

**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,

v.

Case No. 10-CV-662 (BBC)

MOTOROLA, INC. and MOTOROLA  
MOBILITY, INC.

Defendants and  
Counterclaim-  
Plaintiffs

**MOTION OF PLAINTIFFS AND COUNTERCLAIM-DEFENDANTS APPLE INC. AND  
NEXT SOFTWARE, INC. REQUESTING CLAIM CONSTRUCTION AND CLAIM  
CONSTRUCTION HEARING**

## I. REQUEST FOR CLAIM CONSTRUCTION

Plaintiffs and Counterclaim-Defendants Apple Inc. and NeXT Software, Inc. (“Apple”) move for construction of six terms that appear in the claims of four of the six patents asserted by Defendants and Counterclaim-Plaintiffs Motorola, Inc. and Motorola Mobility, Inc. (“Motorola”).<sup>1</sup> Specifically, Apple moves for a construction of the following claim terms:

<b>Motorola Patent No.</b>	<b>Claim Term</b>
U.S. Patent No. 5,490,230	“long term energy value for [the/a] frame of information”
	“extracting from [the recovered signal/the speech coded information] at least one parameter”
U.S. Patent No. 5,319,712	“transmit overflow sequence number”
U.S. Patent No. 5,572,193	“transmitting . . . from the subscriber unit to the communication system”
U.S. Patent No. 6,175,559	“preamble sequence”
	“outer code”

Apple provides its proposed constructions and support thereof in its accompanying brief. The six claim terms selected by Apple from the Motorola patents-in-suit appear in every asserted claim of their respective patents, and as further explained in Apple’s accompanying brief, if the Court adopts Apple’s constructions of these terms, Apple will move for summary judgment of non-infringement with respect to those patents of which the claim terms are a part.

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<sup>1</sup> The Motorola patents-in-suit are U.S. Patent Nos. 5,311,516 (the “516 patent”), 5,319,712 (the “712 patent”), 5,490,230 (the “230 patent”), 5,572,193 (the “193 patent”), 6,175,559 (the “559 patent”) and 6,359,898 (the “898 patent”).

Apple further understands that Motorola is moving for construction of nine terms that appear in the claims of the Apple patents-in-suit.<sup>2</sup> Those claim terms are as follows:

<b>Apple Patent No.</b>	<b>Claim Term</b>
U.S. Patent Nos. RE 39,486 and 5,929,852	“software component architecture”
U.S. Patent No. 6,424,354	“connection information”
U.S. Patent No. 6,275,983	“during runtime”
U.S. Patent No. 5,969,705	“events for controlling said user interface”
U.S. Patent No. 5,946,647	“linking actions to the detected structures”
U.S. Patent No. 5,566,337	“storing means for storing a specific set of events of which said at least one event consumer is to be informed”
U.S. Patent No. 5,481,721	“dynamic binding”
U.S. Patent Nos. 5,455,599	“means for capturing state information and rendering information at the grafport object”
U.S. Patent No. 6,493,002	“programming modules”

Although Apple does not agree that these terms require construction by the Court at this time, in accordance with the briefing schedule set by the Court, Apple also addresses its proposed constructions of these nine terms in its accompanying brief.

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<sup>2</sup> The Apple patents-in-suit are U.S. Patent Nos. 5,455,599 (the “599 patent”), 5,481,721 (the “721 patent”), 5,519,867 (the “867 patent”), 5,566,337 (the “337 patent”), 5,838,315 (the “315 patent”), 5,915,131 (the “131 patent”), 5,929,852 (the “852 patent”), 5,946,647 (the “647 patent”), 5,969,705 (the “705 patent”), 6,275,983 (the “983 patent”), 6,343,263 (the “263 patent”), 6,424,354 (the “354 patent”), 6,493,002 (the “002 patent”), 7,479,949 (the “949 patent”) and RE 39,486 (the “486 patent”).

## **II. REQUEST FOR HEARING**

Apple further requests that the Court hold a claim construction hearing regarding at least four claim terms from the Motorola patents-in-suit as to which Apple is seeking construction. Specifically, Apple requests the Court hear argument regarding the terms “long term energy value for [the/a] frame of information” and “extracting from [the recovered signal/the speech coded information] at least one parameter” found in the asserted claims of Motorola’s ’230 patent and the terms “preamble sequence” and “outer code” found in the asserted claims of Motorola’s ’559 patent.

As discussed in greater detail in the accompanying brief, Motorola’s ’230 and ’559 patents relate to the complex field of wireless telecommunication systems. Specifically, Motorola’s ’230 patent falls within the field of speech coding, which is the process of creating a compressed, digital version of human speech that can be transmitted efficiently from one location to another. The speech coding technology described in the ’230 patent involves digital processing of speech signals, and is built on a foundation that includes numerous interrelated technical concepts. A hearing would provide the parties an opportunity to answer any questions the Court may have about the technology, language, and concepts within the patent regarding the terms “long term energy value for [the/a] frame of information” and “extracting from [the recovered signal/the speech coded information] at least one parameter.”

Motorola’s ’559 patent concerns a method of generating a “preamble sequence” used by a mobile handset to begin a communication session with the base station in a wireless CDMA system. Again, understanding the claimed invention and the disputed issues will require an appreciation of a number of concepts relating to the underlying code, or instructions, used to form these “preamble sequences.” Given the complexity of the technology at issue, a hearing

would provide a useful opportunity to answer any questions the Court may have about the technology and legal arguments regarding the terms “preamble sequence” and “outer code.”

Finally, Apple requests that the Court hold a claim construction hearing regarding certain of the disputed claim terms of the Apple patents-in-suit. Because it is Motorola who is requesting construction of those terms, however, Apple is unable at this juncture to specify which terms from the Apple patents should be the subject of a hearing. Apple will therefore identify the specific terms as to which it believes a hearing would be appropriate in its response to Motorola’s motion for claim construction.

Dated: June 17, 2011

Respectfully submitted,

/s/ Robert T. Haslam

Robert T. Haslam (CA Bar No. 71134)

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

Robert D. Fram (CA Bar No. 126750)

rfram@cov.com

Christine Saunders Haskett (CA Bar No. 188053)

chaskett@cov.com

Samuel F. Ernst (CA Bar No. 223963)

sernst@cov.com

Winslow B. Taub (CA Bar No. 233456)

wtaub@cov.com

COVINGTON & BURLING LLP

One Front Street

San Francisco, CA 94111-5356

Telephone: (415) 591-6000

Facsimile: (415) 591-6091

Matthew D. Powers

[matthew.powers@weil.com](mailto:matthew.powers@weil.com)

Steven S. Cherenky  
Jill J. Ho  
[jill.ho@weil.com](mailto: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](mailto: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](mailto:elizabeth.weiswasser@weil.com)  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

James Donald Peterson (# 1022819)  
One East Main Street, Suite 500  
P.O. Box 2719  
Madison, WI 53701-2719  
Telephone: (608) 257-3911  
Facsimile: (608) 257-0609  
*Attorneys for Plaintiffs Apple Inc.  
and NeXT Software, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2011, I caused these documents to be electronically filed with the Clerk of the Court using the ECF system, which will make these documents available to all counsel of record for viewing and downloading from the ECF system.

- **MOTION OF PLAINTIFFS AND COUNTERCLAIM-DEFENDANTS APPLE INC. AND NEXT SOFTWARE, INC. REQUESTING CLAIM CONSTRUCTION AND CLAIM CONSTRUCTION HEARING**
- **MEMORANDUM IN SUPPORT OF MOTION OF PLAINTIFFS AND COUNTER-CLAIMANTS APPLE INC. AND NEXT SOFTWARE, INC. REQUESTING CLAIM CONSTRUCTION**
- **DECLARATION OF CHRISTINE SAUNDERS HASKETT IN SUPPORT OF PLAINTIFFS AND COUNTERCLAIM-DEFENDANTS APPLE INC. AND NEXT SOFTWARE, INC.'S CLAIM CONSTRUCTION MEMORANDUM (AND EXHIBITS THERETO)**
- **DECLARATION OF DR. LEONARD J. CIMINI IN SUPPORT OF PLAINTIFFS AND COUNTERCLAIM-DEFENDANTS APPLE INC. AND NEXT SOFTWARE, INC.'S CLAIM CONSTRUCTION MEMORANDUM**

*/s/ Robert T. Haslam* \_\_\_\_\_  
Robert T. Haslam