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

HBCU MESSAGING US LP, Plaintiff, v. APPLE INC., Defendant.	C.A. No. 1:24-cv-01199-ADA

DEFENDANT APPLE INC.'S
RESPONSIVE CLAIM CONSTRUCTION BRIEF

APPLE 1107
Apple Inc. v. HBCU
IPR2026-00109

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I. INTRODUCTION

HBCU Messaging's opening brief confirms that Apple's proposed constructions are faithful to the intrinsic record and should be adopted, while HBCU Messaging's proposed constructions are overcomplicated, improperly rewrite the claims, and rely on "plain meaning" where none exists. For the "wherein when" terms, HBCU Messaging overlooks an ambiguity that the Federal Circuit has recognized requires construction and never says what it contends the terms require. For "third party provider," HBCU Messaging's invocation of "plain and ordinary meaning" fails because the intrinsic record provides no guidance on what is being "provided" or by whom, rendering the term indefinite. For "bearer," HBCU Messaging improperly rewrites the specification's clear, disjunctive usage of "channel or protocol" into a conjunctive "protocol running on a channel," excluding disclosed embodiments and importing limitations from examples. And for "cellular core network," HBCU Messaging ignores the specification's unambiguous depiction of the cellular network architecture in Figure 1, instead injecting unnecessary complexity based on a later-filed patent application that does not redefine the term.

The Court should adopt Apple's proposed constructions.

II. ARGUMENT

A. "Wherein…When" Terms ('127 and '182 Patents)

Apple's Proposed Construction	HBCU Messaging's Proposed Construction
"Wherein X whenever Y"	Plain and ordinary meaning

HBCU Messaging's position that these terms do not need construction is mistaken. As Apple explained in its opening brief, there is a clear ambiguity as to whether the terms require mere co-occurrence or a cause-and-effect relationship. The Federal Circuit has construed "when" to require a cause-and-effect relationship when such an ambiguity was raised. *See, e.g.*, *Am. Calcar, Inc. v. Am. Honda Motor Co.*, 651 F.3d 1318, 1340 (Fed. Cir. 2011). That parties in

other cases (including Apple) chose not to propose similar terms for construction is immaterial, as every case and patent is different, and the constructions of those terms may not have been disputed or relevant there. *See* HBCU Messaging Opening Br. at 15-16.

HBCU Messaging's assertion that Apple "has proposed a number of different explanations of how it intends to construe" these terms is unsupported. *Id.* at 16. Apple has always contended the terms require a recited result to occur in response to a recited condition.

The remainder of HBCU Messaging's briefing on these terms is just conclusory assertions. HBCU Messaging offers no explanation for why it calls Apple's construction a "narrowing construction" that "should be rejected." *Id.* at 16. HBCU Messaging also makes no attempt to articulate the "plain meaning" that it contends these terms should be afforded. *Id.*

After opening briefs were filed, HBCU Messaging's counsel represented that they did not understand Apple's constructions prior to Apple's opening brief. For the first time, they expressed concern that Apple's constructions could exclude edge cases such as electricity loss. Apple intended for its constructions to describe how the claimed "wireless devices" and "PSMS" are configured and not to exclude such edge cases. Accordingly, Apple is amenable to the slightly modified constructions below (underlines show the modifications):

- "wherein the wireless device of the sender <u>is configured such that it</u> selects the first transmission mode when <u>whenever</u> the indication corresponds to a subscriber of the service" ('127 patent);
- "wherein, <u>the wireless device of the sender</u> <u>is configured such that whenever</u> 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"

('127 patent);

- "wherein, the wireless device of the sender is configured such that whenever 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" ('127 patent); and
- "wherein the PSMS is configured such that it receives and queues message addressed to a message recipient when whenever the message recipient is not connected to the PSMS" ('182 patent).

All of Apple's arguments in its opening brief apply equally to these modified constructions. The Court should adopt Apple's constructions—in either original or modified form—for the reasons Apple explained there.

B. "Third Party Provider" ('827 Patent)

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

HBCU Messaging contends that "third party provider" is not indefinite because it means "any entity other than the sender or recipient and other than the messaging system provider (either the cellular service or the external service)." HBCU Messaging Opening Br. at 12. HBCU is wrong for two reasons.

First, the specification does not support HBCU Messaging's position. For example, the Abstract that HBCU Messaging quotes does not say the third party provider can be "any entity." All it says is that message content intended for the third party provider is forwarded to the third

party provider. ('827 patent at Abstract.) That provides no information about the third party provider.

Second, HBCU Messaging's position reads out the word "provider." "Entity" and "provider" are not synonyms. HBCU Messaging offers no explanation for why its construction of "third party provider" does not require that it provide anything. HBCU Messaging also fails to explain why the claim does not simply say "third party" instead of "third party provider" if the word "provider" is not essential to the meaning. HBCU Messaging's citation to a case finding "third party" definite is inapposite because it ignores the word "provider." *See Stratosaudio Inc., v. Hyundai Motor Am.*, No. 6:20-cv-01125-ADA, Dkt. No. 79, Claim Construction Br. (W.D. Tex. Dec 15, 2021).

HBCU Messaging points to a portion of the specification that uses "third party" as shorthand to refer to a "third party content provider." HBCU Messaging Opening Br. at 13 (citing '827 patent at 11:9-36). But this does not mean that a "third party provider" need not provide anything; it simply means that a third party provider is a third party. The specification could just as well have used "provider" as shorthand. The meaning of "provider" is still unclear.

HBCU Messaging's assertion that "third party provider" refers to an entity that provides some content or service" is baseless. *Id.* The specification never once indicates that a third party provider provides a *service*. Rather, HBCU Messaging's cited specification excerpt refers only to a "third party *content* provider." (HBCU Messaging Opening Br. at 13-14 (citing '827 patent at 11:9-36).) The applicants presumably intended for "third party provider" to mean something different from "third party content provider," but they never say what they meant. That leaves the term indefinite.

C. "Bearer" (Multiple Patents)

Apple's Proposed Construction	HBCU Messaging's Proposed Construction
"A communication channel or protocol"	"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"

The specification expressly identifies a "bearer" as ***either*** a communication protocol or channel—as Apple proposes. Apple Opening Br. at 9-10. HBCU Messaging's proposed construction—which calls for a "protocol running on a channel"—improperly excludes the disclosed "channel-only" embodiment of a bearer. *See, e.g.*, '127 patent at 2:61–62 ("The SMS ***bearer may be a*** conventional GSM SS7 signalling ***channel***."), *id*. at 7:26–35 ("an SMS bearer may be an SS7 signalling channel while a packet-switched data ***bearer may be a*** shared transmission ***channel"***). Excluding an expressly described embodiment is "rarely, if ever, correct." *Adams Respiratory Therapeutics, Inc. v. Perrigo Co.*, 616 F.3d 1283, 1290 (Fed. Cir. 2010).

HBCU Messaging then compounds its error by hard-coding a list of specific wireless protocols into its proposed construction even though the specification provides those as mere examples. That approach improperly transforms non-limiting embodiments into definitional claim scope. *Liebel-Flarsheim Co. v. Medrad, Inc*., 358 F.3d 898, 906–07, 913 (Fed. Cir. 2004) ("[I]t is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited."). What's more, presenting jurors with a laundry list of non-limiting technical examples is unnecessary and invites confusion. Courts disfavor such verbose, example-laden constructions. *See, e.g., C&M Oilfield*

Rentals v. Apollo Lighting, No. 6:21-CV-00544, 2022 WL 1050318, at *6 (W.D. Tex. Apr. 7, 2022) ("the Court excludes the examples because they may potentially mislead the jury into thinking examples automatically satisfy the claim element without considering the full construction"); *Cisco Sys., Inc. v. Teleconference Sys., LLC*, No. C 09-01550, 2011 WL 5913972, at *8 (N.D. Cal. Nov. 28, 2011) ("an unexhausted list of examples would not assist the jury and could cause some confusion."). By contrast, Apple's proposed construction is succinct and will help the jury understand its meaning.

HBCU Messaging also argues that Apple's construction renders "bearer" superfluous because "all messaging of any type described in the patents necessarily runs over communication channels." Not so. The term "bearer" here is a specific communication mechanism (the channel or protocol used to carry a message), not just "any channel." The claims differentiate between SMS and packet-switched bearers, for example, and the routing capabilities that each provide. *See* '127 patent, 2:61-3:2 ("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. . . . Compared with an SMS bearer, a packet-switched data bearer is able to send a message with unlimited size at a higher speed."). Apple preserves this distinction by recognizing that a bearer may take the form of different transmission modes—either a channel or protocol—just as the patents describe. By contrast, HBCU Messaging distorts this distinction with its conjunctive re-write that collapses "bearer" into any wireless protocol running on a channel.

Because Apple's proposed construction tracks the plain language of the specification, whereas HBCU Messaging rewrites it, the Court should adopt Apple's proposed construction of "bearer" as "a communication channel or protocol."

D. "Cellular Core Network" ('127 Patent)

Apple's Proposed Construction	HBCU Messaging's Proposed Construction
"A network connecting cellular base stations"	"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"

HBCU Messaging's opening brief confirms that Apple's straightforward construction of "cellular core network"—"a network connecting cellular base stations"—is the only construction consistent with the intrinsic record. It is also one that, unlike HBCU Messaging's proposal, will help the jury understand the meaning of the term. Apple's construction tracks the specification's unambiguous depiction of the cellular network architecture in Figure 1. See Apple Opening Br. at 11-12. HBCU Messaging's competing proposal—an overlong, multi-clause definition describing "one or more entities responsible for" maintaining subscriber databases, providing access to SMS or MMS servers, and providing Internet access to one or more mobile devices—relies solely on a later prosecution statement that does not redefine the term and adds superfluous language that will confuse the jury.

As Apple demonstrated in its opening brief, Figure 1 shows "Core Network 140" connecting the mobile operator's base stations (130 and 150). See Apple Opening Br. at 11. This structural distinction reinforces Apple's concise proposal and refutes HBCU Messaging's conflation of the core network with unrelated system components and functions.

Nothing in the specification—or any related patent in the family—describes the "cellular core network" as a collection of "entities" performing the administrative tasks HBCU Messaging

reads into the claims. Instead, the specification repeatedly uses the term to describe network topology, not functionality (*i.e.*, the "cellular core network" connects cellular base stations). HBCU Messaging's construction strings together an amalgam of functions—maintaining subscriber databases, accessing SMS/MMS servers, and providing Internet connectivity—that appear in scattered portions of the specification. But none of these passages purports to define "cellular core network" or describe essential claim limitations. Courts reject such attempts to cobble together definitional language from unrelated examples. *WSOU Investments, LLC v. Canon Inc.*, No. 6:22-cv-00166-ADA, Dkt. No. 193, Claim Construction Order at 3 (W.D. Tex. Oct. 26, 2023) ("particular embodiments and examples appearing in the specification will not generally be read into the claims"); *Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1366 (Fed. Cir. 2012) ("We do not read limitations from the specification into claims").

HBCU Messaging relies heavily on a statement made during prosecution of U.S. Patent Application No. 16/879,161, where the applicant merely *discussed* a "core network." But that passage does not purport to redefine or disavow the broader, architecture-based meaning "cellular core network" from the earlier-filed Asserted Patents. At most, it described an example of how such a network may operate. The Federal Circuit has made clear that a statement made in a later application is not a disclaimer unless it is both "clear and unmistakable." *Biogen Idec, Inc. v. GlaxoSmithKline LLC*, 713 F.3d 1090, 1095-96 (Fed. Cir. 2013); *Goldenberg v. Cytogen, Inc.*, 373 F.3d 1158, 1168 (Fed Cir. 2004) ("Absent a formal relationship or incorporation during prosecution, the new-matter content of the [later-filed continuation-in-part application] is not available to construe the claims of the [earlier-filed] patent, and the district court erred in relying on them."); *Abbott Labs. v. Dey, L.P.*, 287 F.3d 1097, 1104 (Fed. Cir. 2002) (finding the relationship between two unrelated patents, although having common subject matter, a common

inventor, and the same assignee, "insufficient to render particular arguments made during prosecution of [one of the patents] equally applicable to the claims of [the other patent]"). HBCU Messaging has made no such "clear and unmistakable" showing here.

Under *Phillips*, constructions should clarify, not complicate. Apple's concise phrasing—"a network connecting cellular base stations"—captures the entire technical concept without unnecessary detail.

III. CONCLUSION

For the foregoing reasons, the Court should adopt Apple's constructions.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served upon all counsel of record via the Court's ECF system on October 24, 2025.

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