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[redacted]

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Michael Boyea and Cole Richter
Counsel for Sonos, Inc.
Lee Sullivan Shea & Smith LLP
656 W Randolph St, Ste. 5W
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Re: Deficiencies in Sonos's Infringement Contentions and Identification of Accused Products Meriting Motion to Strike

Dear Mr. Boyea and Mr. Richter:

Sonos's infringement contentions and identification of accused products are seriously deficient for at least the reasons described below. These deficiencies merit striking both papers, if not also calling into question Sonos's Rule 11 basis. Please address the following deficiencies in your next supplement by December 19, 2024 or provide your availability for a meet-and-confer for said motion during that time period.

In order to meet its burden of proof on infringement, Sonos has to show (1) each accused product meets every limitation of each asserted claim; (2) how Linkplay or any third party makes a directly infringing action by making, using, selling, offering for sale each accused product in the United States or importing each accused product into the United States, and, (3) for each third party product Sonos claims Linkplay is liable for indirect infringement, what Linkplay activity creates such liability. Sonos currently asserts over 120 claims across five asserted patents, and accused over 120 Linkplay or third-party products for infringement. Yet, despite Sonos's burden to prove infringement, its infringement contentions fail to articulate at least one of (1), (2), or (3) above, for a majority of the accused products identified in this case.

Improperly Accused Linkplay Modules, Third-Party Players, and Associated Apps

Sonos's identification attempts to accuse "[e]ach Linkplay module that supports "multi-room" – including but not limited to the [redacted] modules and any module identified by Linkplay in response to Sonos's Interrogatory No. 20 served on August 23, 2024" (referred to by Sonos as a "Linkplay hardware module"). Sonos further accused numerous third-party branded players that purportedly incorporate accused Linkplay hardware modules and, for some third party products, their associated third-party control apps. The lists are found

[redacted]

in Table 1 and Table 2 of Sonos's identification of accused products, on pages 5–6, and are also part of the group of Accused Products in Sonos's infringement contentions:

[redacted]

[redacted]

[redacted]

Table 2

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However, Sonos's contentions fail to explain, with respect to each of these accused modules, third-party players, and associated third-party apps, how the accused product is ever made, used, sold, offered for sale, or imported into the United States, by Linkplay or by another.

. Accordingly, Sonos must immediately drop this module from Sonos's identification of accused products, from its infringement contentions, and from the case as a whole. Otherwise, please provide Sonos's Rule 11 basis for accusing this module in your amended complaint, including what steps Sonos took before filing its amended complaint to confirm that this module had actually been produced, had plausibly read on at least one claim of each asserted patent, and had been imported or sold into the United States. Linkplay reserves its right to seek sanctions under Rule 11 until and unless Sonos provides a satisfactory explanation for its Rule 11 basis for accusing this product and also agrees to drop it from the case.

Sonos's contentions also ignored the territorial limits of U.S. patent rights and improperly accused a large number of products without even alleging any connection to U.S. soil, which Sonos *cannot* do for products exclusively made and sold in foreign markets. Microsoft Corp. v. AT&T Corp., 550 U.S. 437, 454-455 (rejecting plaintiffs expansive application of § 271(f)). Any reliance on Linkplay's extraterritorial activities to allege indirect infringement does not excuse Sonos from sufficiently proving (let alone alleging) the underlying accused product of directly infringing a U.S. patent. Largan Precision Co. v. Genius Elec. Optical Co., 646 Fed. Appx. 946, 949-950. However, for many accused Linkplay modules and third-party products, Sonos fails to identify any evidence of their U.S. presence.

To the contrary, investigation reveals that several of these third-party products may have never been imported into the United States.

It appears Sonos failed to sufficiently investigate whether or not the accused modules and third-party products actually entered the United States market before accusing them of infringement. And the lack of availability of certain accused third-party products in the United States would have been apparent had Sonos bothered to try to purchase each of the third-party products in the United States before accusing them, which it obviously did not do.

Accordingly, Sonos must immediately provide basis for accusing the modules and third-party products such as how each product had been made, used, imported or sold into the United States. Otherwise, the products should be dropped from Sonos's identification of accused products, from Sonos' infringement contentions, and from the case as a whole. Linkplay also reserves its right to seek sanctions under Rule 11 for Sonos's failure.

[redacted]

Deficient Identification of Claim Elements in Accused Products

Although Sonos included claim charts that it contends "specifically identify where each element of each asserted claim is found within, or otherwise satisfied by, the Accused Products," they are nowhere near actually doing that for each accused product, against each element of each asserted claim. Instead, Sonos charted only one or a limited number of accused products for any given claim element and then attempted to claim other accused products would meet the limitation the same way. That is unacceptable as every product is different (unless and until evidence shows otherwise). Sonos's own choice to assert a gigantic number of claims against a gigantic number of accused products created an enormous burden for itself to separately show, product by product, and claim element by claim element, how the claims are infringed. In its next supplement infringement contentions, Sonos must either meet that burden by providing a separate claim chart for each accused product against each asserted claim, or drop those accused products and claims it cannot so contend. Otherwise, Linkplay intends to seek exclusion of those products and/or claims.

To illustrate the necessity for separate contentions, Linkplay provides below just a few non-limiting examples among those deficiencies in Sonos's infringement contentions.

In its Identification, Sonos accused "[e]ach Linkplay player" as infringing the '357 patent, the '883 patent, and the '023 patent[1] and additionally accused "[e]ach Linkplay hardware module" as infringing only claim 8 of the '357 patent and claim 14 of the '883 patent. However, Sonos did not chart any accused Linkplay hardware modules or any accused third-party products allegedly containing any Linkplay hardware module for the specific claim elements of the '357 patent, the '883 patent, and the '023 patent in the corresponding charts of Exhibits 3-5. For example, for the '357 patent, the only reference to the modules in the synchronization claim elements is that multiroom is viewed by a third-party website as a very appealing feature of the "Linkplay modules." *See* 9.5(a) in Exhibit 3.

The contentions are awfully deficient as they fail to show all of the following:

- [redacted]
- [redacted]
- [redacted]

Similarly, Sonos accused [redacted] as infringing the '014 patent and [redacted] as infringing the '532 patent. However, Sonos did not chart each accused third-party app for

[1] For the '023 patent, [redacted] is carved out from the list.

[redacted]

the specific claim elements of the ’014 patent and the ’532 patent in the corresponding charts of Exhibits 1-2. Sonos’s contentions are also deficient as they fail to show all of the following:

- [redacted]
- [redacted]

In particular, based on Sonos’s blind accusation of products that cannot possibly have infringed, it appears that Sonos has simply accused every product that Linkplay’s [redacted], without any further investigation as to whether these products actually infringe any claims, or whether such infringement results from a connection to Linkplay or its modules. Such a slipshod approach does not amount to an “inquiry reasonable under the circumstances” under Rule 11. Sonos has to have basis to show, rather than assuming, each module [redacted].

Such basic pre-suit due diligence might include, for example, obtaining and testing each accused product, checking the publicly available manuals and third-party website pages for the accused products to see what features and functions they actually include, what apps they are actually compatible with, and what functionalities those app-device combinations provide, before baselessly assuming they are all so identical as to warrant a combined infringement analysis as “Linkplay players.”

As one example, Sonos accused “[e]ach Linkplay player” for infringing the ’023 patent due to [redacted] it has absolutely no basis to accuse the third-party players of infringing the ’023 patent. This example clearly shows that Sonos failed its Rule 11 obligation. Accordingly, Sonos must immediately drop all the third-party players from Sonos’s identification of accused products for the ’023 patent and from its infringement contentions. Meanwhile, please also provide Sonos’s Rule 11 basis for accusing those third-party players and/or Linkplay modules in its amended complaint, including what steps Sonos took before filing its amended complaint to confirm that each Linkplay module and/or third-party player actually had the accused auto-sensing function. Linkplay reserves its right to seek sanctions under Rule 11 until and unless Sonos provides a satisfactory explanation for its Rule 11 basis for accusing these products and also agrees to drop it from the case.

As another example, among Sonos’s unsupported allegations, it accuses [redacted]

(Annotations added in red)

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[redacted]

[redacted]

[redacted].

As yet another example, in its Identification, Sonos has asserted that multiple third-party players infringe the ’883 patent, [redacted]

Sonos’s failure to perform its obligatory due diligence has turned the discovery process on its head requiring Linkplay to investigate and evaluate hundreds of allegations without any merit whatsoever. Rather than making reasonable allegations and using the discovery process to determine key issues, Sonos has made sweeping and baseless allegations against Linkplay completely ignoring the geographic limitations of its patents, the actual functions of the identified products, or the plausibility of Linkplay’s involvement in such functions.

[redacted]

Given this situation, Sonos must now show a plausible Rule 11 basis that each of its third-party accused products actually entered the United States in order to accuse them. While the identification of accused products and infringement contentions are not themselves subject to Rule 11, as they were not filed with the Court, any Sonos opposition to Linkplay's motion to strike these contentions would be, as would any Sonos motion to compel discovery on the third-party accused products, any joint pretrial brief, and any expert report attached to a motion for summary judgment, to strike reports, or to exclude.

Sonos must show a plausible Rule 11 basis that each of its third-party accused products actually entered the United States, rather than rely on Linkplay showing that they did not after conducting its own investigation. That is because patentee Sonos bears the burden of showing infringement, rather than accused infringer Linkplay bearing the burden of showing noninfringement.

Other Deficiencies in Sonos's Infringement Contentions

In addition, the charts attached to Sonos' infringement contentions are also deficient in how they attempt to incorporate by reference contentions for one claim element into another element. Linkplay will showcase the deficiency using Exhibit 5 as an example, but to avoid any doubt, such problematic internal references occur in all claim charts in Exhibits 1-5.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

In fact, of the 36 claim elements purportedly charted by Sonos, 26 of them do nothing more than recite the language of the element itself, and then incorporate the contentions of another element, and even in some cases-the contentions of claim elements in other patents with no identification nor explanation of any feature's relevance to the charted patent at all, and even Linkplay's interrogatory responses, without any explanation of how or why this supports Sonos's purported "analysis." For example, Sonos cited Exhibit 3 ((the '357 claim chart) for claims 5, 6, 11, and 12 of the '023 patent, without any explanation of how the analysis of the referenced claim element, from the '357 patent, applies to any of the individual claims *See, e.g.,* Ex. 5, page 10 for '023 Patent Claim 5:

[redacted]

Each of Sonos's internal references would be problematic on its own, but they are even more confounding when the same contentions from a different patent are referenced for multiple claims elements that clearly recite different subject matter from each other. *See, e.g.*, Ex. 5, page 10 for '023 Patent Claim 5 and Claim 6 (both referencing element 9.5(a)(ii) of Exhibit 3). Additionally, Sonos's contentions do not identify any source code that they intend to rely on to show infringement, despite having inspected Linkplay's source code for over 20 days and received over 250 pages of printouts to date. In its next supplement infringement contentions, Sonos needs to disclose its positions by providing source code citations to those it had the opportunity to inspect. Otherwise, Linkplay intends to move to strike untimely disclosures.

In view of the above, please confirm that Sonos will address these deficiencies in its next supplement by December 19, 2024. Absent that, Linkplay reserves its right to seek orders to strike Sonos's infringement contentions and identification of accused products or otherwise barring Sonos from later making the infringement arguments it failed to contend in its Initial Infringement Contentions, as well as Rule 11 sanctions. If a conferral would be productive, please let us know.

Very truly yours,

/s/ Andrew Landers Ramos
Andrew Landers Ramos, Esq.