for "the UE" in the body, but contends the preamble language "an on-demand system information (SI) request procedure" is not limiting. (Dkt. 54 at 8.) Togail's argument that the latter simply "refers to an

environment in which the method is meant to operate" is both wrong and is no basis to make that part of the preamble non-limiting because every facet of the intrinsic record shows that "an on-demand system information (SI) request procedure" is the supposed novelty—a hallmark of a preamble that is limiting. *See, e.g.*, *Gen. Elec.*, 179 F.3d at 1361-62.

The Title, Background, and Summary of the Invention are directed to ***on-demand*** SI requests and their associated error handling. *See* '502 Patent (Dkt. 49-3, Ex. B) at 1:23-36 (Background) ("However, the next generation wireless network lacks an efficient mechanism for error handling associated with the ***on-demand*** SI request procedure."); *id*. at 1:40-62 (Summary) ("The present disclosure is directed to ***on-demand*** system information request procedure . . . ."). Where the specification is "replete" with references to a preamble limitation, the Federal Circuit has found that the limitation "does not state a purpose or an intended use of the invention, but rather discloses a fundamental characteristic of the claimed invention that is properly construed as a limitation of the claim itself." *Poly-Am.*, 383 F.3d at 1310.[1]

Finally, Togail's reliance on its expert is entitled to no weight because the intrinsic record is unambiguous that the on-demand SI request is central to the invention. *See, e.g.*, *Vitronics*, 90 F.3d at 1583. And just like with the preamble term in the '238 patent, Togail's expert again offers only a single conclusory paragraph, parroting attorney argument, as his opinion on the correct "understanding" of the "on demand system information (SI) request." (Dkt. 54-2 ¶ 60.) This is entitled to no weight. *See, e.g.*, *Horizon Pharma*, 839 Fed. Appx. at 503.

[1] Togail's reliance on *Shoes by Firebug*, *TomTom*, *Chochlear*, and *Williams* are again misplaced because here the preamble recites a fundamental characteristic. (*See* Section II.A.1, *supra*.)

2. "first SI request message including at least one requested system information block (SIB)" ('502 Patent Claims 1 and 11)

This term is indefinite because it unambiguously requires a nonsensical result. The claim recites the "first SI request message **including** at least one requested system information block (SIB)." Togail does not dispute that it would be nonsensical for a request to include the thing it is requesting (here, an SIB); but that is precisely what the explicit wording requires.

As an initial matter, Togail's argument that the claim is "ambiguous" (Dkt. 54 at 11 n.6) is refuted by the clear wording of the claim: "first SI request message ***including*** at least one [SIB]." Togail's reliance on case law to argue the intrinsic evidence should be used to resolve a purported "ambiguity" is thus irrelevant. Notably, despite Togail's heavy reliance on its expert, the expert never opines that the claim language is "ambiguous."

Togail's argument that a POSITA would determine, based on the specification and dependent claims, that the disputed limitation means something other than what it explicitly says fails because the Federal Circuit "has repeatedly held that courts may not redraft claims to cure a drafting error made by the patentee, whether to make them operable or to sustain their validity." *Lucent Techs., Inc. v. Gateway, Inc.*, 525 F.3d 1200, 1215 (Fed. Cir. 2008). Though the specification may not have described the SI request message as including at least one SIB, the patentee drafted the claim as such. Thus, at a minimum, if the Court does not find the term invalid, it should not reinterpret the claim to mean something other than its literal meaning as drafted.

Contrary to Togail's argument, when "the claim language is unambiguous," the Federal Circuit ***has*** "construed claims to exclude all disclosed embodiments." *Lucent*, 525 F.3d at 1215–16 (finding the correct construction excluded all disclosed embodiments and stating "[t]his court has repeatedly held that courts may not redraft claims to cure a drafting error made by the patentee, whether to make them operable or to sustain their validity"). Notably, Togail's expert's opinion

that "the 'specification of the '502 patent does not describe the SI request message to include any SIB'" (Dkt. 54-2 ¶ 65-68) ***compels*** a finding of invalidity because "[w]here it would be apparent to one of skill in the art, based on the specification, that the invention set forth in a claim is ***not*** what the patentee regarded as his invention, [the court] ***must*** hold that claim invalid." *Allen Engineering Corp. v. Bartell Industries, Inc.*, 299 F.3d 1336, 1349 (Fed. Cir. 2002) (emphasis added) (holding claims invalid).

Togail's reliance on its expert to explain "the '502 patent teaches" a different understanding than the explicit wording of the limitation is irrelevant. (Dkt. 54-2 ¶¶ 65-68.) For example, in *Chef Am., Inc. v. Lamb-Weston, Inc.*, the Federal Circuit found a claim directed to baking dough nonsensical. 358 F.3d 1371, 1375 (Fed. Cir. 2004). The court acknowledged that "[t]he problem is that if the batter-coated dough is heated to a temperature range of 400° F. to 850° F., as the claim instructs, it would be burned to a crisp." *Id.* at 1373. But, the court held, the "ordinary, simple English words" of the claim "mean exactly what they say." *Id.* Thus, the court rejected the patentee's expert's testimony of what that claim language should mean in light of the patent's specification, notwithstanding that he opined that the literal interpretation of the claim would result in "an unusable product." *Id.* at 1375. Here, Togail's expert agrees "it would not make sense" for the message to include the requested SIB—the literal wording of the claim. (Dkt. 54-2 ¶ 68.) Like in *Chef Am.*, Togail's expert's opinion that a different meaning should apply is irrelevant. Nor is Togail correct in asserting Apple's expert opined that a POSITA would understand the claim to mean something different than its explicit wording. (Dkt. 54 at 11.) Rather, Dr. Valenti opined that the claims as written require the request to include the SIB. (Dkt. 49-9 (Valenti Decl.) ¶ 37.)

Togail fails to distinguish *Synchronoss*, arguing only the claim there recited an impossibility and the claim here does not. (*See* Dkt. 54 at 11 n.6.) But Togail fails to explain how

a request could include the thing requested. Togail's citation to *Neville v. Foundation Constructors, Inc.*, 972 F.3d 1350, 1357 (Fed. Cir. 2020) is similarly unavailing. In *Neville*, the court rejected a claim interpretation that would have read two separate elements onto a single structure, rendering one an "indistinguishable part" of the other, because that would have ***created*** a "nonsensical" claim. *See* 972 F.3d at 1357. Here, the claim is not being ***reinterpreted*** to be nonsensical—it is nonsensical as worded, and thus invalid.

3. "transmitting a fourth SI request message to the BS after determining that the UE is not in the connected state" ('502 Patent Claims 6, 16)

To reduce the disputed issues, Apple withdraws its indefiniteness argument for this term in light of Togail's representation that "dependent Claims 6 and 16 contemplate operations *subsequent* to those of independent Claims 1 and 11." (Dkt. 54 at 13 (emphasis in original).)

4. "receiving, from the BS, the at least one requested SIB via dedicated signaling that is transmitted in response to the first SI request message" ('502 Patent Claim 15)

Claim 15 of the '502 patent is indefinite for improperly claiming a mixed method and apparatus because this limitation of an apparatus claim describes an action—"transmitted in response to the first SI request message"—that is not taken by the claimed UE but instead by an unclaimed structure. Togail's brief and Togail's expert never assert that it is the claimed UE that performs "transmitted in response." (*See* Dkt. 54 at 15-18; Dkt. 54-2 ¶¶ 79-83.) Togail's two arguments—which mirror those made against the mixed method/apparatus claim of the '238 patent (*see* Section II.A.2, *supra*)—fail for the same reasons: (1) Togail's argument that "receiving" defines an action by the UE is irrelevant because it is the "transmitted in response to the first SI request message" action that is performed by an unclaimed structure and renders the claim invalid; and (2) Togail's argument that "transmitted in response to the first SI request message" is merely "background context" is wrong because the term provides a specific requirement of the limitation.

First, the "transmitted" step is not performed by the UE, and Togail does not dispute this. (Dkt. 54 at 15-18.) As with the mixed method/apparatus term in the '238 patent, Togail argues the claim survives *IPXL* because the limitation begins with a verb pertaining to the UE ("receiving"). Togail's argument fails for the same reasons discussed in Section II.A.2, *supra*.

Second, the "transmitted" step does not simply establish the underlying network environment in which the UE operates. (Dkt. 54 at 16.) Here, the claims specifically require the SI change indication to be "transmitted" "under certain conditions" by something ***other than the UE***. *See Power Integrations*, 2018 WL 5603631, at *17. In particular, the claim requires that the transmission occurs "in response to the first SI request message," and does so "via dedicated signaling." Whether the transmission meets this "condition" can only be determined by how the base station—not the claimed UE—performs the transmission. Such a requirement goes beyond a mere description of the network environment and into a requirement that a method be performed by an unclaimed structure. This is the type of limitation held indefinite in *Power Integrations*. Togail also fails to distinguish *UltimatePointer* and *Visible Connections*. As explained above, Togail attempts to distinguish these cases only on the ground that they describe user actions rather than actions by an unclaimed apparatus. But indefiniteness under *IPXL* is not limited to user actions. *See Power Integrations*, 2018 WL 5603631 at *16.

Contrary to Togail's arguments (Dkt. 54 at 15-16), claim 15 does not resemble the claim at issue in *HTC* for the same reasons discussed in Section II.A.2, *supra—e.g.*, the problematic language here does not merely appear in the preamble. Togail's reliance on *MasterMine Software*, *SFA Sys.*, and *Microprocessor Enhancement* (Dkt. 54 at 15-16), is similarly inapposite as discussed in Section II.A.2, *supra*—here, the claim requires "specific actions performed" by the unclaimed base station, not capabilities of the system. (Section II.A.2, *supra*.)

C. Disputed Terms of the ’972 Patent

1. “leading time [value[s] / duration[s]]” (’972 Patent Claims 1, 11, 15, 25)

The patent defined this term as “[value[s] / duration[s]] for beam switching which are, or may reflect, the minimum required time for a UE to set up its antenna panel(s) for providing an indicated RX/TX beam to receive or transmit data.” This language appears in the specification as clear lexicography, and its relevance to all aspects of the purported invention is confirmed by its appearance as a definition in the provisional application. *See* ’972 Patent (Dkt. 49-4, Ex. C) at 6:23-27; ’972 Provisional (Dkt. 49-6, Ex. E) at 1, 3. Togail’s attempts to cast this definition as merely pertaining to one embodiment, and supposedly identifying instances of a broader use of “leading time,” ignores the reality that every reference in the patent to “leading time” relates to that definition and to beam switching.

As noted in Apple’s opening brief, the ’972 “Detailed Description” introduces “leading time for beam switching” and defines that term ***before*** providing subsequent discussions of “leading time.” ’972 Patent (Dkt. 54-1, Ex. C) at 6:23-31. After discussing background concepts for wireless networks, the specification introduces and defines “leading time <u>for beam switching</u>”:

> Issues related to the leading time for beam switching may affect the power consumption. The leading time for beam switching is, or may reflect, the minimum required time for a UE to set up its antenna panel(s) for providing an indicated RX/TX beam to receive or transmit data. For example, the leading time for beam switching may be the time period between the time the UE receives a command that leads to a change(s) in the Rx beam/antenna panel status and the time that the change(s) actually occurs.

’972 Patent at 6:23-31. This is the first appearance of the words “leading time” in the “Detailed Description” of the ’972 patent. It follows, necessarily, that a definition in the detailed description applies to other mentions of “leading time” in the patent. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) (“the inventor’s lexicography governs”); *Techno View IP,*

Inc. v. Oculus VR, LLC, No. 17-cv-386, 2018 WL 4141032, at *4 (D. Del. Aug. 30, 2018) (report and recommendation) (adopting definition from detailed description because "it does not make sense to omit definitional language found in the part of the patent that describes, in detail, the disclosed invention").

Togail's insistence that "there is no definition or disclaimer in the specification" is false.[2] (Dkt. 54 at 18.) Togail's sole argument that the specification describes leading time values and durations "with respect to implementations that are ***not*** in the context of beam switching" is incorrect. (Dkt. 54 at 19 (emphasis in original).) Togail's suggestion that the '972 patent addresses both a genus of "leading time" and a narrower defined species "leading time for beam switching" is a misinterpretation of the intrinsic record, which reflects usage relating only to the latter. Starting with the provisional application, the patentee expressed the importance of beam switching to the invention as a whole in the title: "Method and Apparatus for **leading time of beam switching** for multi-panel transmission." '972 Provisional (Dkt. 49-1, Ex. E) at 1. And that provisional application, like the '972 patent itself, begins the "Detailed Description" by explaining: "***Leading time for beam switching means*** the minimum required time for UE to set up its antenna panels for the indicated RX/TX beam to receive or transmit the data." *Id.* at 3. Togail's brief improperly ignored the clear support from the provisional application for Apple's construction. *See, e.g.*, *Trustees of Columbia Univ. in City of N.Y. v. Symantec Corp.*, 811 F.3d 1359, 1365 (Fed. Cir. 2016) ("Further, the provisional application similarly defined byte sequence feature, stating

[2] Not only does Togail never discuss the definition appearing in column 6 of the Patent, Togail's arguments are directed only at the issue of beam switching, and never at the remainder of the definition: "which are, or may reflect, the minimum required time for a UE to set up its antenna panel(s) for providing an indicated RX/TX beam to receive or transmit data." '972 Patent at 6:23-27. Apple has therefore focused its reply on the dispute regarding "beam switching." At minimum, the remainder of the definition in Apple's proposed construction should be adopted. *Id.*

that '[t]he byte sequence feature is the most informative because it represents the machine code in an executable instead of resource information' which is not made of machine code instructions."); *Osteoplastics, LLC v. ConforMIS, Inc.*, No. 20-cv-405 2022 WL 610738, at *8 (D. Del. Feb. 14, 2022) (adopting report and recommendation) ("The provisional application to which the patents claim priority contained a glossary, and that glossary contained a definition of a 'deformable template.'") (construing term consistent with definition in provisional application).

Moving on to the specification, the clear definition at the start of the "Detailed Description"—particularly paired with the title of the invention in the provisional application and the definition of the same term there—indicates that ***all*** references to "leading time" in the '972 patent refer to the beam switching context. '972 Patent at 6:23-27. Any references to "leading time" are merely shorthand because the patentee provided an ***express*** definition.

The sections of the '972 patent that Togail cites do not overcome the clear definition. First, Togail identifies that the words "for beam switching" do not appear in the Patent Abstract and "Summary" sections. (Dkt. 54 at 20-21, citing '972 Patent at Abstract, 1:44-55, 1:56-67.) But these sections merely summarize the remainder of the patent, which always use the term once it has been defined in the context of beam switching. The "Detailed Description" begins by defining the "leading time for beam switching," and then the rest of the patent uses it as such. *See Sinorgchem Co., Shandong v. ITC*, 511 F.3d 1132, 1138 (Fed. Cir. 2007) ("'When the specification explains and defines a term used in the claims, without ambiguity or incompleteness, there is no need to search further for the meaning of the term.'" (quoting *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1478 (Fed. Cir. 1998)).

Additionally, the specific embodiments that Togail cites are in fact related to beam switching. For example, Togail identifies in Figure 23 that the device "may apply one of the

plurality of leading time values to switch an antenna panel status." (Dkt. 54 at 20 (citing '972 Patent at 29:25-39).) Togail also identifies an instance where "the UE may apply a [first/second] leading time value when the UE needs to turn on a [first/second] number of antenna panel(s)." (Dkt. 54 at 21 (citing '972 Patent at 21:11-19).) These concepts of "switch[ing] antenna panel status" and "turn[ing] on a . . . number of antenna panel(s)" are both embraced by the patent's definition of leading time for beam switching. Togail's cited cases are therefore inapposite—Apple's definition does not exclude any embodiments. (*See* Dkt. 54 at 20.)[3] Rather, since "leading time" is defined in the specification, it follows necessarily that embodiments referring to "leading time" are in the same context.[4] *Phillips*, 415 F.3d at 1316 ("the inventor's lexicography governs"). Although Togail quotes from *Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358, 1369 (Fed. Cir. 2012) ("absent . . . lexicography, the plain meaning of the claim controls"), in that case the defendants "d[id] not argue that the patentee acted as its own lexicographer." *Id.* In this case, Apple showed intrinsic evidence of lexicography. Togail does not address the lexicographic statements in the intrinsic record, and therefore has not demonstrated the absence of lexicography.

Instead, Togail relies entirely on its expert, Dr. Madisetti, to avoid the patentees' definition. But such extrinsic evidence cannot overcome clear intrinsic evidence of lexicography. *Vitronics*,

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[3] In *Epos Techs. Ltd. v. Pegasus Techs. Ltd.*, the Federal Circuit cited specific embodiments in the patent that were inconsistent with the court's claim construction. 766 F.3d 1338, 1347 (Fed. Cir. 2014). Here, Togail has identified no instance of "leading time" that is inconsistent with beam switching.

[4] Togail also cites *Semcon IP Inc. v. Huawei Device USA Inc.*, No. 2:16-cv-00437-JRG-RSP, 2017 WL 2972193, at *17 (E.D. Tex. July 12, 2017). In that case, unlike the term here, the disputed term ("sleep state") was not defined in the patent and the Court relied on unrebutted expert testimony that "'sleep state' has an ordinary meaning in the art and that it [is] used th[at] way in the patents." *Id.* Here, the '972 patent explains that the leading time is "for beam switching" and that "the leading time for beam switching is, or may reflect, the minimum required time for a UE to set up its antenna panel(s) for providing an indicated RX/TX beam to receive or transmit data." '972 Patent at 6:23-27.

90 F.3d at 1583 ("In those cases where the public record unambiguously describes the scope of the patented invention, reliance on any extrinsic evidence is improper."); *In re RAH Color Techs. Patent Litig.*, No. 3:18-cv-3277, 2021 WL 229287, at *3 (N.D. Cal. Jan. 22, 2021) ("Courts should not rely on extrinsic evidence in claim construction to contradict the meaning of claims discernable from examination of the claims, the written description, and the prosecution history."); *Federal-Mogul Corp. v. Turn-Key Tech*, No. 00-cv-0642, 2001 WL 36170996, at *3 (S.D. Cal. Sept. 28, 2001) ("[I]f analysis of intrinsic evidence alone resolves any ambiguity of a disputed term, it is improper to rely on extrinsic evidence. . . . Therefore, expert testimony that is inconsistent with the unambiguous intrinsic evidence is given no weight."). The definition of "leading time values/durations" is clear from the face of the patent and the provisional application; the Court should disregard Dr. Madisetti's opinions. *Philips*, 415 F.3d at 1318 ("[A] court should discount any expert testimony 'that is clearly at odds with the claim construction mandated by the claims themselves, the written description, and the prosecution history, in other words, with the written record of the patent.'" (quoting *Key Pharms. v. Hercon Labs. Corp.*, 161 F.3d 709, 716 (Fed. Cir. 1998)). Likewise, it was unnecessary for Apple's expert Dr. Valenti to opine on the '972 patent because the meaning of "leading time values" and "leading time durations" is clear from the intrinsic record. Moreover, although Dr. Madisetti spends several pages trying to explain what the "leading time" ***is not***, Dr. Madisetti does not tell the Court what he believes the "leading time" ***is.*** Neither Togail nor Dr. Madisetti contend this term has an ordinary meaning in the art.

In sum, each reference to "leading time" is a reference to the "leading time for beam switching," which "is, or may reflect, the minimum required time for a UE to set up its antenna panel(s) for providing an indicated RX/TX beam to receive or transmit data."

III. CONCLUSION

For the foregoing reasons, Apple requests that the Court adopt its proposed constructions.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above document and all attachments thereto have been served via the Court's CM/ECF system to counsel of record on March 2, 2023.

Dated: March 2, 2023

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