

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

APPLE INC. and NEXT SOFTWARE,)	
INC. (f/k/a NeXT COMPUTER, INC.),)	
)	
Plaintiffs and)	
Counterclaim Defendants,)	
)	Case No. 10-CV-662 (BBC)
v.)	
)	
MOTOROLA, INC. and MOTOROLA)	JURY TRIAL DEMANDED
MOBILITY, INC.,)	
)	
Defendants and)	
Counterclaim Plaintiffs.)	

**APPLE INC.'S AND NEXT SOFTWARE INC.'S RESPONSE TO
MOTOROLA'S NOTICE OF SUPPLEMENTAL AUTHORITY
CONCERNING CLAIM CONSTRUCTION**

Plaintiffs Apple Inc. (“Apple”) and NeXT Software, Inc. (“NeXT”) respectfully respond to Motorola’s Notice of Supplemental Authority Concerning Claim Construction, D.I. 148, to which Motorola attaches the public version of the Initial Determination by an Administrative Law Judge of the United States International Trade Commission In the Matter of CERTAIN PERSONAL DATA AND MOBILE COMMUNICATION DEVICES AND RELATED SOFTWARE, Investigation No. 337-TA-710 (“ALJ Initial Determination”). Motorola asserts that this Court should consider the ALJ Initial Determination as authority for construction of the term “dynamic binding” in claim 1 of U.S. Patent No. 5,481,721 (“the ’721 patent”), which is presently before the Court in

connection with the pending claim construction proceedings. For the reasons that Apple has already fully briefed, Apple respectfully submits that the Court should not follow the ALJ Initial Determination as to the construction of “dynamic binding” and should instead construe the term consistent with Apple’s proposed construction here.

The ALJ’s construction of “dynamic binding” was incorrectly premised on reading a preferred “Objective C” embodiment of the ’721 patent into the claims. ALJ Initial Determination at 220-21. Apple explained in its claim construction briefing that limiting the claims to the Objective C preferred embodiment is improper because (1) the ’721 patent specification teaches that the “invention may be implemented in *any type of computer system or programming or processing environment*,” and thus is not limited to an Objective C environment; and (2) dependent claim 8 of the ’721 patent is itself limited to Objective C, underscoring the incorrectness of reading such a limitation into independent claim 1, from which claim 8 depends. *See* Apple’s Opening Claim Construction Brief, D.I. 91, at 123-27 (June 17, 2011); Apple’s Responsive Claim Construction Brief, D.I. 106, at 16-22 (July 15, 2011). The ALJ Initial Determination did not address these points. In addition, the Cox and NeXTSTEP references cited in the ALJ Initial Determination contradict its construction of “dynamic binding” and indeed support Apple’s construction, for the reasons discussed in Apple’s claim construction briefing. *See* Apple Opening Brief at 126-27; Apple Responsive Brief at 18. Apple’s briefing also cites additional support for the plain and ordinary meaning of “dynamic binding” as specifying that binding occurs during runtime (as opposed to binding at compile time), consistent with Apple’s proposed construction, which is not referenced in the ALJ Initial Determination. *See id.*

Accordingly, for the reasons explained by Apple in its claim construction briefing, Apple respectfully submits that the ALJ's construction of "dynamic binding" should not be followed here.

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s/ James D. Peterson

James D. Peterson (# 1022819)
jpeterson@gklaw.com
GODFREY & KAHN, S.C.
One East Main Street, Suite 500
P.O. Box 2719
Madison, WI 53701-2719
Telephone: (608) 257-3911
Facsimile: (608) 257-0609

Jill J. Ho
jill.ho@weil.com
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065
Telephone: (650) 802-3000
Facsimile: (650) 802-3100

Mark G. Davis
mark.davis@weil.com
WEIL, GOTSHAL & MANGES LLP
1300 Eye Street, N.W., Suite 900
Washington, DC 20005
Telephone: (202) 682-7000
Facsimile: (202) 857-0940

Elizabeth Stotland Weiswasser
elizabeth.weiswasser@weil.com
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Matthew D. Powers
matthew.powers@tensegritylawgroup.com
Steven S. Cherensky
steven.cherensky@tensegritylawgroup.com
TENSEGRITY LAW GROUP LLP
201 Redwood Shores Parkway, Suite 401
Redwood Shores, CA 94065
Telephone: 650-802-6000
Facsimile: 650-802-6001

Robert T. Haslam
rhaslam@cov.com
COVINGTON & BURLING LLP
333 Twin Dolphin Drive, Suite 700
Redwood Shores, CA 94065-1418
Telephone: (650) 632-4700
Facsimile: (650) 632-4800
Attorneys for Plaintiffs Apple Inc.
and NeXT Software, Inc.

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