Brian A. Sun (CA SBN 89410)
NORTON ROSE FULBRIGHT US LLP
555 South Flower Street
Forty-First Floor
Los Angeles, CA 90071
Telephone: (213) 892-9200
brian.sun@nortonrosefulbright.com

Brett C. Govett (*pro hac vice*)
(TX SBN 08235900)
NORTON ROSE FULBRIGHT US LLP
2200 Ross Avenue, Suite 3600
Dallas, Texas 75201
Telephone: (214) 855-8000
brett.govett@nortonrosefulbright.com

Daniel S. Leventhal (*pro hac vice*)
(TX SBN 24050923)
NORTON ROSE FULBRIGHT US LLP
1301 McKinney, Suite 5100
Houston, Texas 77010
Telephone: (713) 651-5151
daniel.leventhal@nortonrosefulbright.com

Counsel for Plaintiff Smith Interface Technologies, LLC

[Additional counsel listed on signature page]

Sean Cunningham (CA SBN 174931)
sean.cunningham@us.dlapiper.com
Richard Mulloy (CA SBN 199278)
richard.mulloy@us.dlapiper.com
Robert Williams (CA SBN 246990)
robert.williams@us.dlapiper.com
Peter Maggiore (CA SBN 292534)
peter.maggiore@us.dlapiper.com
DLA PIPER LLP (US)
4365 Executive Dr, Suite 1100
San Diego, California 92121-2133
Telephone: 858.677.1400
Facsimile: 858.677.1401

Counsel for Defendant Apple Inc.

[Additional counsel listed on signature page]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SMITH INTERFACE TECHNOLOGIES, LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 3:23-cv-1187-TWR-BJC

JOINT CLAIM CONSTRUCTION CHART, WORKSHEET, AND HEARING STATEMENT PURSUANT TO PATENT L.R. 4.2

Pursuant to this Court's Case Management Order Regulating Discovery and Other Pretrial Proceedings in a Patent Case (ECF No. 102) and Patent L.R. 4.2, Plaintiff Smith Interface Technologies, LLC ("Smith Interface") and Defendant Apple Inc. ("Apple") hereby file this Joint Claim Construction Chart, Worksheet, and Hearing Statement regarding the constructions of identified claim terms in U.S. Patent Nos. 10,642,413 (the "'413 Patent"); 10,649,578 (the "'578 Patent"); 10,649,580 (the "'580 Patent"); 10,656,754 (the "'754 Patent"); 10,656,755 (the "'755 Patent"); 10,656,758 (the "'758 Patent"); 10,671,212 (the "'212 Patent"); 10,725,581 (the "'581 Patent"); 10,936,114 (the "'114 Patent"); and 11,740,727 (the "'727 Patent") (collectively, the "Asserted Patents").

I. PARTIES' JOINT PRELIMINARY STATEMENT

The Parties would like to notify the Court that they have agreed to file an Amended Joint Claim Construction Chart, Worksheet, and Hearing Statement given that Smith Interface's October 18, 2024 "claim election of no more than 20 claim per patent and no more than 64 total claims" and November 28, 2024 "claim election of no more than ten claims per Asserted Patent and no more than 32 claims in total two weeks prior to claim construction hearing" (ECF No. 91) is expected to streamline and decrease the number of claim terms.

II. IDENTIFICATION OF MOST SIGNIFICANT TERMS

Pursuant to Patent L.R. 4.2(a), Smith Interface and Apple identify the following 10 terms as most significant to the resolution of the case (in no particular order):

1. "a reduction in a size [that is/so as to be] inversely related to the duration of the gesture" ('114 Patent, claims 27, 30, and 32);
2. "performing a [first/second/third] operation" ('413 Patent, claims 1 and 101) / "performing an operation [in connection with / on] the first application icon" ('758 Patent, claims 1 and 124) / "perform an operation" ('212 Patent, claims 1 and 16);

3. "adjacent" ('413 Patent, claim 7; '212 Patent, claim 57; '754 Patent claims 29, 193, 205, 206, 208);
4. "substantially fills" ('413 Patent, claim 9);
5. "action-option- display criteria" ('758 Patent, claims 1 and 124);
6. "movement criteria" ('758 Patent, claims 1 and 124);
7. "action options" ('758 Patent, claims 1 and 124);
8. "evaluating the first single-finger touch input against at least one of a plurality of criteria, including evaluating a duration of the first single-finger touch input against at least one of: one or more application-launch criteria, one or more action-option-display criteria, or one or more operation criteria, and further including evaluating a movement of the first single-finger touch input against one or more movement criteria"('758 Patent, claims 1, 27);
9. "when . . . the duration of the first contact is determined to be greater than the second user- configurable predefined duration . . . and the end of the first contact is not detected" ('581 Patent, claim 1);
10. "distance magnitude [of the gesture]" ('727 Patent, claims 1, 2; '754 Patent, claims 27, 32, 38, 75, 76-79, 83, 85, 86, 186, 208, 211, 218, 221).

A. Smith Interface's Statement

In agreeing to the above terms as the ten most significant, Smith Interface does not agree with Apple that eight of those terms, none of which Apple identified in its IPRs as indefinite, are indefinite. Rather, Smith Interface only agrees that a finding of indefiniteness would be dispositive of claims including those terms. Further, Smith Interface does not agree that the two remaining terms for which Apple apparently believes a construction would lead to noninfringement would, in fact, lead to noninfringement.

Smith Interface objects to Apple's identification of "a reduction in a size [that is/so as to be] inversely related to the duration of the gesture" as limited to Claims

27, 30, and 32 of the '114 Patent. Apple failed to explain during the meet and confer process why the similar language of Claim 1 of the '114 Patent ("a reduction in a size such that the size is inversely related to the magnitude of the duration of the gesture") would not be subject to the same construction.

B. Apple's Statement

Apple's position is that the four "criteria" terms in claims 1 and 124 of the '758 Patent (i.e., "application-launch criteria," "action-option-display criteria," "operation criteria," and "movement criteria") and the two "action option" terms in claims 1 and 124 of the '758 Patent (i.e., "action options" and "action option objects") should each be treated and briefed, respectively, as a single term for each group. The claim construction issues to be briefed and decided amongst these terms in each respective grouping are virtually identical to each other. The parties met and conferred on this position, but could not reach agreement. Therefore, for purposes of the top 10 terms above, Apple has selected representative terms from both the "criteria" and "action option" groups, but intends to brief and seek a claim construction ruling on each of the "criteria" and "action option" group terms.

In response to Smith's statement above with respect to the "a reduction in a size [that is/so as to be] inversely related to the duration of the gesture" term, Apple did explain during the meet and confer process why this construction is limited to Claims 27, 30, and 32 of the '114 Patent but, regardless, this Hearing Statement is not the proper filing for substantive arguments about the merits and applicability of proposed claim constructions.

III. JOINT CLAIM CONSTRUCTION CHART

Pursuant to Patent L.R. 4.2(b), Smith Interface's and Apple's proposed construction of each disputed claim term, along with each party's identification of supporting evidence, is attached as Exhibit A. For each disputed claim term, phrase, or clause, Exhibit A further includes each party's identification of the impact of the proposed constructions on the merits of the case.

IV. JOINT CLAIM CONSTRUCTION WORKSHEET

Pursuant to Patent L.R. 4.2(c), attached as Exhibit B is the Joint Claim Construction Worksheet, which includes Smith Interface's and Apple's disputed and agreed upon constructions.

V. ANTICIPATED LENGTH OF CLAIM CONSTRUCTION HEARING

Pursuant to Patent L.R. 4.2(d)(1), Smith Interface and Apple anticipate the length of time necessary for the Claim Construction hearing is approximately four (4) hours, and respectfully propose that each side be allocated approximately equal amounts of time to present their positions. If the Court requests a technology tutorial, the parties will meet and confer on the technology tutorial and its estimated length at that time.

VI. WITNESSES FOR CLAIM CONSTRUCTION HEARING

Pursuant to Patent L.R. 4.2(d)(2), Smith Interface and Apple do not expect to present live testimony of witnesses at the Claim Construction Hearing. The parties respectfully propose that expert testimony be submitted via declaration along with the claim construction briefing. Given that Smith Interface is expected to narrow its elected claims to no more than 20 per patent and 64 total claims by October 18, 2024, which Smith Interface believes will render moot the need for the parties to brief and the Court to construe certain disputed claim terms, the parties have agreed to the following schedule for exchange of expert declarations:

- October 22, 2024 – Apple serves Declaration of Dr. Bajaj
- October 29, 2024 – Smith Interface serves Responsive Declaration of Dr. Mahon

The parties will also jointly seek a ten day extension of the claim construction discovery deadline (from October 29, 2024 to November 8, 2024) in order to allow for depositions of Dr. Bajaj and Dr. Mahon, if necessary.

VII. ORDER OF PRESENTATION

Pursuant to Patent L.R. 4.2(d)(3), Smith Interface and Apple anticipate

presenting the claim-construction issues term by term.

Smith Interface and Apple propose that, on terms for which Apple contends are indefinite and on which Apple bears the burden of persuasion, that Apple present first followed by Smith Interface, or at the Court's discretion.

For all other terms, Apple proposes that the parties alternate who presents first, or at the Court's discretion, and Smith Interface proposes that for these terms the party to speak first will be at the Court's discretion.

Dated: October 1, 2024

Respectfully submitted,

/s/ *Daniel Leventhal*

NORTON ROSE FULBRIGHT US LLP

Brian A. Sun
(CA SBN 89410)
555 South Flower Street
Forty-First Floor
Los Angeles, California 90071
Telephone: (213) 892-9222
brian.sun@nortonrosefulbright.com

Brett C. Govett (*pro hac vice)*
(TX SBN 08235900)
Vlada A. Wendel (*pro hac vice*)
(TX SBN 24131751)
2200 Ross Avenue, Suite 3600
Dallas, Texas 75201
Telephone: (214) 855-8000
brett.govett@nortonrosefulbright.com
vlada.wendel@nortonrosefulbright.com

Daniel S. Leventhal (*pro hac vice*)
(TX SBN 24050923)
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
Telephone: (713) 651-5151
daniel.leventhal@nortonrosefulbright.com

John Poulos (*pro hac vice*)
(IL SBN 6324517)
1045 W. Fulton Market, Suite 1200
Chicago, Illinois 60607
Telephone: (312) 964-7766
john.poulos@nortonrosefulbright.com
Counsel for Plaintiff Smith Interface Technologies, LLC

/s/ *Peter Maggiore*

Sean C. Cunningham
Richard Mulloy
Robert Williams
Peter Maggiore
DLA Piper LLP (US)
4365 Executive Drive, Suite 1100
San Diego, CA 92121
Telephone: (858) 677-1400
Facsimile: (858) 677-1401

Brent K. Yamashita
Peiyao Zhang
DLA Piper LLP (US)
2000 University Avenue
East Palo Alto, CA 94303-2214
Telephone: (650) 833-2000
Facsimile: (650) 833-2001

Jessica Hannah
DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, CA 94105
Telephone: (415) 836-2500
Facsimile: (415) 836-2501

Zachary Loney (*pro hac vice*)
DLA Piper LLP (US)
401 Congress Avenue, Suite 2500
Austin, TX 78701
Telephone: (512) 457-7000
Facsimile: (512) 457-7001

Counsel for Defendant Apple Inc.

EXHIBIT A

EXHIBIT A: JOINT CLAIM CONSTRUCTION CHART

Claim Term	Plaintiff's Proposed Construction	Defendant's Proposed Construction
displayed in at least one first virtual display layer which appears above at least one second virtual display layer that includes at least a portion of the user interface of the network browser application that remains at least partially visible.		
Term: "distance magnitude [of the gesture]" **'727 Patent:** Claims 1 and 2 1. A device, comprising: at least one non-transitory memory; a touch screen; and one or more processors in communication with the at least one non-transitory memory, and the touch screen, wherein the one or more processors execute instructions in the at least	**Proposed Construction:** Plain and ordinary meaning. **Impact Statement:** Apple has yet to articulate its reasoning for why this claim term needs to be construed other than plain and ordinary meaning. Presumably, Apple believes that if the Court adopts its proposed construction, its invalidity or noninfringement positions will improve. **Intrinsic Evidence:** The specification of the '727 Patent generally, including but not limited to:	**Proposed Construction:** "length [of the gesture]" **Impact Statement:** Apple believes this term would fully dispose of all issues related to the '727 patent and dispose of all issues related to claims 27, 32, 38, 75-79, 83, 85, 86, 186, 208, 211, 218, 221 of the '754 patent. **Intrinsic Evidence:** '727 patent at: 14:11-15:31, 60:43-47. Claims 1 and 2.

EXHIBIT A: JOINT CLAIM CONSTRUCTION CHART

Claim Term	Plaintiff's Proposed Construction	Defendant's Proposed Construction
one non-transitory memory, to cause the device to: display an object and at least one other object; detect at least part of a gesture on the touch screen; and during detection of at least a portion of the gesture before a completion thereof is detected, blur, based on a change in a **distance magnitude** of the gesture being detected on the touch screen to thereby move the object on the touch screen, at least a portion of the at least one other object that is not overlapped, such that a magnitude of the blur itself, and not a magnitude of an area of the touch screen that is blurred, is increased as a	'727 Patent at 20:62-21:13, 27:38-43, 60:43-61:4, and 63:27-34. The claims of the '727 Patent. '727 Prosecution History. IPR2024-01256 **Extrinsic Evidence:** Smith Interface reserves the right to rely on testimony from Dr. Mahon. Dr. Mahon may testify regarding the plain meaning of the term to a person of ordinary skill in the art in view of the patent specification and other intrinsic evidence. Dr. Mahon may further testify that the term viewed in light of the specification and other intrinsic evidence informs those skilled in the art about the scope of the alleged invention with reasonable certainty. Smith Interface may also rely on Defendant's invalidity contentions and Smith Interface's infringement	'754 patent at: 2:6-39, 14:31-15:51, 60:64-61:5. Claims 27, 32, 38, 75-79, 83, 85, 86, 186, 208, 211, 218, 221. **Extrinsic Evidence:** Apple reserves the right to rely on testimony from Dr. Chandrajit Bajaj. Dr. Bajaj may testify that the proposed construction is consistent with the plain meaning of the term as understood by a person of ordinary skill in the art when read in view of the patent specifications and other intrinsic evidence.

EXHIBIT A: JOINT CLAIM CONSTRUCTION CHART

Claim Term	Plaintiff's Proposed Construction	Defendant's Proposed Construction
function of an increase in the distance magnitude. 2. The device of claim 1, wherein the device is configured such that: the object includes a graphic object; the object is displayed closer to a top edge of the touch screen than a bottom edge of the touch screen; an aspect of the object other than a location thereof is modified, based on the change in the **distance magnitude** of the gesture being detected on the touch screen; and the at least one other object includes a background image. **<u>'754 Patent:</u>** Claims 27, 32, 38, 75-79, 83, 85, 86, 186, 208, 211, 218, 221	contentions, including any references or citations therein. Smith Interface reserves the right to rely upon any evidence cited or relied upon by Defendant.	