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

HBCU MESSAGING US LP *
 * January 23, 2026
VS. *
 * CIVIL ACTION NO. 1:24-CV-1199
APPLE, INC., ET AL. *

BEFORE THE HONORABLE ALAN D ALBRIGHT
MARKMAN HEARING (via Zoom)

APPEARANCES:

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Proceedings recorded by mechanical stenography,
transcript produced by computer-aided transcription.

01:38

02:08 1 in these slides that plaintiff has submitted and the
02:08 2 argument, there is discussion of certain claims that
02:08 3 haven't been asserted. And so we just want to state
02:08 4 for the record that if there appear to be a number of
02:08 5 claims being referenced in these proceedings that
02:08 6 aren't part of the infringement contentions aren't part
02:08 7 of the asserted claims.

02:08 8 THE COURT: Did I -- I may have
02:08 9 misunderstood you. So you -- Apple has challenged this
02:09 10 patent at the PTAB?

02:09 11 MR. MALLOY: Yes, Your Honor. We filed
02:09 12 IPR petitions on all seven --

02:09 13 THE COURT: I got it. I got it. And
02:09 14 so -- and with regard to this claim term, what
02:09 15 construction did you proffer at the PTAB?

02:09 16 MR. MALLOY: We didn't proffer any
02:09 17 construction. We were applying the plain and ordinary
02:09 18 meanings.

02:09 19 THE COURT: And what's the difference
02:09 20 between the PTAB and my Court?

02:09 21 MR. MALLOY: It's the same claim
02:09 22 construction standard is my understanding. And what
02:09 23 I'm trying to express is that we haven't taken any --

02:09 24 THE COURT: No. I -- maybe my question
02:09 25 wasn't clear. Why are you proffering a construction in

02:09 1 this case when you did not proffer one at the PTAB?

02:09 2 MR. MALLOY: Oh, I understand, Your
02:09 3 Honor.

02:09 4 During meet-and-confer conversations with
02:09 5 plaintiff's counsel, we determined that we weren't
02:09 6 seeing these terms eye-to-eye in terms of what they
02:10 7 meant because it appears that plaintiff's counsel
02:10 8 doesn't think that the wireless device needs to be
02:10 9 programmed the same way that we think it needs to be
02:10 10 programmed.

02:10 11 And we think that they would argue that
02:10 12 some kind of coincidental -- coincidental co-occurrence
02:10 13 would be enough to satisfy these claims. And so we
02:10 14 disagreed about that and thought it needed to be raised
02:10 15 as a claim construction.

02:10 16 THE COURT: Well -- I'm sorry to
02:10 17 interrupt you. So let me tell you the problem I have
02:10 18 now. From my perspective.

02:10 19 So what I hear Mr. Devlin saying is
02:10 20 essentially, I think, and he can correct me when we get
02:10 21 back, is that there is plenty of infringing going on,
02:10 22 tons of infringing going on by Apple. Under -- under
02:10 23 his orange juice theory.

02:11 24 But that he's afraid that for other
02:11 25 instances, Apple will say, no. Apple will say because