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January 6, 2025

Andrew Ramos
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***Re:*** ***Sonos v. Linkplay* – Sonos's Initial Infringement Contentions**

Counsel,

We write in response to your December 2 letter. Your letter contains numerous misapprehensions of law and fact, which we set straight below. Overall, your letter appears to be an ill-conceived litigation-tactic attempting to draw equivalence between Linkplay's woefully deficient Initial Invalidity Contentions and Sonos's Initial Infringement Contentions ("IICs") where none exists. Whereas Sonos clearly set out its infringement theories and identified the accused products such that Linkplay can understand what the accused products are, what Sonos's theories of infringement are, and how Linkplay has infringed each patent-in-suit, Linkplay failed in numerous respects to set forth any cognizable theory of invalidity, leaving Sonos only to guess as to how Linkplay intends to prosecute its invalidity case, if it even intends to at all. These are not the same.

**<u>None of Sonos's Accusations Are Improper</u>**

As an initial matter, your letter presumes that Sonos's IICs are deficient because while Sonos bears the burden to prove infringement, Linkplay has come up with a (weak) non-infringement argument for one or two of the accused products or third-party players. However, the purpose of IICs is not to prove infringement, nor serve as a vehicle to marshal all of the patentee's evidence for trial. *TQ Delta, LLC v. ADTRAN, Inc*., No. CV 14-954-RGA, 2021 WL 3728919, at *1 (D. Del. Aug. 23, 2021) ("Plaintiff need not in its contentions actually prove its infringement case."); *see also Alpha & Omega Semiconductor Ltd. v. Force MOS Tech. Co.*, 706 F. Supp. 3d 936, 943 (N.D. Cal. 2023) ("[Patentee] is not required to prove infringement at this stage, or to provide commentary, analysis, or evidence."). Rather, IICs serve to put the accused infringer on notice of what the accused products are and "provid[e] notice to Defendants of Plaintiff's infringement theories beyond that which is provided by the mere language of the patent." *WI-LAN INC., Plaintiff, v. VIZIO, INC., Defendant.*, No. 15-CV-788, 2018 WL 669730, at *1 (D. Del. Jan. 26, 2018).

Sonos's IICs do just this. Indeed, they identify representative products and set forth, for each patent-in-suit, a chart as to how these products are programmed with the functional capability to carry out the steps recited by the claims thereof. *See* IICs at Exs. 1-5. They also go above and beyond this by setting forth a narrative explanation of how Linkplay is

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liable for infringement under each of statutory sections 35 U.S.C. §§ 271(a), 271(b), 271(c), 271(f)(1), and 271(f)(2). *See* IICs at 6-22.

Ignoring this, you allege, for instance, that:

> *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.*

Ltr. at 4. Of course, this is demonstratively false. Sonos's contentions make clear that Linkplay is liable for inducing direct infringement that occurs in the U.S.

> *As another example, Linkplay indirectly infringes each of the '357, '883, and '023 Patents when Linkplay intentionally causes, urges, and/or encourages (i) third parties to make a Linkplay player* ***in the U.S.*** *(e.g., when a third party makes a player that incorporates a Linkplay hardware module), (ii) third parties to use a Linkplay player* ***in the U.S.*** *(e.g., when a third party tests a Linkplay player's functionality after building it based on a Linkplay hardware module, when a third party causes a Linkplay player to perform a claimed method, etc.), (iii) third parties to sell or offer to sell a Linkplay player* ***in the U.S.*** *(e.g., when third parties sell or offer to sell Linkplay players that they build inside or outside the U.S. that incorporate a Linkplay hardware module, such as* [redacted] *etc.), and (iv) third parties to import a Linkplay player* ***into the U.S.*** *(e.g., when third parties import Linkplay players that they build that incorporate a Linkplay hardware module). Indeed, Linkplay induces such third-party activity by selling Linkplay hardware modules to third parties inside or outside of the U.S. knowing and expecting such third parties to sell, offer for sale, and/or import a Linkplay player* ***into the U.S.****, among other inducing activities.*

*E.g.,* IICs at 8 (emphasis added). Sonos also produced on September 27 a vast amount of evidence showing these third-party players being offered for sale and sold in the U.S. *See, e.g.,* SONOS-LP-0203075-0204564.

And for the avoidance of doubt, as we've already explained to you now numerous times, black-letter law makes clear that Linkplay is liable for its actions that induce infringement in the U.S. no matter where in the world those inducing actions take place. *See, e.g., Enplas Display Device Corporation v. Seoul Semiconductor Company, Ltd.*, 909 F.3d 398, 408, (Fed. Cir. 2018) ("Unlike direct infringement under 35 U.S.C. § 271(a), which must occur in the United States, liability for induced infringement under § 271(b) can be imposed based on extraterritorial acts…"); *Honeywell Int'l Inc. v. Acer Am. Corp.*, 655 F. Supp. 2d 650, 661

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(E.D. Tex. 2009) ("Because Honeywell has alleged that CPT sold potentially infringing modules to foreign companies knowing that those modules would be incorporated into products sold in the United States, Honeywell is entitled to discovery regarding CPT's extraterritorial activities."); *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, No. CIV.A. 04-1371-JJF, 2005 WL 5949576, at *2 (D. Del. Aug. 9, 2005) (compelling accused infringer to provide information related to foreign sales because such information is relevant to the accused infringer's knowledge and inducement of infringing activities).

You take issue with Sonos's accusation that Linkplay is liable for its activities with respect to the accused [redacted], alleging that because Linkplay has a non-infringement defense for this module, Sonos must "*immediately drop this module from Sonos's identification of accused products, from its infringement contentions, and from the case as a whole*." Ltr. at 4. Sonos had a valid basis for accusing the [redacted]

[redacted]

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In this respect, to the extent that Linkplay has made, used, and/or offered for sale this module in the U.S., Linkplay is liable for infringement. Although we acknowledge your unsupported attorney argument denying infringement, Sonos is entitled to maintain its accusation against this module until such time that Linkplay demonstrates with actual discovery that it is not liable – which Linkplay has so far failed to do. As to your claim that Sonos lacked a "Rule 11 basis" to accuse [redacted], it makes no sense for Linkplay to provide non-public information during the case, which contradicts public information showing this module for sale, and then claim Sonos had no basis in the first place to accuse this product.

You go on to (i) cherry-pick three out of dozens of third-party products accused of infringement, (ii) incorrectly claim that Sonos hasn't proven (or alleged) infringement with respect to these three products, and (iii) use this as a basis for alleging that Sonos lacked a good faith basis to accuse any of the products it accused in its IICs. Regardless of the fact that this makes no sense and the fact that you concede by implication that the vast majority of the other products are properly accused, your premise for even these three products is incorrect.

***First***, you allege that:

[redacted]

Ltr at 4. Again, this is demonstratively false. [redacted]

[redacted]

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[redacted]

[redacted]

[redacted]

[redacted]

*See* SONOS-LP-0006857. Thus, your complaints about the [redacted] product are disingenuous at best.

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***Second***, the [redacted] products are clearly being offered for sale in the U.S. as well, despite your unsupported protestations to the contrary.

[redacted]

*See also* SONOS-LP-0203707, SONOS-LP-0203543, SONOS-LP-0203535. Moreover, the manual for [redacted]

[redacted]

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***Third***, you take issue with [redacted]

Ltr. at 6. However, both [redacted]

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Thus, Sonos had (and currently has) a valid basis to accuse the [redacted]. The fact that these products may contain additional, unaccused, functionality, does not mean that they do not also contain infringing functionality. Moreover, you raise no dispute as to the [redacted], claimed in the '883 patent. Thus, the [redacted] remain properly accused for at least this reason.

Your faulty logic infects the remainder of your complaints with Sonos's IICs, chief among them being that on the one hand Sonos must identify to Linkplay all of the products for which Linkplay is inducing infringement, but on the other hand, Linkplay is without information as to which third party products contain which Linkplay modules. It defies logic that you are refusing to provide basic discovery of non-public information (of which Linkplay is clearly in possession) showing which modules are in which third party products and then faulting Sonos for not having access to this non-public information when it prepared its IICs. Nevertheless, despite your utter lack of compliance with basic discovery obligations, Sonos has produced copious evidence showing which Linkplay modules are used in which third-party products, as best as we are able to tell. *See, e.g.,* SONOS-LP-0296937-0304485.

**<u>Sonos Identification of Claim Elements in Accused Products Is Not Deficient</u>**

You complain that:

> *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 . . . is unacceptable as every product is different (unless and until evidence shows otherwise)*

Ltr at 5. But this complaint fails for multiple reasons.

***First***, it is simply untrue. Each of Sonos's charts sets forth contentions for all accused products that are implicated by the given patent and cites to representative evidence, including Linkplay's own produced documents, that demonstrate all Linkplay players and/or controllers function in the same way for all relevant purposes. That Sonos follows this by providing further specific evidence for certain Linkplay players and/or controllers does not negate the former.

***Second***, even if Sonos had only charted a representative product and alleged that all of the accused products function in the same way for all relevant purposes, that would have been a completely acceptable practice. *See, e.g., Greenthread, LLC v. OmniVision Techs., Inc.*, No. 2:23-CV-00157-JRG, 2024 WL 1744069, at *4 (E.D. Tex. Apr. 23, 2024) (declining to strike contentions for charting a representative product because "[Patentee] cannot chart the 'specific arrangements and properties' of every Accused Product when such

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information is not publicly available. Further, [Patentee] is not required to provide infringement charts for every Accused Product. It is sufficient at this stage that [Patentee] has charted a representative product . . . ."); *Technology Properties Limited LLC v. Canon Inc*., 2015 WL 5118687, *3-*5 (N.D. Cal. 2015) (denying motion to compel the patentee to provide additional infringement contentions where patentee alleged that the charted accused products were representative of all the accused products and the accused infringer failed to identify any material differences in the uncharted accused products from the charted accused products). Indeed, this complaint is belied by your own interrogatory response setting forth your contentions as to why the accused products do not infringe, which itself lumps all accused products into the same functional category and does not contain any allegation that different accused products differ in any relevant functional respect.

You also disingenuously characterize Sonos's IICs by reading Sonos's Supplemental Identification of Asserted Patents and Accused Products in isolation without regard to Sonos's IICs themselves despite that supplemental identification expressly stating "Sonos further refers to its Initial Infringement Contentions, and any supplements thereto." Suppl. ID. at p. 10. And as you should be aware, Sonos's IICs provide further identification of accused products in Section II and the accompanying charts. *See* IICs at 4-5.

Relatedly, you next appear to take issue with Sonos's articulation of its infringement theory for the '023 Patent. However, we are confused as to what exactly you contend is missing from these infringement contentions – especially in view of Linkplay's tacit understanding of Sonos's contentions, which is evidenced by Linkplay's attempted design around of the '023 Patent. Indeed, we defined the universe of accused products [redacted] which is clearly still present in '023 [redacted] capabilities satisfy each and every limitation of the asserted '023 claims. *See* IICs at pp. 4-5 & Ex. 5. Although not required, we then provide pin-cited evidence that shows that each [redacted] is configured in the way that we allege it is. *See id*. This is the functionality we have accused as meeting the noted elements of the '023 asserted claims. Thus, we do not understand how Linkplay cannot understand what functionality is accused of meeting the claim elements.

Your complaint that Sonos's IICs do not contain source code cites is similarly confusing as you note that we have only inspected Linkplay's source code for "20 days" (and for several of those days, Linkplay's production of source code was incomplete and/or contained corrupted files) and for the additional reason that Linkplay's has stifled Sonos's source code inspection by refusing to provide the source code for all accused products.

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Finally, your repeated insinuations that Sonos somehow lacked a "Rule 11 basis" for setting forth its infringement allegations appear to be nothing more than an ill-conceived litigation tactic designed to mask Linkplay's own poorly-conceived invalidity contentions. The fact that Linkplay's attorneys have come up with spotty and unsupported non-infringement arguments for cherry-picked accused products in a letter (while remaining silent on the vast majority of the other accused products, thus tacitly conceding infringement with respect to these other accused products) does not compel Sonos to somehow waive privilege to demonstrate the extent of its pre-filing and/or litigation investigations.

Best regards,

/s/ Cole B. Richter
Cole B. Richter

cc: counsel of record