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JENNIFER J. SCHMIDT (*pro hac vice*)
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Attorneys for Plaintiff
ADVANCED VOICE RECOGNITION
SYSTEMS, INC.

Attorneys for Defendant
APPLE INC.

18 **IN THE UNITED STATES DISTRICT COURT**
19 **FOR THE DISTRICT OF ARIZONA**

20 Advanced Voice Recognition Systems,
21 Inc.,

22 Plaintiff,

23 v.

24 Apple Inc.,

25 Defendant.

Case No. 18-02083-PHX-DGC

JOINT STATUS REPORT

1 Pursuant to Paragraph 4 of the Court’s Case Management Order, Doc. 32, Plaintiff
2 Advanced Voice Recognition Systems, Inc. (“AVRS”) and Defendant Apple Inc.
3 (“Apple”), hereby file this Joint Status Report.

4 1. **Status of Pleadings.** On August 24, 2018, Plaintiff filed its First Amended
5 Complaint, Doc. 19, which is the operative complaint. Defendant filed its Answer and
6 Counterclaim, Doc. 28, on September 12, 2018. On January 4, 2019, the parties filed a
7 stipulation in which they agreed “to the dismissal of Apple’s breach of contract
8 counterclaim without prejudice,” Doc. 47, based in part on the contemporaneous
9 agreement to exclude certain evidence. *See id.* at 2-3.

10 2. **Status of Discovery.** On October 12, 2018, the parties exchanged
11 Mandatory Initial Discovery Project (“MIDP”) Responses. On November 9, 2018,
12 Plaintiff served its First Amended Responses to Mandatory Initial Discovery. The
13 parties’ MIDP responses are attached as Exhibit A (AVRS’s responses and amended
14 responses) and Exhibit B (Apple’s responses). Both parties anticipate further amending
15 or supplementing their respective MIDP Responses as the case progresses. Defendant
16 served Plaintiff with its initial document production on November 21, 2018, and Plaintiff
17 served Defendant with its Initial ESI Document Production on November 29, 2018. On
18 December 21, 2018, Plaintiff served Defendant with its First Set of Interrogatories (Nos.
19 1-16). Defendant’s responses are currently due on January 22, 2019. No other discovery
20 has taken place.

21 3. **Status of Infringement & Invalidity Contentions.** Plaintiff’s Disclosure
22 of Asserted Claims and Infringement Contentions were served on January 7, 2019. *See*
23 Doc. 46 at 18-21. Defendant’s Disclosure of Invalidity Contentions is due on February
24 25, 2019. *Id.* at 22.

25 4. **Outstanding Issues.** On November 20, 2018, Plaintiff requested a Meet &
26 Confer to discuss ESI search terms and custodians, as required by the parties’ Joint Case
27 Management Report. *See* Doc. 26 ¶ 10 at 4-5. Apple has indicated that it will make itself
28 available after reviewing Plaintiff’s Infringement Contentions. The parties have been

1 diligently working towards an agreed-upon proposed Protective Order for the Court's
2 consideration. They have essentially agreed on all terms except one: the extent of a
3 party's use of printed source code at depositions. The parties' contrasting positions on
4 this unresolved issue are provided in Exhibit C attached hereto.

5 **5. Status of Settlement Negotiations.** The parties have not discussed
6 settlement. Currently, the parties do not believe that Court assistance with settlement is
7 necessary.

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Dated: January 8, 2019

OSBORN MALEDON, P.A.

By s/ Eric M. Fraser
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Phoenix, Arizona 85012-2793

Attorney for Defendant
APPLE INC.

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MORRISON & FOERSTER LLP
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San Francisco, California 94105

Of Counsel

Dated: January 8, 2019

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By s/ Kenneth P. Kula
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Mesa, AZ 85201-5946

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ADVANCED VOICE RECOGNITION
SYSTEMS, INC.

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Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2019, I electronically transmitted the attached document(s) to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the parties who are CM/ECF registrants.

s/ Kenneth P. Kula _____
Kenneth P. Kula

EXHIBIT A

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13 Tel: (214) 466-1271

14 **ATTORNEYS FOR PLAINTIFF ADVANCED**
VOICE RECOGNITION SYSTEMS, INC.

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF ARIZONA**

18 Advanced Voice Recognition Systems, Inc.,

19 Plaintiff,

20 v.

21 Apple, Inc.,

22 Defendant.

Case No. 2:18-cv-02083-DGC

**PLAINTIFF’S RESPONSES TO
MANDATORY INITIAL DISCOVERY**

24

1 Pursuant to General Order 17-08 and the Court's Order dated July 3, 2018 (Dkt. 5)
2 Plaintiff Advanced Voice Recognition Systems, Inc. ("AVRS" or "Plaintiff") submits the
3 following responses to Mandatory Initial Discovery.

4 **Mandatory Initial Discovery Requests**

- 5 **1. Names and addresses and telephone numbers of all persons who are likely to**
6 **have discoverable information of any claim or defense, and a fair description**
7 **of the nature of the information they possess.**

8 Walter Geldenhuys – to be contacted via undersigned counsel.
9 112 E. Spruce St.
10 Mitchell, SD 57301
605-221-5610
President / CEO / CFO
2001

11 Mr. Geldenhuys is knowledgeable regarding the corporate history, structure,
12 and operations of Plaintiff AVRS and its predecessor NCC, the prosecution
13 of the patent-in-suit, and the identification of Apple as an infringer of the
patent-in-suit.

14 Diana Jakowchuk – to be contacted via undersigned counsel.
15 7659 E. Wood Dr.
Scottsdale, AZ 85260
602-743-8094
16 Secretary / Treasurer

17 Ms. Jakowchuk is knowledgeable regarding the corporate history, structure,
18 and operations of Plaintiff AVRS and its predecessor NCC, the prosecution
of the patent-in-suit, and the identification of Apple as an infringer of the
patent-in-suit.

19 Michael Davis – to be contacted via undersigned counsel.
20 10307 S. 18th Ave.
Phoenix, AZ 85041
21 602-315-2899
22 Founder / Inventor

23 Mr. Davis is knowledgeable regarding the corporate history, structure, and
24 operations of Plaintiff AVRS and its predecessor NCC, the inventions
claimed in the patent-in-suit, the prosecution of the patent-in-suit, and
Apple's infringement of the patent-in-suit.

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Joseph Miglietta – to be contacted via undersigned counsel.
11319 E. Jenan Dr.
Scottsdale, AZ 85259
480 225-0568
Engineer / Inventor

Mr. Miglietta is knowledgeable regarding the corporate history, structure, and operations of Plaintiff AVRS and its predecessor NCC, the inventions claimed in the patent-in-suit, the prosecution of the patent-in-suit, and Apple’s infringement of the patent-in-suit.

Matt Boyer
No Known Address
480-773-7663
Programmer

Mr. Boyer worked for NCC—the predecessor in interest to AVRS—and is knowledgeable regarding the reduction to practice of the inventions claimed in the patent-in-suit.

Lee Meyer
Meyer & Associates, LLC
17462 E. Powers Drive
Centennial, CO 80015-3046
(720) 870-5845

Mr. Meyer prosecuted the patent-in-suit and is knowledgeable about such activities.

Shawn Turner
Holland & Knight
1801 California St.
Suite 5000
Denver, CO 80202
303-974-6645

Mr. Turner is knowledgeable about the formation of AVRS and its filings with the Security Exchange Commission (“SEC”).

Charles Gholz and Todd Baker
Oblon Spivak
1940 Duke Street
Alexandria, Virginia 22314

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Messrs. Gholz and Baker are knowledgeable about the prosecution of the patent-in-suit.

Norman Winarsky
President
Winarsky Ventures
President @ Winarsky Ventures

Mr. Winarsky was a co-founder of Siri and is knowledgeable about the development of Siri and the value of Siri to Apple.

Dag Kittlaus
Co-Founder & Chief Executive Officer Viv Labs
60 South Market Street
9th Floor
San Jose, California 95113

Mr. Kittlaus was a co-founder of Siri and is knowledgeable about the development of Siri and the value of Siri to Apple.

Tom Gruber
(formerly Apple CTO)

Mr. Gruber was a co-founder of Siri and is knowledgeable about the development of Siri and the value of Siri to Apple and Apple's knowledge of the patent-in-suit and willful infringement.

Adam Cheyer
VP Engineering of Viv Labs (formerly co-founder and VP Engineering of Siri)
60 South Market Street
9th Floor
San Jose, California 95113

Mr. Cheyer was a co-founder of Siri and is knowledgeable about the development of Siri and the value of Siri to Apple and Apple's knowledge of the patent-in-suit and willful infringement.

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Tim Cook
Chief Executive Officer
Apple, Inc.
1 Infinite Loop
Cupertino, CA 95014

Mr. Cook is knowledgeable about the valuation of Siri when Apple acquired it and about the continuing development of Siri and the value of Siri to Apple.

Bill Stasior
Vice President of Apple
Apple, Inc.
1 Infinite Loop
Cupertino, CA 95014

Mr. Stasior is knowledgeable about the development and operation of the Siri product at Apple and the continuing value of Siri to Apple.

Scott Forstall
(formerly Senior Vice President iOS Software at Apple)
(contact information unknown)

Mr. Forstall is knowledgeable about the valuation of Siri when Apple acquired it and about the continuing development of Siri and the value of Siri to Apple.

Richard Williamson
Director of Engineering at Facebook (formerly Vice President iOS Platform Services)
1 Hacker Way
Menlo Park, California 94025

Mr. Williamson is knowledgeable about the development and operation of the Siri product at Apple and the value of Siri to Apple.

Luc Julia
Samsung Electronics, Vice-President of Innovation (formerly Director at Apple)
2440 Sand Hill Rd
Menlo Park, California 94025
650-223-7898

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Mr. Julie is knowledgeable about the development of Siri and the value of Siri to Apple.

Eddy Cue
Senior Vice President of Internet Software and Services
Apple, Inc.
1 Infinite Loop
Cupertino, CA 95014

Mr. Cue is knowledgeable about the development and operation of the Siri product at Apple and the continuing value of Siri to Apple.

Robby Walker
Director
Apple, Inc.
1 Infinite Loop
Cupertino, CA 95014

Mr. Walker is knowledgeable about the development and operation of the Siri product at Apple and the continuing value of Siri to Apple.

Christopher Velturo
Quantitative Economic Solutions LLC
101 Arch Street
Suite 1010
Boston, MA 02110
(617) 995-7676

Mr. Velturo is knowledgeable about the value of Siri to Apple.

Dion Bergman
Morgan, Lewis & Bockius LLP
2 Palo Alto Square
3000 El Camino Real, Suite 700
Palo Alto, CA 94306
(650) 843-4000

Mr. Bergman is knowledgeable about Apple's knowledge of the patent-in-suit and willful infringement

1 Christopher B. Eide
2 Dentons
3 1530 Page Mill Road
4 Suite 200
5 Palo Alto California 94304-1125
6 (650) 798-0314

7 Mr. Eide is knowledgeable about Apple's knowledge of the patent-in-suit
8 and willful infringement

9 Bruce H. Waltrous, Jr.
10 Vice President and Chief IP Counsel
11 Apple, Inc.
12 1 Infinite Loop
13 Cupertino, CA 95014

14 Mr. Waltrous is knowledgeable about Apple's knowledge of the patent-in-
15 suit and willful infringement

16 **2. Names addresses and phone numbers of all persons you believe have given
17 written or recorded statements relevant to any party's claims or defenses.**

18 None.

19 **3. List of documents, ESI, and other property known to exist and relevant to any
20 party's claims or defenses.**

- 21 (a) The background and operations of NCC LLC (the predecessor of AVRS)
- 22 (b) The formation and operations of AVRS.
- 23 (c) The background regarding speech recognition technology.
- 24 (d) The conception and reduction to practice of the inventions described and
claimed in the `730 Patent.
- (e) The `730 Patent and file wrapper relating to the prosecution of the patent.
- (f) The patents and file wrappers relating to the other patents owned by AVRS
and related to the `730 Patent.
- (g) AVRS' efforts to monetize the inventions claimed in the `730 Patent.
- (h) The development functionality and value to Apple of Siri.

1 (i) Apple's knowledge of the '730 Patent.

2 **4. Statement of Facts relevant to each claim or defense and the legal theories**
3 **upon which each is based.**

4 AVRS filed the Complaint in this matter against Apple on July 3, 2018. Dkt. 1.
5 Thereafter, it filed its Amended Complaint on August 24, 2018. Dkt. 19. AVRS alleges
6 that Apple infringes U.S. Patent No. 7,558,730 (the "'730 patent" or "patent-in-suit").
7 AVRS alleges that the Siri intelligent personal assistant offered by Apple to the public
8 infringes one or more claims of the '730 patent and that Apple directly infringes the
9 asserted patent by making, offering for sale, and/or selling in the United States products
10 and services that run Siri (the "Accused Instrumentalities"), and by using Siri in the United
11 States for testing, demonstration and marketing purposes, all in violation of 35 U.S.C.
12 § 271(a). The Accused Instrumentalities include the iPhone, iPad, Mac, Apple Watch, the
13 Apple HomePod, including the various versions of these products, and the iOS, macOS,
14 watchOS and tvOS operating systems for those products which run Siri, including the
15 various versions of those operating systems. *See generally id.* ¶¶ 18-19 at 7. AVRS also
16 alleges that Apple indirectly infringes the asserted patent by inducing others to use the Siri
17 functionality enabled through the Accused Instrumentalities to directly infringe one or
18 more claims of the '730 Patent in violation of 35 U.S.C. § 271(b). AVRS alleges that
19 Apple's infringement has been willful. *See generally id.* ¶¶ 27-40 at 11-16.

20 Apple denies that it directly or indirectly infringes any claim of the asserted patent,
21 literally or under the doctrine of equivalents. Apple denies that the asserted patent is valid
22 and/or enforceable. Apple denies that AVRS is entitled to monetary or other relief by way
23 of the Complaint. Apple also raises numerous and sundry defenses to AVRS's claims of
24 infringement. *See generally* Dkt. 28 at 4-9. As of the date of this disclosure, Apple has not
provided any factual or legal basis for its claims or defenses.

1 **5. Computation of each category of damages claimed by AVRS and a description**
2 **of the documents or other evidentiary material on which it is based.**

3 Apple designs, manufactures and markets mobile communication and media devices
4 and personal computers, and sells a variety of related software, services, accessories,
5 networking solutions and third-party digital content and applications. Apple's products
6 and services include the iPhone, iPad, Mac, Apple Watch, Apple TV, Apple HomePod, a
7 portfolio of consumer and professional software applications, a variety of accessory,
8 service and support offerings, the iCloud and Apple Pay services as well as the iOS,
9 macOS, watchOS and tvOS operating systems. Many of these Apple products include a
10 service called Siri, a voice-activated intelligent assistant, which provides, among other
11 things, voice recognition and natural language understanding solutions, including
12 automated speech recognition and transcription services. Among these products are the
13 iPhone, iPad, Mac, Apple Watch, the Apple HomePod and the iOS, macOS, watchOS and
14 tvOS operating systems (referred to herein as the "Accused Instrumentalities").

15 Apple has been and is continuing to directly infringe one or more claims of the '730
16 Patent by making, using (including for testing, demonstrating and marketing purposes),
17 offering for sale, and/or selling the Accused Instrumentalities in the United States in
18 violation of 35 U.S.C. § 271(a). The Accused Instrumentalities include Siri, which makes
19 them fully capable of executing the functions of systems and methods claimed in the '730
20 Patent. When a user of any of the Accused Instrumentalities activates Siri, the Accused
21 Instrumentalities place the Siri system into service. These acts of infringement also
22 include Apple's knowing and intentional inducement of users of Apple products to infringe
23 the asserted patent in the State of Arizona by using the systems and methods covered by
24

1 the asserted patent.

2 AVRS seeks monetary damages for Apple’s infringement of the `730 Patent.
3 Plaintiff’s monetary damages will be calculated using a reasonable royalty based upon a
4 hypothetical negotiation between AVRS and Apple that is derived from the economic
5 value to Apple of Siri and the portion of that value attributable to Apple’s use of the
6 claimed inventions of the `730 Patent asserted in this case.

7 Plaintiff requires additional discovery and information from Apple in order to
8 provide a specific computation of damages, including but not limited to prior licenses, and
9 financial information relating to the value to Apple of its use of Siri. In April 2000, Apple
10 acquired Siri for approximately \$200 million just two months after Siri went public. Siri
11 had just 24 employees at the time. In October 2011, Apple implemented the Siri
12 functionality in the iPhone 4s, which was simply an incremental update of the existing
13 version of the iPhone. Critics, however, marveled at Siri’s potential and speculated that
14 Apple might have developed another revolutionary product. Apple’s implementation of
15 the Siri “virtual personal assistant” in the iPhone was regarded by those in the smartphone
16 and speech recognition industries as a groundbreaking event. Customers seemed to
17 agree. Three days after the iPhone 4s launched, Apple had sold four million of the devices,
18 at the time making it the fastest-selling iPhone ever.

19
20 Apple, in patent litigation against Samsung, touted that Siri has driven consumer
21 demand for the iPhone—and Apple submitted sworn declarations attesting to this fact.
22 *Apple Inc. v. Samsung Elecs. Co., et al.*, No. 12-cv-630, slip op. at 81 (N.D. Cal. June 29,
23 2012) (“Apple asserts that...Siri, a computerized personal assistant, has driven consumer
24

1 demand for the iPhone 4S.”). Apple also persuaded the United States Court of Appeals for
2 the Federal Circuit that Siri drives consumer demand for the iPhone 4S. *Apple Inc. v.*
3 *Samsung Elecs. Co., et al.*, No. 2012-1507, slip op. at 8 (Fed. Cir. Oct. 11, 2012)
4 (“Advertised by Apple as an ‘intelligent personal assistant,’ Siri enables iPhone 4S users to
5 speak their commands to the phone in a natural and conversational tone. There is no
6 dispute that this highly popular feature is a significant source of consumer demand for the
7 iPhone 4S”). AVRS intends to rely on a damages expert, and will supplement this
8 disclosure at an appropriate time in accordance with the deadlines set by the Court related
9 to disclosure of expert opinions on damages, and after Apple has produced all information
10 and documents.

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12 **6. Identity of any insurance or other agreement under which an insurance**
13 **business or other person or entity may be liable to satisfy all or part of a**
14 **possible judgment.**

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None.

1 Dated: October 12, 2018

SCHMEISER, OLSEN & WATTS LLP

2 /s/ Kenneth P. Kula

3 Sean K. Enos

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22 Dallas, TX 75201

23 Telephone: (214) 730-5660

**ATTORNEYS FOR PLAINTIFF ADVANCED
VOICE RECOGNITION SYSTEMS, INC.**

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CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2018, I electronically transmitted the attached document(s) to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the parties who are CM/ECF registrants.

/s/ Kenneth P. Kula
Kenneth P. Kula

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2 kenos@iplawusa.com
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14 **ATTORNEYS FOR PLAINTIFF ADVANCED**
VOICE RECOGNITION SYSTEMS, INC.

15
16 **UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF ARIZONA**

18 Advanced Voice Recognition Systems, Inc.,

19 Plaintiff,

20 v.

21 Apple, Inc.,

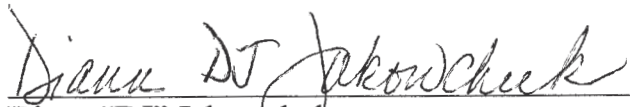
22 Defendant.
23
24

Case No. 2:18-cv-02083-DGC

**VERIFICATION OF PLAINTIFF'S
RESPONSES TO MANDATORY
INITIAL DISCOVERY**

1 I, Diana "DJ" Jakowchuk, Secretary-Treasurer of Advanced Voice Recognition
2 System, Inc., hereby declare under penalty of perjury that Plaintiff Advanced Voice
3 Recognition Systems, Inc.'s Responses to Mandatory Initial Discovery served on October
4 12, 2018 were complete and correct as of the time made based upon my knowledge,
5 information and belief formed after a reasonable inquiry.
6

7 Dated: November 8, 2018


8 Diana "DJ" Jakowchuk
9 Secretary-Treasurer
Advanced Voice Recognition System, Inc.

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14 **ATTORNEYS FOR PLAINTIFF ADVANCED**
VOICE RECOGNITION SYSTEMS, INC.

16 **UNITED STATES DISTRICT COURT**

17 **FOR THE DISTRICT OF ARIZONA**

18 Advanced Voice Recognition Systems, Inc.,

19 Plaintiff,

20 v.

21 Apple, Inc.,

22 Defendant.

Case No. 2:18-cv-02083-DGC

**PLAINTIFF'S FIRST AMENDED
RESPONSES TO MANDATORY
INITIAL DISCOVERY**

1 Pursuant to General Order 17-08 and the Court’s Order dated July 3, 2018 (Dkt. 5)
2 Plaintiff Advanced Voice Recognition Systems, Inc. (“AVRS” or “Plaintiff”) submits the
3 following First Amended Responses to Mandatory Initial Discovery.

4 **Mandatory Initial Discovery Requests**

- 5 **1. Names and addresses and telephone numbers of all persons who are likely to**
6 **have discoverable information of any claim or defense, and a fair description**
7 **of the nature of the information they possess.**

8 Walter Geldenhuys – to be contacted via undersigned counsel.
9 112 E. Spruce St.
10 Mitchell, SD 57301
605-221-5610
President / CEO / CFO
2001

11 Mr. Geldenhuys is knowledgeable regarding the corporate history, structure,
12 and operations of Plaintiff AVRS and its predecessor NCC, the prosecution
13 of the patent-in-suit, and the identification of Apple as an infringer of the
patent-in-suit.

14 Diana Jakowchuk – to be contacted via undersigned counsel.
15 7659 E. Wood Dr.
16 Scottsdale, AZ 85260
602-743-8094
Secretary / Treasurer

17 Ms. Jakowchuk is knowledgeable regarding the corporate history, structure,
18 and operations of Plaintiff AVRS and its predecessor NCC, the prosecution
19 of the patent-in-suit, and the identification of Apple as an infringer of the
patent-in-suit.

20 Michael Davis – to be contacted via undersigned counsel.
21 10307 S. 18th Ave.
22 Phoenix, AZ 85041
602-315-2899
Founder / Inventor

23 Mr. Davis is knowledgeable regarding the corporate history, structure, and
24 operations of Plaintiff AVRS and its predecessor NCC, the inventions
claimed in the patent-in-suit, the prosecution of the patent-in-suit, and
Apple’s infringement of the patent-in-suit.

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Joseph Miglietta – to be contacted via undersigned counsel.
11319 E. Jenan Dr.
Scottsdale, AZ 85259
480 225-0568
Engineer / Inventor

Mr. Miglietta is knowledgeable regarding the corporate history, structure, and operations of Plaintiff AVRS and its predecessor NCC, the inventions claimed in the patent-in-suit, the prosecution of the patent-in-suit, and Apple’s infringement of the patent-in-suit.

Matt Boyer
No Known Address
480-773-7663
Programmer

Mr. Boyer worked for NCC—the predecessor in interest to AVRS—and is knowledgeable regarding the reduction to practice of the inventions claimed in the patent-in-suit.

Lee Meyer
Meyer & Associates, LLC
17462 E. Powers Drive
Centennial, CO 80015-3046
(720) 870-5845

Mr. Meyer prosecuted the patent-in-suit and is knowledgeable about such activities.

Shawn Turner
Holland & Knight
1801 California St.
Suite 5000
Denver, CO 80202
303-974-6645

Mr. Turner is knowledgeable about the formation of AVRS and its filings with the Security Exchange Commission (“SEC”).

Charles Gholz and Todd Baker
Oblon Spivak
1940 Duke Street
Alexandria, Virginia 22314

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Messrs. Gholz and Baker are knowledgeable about the prosecution of the patent-in-suit.

Norman Winarsky
President
Winarsky Ventures
President @ Winarsky Ventures

Mr. Winarsky was a co-founder of Siri and is knowledgeable about the development of Siri and the value of Siri to Apple.

Dag Kittlaus
Co-Founder & Chief Executive Officer Viv Labs
60 South Market Street
9th Floor
San Jose, California 95113

Mr. Kittlaus was a co-founder of Siri and is knowledgeable about the development of Siri and the value of Siri to Apple.

Tom Gruber
(formerly Apple CTO)

Mr. Gruber was a co-founder of Siri and is knowledgeable about the development of Siri and the value of Siri to Apple and Apple's knowledge of the patent-in-suit and willful infringement.

Adam Cheyer
VP Engineering of Viv Labs (formerly co-founder and VP Engineering of Siri)
60 South Market Street
9th Floor
San Jose, California 95113

Mr. Cheyer was a co-founder of Siri and is knowledgeable about the development of Siri and the value of Siri to Apple and Apple's knowledge of the patent-in-suit and willful infringement.

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Tim Cook
Chief Executive Officer
Apple, Inc.
1 Infinite Loop
Cupertino, CA 95014

Mr. Cook is knowledgeable about the valuation of Siri when Apple acquired it and about the continuing development of Siri and the value of Siri to Apple.

Bill Stasior
Vice President of Apple
Apple, Inc.
1 Infinite Loop
Cupertino, CA 95014

Mr. Stasior is knowledgeable about the development and operation of the Siri product at Apple and the continuing value of Siri to Apple.

Scott Forstall
(formerly Senior Vice President iOS Software at Apple)
(contact information unknown)

Mr. Forstall is knowledgeable about the valuation of Siri when Apple acquired it and about the continuing development of Siri and the value of Siri to Apple.

Richard Williamson
Director of Engineering at Facebook (formerly Vice President iOS Platform Services)
1 Hacker Way
Menlo Park, California 94025

Mr. Williamson is knowledgeable about the development and operation of the Siri product at Apple and the value of Siri to Apple.

Luc Julia
Samsung Electronics, Vice-President of Innovation (formerly Director at Apple)
2440 Sand Hill Rd
Menlo Park, California 94025
650-223-7898

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Mr. Julie is knowledgeable about the development of Siri and the value of Siri to Apple.

Eddy Cue
Senior Vice President of Internet Software and Services
Apple, Inc.
1 Infinite Loop
Cupertino, CA 95014

Mr. Cue is knowledgeable about the development and operation of the Siri product at Apple and the continuing value of Siri to Apple.

Robby Walker
Director
Apple, Inc.
1 Infinite Loop
Cupertino, CA 95014

Mr. Walker is knowledgeable about the development and operation of the Siri product at Apple and the continuing value of Siri to Apple.

Christopher Velturo
Quantitative Economic Solutions LLC
101 Arch Street
Suite 1010
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(617) 995-7676

Mr. Velturo is knowledgeable about the value of Siri to Apple.

Dion Bergman
Morgan, Lewis & Bockius LLP
2 Palo Alto Square
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Palo Alto, CA 94306
(650) 843-4000

Mr. Bergman is knowledgeable about Apple's knowledge of the patent-in-suit and willful infringement

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Christopher B. Eide
Dentons
1530 Page Mill Road
Suite 200
Palo Alto California 94304-1125
(650) 798-0314

Mr. Eide is knowledgeable about Apple’s knowledge of the patent-in-suit and willful infringement

Bruce H. Waltrous, Jr.
Vice President and Chief IP Counsel
Apple, Inc.
1 Infinite Loop
Cupertino, CA 95014

Mr. Waltrous is knowledgeable about Apple’s knowledge of the patent-in-suit and willful infringement

2. Names addresses and phone numbers of all persons you believe have given written or recorded statements relevant to any party’s claims or defenses.

None.

3. List of documents, ESI, and other property known to exist and relevant to any party’s claims or defenses.

- (a) The background and operations of NCC LLC (the predecessor of AVRS)
- (b) The formation and operations of AVRS.
- (c) The background regarding speech recognition technology.
- (d) The conception and reduction to practice of the inventions described and claimed in the `730 Patent.
- (e) The `730 Patent and file wrapper relating to the prosecution of the patent.
- (f) The patents and file wrappers relating to the other patents owned by AVRS and related to the `730 Patent.
- (g) AVRS’ efforts to monetize the inventions claimed in the `730 Patent.
- (h) The development functionality and value to Apple of Siri.

1 (i) Apple's knowledge of the '730 Patent.

2 **4. Statement of Facts relevant to each claim or defense and the legal theories**
3 **upon which each is based.**

4 AVRS filed the Complaint in this matter against Apple on July 3, 2018. Dkt. 1.
5 Thereafter, it filed its Amended Complaint on August 24, 2018. Dkt. 19. AVRS alleges
6 that Apple infringes U.S. Patent No. 7,558,730 (the "'730 patent" or "patent-in-suit").
7 AVRS alleges that the Siri intelligent personal assistant offered by Apple to the public
8 infringes one or more claims of the '730 patent and that Apple directly infringes the
9 asserted patent by making, offering for sale, and/or selling in the United States products
10 and services that run Siri (the "Accused Instrumentalities"), and by using Siri in the United
11 States for testing, demonstration and marketing purposes, all in violation of 35 U.S.C.
12 § 271(a). The Accused Instrumentalities include the iPhone, iPad, Mac, Apple Watch, the
13 Apple HomePod, including the various versions of these products, and the iOS, macOS,
14 watchOS and tvOS operating systems for those products which run Siri, including the
15 various versions of those operating systems.

16 In particular, Apple designs, manufactures and markets mobile communication and
17 media devices and personal computers, and sells a variety of related software, services,
18 accessories, networking solutions and third-party digital content and applications. Apple's
19 products and services include the iPhone, iPad, Mac, Apple Watch, Apple TV, Apple
20 HomePod, a portfolio of consumer and professional software applications, a variety of
21 accessory, service and support offerings, the iCloud and Apple Pay services as well as the
22 iOS, macOS, watchOS and tvOS operating systems. Many of these Apple products
23 include a service called Siri, a voice-activated intelligent assistant, which provides, among
24 other things, voice recognition and natural language understanding solutions, including
automated speech recognition and transcription services. Among these products are the
iPhone, iPad, Mac, Apple Watch, the Apple HomePod and the iOS, macOS, watchOS and
tvOS operating systems.

1 1. Based upon publicly available information, Siri uses a system transaction
2 manager utilizing a uniform system protocol. The Siri system has a component that is able
3 to process commands/requests for speech recognition and transcription from different types
4 of legacy operating systems using different legacy protocols, such as from users using
5 devices operating on the MacOS and others using devices operating on the iOS. An
6 internal uniform system protocol is necessary for Siri to process speech recognition and
7 transcription commands or requests from different operating systems using different legacy
8 protocols. Siri is described in U.S. Patent 9,318,108 (the “‘108 Siri Patent”). The “Active
9 Ontology” described in the ‘108 Siri Patent is the component of the Siri system which
10 performs this function. Upon information and belief, Figure 1 of the ‘108 Patent depicts
11 the “Active Ontology” component used in Siri.
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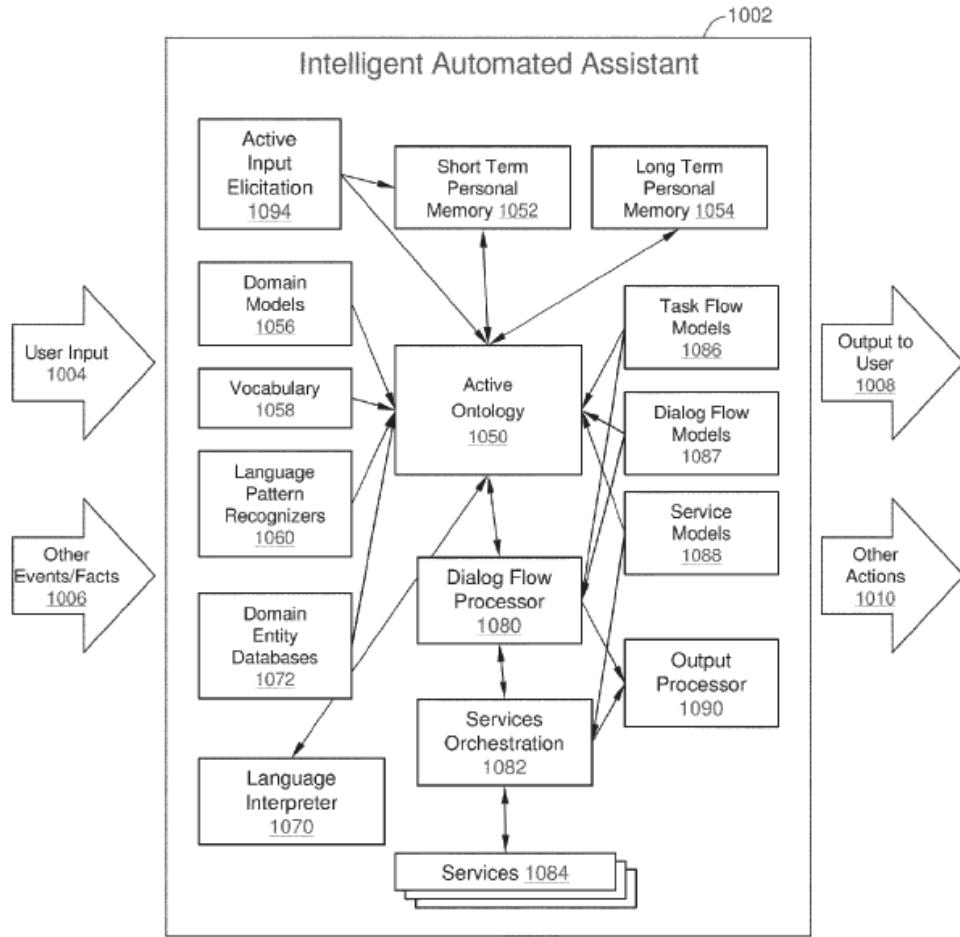


FIG. 1

Figure 7B in United States Patent Application No. 2017/0358301 filed by Apple regarding the Siri system also depicts the “Active Ontology” (760) used in the Siri System:

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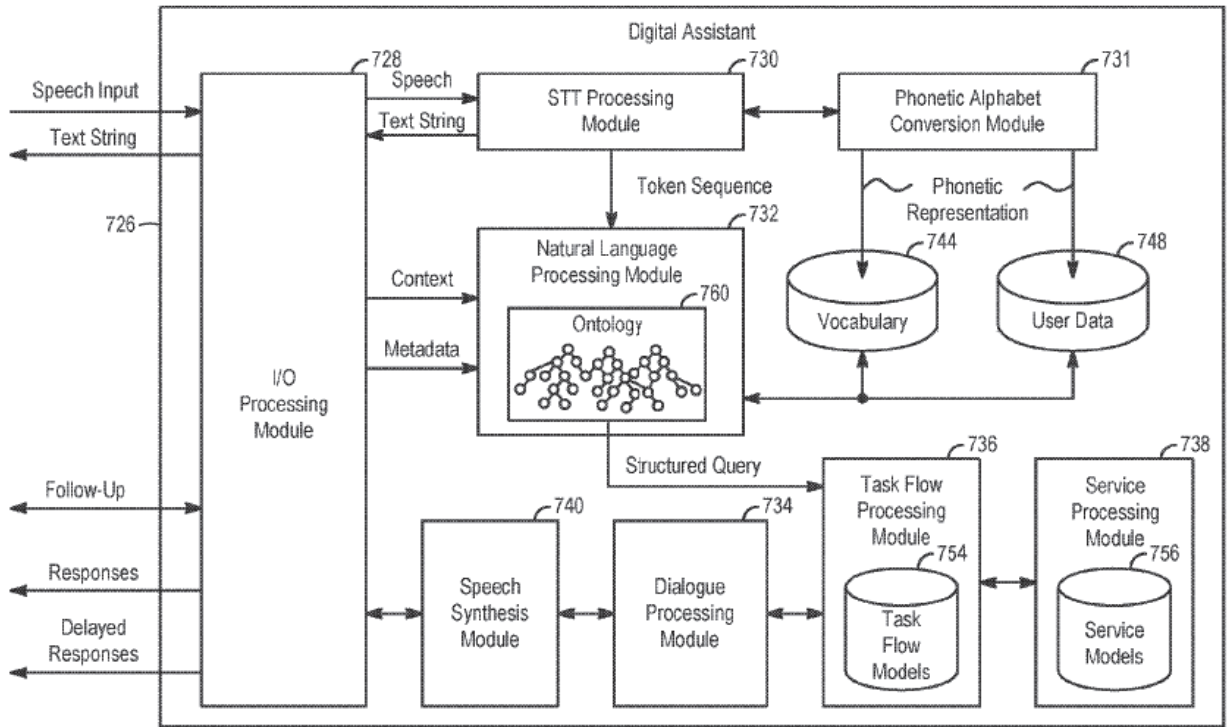


FIG. 7B

Figure 7B in United States Patent Application No. 2017/0358301 filed by Apple regarding the Siri system also depicts the “Active Ontology” (760) used in the Siri System:

Based upon publicly available information, Siri uses a speech recognition and transcription engine to process speech recognition and transcription commands or requests in communication with the system transaction manager. The Siri system has a component which receives from the system transaction manager an audio file comprising spoken text, recognizes the audio file, and processes that file by transcribing the spoken text into written text. The “STT Processing Module” shown in Figure 7B above functions as the speech recognition and transcription engine in Siri.

Based upon publicly available information, Siri has at least one or more components that communicate with both a user of the Siri system and the system transaction manager

1 to generate a speech recognition and transcription command or request from spoken text
2 and a transcription of the spoken text. This component is the “I/O Processing Module”
3 (728) in Figure 7B above which reflects the bidirectional functionality of this component
4 (providing speech input and outbound responses.)

5 The “Active Ontology” component of the Siri system acts as a system transaction
6 manager in communication with the user generating a speech recognition and transcription
7 request, the speech recognition and transcription engine or “speech-to-text service” as
8 defined by Apple, and the user who receives the transcribed speech. The “I/O Module”
9 acts as an application service adapter bridging the generation of the speech recognition and
10 transcription request by a user with its receipt by the Active Ontology system transaction
11 manager, and the transmission of a transcription of the spoken text from the Active
12 Ontology system transaction manager to the same or different user. The Active Ontology
13 component utilizes a uniform system protocol (1) to send the speech information requests
14 generated by the users to the speech recognition and transcription engine; and (2) receive
15 the responses generated by the speech recognition and transcription engine. After the
16 response is received, the Active Ontology component sends the response to the same or
17 different user.
18

19 In addition, Apple has been indirectly infringing one or more claims of the Asserted
20 Patents by inducing others to the Siri functionality enabled through the Accused
21 Instrumentalities to directly infringe one or more claims of the ‘730 Patent in violation of
22 35 U.S.C. § 271(b).
23
24

1 Apple has been aware of the '730 Patent since at least 2013. In particular, Apple
2 has cited the '730 Patent as relevant and material to inventions relating to speech
3 recognition and transcription in at least 112 patent application from 2013 to the present.
4 Apple, with the knowledge of the '730 Patent and the infringing functionality of Siri, has
5 aggressively encouraged users of the Accused Instrumentalities to use Siri. Apple provides
6 training and instructions to end users of its Accused Instrumentalities instructing them how
7 to use Siri through the Accused Instrumentalities in a manner which directly infringes the
8 '730 Patent. When end users of the Accused Instrumentalities use the Siri system through
9 the Accused Instrumentalities they necessarily and directly infringe one or more of the
10 system and method claims of the '730 Patent, and Apple is aware of this fact. Use of the
11 claimed systems and methods for implementing a speech recognition and transcription
12 workflow process is an essential part of the functionality of the Accused Instrumentalities.
13 Notwithstanding Apple's knowledge of the '730 Patent and AVRS' notice to Apple that
14 the Siri functionality enabled by the Accused Instrumentalities infringes that patent, Apple
15 continues in acts of infringement without regard to the '730 Patent.
16

17 Apple's infringement of the '730 Patent has also been willful. As discussed above,
18 Apple has been aware of the '730 Patent since at least 2013. Apple has cited the '730
19 Patent as relevant and material to inventions relating to speech recognition and
20 transcription in at least 112 patent application from 2013 to the present.

21 Under United States patent law, inventors and those associated with filing or
22 prosecuting patent applications as defined in 37 C.F.R. § 1.56, including lawyers involved
23 in such prosecution, have a duty to disclose to the U.S. Patent and Trademark Office (the
24

1 “USPTO”) all known prior art or other information that may be “material” in determining
2 the patentability of claims in the patent application. This duty is deemed satisfied when
3 “material” information is submitted to the USPTO in an information disclosure statement
4 (“IDS”). The duty continues until a patent has issued, and importantly, if one fails to live
5 up to this duty, the resulting patent may be deemed unenforceable. Apple cited to the ‘730
6 on June 19, 2013, when it cited the ‘730 Patent in an IDS submitted to the USPTO during
7 the prosecution of U.S. Patent Nos. 8,676,904, 8,682,667, and 8,762,469. The patents are
8 directed to speech to text technology as is the ‘730 Patent. Apple filed these applications
9 using Dion M. Bregman of the law firm of Morgan, Lewis and Bockius.

10
11 Between June and December of 2013, Morgan, Lewis and Bockius filed a total of at
12 least 44 patent applications on behalf of Apple citing the ‘730 Patent. All of these patent
13 applications were directed to speech recognition and transcription technology and many of
14 them directly concerned technology used by Siri. At some point in time prior to June
15 2013, Apple and its lawyers at Morgan, Lewis and Bockius reviewed the ‘730 Patent and
16 developed a thorough understanding of the inventions disclosed in that patent and that
17 those inventions were directly related and material to speech to text technology and the
18 technology used by Siri. For this reason, Apple identified the ‘730 Patent as material to its
19 patent applications relating to speech to text technology in general and the Siri technology
20 in particular. Between June and December 2013, Apple and its lawyers at Morgan, Lewis
21 and Bockius made this determination with respect to 44 separate patent applications.

22 In approximately December 2013, Apple shifted its patent prosecution business
23 relating to speech recognition and transcription technology, Siri and digital assistants to
24

1 Christopher B. Eide of the law firm of Morrison & Foerster. From 2014 through 2015, Mr.
2 Eide of Morrison & Foerster prosecuted approximately 53 patent applications on behalf of
3 Apple relating to speech to text and Siri technology. During the prosecution of these 53
4 patent applications on behalf of Apple, Morrison & Foerster filed IDSs identifying the `730
5 Patent as material to the inventions claimed in these applications.

6 Therefore, at some point in late 2013, Mr. Eide and other lawyers at Morrison &
7 Foerster working for Apple reviewed the `730 Patent and developed a thorough
8 understanding of the inventions disclosed in that patent and that those inventions were
9 directly related and material to speech to text technology generally and specifically to the
10 technology used by Siri. For this reason, Apple identified the `730 Patent as material to its
11 patent applications relating to speech to text technology in general and the Siri technology
12 in particular prosecuted by Morrison & Foerster.

13 Thus, as early as June 2013, Apple was aware of the `730 Patent and the nature and
14 scope of the inventions disclosed in that patent, and was aware that the `730 Patent was
15 highly relevant to the speech to text technology used by Siri. Apple knew that its conduct
16 employing the Siri technology amounted to infringement of the `730 Patent. This
17 knowledge deepened during Apple's prosecution of over 100 patent applications directed
18 at such technology citing the `730 Patent as material to such technology.

19 The `730 Patent has been cited to the USPTO as material art in the field of speech
20 recognition and transcription at least 196 times so far. This is an indication that the `730
21 Patent disclosed inventions fundamental to this field. Apple understood this when it cited
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1 the '730 Patent in most, if not all, of its patent applications relating to this field over the
2 last five years.

3 2. Apple deliberately disregarded AVRS' patent rights embodied in the '730
4 Patent when it continued to employ Siri with this knowledge. Apple did not have a good
5 faith belief that the '730 Patent was invalid or not infringed when it engaged in this
6 conduct.

7 **5. Computation of each category of damages claimed by AVRS and a description**
8 **of the documents or other evidentiary material on which it is based.**

9 Apple designs, manufactures and markets mobile communication and media devices
10 and personal computers, and sells a variety of related software, services, accessories,
11 networking solutions and third-party digital content and applications. Apple's products
12 and services include the iPhone, iPad, Mac, Apple Watch, Apple TV, Apple HomePod, a
13 portfolio of consumer and professional software applications, a variety of accessory,
14 service and support offerings, the iCloud and Apple Pay services as well as the iOS,
15 macOS, watchOS and tvOS operating systems. Many of these Apple products include a
16 service called Siri, a voice-activated intelligent assistant, which provides, among other
17 things, voice recognition and natural language understanding solutions, including
18 automated speech recognition and transcription services. Among these products are the
19 iPhone, iPad, Mac, Apple Watch, the Apple HomePod and the iOS, macOS, watchOS and
20 tvOS operating systems (referred to herein as the "Accused Instrumentalities").
21

22 Apple has been and is continuing to directly infringe one or more claims of the '730
23 Patent by making, using (including for testing, demonstrating and marketing purposes),
24 offering for sale, and/or selling the Accused Instrumentalities in the United States in

1 violation of 35 U.S.C. § 271(a). The Accused Instrumentalities include Siri, which makes
2 them fully capable of executing the functions of systems and methods claimed in the `730
3 Patent. When a user of any of the Accused Instrumentalities activates Siri, the Accused
4 Instrumentalities place the Siri system into service. These acts of infringement also
5 include Apple's knowing and intentional inducement of users of Apple products to infringe
6 the asserted patent in the State of Arizona by using the systems and methods covered by
7 the asserted patent.

8 AVRS seeks monetary damages for Apple's infringement of the `730 Patent.
9 Plaintiff's monetary damages will be calculated using a reasonable royalty based upon a
10 hypothetical negotiation between AVRS and Apple that is derived from the economic
11 value to Apple of Siri and the portion of that value attributable to Apple's use of the
12 claimed inventions of the `730 Patent asserted in this case.

13
14 Plaintiff requires additional discovery and information from Apple in order to
15 provide a specific computation of damages, including but not limited to prior licenses, and
16 financial information relating to the value to Apple of its use of Siri. In April 2000, Apple
17 acquired Siri for approximately \$200 million just two months after Siri went public. Siri
18 had just 24 employees at the time. In October 2011, Apple implemented the Siri
19 functionality in the iPhone 4s, which was simply an incremental update of the existing
20 version of the iPhone. Critics, however, marveled at Siri's potential and speculated that
21 Apple might have developed another revolutionary product. Apple's implementation of
22 the Siri "virtual personal assistant" in the iPhone was regarded by those in the smartphone
23 and speech recognition industries as a groundbreaking event. Customers seemed to
24

1 agree. Three days after the iPhone 4s launched, Apple had sold four million of the devices,
2 at the time making it the fastest-selling iPhone ever.

3 Apple, in patent litigation against Samsung, touted that Siri has driven consumer
4 demand for the iPhone—and Apple submitted sworn declarations attesting to this fact.
5 *Apple Inc. v. Samsung Elecs. Co., et al.*, No. 12-cv-630, slip op. at 81 (N.D. Cal. June 29,
6 2012) (“Apple asserts that...Siri, a computerized personal assistant, has driven consumer
7 demand for the iPhone 4S.”). Apple also persuaded the United States Court of Appeals for
8 the Federal Circuit that Siri drives consumer demand for the iPhone 4S. *Apple Inc. v.*
9 *Samsung Elecs. Co., et al.*, No. 2012-1507, slip op. at 8 (Fed. Cir. Oct. 11, 2012)
10 (“Advertised by Apple as an ‘intelligent personal assistant,’ Siri enables iPhone 4S users to
11 speak their commands to the phone in a natural and conversational tone. There is no
12 dispute that this highly popular feature is a significant source of consumer demand for the
13 iPhone 4S”). AVRS intends to rely on a damages expert, and will supplement this
14 disclosure at an appropriate time in accordance with the deadlines set by the Court related
15 to disclosure of expert opinions on damages, and after Apple has produced all information
16 and documents.

18 **6. Identity of any insurance or other agreement under which an insurance
19 business or other person or entity may be liable to satisfy all or part of a
20 possible judgment.**

21 None.
22
23
24

1 Dated: November 9, 2018

SCHMEISER, OLSEN & WATTS LLP

2 /s/ Kenneth P. Kula

3 Sean K. Enos

4 AZ Bar No. 023634

5 kenos@iplawusa.com

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BUETHER JOE & CARPENTER, LLC

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23 Telephone: (214) 730-5660

24 **ATTORNEYS FOR PLAINTIFF ADVANCED
VOICE RECOGNITION SYSTEMS, INC.**

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2018, I electronically transmitted the attached document(s) to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the parties who are CM/ECF registrants.

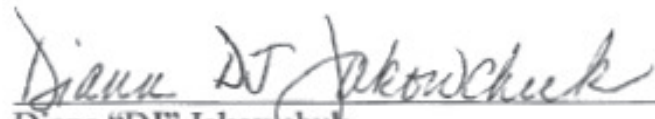
/s/ Kenneth P. Kula
Kenneth P. Kula

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VERIFICATION

I, Diana “DJ” Jakowchuk, Secretary-Treasurer of Advanced Voice Recognition System, Inc., hereby declare under penalty of perjury that Plaintiff Advanced Voice Recognition Systems, Inc.’s First Amended Responses to Mandatory Initial Discovery are complete and correct as of the time made based upon my knowledge, information and belief formed after a reasonable inquiry.

DATED: November 9, 2018



Diana “DJ” Jakowchuk
Secretary-Treasurer
Advanced Voice Recognition System, Inc.

EXHIBIT B

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4 Phoenix, Arizona 85012-2793
5 Telephone: 602-640-9000
6 Email: efraser@omlaw.com

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8 JENNIFER J. SCHMIDT (*pro hac vice*)
9 ROBIN L. BREWER (*pro hac vice*)
10 MICHAEL J. GUO (*pro hac vice*)
11 MADELEINE E. GULLY (*pro hac vice*)
12 **MORRISON & FOERSTER LLP**
13 425 Market Street
14 San Francisco, California 94105
15 Telephone: (415) 268-7000
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18 rbrewer@mofocom
19 mguo@mofocom
20 mgully@mofocom

21 *Attorneys for Defendant*
22 APPLE INC.

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Advanced Voice Recognition Systems,
Inc.,

Plaintiff and Counter-Defendant,

vs.

Apple Inc.,

Defendant and Counterclaimant.

Case No. 18-02083-PHX-DGC

**DEFENDANT APPLE INC.'S MIDP
DISCOVERY RESPONSES**

Pursuant to General Order 17-08, Paragraph 13 of the parties' Joint Case Management Report (Dkt. No. 26), and this Court's Case Management Order (Dkt. No. 32) Defendant Apple Inc. ("Apple") hereby makes its Mandatory Initial Discovery Pilot Project ("MIDP") discovery responses. Plaintiff Advanced Voice Recognition Systems,

1 Inc. (“AVRS”) alleges infringement of U.S. Patent No. 7,558,730 (the “730 patent” or
 2 “asserted patent”). These disclosures are based on information reasonably available to
 3 Apple. Apple reserves the right to supplement or amend its disclosures based on
 4 information developed in the course of this lawsuit through discovery or factual
 5 investigation, and call any witness or present any exhibit or item at trial not listed here,
 6 but identified through discovery or factual investigation during this litigation.

7 Apple provides these disclosures subject to and without waiving the attorney-
 8 client privilege, work product doctrine, common interest privilege, or any other
 9 applicable privilege, doctrine, or immunity. By making these disclosures, Apple does
 10 not concede the relevance or admissibility of any particular information.

11 **I. LIST OF KNOWLEDGEABLE PERSONS**

12 The following list identifies those persons presently known to Apple who are
 13 likely to have discoverable information relevant to any party’s claims or defenses. The
 14 following list shall not be interpreted to be an admission that any of the listed persons
 15 will have discoverable information.

16 Apple also requests that all employees or former employees of Apple be
 17 contacted only through the undersigned counsel.

WITNESS	ADDRESS	SUBJECT MATTER
Nick Treadgold	Contact through counsel for Apple	Technical aspects of accused products, including design, development, and operation; prior art and invalidity of the asserted patents.
Didier Guzzoni	Contact through counsel for Apple	Technical aspects of the accused products including design, development, and operation; prior art and invalidity of the asserted patents.

WITNESS	ADDRESS	SUBJECT MATTER
Jeffrey Lasker	Contact through counsel for Apple	Apple licensing terms and practices; pre-suit communications.
Michael Jaynes	Contact through counsel for Apple	Economic knowledge of accused products.
One or more Apple employees	Contact through counsel for Apple	Marketing of accused products.
Walter Geldenhuys	Scottsdale, Arizona	AVRS's business activities, marketing and licensing activities, patent prosecution, assignment of the asserted patents, company financial information, and company files generally.
David Pridham	Dominion Harbor 200 Crescent Court Suite 1550 Dallas, TX 75201	AVRS's business activities, marketing and licensing activities, patent prosecution, assignment of the asserted patents, and pre-suit communications.
Michael K. Davis	Scottsdale, Arizona	Alleged inventions, the conception and reduction to practice of the alleged inventions, prior art, noninfringement, invalidity, unenforceability, claim scope, assignment and ownership of the asserted patents, and efforts to license and market the asserted patents.
Joseph Miglietta	Scottsdale, Arizona	Alleged inventions, the conception and reduction to practice of the alleged

WITNESS	ADDRESS	SUBJECT MATTER
		inventions, prior art, noninfringement, invalidity, unenforceability, claim scope, assignment and ownership of the asserted patents, and efforts to license and market the asserted patents.
Lee G. Meyer, Esq.	Meyer & Assoc., LLC 17462 E. Powers Drive Centennial, CO 80015	Prosecution of the '730 patent, prior art, and unenforceability.
W. Todd Baker	Obion Spivak McClelland Maier & Neustadt, P.C. 1940 Duke Street Alexandria, VA 22314	Prosecution of the '730 patent, prior art, and unenforceability.
Marvin Jay Spivak	Obion Spivak McClelland Maier & Neustadt, P.C. 1940 Duke Street Alexandria, VA 22314	Prosecution of the '730 patent, prior art, and unenforceability.

Apple incorporates by reference AVRS's disclosures of people with relevant knowledge. In addition, Apple states that other persons may have knowledge of prior art. Apple has not yet identified expert witnesses upon whose opinions and testimony it may rely in this matter. Apple anticipates that additional witnesses may be located or identified, and will supplement its disclosures to identify additional witnesses based upon information developed during the course of discovery in this action.

II. PERSONS BELIEVED TO HAVE GIVEN WRITTEN OR RECORDED STATEMENTS

Apple is not aware of any person who has given a written or recorded statement relevant to the claims and defenses in this action.

1 **III. DOCUMENTS RELEVANT TO ANY PARTY'S CLAIMS OR DEFENSES**

2 Apple describes below the categories of documents, electronically stored
3 information, or tangible things that are either publicly available or in its possession,
4 custody or control and that may be relevant to any party's claims or defenses. Apple
5 reserves the right to supplement the following disclosure after further discovery and
6 investigation.

- 7 • Documents relating to the asserted patents and their prosecution histories;
- 8 • Documents relating to invalidity of the asserted patents, including prior
9 art;
- 10 • Documents relating to foreign patents and applications related to the
11 asserted patents;
- 12 • File histories and other information concerning the prosecution of foreign
13 patents and applications related to the asserted patents;
- 14 • Documents relating to invalidity of the foreign patents and applications
15 related to the asserted patents, including prior art;
- 16 • Documents relating to any reduction to practice or product development
17 of the technology claimed in the asserted patents;
- 18 • Documents relating to any attempts to commercialize or license the
19 technology claimed in the asserted patents;
- 20 • License agreements relating to the asserted patents or other relevant
21 license agreements;
- 22 • Documents relating to notice of the asserted patents;
- 23 • Documents relating to the design, development, operation, and use of the
24 accused products, including, but not limited to, source code, technical
25 specifications, engineering requirements specifications, change history,
26 product releases and histories, mechanical control outlines, schematics,
27 flow charts, artwork, formulas, user guides, product briefs, device and
28 component level information, and general product information;

- 1 • Documents relating to financial and economic information regarding the
- 2 accused products, including sales and marketing of the accused products,
- 3 including, but not limited to, sales figures, profit and loss statements, bills
- 4 of materials, line of business reports, cost pubs, and press releases;
- 5 • Communications between AVRS or its agents and Apple; and
- 6 • Communications and agreements between AVRS and third parties
- 7 regarding the asserted patents.

8 Apple reserves the right to object to the production of these documents on any
9 basis, including that the information sought: (i) is not relevant; (ii) is protected from
10 disclosure by an applicable privilege, doctrine, or immunity; (iii) would be unduly
11 burdensome or expensive to produce; (iv) contains third party confidential information;
12 or (v) constitutes proprietary or trade secret information that should not be produced
13 before an appropriate protective order has been entered. Apple also reserves the right to
14 assert a claim of privilege or immunity and withhold from production any documents,
15 whether or not included above, that are protected from discovery by the attorney-client
16 privilege, work product immunity, or any other privilege or immunity.

17 Apple’s investigation for discoverable information that it may use to support its
18 claims or defenses in this litigation is ongoing. Apple reserves the right to supplement
19 its disclosures with additional documents, information, or things that Apple may use to
20 support its claims or defenses based upon information developed during the course of
21 discovery. Apple also may rely on documents that are produced by any party to this
22 litigation, including by Apple and/or AVRS, and by any third party.

23 **IV. FACTS, DEFENSES, AND LEGAL THEORIES**

24 **A. Factual Background**

25 AVRS filed the Complaint in this matter against Apple on July 3, 2018 (Dkt.
26 No.1). Thereafter, it filed its First Amended Complaint on August 24, 2018 (Dkt. No.
27 19) (“Amended Complaint”). AVRS alleges that Apple infringes U.S. Patent No.
28 7,558,730 (the “730 patent” or “asserted patent”). AVRS alleges that the Siri

1 intelligent personal assistant offered by Apple infringes one or more claims of the '730
2 patent and that Apple directly infringes the asserted patent by making, offering for sale,
3 and/or selling in the United States products and services which run Siri (the "Accused
4 Instrumentalities"), and by using Siri in the United States for testing, demonstration and
5 marketing purposes, all in violation of 35 U.S.C. § 271(a). The Accused
6 Instrumentalities include the iPhone, iPad, Mac, Apple Watch, the Apple HomePod,
7 including the various versions of these products, and the iOS, macOS, watchOS and
8 tvOS operating systems for those products which run Siri, including the various
9 versions of those operating systems. AVRS also alleges that Apple indirectly infringes
10 the asserted patent by inducing others to use the Siri functionality enabled through the
11 Accused Instrumentalities to directly infringe one or more claims of the '730 Patent in
12 violation of 35 U.S.C. § 271(b). AVRS alleges that Apple's infringement has been
13 willful.

14 Apple filed its Answer and Counterclaim to the Amended Complaint on
15 September 12, 2018 (Dkt. No.28). Apple denies that it infringes, directly or indirectly,
16 literally or by equivalents, any claim of the asserted patent.¹ Apple denies that the
17 asserted patent is valid and/or enforceable. Apple denies that AVRS is entitled to
18 monetary or other relief by way of the Amended Complaint. Apple asserts
19 counterclaims for declaratory judgment of noninfringement and invalidity of the '730
20 patent and for breach of contract.

21 AVRS filed its Answer to Apple's Counterclaim on October 3, 2018 (Dkt.
22 No.35). AVRS denies that the '730 patent is invalid and/or not infringed by Apple, and
23 denies that AVRS committed breach of contract.

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28 ¹ AVRS has not alleged infringement under the doctrine of equivalents and should be
precluded from doing so.

1 **B. Legal Responses and Defenses**

2 Apple makes the following legal responses and defenses based upon its current
3 knowledge, its current understanding of AVRS's infringement allegations, and its
4 investigation to date. Apple's investigation into the facts of this action is ongoing.
5 Apple has not completed its investigation of the facts relating to this case, discovery in
6 this action, or its preparation for trial. These responses are without prejudice to Apple's
7 right to produce evidence of any additional legal responses or defenses. Accordingly,
8 Apple reserves its right to supplement or amend the responses made herein as new,
9 additional, or different information is learned and discovered.

10 These responses were prepared prior to receiving AVRS's identification of
11 asserted claims or infringement contentions. Apple's legal positions and defenses
12 related to particular claims may depend on how AVRS intends to read certain claims of
13 the '730 patent on the Accused Instrumentalities. These responses are made out of an
14 abundance of caution to reflect the potential scope of the claims that AVRS appears to
15 be advocating or could advocate, as suggested in AVRS's Amended Complaint.
16 Apple's responses herein should not be seen as a suggestion that it understands AVRS's
17 reading of the patent claims or that such reading is correct. Apple reserves the right to
18 supplement or amend the responses made herein following disclosure by AVRS of its
19 identification of asserted claims and infringement contentions.

20 Further, these responses were prepared prior to the Court's claim construction
21 ruling and disclosure of claim construction positions from AVRS. Apple's legal
22 positions and defenses related to particular claims may depend on how the claims are
23 construed by the Court. In the absence of a claim construction ruling, these responses
24 are made in the alternative and are not necessarily intended to be consistent with each
25 other and other legal positions and defenses herein. Apple reserves the right to
26 supplement or amend the responses made herein following disclosure by AVRS of its
27 positions regarding claim construction and following receipt of the Court's claim
28 construction order construing the claims of the '730 patent.

1 Apple applies the prior art in light of AVRS's improper assertion of infringement
2 and improper application of the each and every claim of the asserted patent that AVRS
3 contends Apple infringes (collectively, the "asserted claims"). Apple does not agree
4 with AVRS's application of the claims, or that the claims satisfy the requirements of 35
5 U.S.C. § 112. Apple's responses herein are not, and should in no way be seen as,
6 admissions or adoptions as to any particular claim scope or construction, or as any
7 admission that any particular element is met in any particular way. Apple objects to any
8 attempt to imply claim construction from the positions herein. The legal positions and
9 defenses herein are made in a variety of alternatives and do not represent Apple's
10 agreement or view as to the meaning, definiteness, written description support for, or
11 enablement of any claim contained therein.

12 Apple reserves the right to rely on any portions of the identified prior art to
13 establish the invalidity of the asserted claims. Moreover, Apple reserves the right to
14 rely on any portions of the identified prior art, other art, or testimony to provide context
15 to or aid in understanding the identified prior art. Apple also reserves the right to rely
16 upon treatises, published industry standards, and similar documents to demonstrate the
17 knowledge of one of ordinary skill in the relevant art. Similarly, Apple reserves the
18 right to rely on any documents or source code that have yet to be produced to aid in
19 understanding the Accused Instrumentalities and noninfringement of the asserted claims
20 in support of the positions included herein.

21 The identification of prior art references provided below is merely exemplary
22 and is not intended to be exhaustive. Apple reserves the right to rely on prior art
23 references not identified below. Additionally, Apple reserves the right to rely on any
24 obviousness combinations of the references identified below or at a later date in this
25 litigation. In particular, Apple is currently unaware of the extent to which AVRS may
26 contend that limitations of the claims at issue are not disclosed in the art identified by
27 Apple. To the extent that an issue arises with any such limitation, Apple reserves the
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1 right to identify other references which make obvious the addition of the allegedly
2 missing limitation to the disclosed system or method of operation.

3 **1. Noninfringement**

4 The patentee bears the burden of proving infringement. *See Technology*
5 *Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1327 (Fed. Cir. 2008). To prove
6 literal infringement, the accused device must contain each limitation of the claim
7 exactly; any deviation from the claim precludes a finding of literal infringement. *Litton*
8 *Sys. Inc. v. Honeywell, Inc.*, 140 F.3d 1449, 1454 (Fed. Cir. 1998) (citation omitted). If
9 an independent claim is not infringed, the claims that depend from it also are not
10 infringed. *Becton Dickinson & Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 798 (Fed. Cir.
11 1990); 35 U.S.C. § 112(d).

12 The '730 patent generally relates to systems and methods for facilitating speech
13 recognition and transcription among users employing incompatible protocols for
14 generating, transcribing, and exchanging speech. The specification of the '730 patent
15 alleges that a barrier to the implementation of centralized speech recognition and
16 transcription engines was the fact that many people were using unique communications
17 and application protocols, referred to as "legacy systems," that were not universal in
18 application. '730 patent at 2:42-51. The specification of the '730 patent explains that
19 replacing such systems with uniform systems would be inefficient and unrealistic as the
20 legacy systems are typically directed to core aspects of the business. *Id.* at 2:49-57.
21 The '730 patent describes enabling communication between two legacy systems by
22 converting a "first user legacy protocol" to a "uniform system protocol," such as
23 TCP/IP, which can then be converted to a "second user legacy protocol." Claim 1, *see*
24 *also id.* at 4:4-19.

25 Independent system claims 1, 14, 15, and 18, and independent method claims 16
26 and 17 all include at least an "application service adapter," a "system transaction
27 manager," and/or a "speech recognition and transcription engine." The "application
28 service adapter" provides bidirectional translation between a "legacy protocol" and a

1 “uniform system protocol.” The “system transaction manager” receives a “speech
2 information request” from a user in order to “route a response” to one or more other
3 users. The “system transaction manager” is responsible for tracking jobs in the system
4 and sending “speech information requests” to the “speech recognition and transcription
5 engine.” The “speech recognition and transcription engine” generates a “response”
6 comprising a “transcription” to the “speech information request” and sends the
7 “response” back to the “system transaction manager,” which then routes the “response”
8 to the one or more other users. The “response” passes through an “application service
9 adapter” that provides “bi-directional translation” between the “uniform system
10 protocol” and the “first user legacy protocol” or the “second user legacy protocol.”
11 Claims 2 and 15 include a “first user legacy protocol” that is “the same as or different”
12 than the “second user legacy protocol.” Claims 14, 16 and 17 require “first user legacy
13 protocol” that is “different” than the “second user legacy protocol.” All dependent
14 claims depend from claim 1.

15 The '730 patent claims priority to U.S. Application No. 09/996,849 (“the '849
16 application”). During prosecution of the '849 application, AVRS repeatedly took the
17 position that the claimed invention differed from the prior art because it was not
18 directed to a system using “homogenous” protocols. During prosecution of the '730
19 patent, all claims of the '730 patent application were rejected multiple times based on
20 prior art obviousness grounds. In order to overcome the rejections, AVRS represented
21 that what set the claimed invention apart from existing technology was the claimed
22 invention’s ability to communicate across multiple legacy protocols. AVRS amended
23 the claims to include reference to and distinctions between a “uniform system protocol,”
24 a first and second “user legacy protocol,” and an “application service adapter” that
25 provides “bi-directional translation” between the different claimed protocols to obtain
26 issuance of the '730 patent.

27 The Accused Instrumentalities do not infringe the claims of the '730 patent at
28 least because they do not receive a “speech information request” from and do not route

1 or send “a response” to one or more other users, as required by claims 1, 14, 15, 16, and
2 18.

3 The Accused Instrumentalities do not infringe the claims of the ’730 patent at
4 least because they do not employ a “first user legacy protocol” or “first protocol” and a
5 “second user legacy protocol” or “second protocol,” as required by claims 1, 2, 8, 14,
6 15, 16, 17, and 18.

7 The Accused Instrumentalities do not infringe the claims of the ’730 patent at
8 least because they do not provide “bi-directional translation” between a “uniform
9 system protocol” and “first user legacy protocol” or “second user legacy protocol,” as
10 required by claims 1, 14, and 18. Similarly, the Accused Instrumentalities do not
11 infringe any claim of the ’730 patent at least because they do not communicate across
12 multiple legacy protocols.

13 The Accused Instrumentalities do not infringe the ’730 patent at least because
14 they do not employ a “first user application service adapter” or a “second user
15 application service adapter” which are “different,” as required by claims 9, 15, and 17.

16 The Accused Instrumentalities do not infringe the ’730 patent at least because
17 they do not receive “speech information requests” from the “system transaction
18 manager” at the “speech recognition and transcription engine” or transmit a “response”
19 from the “speech recognition and transcription engine” to the “system transaction
20 manager,” as required by claims 1, 14, 15, 16, 17, and 18.

21 Further, the Accused Instrumentalities also do not infringe the ’730 patent at
22 least because patent they do not include the following claim elements:

- 23 • system transaction manager;
- 24 • application service adapter;
- 25 • user application service adapter;
- 26 • user service adapter;
- 27 • automated speech recognition (ASR) application service adaptor;
- 28 • speech service adapter;

- 1 • speech recognition and transcription engine; and
- 2 • speech recognition and transcription server.

3 Further, the Accused Instrumentalities do not infringe any dependent claim of the
4 '730 patent because the Accused Instrumentalities do not infringe claim 1, for at least
5 the reasons stated above, and all dependent claims depend therefrom.

6 AVRS's indirect infringement allegations fail at least because, as discussed
7 above, the Accused Instrumentalities do not directly infringe the '730 patent, a
8 necessary component for finding indirect infringement. In addition, Apple has at all
9 relevant times believed in good faith that the use of the Accused Instrumentalities does
10 not infringe any claim of the '730 patent, and that the asserted claims of the '730 patent
11 are invalid, negating the specific intent element of such allegations. To the extent that
12 AVRS does not allege that Apple performs every limitation of the '730 patent, Apple
13 has not infringed, contributed to the infringement of, or induced others to infringe,
14 directly or indirectly, literally or by equivalents, any claim of the '730 patent at least
15 because Apple does not exercise direction or control over a third party that performs any
16 limitations of the '730 patent.

17 **2. Invalidity**

18 Apple identifies the following prior art references that anticipate and/or render
19 obvious the asserted claims of the '730 patent. The following patents and publications
20 are prior art under at least 35 U.S.C. §§ 102(a), (b), (e), (f), and/or (g). Whether a prior
21 art reference anticipates or renders obvious the asserted claims may depend upon claim
22 construction. Apple has identified each prior art patent by its inventor, title, number,
23 country of origin, date of filing, and date of issue. Each prior art publication is
24 identified by its title, date of publication, and, where feasible, author and publisher. For
25 prior art under 35 U.S.C. § 102(b), Apple has identified the item offered for sale or
26 publicly used or known, the date the offer or use took place or the information became
27 known, and the identity of the person or entity which made the use or which made and
28 received the offer, or the person or entity which made the information known or to

1 whom it was made known, to the full extent currently known. To the extent any prior
2 art reference is found not to anticipate any of the asserted claims or AVRS contends that
3 the reference is not anticipatory, Apple contends that the reference nevertheless renders
4 all of the asserted claims obvious either individually or in combination with other
5 references and/or in view of the general knowledge in the art and/or common sense.

- 6 1. Kite et al., *Testing tools in an intelligent network system*, U.S. Patent No.
7 5,737,517 (filed December 21, 1995, issued April 7, 1998).
- 8 2. Barclay et al., *Client/server speech processor recognizer*, U.S. Patent No.
9 5,960,399 (filed December 24, 1997, issued September 28, 1999).
- 10 3. Cohn et al., *Network-based multimedia communications and directory
11 system and method of operation*, U.S. Patent No. 6,064,723 (filed April 7,
12 1998, issued May 16, 2000).
- 13 4. Bijl et al., *Speech to text conversion*, U.S. Patent No. 6,173,259 (filed
14 March 27, 1998, issued January 9, 2001).
- 15 5. Scherer, *Call processing system with call screening*, U.S. Patent No.
16 6,188,751 (filed October 28, 1998, issued February 13, 2001).
- 17 6. Martin, *Controller for use with communications systems for converting a
18 voice message to a text message*, U.S. Patent No. 6,198,808 (filed
19 December 31, 1997, issued March 6, 2001).
- 20 7. Rohler et al., *Phone-assisted clinical document information computer
21 system for use in home healthcare, post-acute clinical care, hospice and
22 home infusion applications*, U.S. Patent No. 6,292,783 (filed March 6,
23 1998, issued September 18, 2001).
- 24 8. Monaco et al., *Method and apparatus for creating modifiable and
25 combinable speech objects for acquiring information from a speaker in an
26 interactive voice response system*, U.S. Patent No. 6,314,402 (filed April
27 23, 1999, issued November 6, 2001).
- 28 9. Engelke et al., *Voice and text transmission system*, U.S. Patent No.
6,504,910 (filed on June 7, 2001, issued on January 7, 2003).
10. King, *Server based speech recognition user interface for wireless devices*,
U.S. Patent No. 6,532,446 (filed August 21, 2000, filed March 11, 2003).
11. Kanevsky et al., *Conversational data mining*, U.S. Patent No. 6,665,644
(filed August 10, 1999, issued December 16, 2003).
12. Anderson et al., *Method for automatically and dynamically switching
between speech technologies*, U.S. Patent No. 6,704,707 (filed March 14,
2001, issued March 9, 2004).
13. Cruickshank, *Captioning for tele-conferences*, U.S. Patent No. 6,816,468
(filed on December 16, 1999, issued on November 9, 2004).

- 1 14. Coffman et al., *Conversational computing via conversational virtual*
2 *machine*, U.S. Patent No. 7,137,126 (filed October 1, 1999, issued
November 14, 2016).
- 3 15. Cyr et al., *Distributed speech recognition system*, U.S. Patent No.
4 7,146,321 (filed October 31, 2001, issued December 5, 2006).
- 5 16. Obilisetty, *Transcription application infrastructure and methodology*,
U.S. Patent No. 7,558,735 (filed December 28, 2000, issued July 7, 2009).
- 6 17. Polcyn, *Method and system for enhanced media messaging integrated*
7 *with real-time communication*, WO 01/13611 (filed on August 11, 2000,
published on February 22, 2001).
- 8 18. Alpdemir, *Voice-interactive marketplace providing time and money*
9 *saving benefits and real-time promotion publishing and feedback*, U.S.
Patent Publication No. 2002/0035474 (filed on March 26, 2001, published
on March 21, 2002).
- 10 19. The NCC Digital Dictate product was publicly known and used in the
11 United States by at least 1994. At least individuals associated with NCC
12 were involved in the creation of the Digital Dictate product.
- 13 20. Dejima, Inc., founded in 1998, provided software solutions that enabled
14 people to interact with computerized content using natural language.
Products included Dejima Direct. At least individuals associated with
Dejima were involved in the creation of the Dejima Direct product.
- 15 21. Both Stanford University and Carnegie Mellon were actively involved in
16 researching speech-to-text and natural language processing before the
priority date of the '730 patent.

17 To the extent AVRS alleges the asserted claims are not anticipated by any of the
18 identified references, the asserted claims are invalid under 35 U.S.C. § 103 as being
19 obvious to a person having ordinary skill in the art of the relevant technology. In the
20 event a particular prior art reference identified above does not anticipate one of the
21 asserted claims, the reference, alone or in combination with one or more of the other
22 references disclosed herein, renders the claim obvious. To be clear, each of the
23 references identified above, alone or in combination with one or more additional
24 references identified above, renders the asserted claims of the '730 patent obvious.

25 Apple further believes that no showing of a specific motivation to combine prior
26 art is required to combine the references disclosed above, as each combination of prior
27 art would have no unexpected result, and at most would simply represent a known
28 alternative to one of ordinary skill in the art. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S.

1 Ct. 1727, 1739-40, (2007) (rejecting the Federal Circuit’s “rigid” application of the
2 teaching, suggestion, or motivation to combine test, instead espousing an “expansive
3 and flexible” approach). The Supreme Court held that a person of ordinary skill in the
4 art is “a person of ordinary creativity, not an automaton” and “in many cases a person of
5 ordinary skill will be able to fit the teachings of multiple patents together like pieces of
6 a puzzle.” *Id.* at 1742. Nevertheless, in addition to the other information contained
7 herein, Apple hereby identifies various motivations and reasons to combine the cited art
8 by way of example, and does not intend such identification to be exhaustive.

9 Clear and logical rationale to combine any of the above-identified references
10 with others exists within the references themselves, as well as within the knowledge of
11 those of ordinary skill in the art at the relevant time. These references identify and
12 address the issues of converting between legacy protocol and performing speech to text
13 translation. Therefore, various reasons to combine the disclosed references existed. At
14 most, the claimed inventions of the asserted patents were nothing more than the obvious
15 combination of familiar elements, yielding entirely predictable results.

16 Under Section 101, “[w]hoever invents or discovers any new and useful process,
17 machine, manufacture, or composition of matter, or any new and useful improvement
18 thereof, may obtain a patent therefore.” 35 U.S.C. § 101. In *Alice*, the Supreme Court
19 established a two-step framework for determining patent-eligibility under Section 101:
20 (1) determine whether the claims are “directed to” a patent-ineligible abstract idea; and
21 (2) if so, consider the elements of the claims—both individually and as ordered
22 combinations—to assess whether the additional elements transform the nature of the
23 claims into a patent-eligible application of the abstract idea. *Alice Corp. Pty. v. CLS*
24 *Bank Int’l*, ___ U.S. ___, 134 S.Ct. 2347, 2350 (2014).

25 The inquiry “focus[es] on the language of the Asserted Claims themselves.” *See*
26 *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (citing
27 *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016)). At
28 step one, “the claims are considered in their entirety to ascertain whether their character

1 as a whole is directed to excluded subject matter.” *FairWarning IP, LLC v. Iatric Sys.,*
2 *Inc.*, 839 F.3d 1089, 1094 (Fed. Cir. 2016).

3 The second step examines the elements of the claims, individually and as a
4 combination, to determine whether they include an “inventive concept.” *See Alice*, 134
5 S. Ct. at 2355. Specifically, courts determine whether the claim elements “transform
6 the claimed abstract idea into a patent-eligible application of the abstract idea.” *Apple,*
7 *Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1242 (Fed. Cir. 2016). “When a claim directed to
8 an abstract idea contains no restriction on how the result is accomplished . . ., then the
9 claim is not patent-eligible.” *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d
10 1307, 1316 (Fed. Cir. 2016). Elements that add “insignificant postsolution activity” fail
11 to transform abstract ideas into patent-eligible inventions. *See Bilski v. Kappos*, 561
12 U.S. 593, 611 (2010) (quoting *Diamond v. Diehr*, 450 U.S. 175, 191-92 (1981));
13 *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (finding claim that
14 recites abstract idea must include “additional features” that are more than “well-
15 understood, routine, conventional activity”) (internal citations omitted).

16 The asserted claims are directed to an abstract idea of recognizing and
17 transcribing human speech without the addition of any inventive concept, relying only
18 on generic components performing their routine functions to achieve the abstract idea.
19 The components are broadly defined in the specification, and point to elements that are
20 both generic and well-known in the art. *See, e.g.*, ’730 patent at 5:50-8:28. The
21 asserted claims also do not address a problem that arises in a particular technological
22 realm. Rather, the claims cover what scribes have been doing for centuries:
23 transcribing, translating, and communicating human speech to text. Courts have
24 repeatedly held similar claims patent-ineligible under Section 101.

25 In order to comply with the enablement requirement of 35 U.S.C. § 112 ¶ 1, the
26 patent specification must teach those skilled in the art how to make and use the full
27 scope of the claimed invention without undue experimentation. *In re Wright*, 999 F.2d
28 1557, 1561 (Fed. Cir. 1993). To comply with the written description requirement of 35

1 U.S.C. § 112 ¶ 1, the patent specification must describe an invention in sufficient detail
2 that one skilled in the art can clearly conclude that the inventor invented the claimed
3 invention. *Regents of the Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1566 (Fed.
4 Cir. 1997). The asserted claims of the asserted patents are invalid for failure to provide
5 a written description of the alleged invention and enable the alleged invention as
6 required by 35 U.S.C. § 112 ¶ 1. Because the original disclosures do not contain
7 sufficient information to show that the inventor possessed the alleged invention at the
8 time of the original filing, and that by reading the specification a person skilled in the
9 art can make and use the claimed inventions, one or more of the asserted claims fail to
10 meet the standard of written specificity under 35 U.S.C. § 112 ¶ 1. For example, the
11 '730 patent does not teach one of skill in the art how to practice “bi-directional
12 translation between the [] user legacy protocol and the uniform system protocol.” This
13 case is in the early stages and the parties have yet to engage in claim construction or
14 exchange infringement and invalidity contentions. Apply reserves the right to
15 supplement its disclosure to identify additional grounds of invalidity under § 112 ¶ 1.

16 The claims of a patent must also “particularly point out and distinctly claim the
17 subject matter which the applicant regards as his invention.” 35 U.S.C. § 112 ¶ 2. A
18 claim is invalid as indefinite if it is not sufficiently precise to permit a potential
19 competitor to determine whether or not it is infringing. *Morton Int’l, Inc. v. Cardinal*
20 *Chem. Co.*, 5 F.3d 1464, 1470 (Fed. Cir. 1993). Claims are required to reasonably
21 apprise those skilled in the art of the scope of the invention. *Amgen Inc. v. Hoechst*
22 *Marion Roussel, Inc.*, 314 F.3d 1313, 1342 (Fed. Cir. 2003). A person of ordinary skill
23 in the art must be able to determine the scope of the claims without undue
24 experimentation. *Geneva Pharms., Inc. v. GlaxoSmithKline PLC*, 349 F.3d 1373, 1383-
25 84 (Fed. Cir. 2003). Specifically, “a patent is invalid for indefiniteness if its claims,
26 read in light of the specification delineating the patent, and the prosecution history, fail
27 to inform, with reasonable certainty, those skilled in the art about the scope of the
28 invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, No. 13-369, 2014 U.S. LEXIS

1 3818, *6 (June 2, 2014). Multiple terms of the asserted claims fail to provide the
2 necessary notice in view of AVRS’s allegations in the Amended Complaint. Apple
3 reserves the right to supplement its disclosure as this case progresses.

4 **3. Breach of Contract**

5 On November 2, 2015, Apple and Dominion Harbor Group, LLC (“Dominion
6 Harbor” or “DHG”), on behalf of AVRS, entered into an NDA for purposes of
7 discussing a potential licensing agreement. In its Counterclaims, Apple alleged breach
8 of contract based upon AVRS’s disclosure of the discussions between Dominion Harbor
9 and Apple and AVRS’s reliance on these communications in support of its willfulness
10 allegations in the First Amended Complaint; such disclosure and reliance are each
11 precluded under the terms of the NDA. The parties have tentatively reached an
12 agreement relating to the breach of contract counterclaim and expect to file a stipulation
13 resolving this claim.

14 **4. Additional Defenses**

15 **a. Failure to State a Claim**

16 AVRS’s Amended Complaint fails to state a claim to relief that is plausible on its
17 face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
18 550 U.S. 544, 570 (2007)). For example, AVRS’s allegations of direct infringement fail
19 to plausibly allege that the limitations of ’730 patent claims are met by the Accused
20 Instrumentalities. AVRS’s allegations of indirect infringement also fail to plausibly
21 allege that Apple had the specific intent to induce end users to engage in known
22 infringement. Finally, AVRS’s allegations of willful infringement fail to plausibly
23 allege egregious conduct. As a result, AVRS has failed to state claim upon which relief
24 may be granted.

25 **b. Limitation of Damages**

26 AVRS’s right to seek damages is limited by, including without limitation, 35
27 U.S.C. §§ 286, 287, and 288, and 28 U.S.C. § 1498.

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c. Waiver and/or Estoppel

AVRS's claims for relief and prayer for damages are barred, in whole or in part, by the equitable doctrines of waiver and/or estoppel. *High Point SARL v. Sprint Nextel Corp.*, 2016 WL 1320782 (Fed. Cir. Apr. 5, 2016). The '730 patent was issued July 7, 2009. The Beta version of Siri was released with the iPhone 4S on October 4, 2011. AVRS alleges that Apple had notice of the '730 patent as early as 2013. As a result, AVRS has waived its right to assert the claims at issue. Apple believed AVRS did not intend to enforce its rights and was materially prejudiced. As a result, AVRS is estopped.

d. Ensnarement of Prior Art

To the extent that AVRS alleges that Apple infringes the '730 patent by equivalents, AVRS's claims for relief are barred, in whole or in part, by ensnaring the prior art. *Jang v. Boston Scientific Corp.*, 872 F.3d 1275 (Fed. Cir. 2017), pet. for cert. pending (No. 17-1332, filed Mar. 21, 2018). During prosecution of the '849 application, AVRS repeatedly took the position that the claimed invention differed from the prior art because it was not directed to a system using "homogenous" protocols. As a result, AVRS is precluded from asserting infringement under the doctrine of equivalents for at least those elements found in the prior art.

e. Prosecution History Estoppel

By reason of proceedings in the United States Patent and Trademark Office, and by reasons of amendments, disclaimers, disavowals, admissions, representations, arguments, and/or statements made by the applicants or on their behalf, AVRS is estopped from construing the claims of the '730 patent to cover and/or include any acts of Apple. *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U. S. 722 (2002). During prosecution of the '849 application, AVRS repeatedly took the position that the claimed invention differed from the prior art because it was not directed to a system using "homogenous" protocols. During prosecution of the '730 patent, all claims of the '730 patent application were rejected multiple times based on prior art obviousness

1 grounds. In order to overcome the rejections, AVRS claimed that what set the claimed
2 invention apart from existing technology was the claimed invention's ability to
3 communicate across multiple legacy protocols. As a result, AVRS is precluded from
4 asserting infringement under the doctrine of equivalents for at least those elements
5 found in the claim scope surrendered by AVRS.

6 **f. Reverse Doctrine of Equivalents**

7 To the extent that AVRS alleges that Apple infringes the '730 patent literally,
8 AVRS's claims for relief are barred, in whole or in part, by the reverse doctrine of
9 equivalents. *Graver Tank & Manufacturing Co. v. Linde Air Products Co.*, 339 U.S.
10 605 (1950). To the extent that the Accused Instrumentalities are found to perform the
11 same or a similar function as any claim of the '730 patent, they do not infringe at least
12 because they perform in a substantially different way.

13 **g. No Equitable Relief**

14 To the extent that AVRS seeks equitable relief, including but not limited to
15 injunctive relief for alleged infringement, the relief it seeks is unavailable because the
16 alleged injury to AVRS is not immediate or irreparable, and AVRS has an adequate
17 remedy at law for any alleged injury. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388
18 (2006).

19 **h. Failure to Mitigate**

20 AVRS's claims for relief and prayer for damages are barred, in whole or in part,
21 because of AVRS's failure to mitigate damages, if any such damages exist. *Cummings*
22 *v. Amtrak Nat'l R.R. Passenger Corp.*, 199 F.3d 1331 (9th Cir. 1999). The '730 patent
23 was issued July 7, 2009. The Beta version of Siri was released with the iPhone 4S on
24 October 4, 2011. AVRS alleges that Apple had notice of the '730 patent as early as
25 2013. As a result, AVRS has failed to its mitigate damages, if any such damages exist.

26 **i. No Willful Infringement**

27 AVRS's claim for enhanced damages and an award of fees and costs against
28 Apple have no basis in fact or law and should be denied at least because Apple has

1 engaged in all relevant activities in good faith, precluding AVRS, even if it were to
2 prevail, from recovering enhanced damages for willful infringement under 35 U.S.C. §
3 284 or recovering its attorneys' fees and/or costs under 35 U.S.C. § 285. *Halo Elecs.,*
4 *Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923 (2016).

5 **V. COMPUTATION OF DAMAGES**

6 Apple does not believe that AVRS has suffered any damages as a result of any
7 conduct by Apple. Apple seeks to recover its reasonable attorneys' fees, costs, and a
8 declaration that this case is exceptional.

9 **VI. INSURANCE AGREEMENTS**

10 Apple is currently unaware of any indemnity or insurance agreements under
11 which any person or entity may be liable to satisfy part or all of a judgment entered in
12 this action or to indemnify or reimburse Apple for payments made to satisfy any
13 judgment.

14 **VII. VERIFICATION**

15 I, Kim Moore, hereby declare under penalty of perjury that these responses
16 are complete and correct as of the time made based upon my knowledge, information
17 and belief formed after a reasonable inquiry.

18 DATED:

19 

20 Kim Moore

21 Senior Litigation Counsel, Apple

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Dated: October 12, 2018

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CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market St., San Francisco, California 94105. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on October 12, 2018, I served a copy of:

DEFENDANT APPLE INC.’S MIDP DISCOVERY RESPONSES

by electronically mailing a true and correct copy through Morrison & Foerster LLP’s electronic mail system to the e-mail address(es) set forth below per the parties’ agreement in accordance with Federal Rule of Civil Procedure 5(b).

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 12th day of October, 2018

Antonio Ramos
(typed)

/s/ Antonio Ramos
Signature

EXHIBIT C

EXHIBIT C

AVRS's and Apple's Positions On Whether AVRS's Counsel Should Be Limited to Bringing Only 20 Pages Of Source Code To A Deposition.

Apple requests that the proposed protective order include a provision limiting AVRS's counsel to bringing only 20 pages of source code to a deposition. AVRS opposes such a limitation. The disputed language and its context is set forth here:

(xv) For depositions, all HIGHLY CONFIDENTIAL – SOURCE CODE materials used by the Receiving Party during a deposition or marked as an exhibit at a deposition will be retrieved by the Receiving Party conducting the deposition at the end of the day. [Entire clause disputed] The Receiving Party shall bring copies of no more than twenty (20) pages total of any printed Source Code and any such printed portion may consist of no more than five (5) pages of a continuous block of Source Code. The Receiving Party shall narrowly tailor such printed copies to those specific portions of Source Code it anticipates using at the deposition.

AVRS POSITION: AVRS objects to any restriction on the number of pages of source code its counsel can bring to a deposition because such a restriction will substantially hamper the ability of AVRS's counsel to obtain deposition testimony from Apple witnesses about relevant functionality reflected in Apple's source code. If AVRS has obtained printouts of Apple source code previously produced by Apple for review, and AVRS's counsel believes in good faith that some or all of that source code is relevant to prove the functionality of Apple's accused products, then AVRS should be able to use the source code to prove infringement by Apple. To place an artificial limit on AVRS's counsel's ability to fully examine Apple witnesses about Apple's source code will deprive AVRS of a full and fair opportunity to prove its case. It also is completely unnecessary in view of the substantial restrictions already in the proposed protective order protecting the confidentiality of any source code produced by Apple.

APPLE POSITION:

For technology companies, source code is often a closely guarded crown jewel. Apple safeguards its source code seriously, and its source code is a highly confidential, highly valuable, proprietary trade secret that comprises a core asset of Apple's business. Access to its source code is restricted to Apple employees on a need-to-know basis after gaining explicit approval from senior management.

Apple initially requested advance notice of what source code would be used at a deposition and that it would print out the source code at the location of the deposition. Such a provision would prevent highly-sensitive source code from being transported through airports, in taxis, and in other public domains without adequate safeguards, thereby exposing the source code to risks of being lost or stolen. *See Valencell, Inc. v. Apple, Inc.*, Case No. 5:16-CV-1-D, 2016 U.S. Dist. LEXIS 173158, at *15 (E.D.N.C. Dec. 12, 2016) (adopting Apple's proposal of advance notice of source code before depositions, over plaintiff's proposal of ability to bring any printed copies of source code to depositions). AVRS would not agree to advance notice.

As a less restrictive alternative, Apple proposed a limit on the number of pages to at least minimize the amount of source code that would be exposed to the risks of travel, proposing no more than 20 pages at an individual deposition, and 5 pages of contiguous source code. AVRS will not agree to any page limits for use at deposition either. Apple respectfully submits that a limit on the pages of source code to be printed for use at a deposition is a reasonable compromise against the alternative of potentially hundreds of pages of highly sensitive source code traveling through unsecured locations. Alternatively, Apple would revert to its previous proposal that AVRS provide advance notice of what it would like to use at a deposition, from the pages that it previously requested to print consistent with the process and presumptive limits discussed in the

agreed-upon sections of the Protective Order, and Apple would print out the requested pages for use at the deposition to avoid their being transported.