

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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:

For the Plaintiff: Timothy Devlin, Esq.  
Neil A. Benchell, Esq.  
Devlin Law Firm, LLC  
1526 Gilpin Avenue  
Wilmington, DE 19806  
  
Michael W. Shore, Esq.  
The Shore Firm  
901 Main Street, Suite 3300  
Dallas, TX 75202  
  
For the Defendants: Brian Christopher Nash, Esq.  
Morrison & Foerster LLP  
701 Brazos Street, Suite 1100  
Austin, TX 78701  
  
Nima I. Kiaei, Esq.  
Ryan J. Malloy, Esq.  
Morrison & Foerster LLP  
707 Wilshire Blvd., Suite 6000  
Los Angeles, CA 90017-3543  
  
Nomin-Erdene Jagdagdorj, Esq.  
Morrison & Foerster LLP  
2100 L Street, NW Suite 900  
Washington, DC 20037  
  
Court Reporter: Kristie M. Davis, CRR, RMR  
PO Box 20994  
Waco, Texas 76702-0994  
(254) 666-0904

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