

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

VARIA HOLDINGS LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

JURY TRIAL DEMANDED

PLAINTIFF VARIA’S PRELIMINARY INFRINGEMENT CONTENTIONS

Pursuant to the Joint Case Management Statement (D.I. 20), Plaintiff Varia Holdings LLC (“Varia”) provides the following Preliminary Infringement Contentions (“Contentions”) for U.S. Patent Nos. 8,127,984 (“the ’984 Patent”), 8,381,974 (“the ’974 Patent”), and 9,405,947 (“the ’947 Patent”) (collectively, “the Asserted Patents”). The Contentions include Appendices A, B, and C (collectively, the “Claim Charts”) and Appendix D (the “Preliminary and Exemplary Identification of Components Appendix”).

Varia makes these Contentions based on the public information reasonably available to Varia at this time. Discovery has only recently commenced, Defendant Apple Inc. (“Apple”) has not provided any technical discovery, and claim construction has not yet occurred. Varia has used good faith efforts to identify, where possible for each Accused Product, potentially relevant components that are potentially involved in performing the Accused Features, on the basis of publicly available information only. These components are identified in the Preliminary and Exemplary Identification of Components Appendix with citations to Bates numbers—the identification of any components and referenced Bates numbers therein is exemplary, illustrative, and non-limiting, especially because the particular details regarding the specific components in the Accused Products and details regarding how the Accused Features operate is proprietary and non-

public, and Apple has not yet produced technical discovery regarding these details. Varia expressly reserves the right to supplement and/or amend the Preliminary and Exemplary Identification of Components Appendix on the basis of discovery materials produced in the litigation, including but not limited to Apple's core technical production, source code and other non-public technical information. Thus, for example, where the Preliminary and Exemplary Identification of Components Appendix identifies certain components (*e.g.*, a particular memory or storage component), Varia expressly reserves the right to identify additional components (*e.g.*, other memory or storage components) that may be involved in the operation of the Accused Features. Nothing in the Preliminary and Exemplary Identification of Components Appendix (*e.g.*, lack of identification of particular components), shall serve as an admission, waiver, or concession that Apple's Accused Products do not infringe. Varia further reserves the right to supplement and/or amend these Contentions, including the Claim Charts and Preliminary and Exemplary Identification of Components Appendix, to the full extent consistent with the Court's Rules and Order, the Joint Case Management Statement, and any other applicable rule or authority, including in light of discovery (including a complete production by Apple of relevant source code and other non-public technical information) and claim construction.

I. ASSERTED CLAIMS

Varia asserts that Defendant Apple infringes, directly under 35 U.S.C. § 271(a), contributorily under 35 U.S.C. § 271(c), and by inducement under 35 U.S.C. § 271(b), the following claims (collectively, the "Asserted Claims") of the Asserted Patents:

- U.S. Patent No. 8,127,984 ("the '984 Patent") – claims 1-29, 31-39
- U.S. Patent No. 8,381,974 ("the '974 Patent") – claims 1-19
- U.S. Patent No. 9,405,947 ("the '947 Patent") – claims 1-32

Varia believes that discovery, including inspection of the source code and other technical documents relating to Apple's products, may reveal that Apple infringes additional claims of the Asserted Patents. In such case, Varia reserves the right to amend and/or supplement these contentions.

II. THE ACCUSED PRODUCTS

Varia asserts that the "Accused Voice Features" include voice communications, including cellular telephone service, audio calling service that use a Wi-Fi connection, voice over internet protocol, and other similar voice communication technology.

Varia asserts that the "Accused RFID/NFC Features" include RFID/NFC communications, including but not limited to Apple Pay for contactless payments, Express mode for transit cards, payments cards, passes or keys in Apple Wallet, Tap to Pay on iPhone, and other similar RFID/NFC technology.

Varia asserts that the "Accused Features" include the "Accused Voice Features" and the "Accused RFID/NFC Features."

Varia asserts that the Asserted Claims are infringed by the following products (collectively, "the Accused Products"): Apple devices that implement the Accused Features, including but not limited to at least all variants of the following Apple devices: iPhone 6, iPhone 6 Plus, iPhone 6S, iPhone 6S Plus, iPhone SE (1st generation), iPhone 7, iPhone 7 Plus, iPhone 8, iPhone 8 Plus, iPhone X, iPhone XS, iPhone XS Max, iPhone XR, iPhone SE (2nd generation), iPhone 11, iPhone 11 Pro Max, iPhone 12 mini, iPhone 12, iPhone 12 Pro, iPhone 12 Pro Max, iPhone SE (3rd generation), iPhone 13 mini, iPhone 13, iPhone 13 Pro Max, iPhone 13 Pro, iPhone 14 Plus, iPhone 14, iPhone 14 Pro Max, iPhone 14 Pro, iPhone 15 Plus, iPhone 15, iPhone 15 Pro, iPhone 15 Pro Max, Watch Series 3, Watch Series 4, Watch Series 5, Watch SE (first generation), Watch Series

6, Watch Series 7, Watch Series SE, (second generation), Watch Series 8, Watch Ultra, Watch Series 9, and Watch Ultra 2.

The above Accused Products infringe the Asserted Claims, as set forth in the Claim Charts and Preliminary and Exemplary Identification of Components Appendix. Discovery, including inspection of the source code and other technical documents relating to Apple's products, services or features, may reveal that additional Apple products, services, or features infringe the Asserted Claims. Varia reserves the right to amend and/or supplement these Contentions, including the Claim Charts and Preliminary and Exemplary Identification of Components Appendix, to include additional, products, services, or features identified during discovery, or released, developed, or made available by Apple after the date on which these contentions are served. Additionally, discovery, including inspection of the source code and other technical documents relating to the Accused Products, may reveal that Apple infringes additional claims of the Asserted Patents. Varia reserves the right to amend and/or supplement these Contentions, including the Claim Charts and Preliminary and Exemplary Identification of Components Appendix, to include additional asserted claims.

Varia identifies where each element of each Asserted Claim is found within the Accused Products in the Claim Charts and Preliminary and Exemplary Identification of Components Appendix, supported by citations to documents identified by Bates number or URL. The citations herein are exemplary and illustrative. Varia reserves the right to amend and/or supplement these Contentions, including the Claim Charts and Preliminary and Exemplary Identification of Components Appendix, to identify additional or other documents supporting Varia's allegations of infringement. Each limitation of each Asserted Claim is considered to be literally present in the Accused Products. Where Varia contends—based on the information presently available to it (*e.g.*,

arguments raised in Apple’s motion to dismiss)—that a limitation is met under the doctrine of equivalents, to the extent it is not literally present, Varia has identified the basis for that contention on a limitation-by-limitation basis in the Claim Charts. Varia reserves the right to assert additional or different theories of infringement under the doctrine of equivalents as discovery progresses and after claim construction. For example, Varia has served an interrogatory seeking Apple’s non-infringement contentions, which Apple has not answered. Varia reserves the right to assert additional or different theories of infringement under the doctrine of equivalents as discovery progresses based on Apple’s responses to this interrogatory. The Asserted Claims include limitations that are performed, in whole or in part, by software. Apple does not make public the source code or other technical documents concerning the operation of the Accused Products. Accordingly, Varia’s current positions on infringement are provided without the benefit of the source code for and other non-public information regarding the Accused Products. Discovery, including inspection of the source code and other technical documents relating to the Accused Products, may reveal that the Accused Products infringe in additional or other manners. Further, Varia’s positions on infringement of specific claims will depend on the claim constructions adopted by the Court, which has not yet construed the claim terms. Varia reserves the right to amend and/or supplement these Contentions, including the Claim Charts and Preliminary and Exemplary Identification of Components Appendix, for any of the reasons set forth above (including after a complete production by Apple of relevant source code and other non-public technical information and claim construction) in accordance with the Joint Case Management Statement (D.I. 20), or as otherwise ordered by the Court.

III. OVERVIEW OF DIRECT AND INDIRECT INFRINGEMENT

Varia asserts that Apple directly infringes the Asserted Claims under 35 U.S.C. § 271(a) by making, having made, using, selling, offering for sale, and/or importing products, systems, and

methods protected thereby within the United States. To the extent that any step of any asserted method claims is not directly performed by Apple, it is performed under the direction or control of Apple. Receipt of the benefits of the Accused Products, including to provide a customer or end-user with a secure, contactless mobile payment solution, are necessarily conditioned on performance of the claimed steps, and Apple establishes the manner and/or timing of such performance by directing and or controlling the operation of the Accused Products.

Varia further asserts that Apple induces the direct infringement of the Asserted Claims by users of the Accused Products pursuant to 35 U.S.C. § 271(b) at least by making and providing the Accused Products, and through activities relating to selling, marketing, advertising, promotion, support, and distribution of the Accused Products. For example, when a user uses the Accused Products as designed and intended by Apple, each component and/or step of each Asserted Claim is used and/or performed as described in the Claim Charts. As another example, Apple induces the direct infringement of the Asserted Claims by touting the benefits of, and encouraging the use of the Accused Products in manners that directly infringe the Asserted Claims as described in the Claim Charts.

Varia further asserts that Apple contributes to the direct infringement of the Asserted Claims by users of the Accused Products pursuant to 35 U.S.C. § 271(c) at least by making, selling, offering to sell, and/or importing or exporting one or more components of the Accused Products used to practice the Asserted Claims, that constitute a material part of the inventions claimed in the Asserted Claims, and that have no substantial non-infringing use, with knowledge that such components are especially made or adapted for use in infringing the Asserted Claims.

Dated: February 26, 2024
New York, New York

By: /s/Natalie Lieber

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2024, I caused a true and correct copy of the foregoing PLAINTIFF VARIA’S PRELIMINARY INFRINGEMENT CONTENTIONS to be served on all counsel of record via e-mail service.

By: /s/Natalie Lieber

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