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

HBCU MESSAGING US LP, *Plaintiff,* v. APPLE, INC., *Defendant.*	Civil Action No. 1:24-cv-01199-ADA JURY TRIAL DEMANDED

PLAINTIFF HBCU MESSAGING US LP'S OPENING CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Pursuant to the Scheduling Order (D.I. 49) and Joint Motion to Extend Claim Construction (D.I. 60), Plaintiff HBCU Messaging US LP ("HBCU") hereby provides its Opening Claim Construction Brief.

Unlike HBCU, which adheres to the standards of claim construction, Defendant Apple Inc. ("Apple") improperly seeks to read in limitations from the patents, thereby broadening and at other times narrowing the scope of the claims in a manner inconsistent with Federal Circuit precedent, patent specification, and patent history. Defendants' constructions risk confusing the jury with oversimplified, overcomplicated, and vague language. Accordingly, HBCU respectfully requests that the Court adopt its proposed claim constructions.

II. TECHNOLOGY BACKGROUND

A. Technology Background and Asserted Patents

In general, U.S. Patent Nos. 8,918,127 ("the '127 patent), 11,012,827 ("the '827 patent), 11,089,450 ("the '450 patent"), 11,653,182 ("the '182 patent"), 11,653,183 ("the '183 patent"), 11,991,600 ("the '600 patent"), and 11,991,601 ("the '601 patent) (collectively "Asserted Patents") relate to a messaging system capable of sending messages either through a cellular messaging service such as short message service ("SMS"), or through a packet switched message service outside the cellular network. The ability to send messages both via cellular SMS and an external packet-switched network improves various messaging features as set forth in the patents.

A core aspect of the technology is the ability to determine, before sending a message, whether the recipient supports packet-switched messages via the non-cellular service. To make this determination, the sender's device sends a request to a server associated with the service via a packet switched base station, to verify whether the recipient is a subscriber to the service. If

confirmed, the message is sent over the packet switched service; otherwise, the message is sent via a cellular service such as SMS.

Individually, the Asserted Patents set forth various enhancements to the core messaging functionality. The '127 patent focuses on determining subscriber status through a packet-switched WLAN connection to dynamically select between IP-based and SMS transmission modes. The '827 and '600 patents are further enhanced by enabling the mobile wireless device to interact with third-party providers, such as payment systems, by transmitting message content to a server associated with the messaging service, which then forwards the message to the intended provider. The '182 and '183 patents allow devices to send IP-based messages when the recipient is online and revert to SMS if the recipient is inactive, even after a positive subscriber match. The '450 patent describes a system where a user may subscribe to the messaging service after initially receiving an SMS, enabling future communications in a non-SMS form and displaying messages from multiple formats in a single interface. Finally, the '601 patent emphasizes server-side processing and address resolution, where the system maps numeric phone numbers to alternate identifiers, determines subscriber activity, and shares routing decisions across multiple devices to ensure accurate and efficient message delivery.

III. LEGAL STANDARDS

The principles of claim construction are well established. Claim terms are to be given their "ordinary and customary meaning," as determined by "a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (*en banc*). When construing the claims, a court first considers intrinsic evidence, including the claims themselves, the remainder of the specification, and the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc), *aff'd*, 517

U.S. 370 (1996); *see Phillips*, 415 F.3d at 1315-17. However, "the inventor's lexicography governs." *Phillips*, 415 F.3d at 1316. Therefore, the patentee is entitled to define claim terms to identify the invention precisely. As such, a claim construction that "excludes the preferred embodiment is rarely, if ever, correct." *Adams Respiratory Therapeutics, Inc. v. Perrigo Co.*, 616 F.3d 1283, 1290 (Fed. Cir. 2010).

Although claims should be construed with guidance from the patent specification, courts should not go so far as to write the specification into the claims. *Phillips*, 415 F.3d at 1317, 1322. The specification is not intended to artificially limit the scope of the claims. Disclaimers and disavowals that limit the claim terms are appropriate only if "the patentee has demonstrated a clear intention to limit the claim scope." *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004).

As part of claim construction, courts may review statements made during the prosecution of a later-issued patent in the same family for claim language that was common across the patent family. *See Microsoft Corp. v. Multi-Tech Sys., Inc.*, 357 F.3d 1340, 1350 (Fed. Cir. 2004). Such statements made by the inventor are relevant to the construction of the earlier-issued patents. *Id.* at 1350. "Any statement of the patentee in the prosecution of a related application as to the scope of the invention would be relevant to claim construction, and the relevance of the statement made in this instance is enhanced by the fact that it was made in an official proceeding in which the patentee had every incentive to exercise care in characterizing the scope of its invention." *Id.* at 1350.

IV. DISPUTED TERMS

A. "bearer" ('127, '827, '182, '183, '600, and '601 Patents)

HBCU Messaging's Construction	Apple's Construction
A protocol running on a channel for transmitting data including SS7, GSM SS7, HSDPA, WCDMA, CDMA2000, GPRS, Bluetooth, WiFi, WiMax, or any other WPAN, WLAN, or WWAN wireless data transfer protocol	A communication channel or protocol

The term "bearer" is found in multiple claims of the asserted patents and is used consistently throughout. For example, claim 1 of the '127 patent recites, in part:

> determining, by the wireless device of the sender, whether the destination address corresponds to a subscriber of a service for receiving the outgoing message via a packet switched ***bearer*** by sending a request via a packet switched wireless local area network (WLAN) base station to a server

('127 patent, claim 1.)[1] In addition, the specification refers to "bearer" dozens of times throughout. (*See, e.g.*,'127 patent at Fig. 3, Fig. 5, Abstract, 2:12-16, 2:48-3:2, 4:1-39, 4:62-67, 5:29-36, 7:26-36.)[2]

Apple's construction, "a communication channel or protocol" incorporates elements of a bearer—namely, a communication channel and a protocol relied on to send the message—but oversimplifies the term. HBCU's construction more properly aligns with the meaning of bearer as used in the patent specification. Specifically, the "channel" and "protocol" are not simply

[1] Unless otherwise indicated, emphasis in this Brief has been added.

[2] The patents in suit share a common specification stemming from one original application. (*See* Application No. PCT/AU2008/001043 filed on Jul. 18, 2008.) For simplicity, citations to the specification within this Brief are to the '127 patent and, unless otherwise indicated, the identical text appears in the other specifications.

alternatives, as Apple proposes, but instead common elements of a bearer, with the protocol running on the channel.

HBCU's construction aligns directly with the patent specification. For instance, the specification states that the "bearer" may be a channel running the protocol GSM SS7 or one of several other wireless protocols:

> The SMS ***bearer*** may be a conventional GSM SS7 signalling channel. The packet-switched ***bearer*** may be a HSDPA, WCDMA, CDMA2000, GPRS or similar data ***bearer***. The packet-switched ***bearer*** may also supported by other wireless technologies such as Bluetooth, WiFi, WiMax.

('127 patent at 2:61-65.)

Similarly, the specification later identifies as "bearers" other protocols running (in this particular example) on the cellular core network:

> Referring first to FIG. 1, . . . [b]ase stations 130 and 150 are typical based stations in a GSM, CDMA, 3G, 3.5G or similar network that supports a HSDPA, WCDMA, CDMA2000, GPRS or similar data ***bearer*** and are connected to an SMSC via Core Network 140.

('127 patent at 5:29-36.)

The specification further distinguishes between various packet switched bearers and SMS bearers running over networks:

> If a packet-switched data ***bearer*** is used, the message client has a choice of sending the message using a packet-switched ***bearer*** supported by the mobile operator's or a third party's network. For example, in a GSM system with General Packet Radio Service (GPRS) overlay, an SMS ***bearer*** may be an SS7 signalling channel while a packet-switched data ***bearer*** may be a shared transmission channel that combines multiple timeslots in a GSM TDMA frame. The packet-switched data ***bearer*** may also be a Bluetooth, WiFi, WiMax or any other WPAN, WLAN, or WWAN wireless data transfer protocol.

('127 patent at 7:26-36.)

Each of these passages confirms that a bearer cannot simply be any communication "channel" or any communication "protocol," with each of those words operating independently as options within the construction, as Apple proposes. The specification consistently describes bearers as protocols running over channels or networks (which by definition encompass communication channels). Apple's construction would essentially obviate the term bearer by simply replacing it with—as one option—***any*** communication channel. But all messaging of any type described in the patents necessarily runs over communication channels. In broadening the term "bearer" to equate to ***either*** a "communication channel" ***or*** a "communication protocol," Apple would effectively render the term completely superfluous. This result would conflict with one of the most fundamental tenets of claim construction. *See Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 810 (Fed. Cir. 2021) ("It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous.").

In contrast, HBCU's proposed construction accurately distills the teachings of the specification and further includes a listing of protocols drawn directly from the specification in the precise words the inventors utilized. (*See* '127 patent at 2:48-3:2, 5:29-36, 7:26-36.) HBCU's proposal preserves the inventor's explicitly disclosed subject matter and, therefore, is fully supported by the law as well as the facts. *Phillips*, 415 F.3d at 1315 ("The specification is, thus, the primary basis for construing the claims.")

Notably, claims should also be construed, consistent with the other rules of construction, to preserve their validity, where needed. *Ecolab, Inc. v. FMC Corp.*, 569 F.3d 1335, 1345 (Fed. Cir. 2009) (finding that where claim language permits an operable construction, the inoperable construction is wrong.) Here, while HBCU believes other elements of each of the claims distinguish the inventions from the prior art cited by Apple in its contentions, it is readily

apparent that the only reason Apple would propose such a construction is to support an attack on the patents' validity. No system for exchanging electronic messages can work without the presence of a "communication channel," and obviously Apple's iMessage service runs on communications channels. There is no noninfringement argument supported by Apple's proposed construction. Its only *other* purpose—advancing an invalidity argument—runs afoul of yet another principle of claim construction. *Ecolab, Inc.*, 569 F.3d at 1345 (finding that where claim language permits an operable construction, the inoperable construction is wrong.)

HBCU's proposed construction of "bearer" adheres faithfully to the intrinsic record, whereas Apple's would effectively read the entire element out of the claims. HBCU's construction should be adopted. .

B. "cellular core network" ('127 and '600 Patents)

HBCU Messaging's Construction	Apple's Construction
One or more entities responsible for: maintaining a database of subscriber information for a cellular network, for example, a home location register (HLR) and/or a home subscriber server (HSS); providing access to a short message service center (SMSC) or multimedia message (MMS) server; and providing Internet access to one or more mobile devices via at least mobile operator base stations	The portion of a cellular network that connects base stations to each other and to the internet

The term "cellular core network" is found in independent claims 1 and 11 of the '127 patent and claims 5 and 16 of the '600 patent. For example, claim 1 of the '127 patent recites, in part:

> wherein, when the selected transmission mode is the second transmission mode, the wireless device of the sender sends the outgoing message as a short message service (SMS) message to the wireless device of the recipient using the destination address via a base station that is associated with a ***cellular core network*** that is independent of the packet switched WLAN base station, and

> wherein the request sent to the server and the response received from the server do not traverse the ***cellular core network***.

('127 patent, claim 1.)

There is no need to look further than the patentee's own words from the prosecution history, explicitly defining "cellular core network" in this family of patents. Specifically, in the prosecution history for U.S. Pat. App. No. 16/879,161,[3] the inventor expressly defined "cellular core network":

> Referring again to FIG. 1, a core network includes one or more entities responsible for: maintaining a database of subscriber information for a cellular network, for example, a home location register (HLR) and/or a home subscriber server (HSS); providing access to a short message service center (SMSC) or multimedia message (MMS) server; and providing Internet access to one or more mobile devices via at least mobile operator base stations.

(Ex. 1 at 3.)[4] This is the very construction HBCU proposes here.

It is fundamental that an inventor may act as his own lexicographer. *Phillips*, 415 F.3d at 1316 ("[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs."); *3M Innovative Properties Co. v. Avery Dennison Corp.*, 350 F.3d 1365, 1369, 1371 (Fed. Cir. 2004) ("[A] definition of a claim term in the specification will prevail over a term's ordinary meaning if the patentee has acted as his own lexicographer and clearly set forth a different definition"); *Astrazeneca AB v. Mutual Pharm. Co.*, 384 F.3d 1333, 1341 (Fed. Cir. 2004) ("The applicants' characterization [in the prosecution history] of this sentence in the specification as a 'definition' confirms that the applicants acted as their own lexicographers to

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[3] U.S. Pat. App. No. 16/879,161 is a parent of the '600 patent and a child of the PCT application, PCT/AU2008/001043, which to which both the '127 and '600 patents claim priority.

[4] Citations to Exhibits in this brief refer to the Exhibits attached to the co-filed Declaration of Neil Benchell in Support of Plaintiff's Opening Claim Construction Brief

redefine 'solubilizer' differently from its ordinary meaning."). The inventor's "lexicography governs" whether the definitions stem from the specification or the patent prosecution. *See 3M Innovative Props. Co.*, 350 F.3d at 1371 ("A term's ordinary meaning, however, must be considered in the context of all intrinsic evidence, namely the claims, the specification, and the prosecution history. . . . [A] definition of a claim term in the specification will prevail over a term's ordinary meaning if the patentee has acted as his own lexicographer and clearly set forth a different definition.").

This includes when the definition is set forth in a subsequent application. *Microsoft Corp.*, 357 F.3d at 1350. For example, in *Microsoft Corp. v. Multi-Tech Sys*, the Federal Circuit affirmed a district court's claim construction where the lower court relied on, in part, an applicant's statements made in a related but subsequent application. 357 F.3d at 1350. The Federal Circuit explained the use of the subsequent application in claim construction that "[a]ny statement of the patentee in the prosecution of a related application [including subsequent applications] as to the scope of the invention would be relevant to claim construction, and the relevance of the statement made in this instance is enhanced by the fact that it was made in an official proceeding in which the patentee had every incentive to exercise care in characterizing the scope of its invention." *Id*.

The specification provides further support for the inventor's explicit definition. For instance, Figure 1 provides a graphical depiction of the cellular core network showing the three components from the explicit definition: a database of subscriber information, access to a short message service center (SMSC) or multimedia message server (MMS), and internet access:

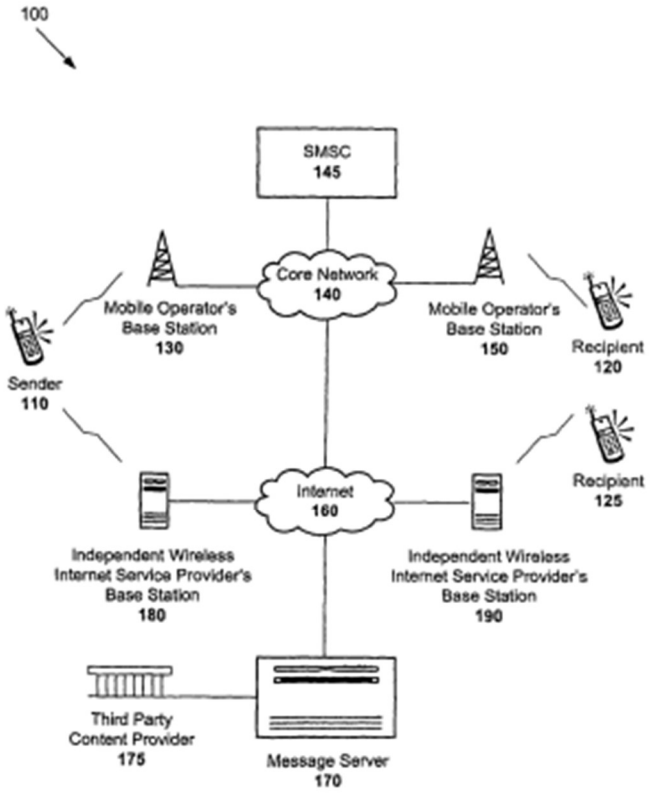

FIG. 1

Fig. 1 shows the message server 170 connected to the core network, at the bottom of the figure. The message server 170 is also in connection with the sender 110, where the client app 114 resides (Fig. 2(a)), either via the internet 160 or a base station 180. In addition, Fig. 1 shows the SMSC 145 connected to the core network 140, and the internet 160 which is accessible from the core network 140.

As further explained in the specification, upon creation of the message, the client application 114 retrieves the destination address from the message. ('127 patent at 8:29-32; Fig. 3 at step 210.) "The client then sends a verification request to the message server 170 via base

station 130 or 180 and the Internet 160." (*Id*. at 8:32-33; Fig. 3 at step 215.) The verification confirms whether the destination address is capable of receiving the message via a packet-switched bearer. (*Id*. at 2:48-49.) This can be done by confirming whether the destination address is a subscriber of the messaging service. (*Id*. at 2:12-16.) Thus, the subscriber information is maintained by the message server.

Again, the cellular core network provides access to the message server itself (Fig. 1, 170) which, as discussed, maintains the subscriber information. This, in addition to providing a direct link to internet access (Fig. 1, 160) forms the backbone of HBCU's definition of "cellular core network." ("responsible for: ***maintaining a database of subscriber information*** for a cellular network, for example, a home location register (HLR) and/or a home subscriber server (HSS); ***providing access to a short message service center (SMSC) or multimedia message (MMS) server***; and ***providing Internet access*** to one or more mobile devices via at least mobile operator base stations" (emphasis added).)

In short, the patentee explicitly defined the "cellular core network" in prosecution. It is this explicit definition that HBCU proposes here. That definition and proposed construction are further supported in the patent specification itself. HBCU's construction should be adopted.

C. "third party provider" ('827 Patent)

HBCU Messaging's Construction	Apple's Construction
Plain and ordinary meaning	Indefinite

The term "third party provider" is found in claims 1 4, 5, 10, 20, 26, 28, 29, and 30 of the '827 patent. For example, claim 1 of the '827 patent recites, in part:

> wherein the mobile wireless device transmits message content intended for a third party provider, to a server associated with the service, which forwards a message comprising the message content

> intended for the third party provider, to the third party provider, wherein the message forwarded to the third party provider is derived at least in part from a random number.

('827 patent at claim 1.)

In fact, "third party provider" appears repeatedly throughout the patent; in the title, abstract, specification, figures and, of course, the claims. In each case, the term obtains its normal meaning as any entity other than the sender or recipient and other than the messaging system provider (either the cellular service or the external service). The abstract, for example, states:

> A mobile wireless device may transmit message content intended for a ***third party provider***, to a server associated with the service, which forwards a message comprising the message content intended for the ***third party provider***, to the ***third party provider***. The message forwarded to the ***third party provider*** may be derived at least in part from a random number. The message forwarded to the ***third party provider*** may not be identical to a message transmitted by the mobile wireless device comprising the message content intended for the ***third party provider***. The message transmitted by the mobile wireless device comprising the message content intended for the ***third party provider*** may include at least one information element which is not included in the message forwarded to the ***third party provider.***

('827 patent at Abstract.)

In common parlance, "third party" is not a technical term. Its plain English usage is ubiquitous and well understood. Thus, it is typically either not construed by courts or simply accorded its plain and ordinary meaning. For example, this Court has held that "third party" was generally construed as its plain and ordinary meaning. *Stratosaudio Inc., v. Hyundai Motor America*, Case No. 6:20-cv-01125-ADA (W.D. Tex. Dec 15 2021) (No. 79). And of course, the Court in *Stratosaudio* did ***not*** find the term indefinite. *Id.* at 2.

This invention deals, at its core, with a "messaging service in a wireless communications network." ('827 patent at 1:30-32.) Any message, be that a wireless text message, a fax, or a hand-written note, inherently involves at least two parties (a sender and a receiver). In fact, the patent, likewise, teaches only two parties to a message. (*See e.g.*, Fig. 1 showing Sender 110 and Recipient 120.) Moreover, the invention deals with two messaging system, one associated with the cellular network and the other an external system. The term "third party" simply identifies any entity other than the sender and receiver.

The meaning of "provider" is likewise clear both from common usage and the context of the specification. While the claim uses only "third party provider," the specification variously refers to "the third party provider," "third party content provider," and simply "the third party" at roughly equal frequency, all referring to the exact same entity that provides some content or service. This is best illustrated by the following portion of the specification:

> Referring to FIG. 1 again, the message server **170** receives each message that is sent using a packet switched bearer. Each message is in an XML format, and the message server parses the message to determine the destination address. The message server **170** is also in communication with ***third-party content providers*** **175** over the Internet **180**. When the message server identifies a destination address corresponding to a ***third party content provider***, it automatically sends the message to ***the third party***. ***The third party*** may, for example depending on the presence of keywords, send additional information related to the keywords to the sender **110**. However, a user may disable this feature.
>
> For example, if the message contains the name of a certain brand, BUYME, information concerning where to buy the product or its latest promotion will be retrieved from the ***third party content provider*** in communication with the message server. . . .
>
> User privacy may be protected by not revealing a user's phone number to ***a third party*** without the consent of the user. For example, a user may send a query to ***a third party content provider*** **175** to ask about the weather forecast in a particular location via the message server **170**. To hide a user's identity, the

> message server may dynamically create a random number that maps to the user's actual mobile number and passes the query to the ***third party content provider*** **175**. Further, this mapping may be dynamic, not static, to ensure that ***the third party*** is not able to determine information about the general behavior of the users.

('827 patent at col. 11:9-36.)

Thus, the plain and ordinary meaning of "third party provider" should control.

D. "wherein . . . when" ('127 and '182 Patents)

HBCU Messaging's Construction	Apple's Construction
plain and ordinary meaning	the "wherein . . . when" phrases should be construed as "Wherein the wireless device / PSMS is configured such that [X] occurs whenever condition [Y] is satisfied" (*i.e.*, "wherein the wireless device of the sender is configured such that it selects the first transmission mode whenever the indication corresponds to a subscriber of the service"; "wherein, the wireless device of the sender is configured such that whenever the selected transmission mode is the first transmission mode, the wireless device of the sender sends the outgoing message as one or more Internet protocol (IP) packets to the wireless device of the recipient via the packet switched WLAN base station"; "wherein, the wireless device of the sender is configured such that whenever the selected transmission mode is the second transmission mode, the wireless device of the sender sends the outgoing message as a short message service (SMS) message to the wireless device of the recipient using the destination address via a base station that is associated with a cellular core network that is independent of the packet switched WLAN base station"; and "wherein the PSMS is configured such that it receives and queues message addressed to a message recipient whenever the message recipient is not connected to the PSMS")

It may be that the parties have no dispute here, although this remains a term for briefing depending on what Apple intends its definition to actually mean.

A variety of claim terms recite "wherein" terms that relate to "when" certain conditions or steps exist. For example, claim 1 of the '127 patent recites:

> ***wherein, when*** the selected transmission mode is the first transmission mode, the wireless device of the sender sends the outgoing message as one or more Internet protocol (IP) packets to the wireless device of the recipient via the packet switched WLAN base station,
>
> ***wherein, when*** the selected transmission mode is the second transmission mode, the wireless device of the sender sends the outgoing message as a short message service (SMS) message to the wireless device of the recipient using the destination address via a base station that is associated with a cellular core network that is independent of the packet switched WLAN base station, and

('127 patent, claim 1.)

HBCU believes these terms need no construction. They utilize common phraseology used in many patent claims of varied technologies. Courts have considered patents containing this same phrase without confusion or need to construe the term. *See e.g., Amgen Inc. v. Sanofi*, 872 F.3d 1367 (Fed. Cir 2017) (patent related to antibodies); *Sealant Sys. Int'l v. TEK Global, S.R.L.,* 6165 Fed. Appx. 987 (Fed. Cir. 2015) (patent related to tire inflation device); *In re Votel*, 847 Fed. Appx. 923 (Fed. Cir. 2021) (patent relating to protective eyewear); *HC Robotics v. Int'l Trade Comm'n*, 2024-1193, 2025 U.S. App. LEXIS 21489 (Fed. Cir. Aug. 22, 2025) (patent related to material handling).

In fact, Apple was a party to at least one case where the claims included a "wherein . . . when" structure. In that case, *Pinn Inc. v. Apple Inc.*, one of the patents at issue recited, "the system of claim 1, ***wherein, when*** . . ." Yet there, Apple understood the meaning of the phrase and did not seek clarification from the Court. *See, e.g.*, *Pinn, Inc. v. Apple, Inc.*, 8:19-CV-

01805-DOC-JDE, 2021 U.S. Dist. LEXIS 20073, *57 (C.D. Cal., April 2, 2021); *see also* U.S. Patent No. 10,609,198 at claim 3. There is nothing in the *Pinn, Inc.* patent that would provide any better intrinsic evidence to the meaning of "wherein . . . when" than there is here.

HBCU has already agreed that all "wherein" clauses will be read as claim limitations as opposed to intended results. This agreement necessarily includes the "wherein . . . when" clauses. To the extent Apple was concerned that the "wherein . . . when" clauses will not be treated in the same way, that concern is unwarranted.

Apple itself has proposed a number of different explanations of how it intends to construe the "wherein . . . when" elements, or how its construction should itself be interpreted. As one example, Apple asserted that the "wherein" requirement should be understood to occur ***only*** when the "when" condition or step is present. This type of narrowing construction should be rejected. To the extent Apple's current proposal is fully co-extensive with the plain and ordinary meaning of the phrase, HBCU has no objection other than potentially jury confusion, which can only be exacerbated by interposing a lengthy construction over what are otherwise straightforward relationships as set forth in the claim. The better option is simply to accord the actual claim language its plain meaning, as HBCU proposes.

Thus, the Court should adopt the plain and ordinary meaning of the "wherein . . . when" terms.

V. CONCLUSION

For the reasons set forth above, HBCU's proposed constructions should be adopted.

Dated: September 22, 2025

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HBCU Messaging US LP

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Timothy Devlin
Timothy Devlin