

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE, INC.,  
Petitioner

v.

HBCU MESSAGING US LP,  
Patent Owner

IPR2025-01486  
U.S. Patent No. 8,918,127

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**PATENT OWNER'S PRELIMINARY SUR-REPLY**

Mail Stop PATENT BOARD  
Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
*Submitted Electronically via PTAB E2E*

**TABLE OF AUTHORITIES**

**Cases**

*W.L. Gore & Assocs. v. Garlock, Inc.*,  
842 F.2d 1275 (Fed. Cir. 1988)..... 2

## TABLE OF EXHIBITS

<b>Exhibit</b>	<b>Description</b>
2027	January 23, 2026, Markman Hearing Transcript
2028	Apple's August 15, 2025, Proposed Constructions
2029	HBCU's August 15, 2025, Proposed Construction
2030	January 26, 2025, email from Michael Shore to the Court
2031	January 28, 2025, email response from the Court

**A. Introduction**

Petitioner continues to mischaracterize the record and its own actions with respect to claim construction. Contrary to Petitioner’s statements, its positions here *still* contradict its positions in District Court on at least three claim terms. Indeed, at the recent Markman hearing, even Judge Albright expressed concern about Apple’s inconsistent positions: “Why are you proffering a construction in this case when you did not proffer one at the PTAB?” (Ex. 2027 at 24-25.)

Petitioner now asserts that any problems are mooted by the District Court’s *Markman* ruling. (Reply at 1.) That is false. The District Court construed one term in a manner that was opposed by Petitioner in Court, and radically different from the construction Petitioner applied in its Petition. On two other terms, the District Court recognized that its current “plain and ordinary” ruling will likely need to be revised later, on a fuller record, because the parties disagree about what that ordinary meaning is. Petitioners know that nothing has been resolved in District Court, and so nothing absolves Petitioner from its failure to seek claim construction here or to at least make the Board and Director aware of its differing positions.

**B. The District Court Construction of “cellular core network” Bears Zero Resemblance to Petitioner’s Application of the Term Here**

Contrary to Petitioner’s claim, it *did not* seek the plain and ordinary meaning of the term “cellular core network.” (Reply at 1.) Instead, both parties proposed competing constructions, and the District Court sided with the Patent Owner.

The definition adopted by the Court is lengthy and detailed (*see* APPLE-1116), yet ***none of that language was applied by Apple in its Petition***. Petitioner’s own proposal in District Court differed substantially from its position here, and yet Petitioner failed to apply it or even mention it within the Petition. Petitioner now tacitly admits that it did not apply the District Court’s construction within its Petition (Reply at 2); otherwise, there would be no need to even attempt to rehabilitate its position now. Because Petitioner addressed neither the District Court’s construction nor even its own proposed construction, it is impossible to know how Petitioner applied this term within the Petition, or worse, if Petitioner’s construction might further “evolve” as needed.

The use of one construction for purposes of infringement and a different construction for purposes of validity is a fundamental violation of the most basic principles of patent law and of simple fairness. *W.L. Gore & Assocs. v. Garlock, Inc.*, 842 F.2d 1275, 1279 (Fed. Cir. 1988) (“having construed the claims one way for determining their validity, it is axiomatic that the claims must be construed in the same way for infringement”). Apple knew Patent Owner’s proposed construction, as well as its own, well in advance of its Petition filing. (*See* Exs. 2028 and 2029.) There is zero basis for its failure to contend with any of those proposals within the Petition, and the Petition should be denied.

**C. The District Court’s Constructions of “bearer” and “wherein . . . when” Leave Open Issues that Petitioner Continues to Conceal**

The District Court construed two additional terms relevant here, “bearer” and a series of terms involving the phrase “wherein . . . when.” Petitioner proposed constructions of both these terms at District Court yet applied no construction here (essentially adopting some “plain and ordinary” meaning in its Petition despite its District Court proposals). Importantly, while the District Court adopted the “plain and ordinary meaning” *for now*, that does not moot the issue whatsoever.

Instead, both the Court and Parties currently understand that both these terms may require further construction later, because the parties likely dispute what that plain and ordinary meaning is. (*See* Ex. 2030 Email from Shore to Court, “The parties have differing positions on what the plain and ordinary meaning for these four terms should be.”; Ex. 2031 Email from Court, “Judge Albright would like to see more briefing at the summary judgment stage.”)

Inherent in this percolating dispute is the fact that *Petitioner has a specific view of the plain and ordinary meaning of each term*. Yet Petitioner continues to conceal both its view of the plain and ordinary meaning and the more basic fact that these terms are still in dispute. Petitioner cannot now assert that its failures regarding claim construction are mooted when the issues are still live, and even worse, when Petitioner retains the flexibility at District Court to assert whatever “ordinary meaning” it wants, while hiding that same position from the Board and Director here.

Respectfully submitted,

Dated: February 6, 2026

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 6, 2026, I caused a true and correct copy of **PATENT OWNER’S PRELIMINARY SUR-REPLY** to be served via electronic mail on the following counsel for Petitioner:

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