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14 ADDITIONAL COUNSEL LISTED ON SIGNATURE  
 15 PAGE

16 **UNITED STATES DISTRICT COURT**  
 17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 18 **OAKLAND DIVISION**

19 EMBLAZE LTD.,  
 20 Plaintiff,  
 21 v.  
 22 APPLE INC., a California Corporation,  
 23 Defendant.

**CASE NO. 4:11-CV-01079 SBA**  
**JOINT CLAIM CONSTRUCTION**  
**AND PREHEARING STATEMENT**  
**Date: September 26, 2012**  
**Time: 9:00 a.m.**  
**Courtroom: 1**

1 Pursuant to Patent L. R. 4-3, Plaintiff Emblaze Ltd. (“Emblaze”) and Defendant Apple  
2 Inc. (“Apple”) by and through their respective undersigned counsel, respectfully submit the  
3 following Joint Claim Construction and Prehearing Statement (“Joint Statement”) concerning  
4 U.S. Patent No. 6,389,473 (the “’473 patent” or “patent-in-suit”).

5 **I. Construction Of Claim Terms On Which The Parties Agree (Patent L. R. 4-3(a))**

6 The parties met and conferred, but were unable to reach agreement on the construction  
7 of any disputed terms.

8 **II. Construction of Claim Terms On Which The Parties Disagree (Patent L. R. 4-3(b))**

9 The chart attached as Exhibit A to this Joint Statement lists the disputed claim  
10 terms/phrases of the ’473 patent, and each party’s proposed constructions with supporting  
11 intrinsic and extrinsic evidence. A copy of the ’473 patent is attached as Exhibit B. Apple’s  
12 supporting extrinsic evidence is attached as Exhibit C and Emblaze’s supporting extrinsic  
13 evidence is attached as Exhibits D and E. The Israeli priority application is attached as Exhibit  
14 F.

15 The parties reserve the right to rely upon any evidence cited by the other party to  
16 support its proposed constructions.

17 Apple submits that by proposing constructions for the disputed terms Apple does not  
18 waive or concede any of its invalidity contentions under 35 U.S.C. § 112.

19 **III. Identification of the Most Significant and Dispositive Terms (Patent L. R. 4-3(c))**

20 **A. Identification of Terms That the Parties Agree are the Most Significant**

Term <sup>1</sup>	Claim Language
#2	providing at the transmitting computer a data stream having a given data rate [Claim 1] <sup>2</sup>
#5	each slice having a predetermined data size associated therewith [Claims 1, 25]
#6	encoding the slices in a corresponding sequence of files [Claim 1] encodes the slices in a corresponding sequence of files [Claim 25]

27 <sup>1</sup> The numbers shown in the “Term” column correspond to the numbering of the claim Terms in attached Exhibit A.

28 <sup>2</sup> The parties dispute the precise language of Term #2 to be construed, as set forth in Emblaze’s Proposed Construction of Term #2 and Apple’s Proposed Construction of Terms #2 and #3 in attached Exhibit A.

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#8	uploading the sequence to a server at an upload rate generally equal to the data rate of the stream [Claim 1]  which uploads the sequence to a server at an upload rate generally equal to the data rate [Claim 25]
#9	such that one or more client computers can download the sequence over the network from the server at a download rate generally equal to the data rate [Claims 1, 25]
#13	uploading and updating an index file containing the index of the file in the sequence that was most recently uploaded [Claim 9]
#14	encoding slices at a plurality of different quality levels [Claim 11]  slices are encoded at a plurality of different quality levels [Claim 40]
#16	wherein dividing the stream into the sequence of slices comprises dividing the stream into a sequence of time slices, each having a predetermined duration associated therewith [Claim 23]  wherein the predetermined data size of each of the slices corresponds to a time duration of the slice [Claim 37]

Emblaze contends that none of the agreed-to terms are potentially case or claim dispositive. Apple contends that each term is potentially case or claim dispositive.

**B. Emblaze’s Identification of Additional Term as Most Significant**

Emblaze contends that the following additional term is among the ten most significant, and that the term is not potentially case or claim dispositive:

Term	Claim Language
#10	decode the sequence [Claims 8, 26]

**C. Apple’s Identification of Additional Term as Most Significant**

Apple contends that the following additional term is among the ten most significant, and that the term is potentially case or claim dispositive:

Term	Claim Language
#3	a data stream having a <b><u>given data rate</u></b> [Claims 1, 25] the data rate of the stream [Claim 1] the data rate [Claims 1, 8, 25, 26]

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6 **IV. Length of Time For Claim Construction Hearing (Patent L. R. 4-3(d))**

7 The claim construction hearing is presently scheduled for September 26, 2012, at  
8 9:00AM, although Emblaze will be making a motion requesting that the Court adjourn this date  
9 because it falls on Yom Kippur. Apple has advised Emblaze that it will not oppose such a  
10 motion. The parties believe the four (4) hours presently allotted should be sufficient for the  
11 claim construction hearing, but to the extent the Court requires a tutorial on the same day as the  
12 claim construction hearing, the parties request six (6) total hours to accommodate an hour for  
13 each party's tutorial.

14 **V. Witnesses To Be Called At Claim Construction Hearing (Patent L. R. 4-3(e))**

15 The parties do not intend to call any witnesses at the claim construction hearing (but do  
16 intend to have persons who will present a summary and explanation of the technology at issue  
17 if the Court requests a tutorial on the day of the hearing).

18 Because Emblaze's principals reside and work in Israel, Emblaze requests that the  
19 tutorial be scheduled to take place immediately prior to the claim construction hearing so that  
20 Emblaze's principals only have to make one trip to northern California for this phase of the  
21 case.

22 Respectfully submitted,

23 DATED: April 2, 2012

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**DECLARATION OF CONSENT**

Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under penalty of perjury that concurrence in the filing of this document has been obtained from James J. DeCarlo, counsel for Defendant Apple Inc.

DATED: April 2, 2012

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