

**United States District Court**  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

SIMPLEAIR, INC.

v.

AWS CONVERGENCE  
TECHNOLOGIES, INC., ET AL.

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Case No. 2:09-cv-289

**ORDER ON MOTIONS IN LIMINE**  
**AND TO REFILE EXHIBIT LISTS AND OBJECTIONS**

The Court makes the following rulings on the parties' motions in limine<sup>1</sup> (Doc. Nos. 466, 468):

**I. DEFENDANTS' MOTIONS IN LIMINE**

- 1) Defendants' motion to preclude SimpleAir from referencing the revenue or profits associated with Defendants' products or Defendants' overall economic status, profitability, or relative financial strength.

This motion is **GRANTED-IN-PART** and **DENIED-IN-PART**. SimpleAir is prohibited from discussing the total revenue or profits of Defendants' products. SimpleAir may discuss the incremental change in revenue, but only to the limited scope Dr. Srinivasan addresses it in his expert report. Additionally, SimpleAir is not to address Defendants' overall economic status, profitability, or relative financial strength. But SimpleAir may discuss market share, market power, and the size of the Defendants relative to SimpleAir.

- 2) Defendants' motion to preclude SimpleAir from offering evidence or testimony regarding unrelated litigation, damages awards, and patent purchases.

This motion is **GRANTED** and made applicable to all parties.

- 3) Defendants' motion to preclude SimpleAir from presenting argument, evidence, or testimony referencing third-party service providers and end users as joint infringers.

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<sup>1</sup> All rulings on motions in limine are preliminary and are not final evidentiary rulings. To the extent the Court grants a motion in limine, the parties are instructed to approach the bench prior to addressing the issue in the jury's presence. To the extent a motion is denied, parties must make their objection at trial.

This motion is **DENIED**.

- 4) Defendants' motion to preclude SimpleAir from offering evidence or testimony regarding priority dates that contradict SimpleAir's representations to the Court.

This motion is **DENIED**.

- 5) Defendants' motion to preclude SimpleAir from referencing the PricewaterhouseCoopers opinion.

This motion is **GRANTED**.

- 6) Defendants' motion to preclude SimpleAir from suggesting that Defendants willfully infringe or copied the patents-in-suit or that Apple does not respect intellectual property.

This motion is **GRANTED**.

- 7) Defendants' motion to preclude SimpleAir from referencing statements made by Apple's expert, Dr. Wicker, regarding privacy issues concerning the accused products.

This motion is **GRANTED**.

- 8) Defendants' motion to any evidence, testimony, or reference from Dr. Knox and Mr. Mills regarding why RIM allegedly cannot move its BPDS servers outside the United States, or the cost of doing so.

This motion is **GRANTED**.

- 9) Defendants' motion to preclude any evidence, testimony, or reference to infringement of products and services other than BPDS.

This motion is **GRANTED**.

- 10) Defendants' motion to preclude SimpleAir from disclosing the specific locations of RIM's servers and relays within identified countries.

This motion is **GRANTED**.

## **II. PLAINTIFF'S MOTIONS IN LIMINE**

- 1) The parties are precluded from offering expert testimony from witnesses (including their own employees and their party witnesses) other than their designated experts.

This motion is **GRANTED** and made applicable to all parties. But non-expert witnesses are permitted to testify on facts within their personal knowledge.

- 2) The parties are precluded from offering any expert opinions or bases that are not disclosed in their expert reports or depositions.

This motion is **GRANTED-IN-PART**. Experts are limited to opinions disclosed in their reports. But any opinion disclosed only during deposition is precluded.

- 3) Defendants are precluded from presenting any evidence or argument of invalidity based on comparing prior art references to the accused products or to Plaintiff's infringement contents, evidence, or analysis.

This motion is **GRANTED**. The Court's claim construction (Doc. No, 240) remains the controlling construction and neither party is to deviate from those constructions at trial.

- 4) Defendants are precluded from offering uncorroborated testimony regarding the invalidity of the asserted claims.

This motion is **DENIED**. This motion is premature and more properly raised by a Rule 50 motion at the close of evidence.

- 5) Defendants are precluded from offering percipient testimony regarding the Apple Mobile Message System or RIM Gate service beyond that disclosed by their Rule 30(b)(6) deponents on those issues.

This motion is **DENIED**.

- 6) Apple is precluded from presenting argument or evidence regarding unproduced license agreements.

This motion is **DENIED**.

- 7) Defendants are precluded from presenting evidence or argument that their accused instrumentalities practice the claims of any of their own patents or any patents of third parties.

This motion is **DENIED**.

- 8) Defendants are precluded from presenting irrelevant evidence or argument regarding their company character and achievements, including evidence about their companies' awards, achievements, innovations, or the history of their founding.

This motion is **GRANTED**.

- 9) Defendants are precluded from introducing evidence relating to the reexamination proceedings or making arguments that disparage the Patent Office or its performance of its duties during the original prosecution.

This motion is **GRANTED**.

- 10) Defendants are precluded from presenting evidence or argument relating to SimpleAir's litigation or settlements with third parties, except to the extent necessary to assert their license and exhaustion defenses.

This motion is **GRANTED** and made applicable to all parties. The potential for prejudice and jury confusion substantially outweigh any probative value of the settlement induced license agreements. *See Fenner Invs., Ltd. v. Hewlett-Packard Co.* No. 6:08-CV-273, 2010 WL 1727916, at 1–3 (E.D. Tex. Apr. 28, 2010) (discussing the rationale for excluding license agreements obtained as a result of litigation).

When the Court instructed the parties on filing their pretrial materials, the Court stated that “[a] **list of exhibits (including demonstrative exhibits)** and a **designation of portions of depositions** that a party in good faith intends to offer at trial must be filed by each party” (Doc. No. 450). The Court also instructed that “[t]he parties also must adhere to the meet and confer requirement set forth in Local Rule CV-7(h) when filing their objections, which will help to narrow issues that are *actually* in dispute.”

Defendants' most recently filed exhibit list contains 3235 exhibits encompassing a list 412 pages long (Doc. No. 469-10). Plaintiff's most recently filed list contains 619 exhibits encompassing a list approximately 32 pages long. This results in 3854 exhibits collectively.

As for deposition designations, Apple's designation list is approximately 68 pages long (Doc. No. 469-5). RIM's deposition designation list covers 17 pages (Doc. No. 469-7). Lastly, SimpleAir's deposition designation list spans 33 pages (Doc. No. 469-2).

It is evident that none of the parties complied with the Court's previous order. None of the parties can reasonably argue in good faith that it intends to offer that many exhibits or that much deposition testimony at trial. Clearly, the parties disregarded the good faith and meet and confer instructions.

In light of the parties' disregard of the Court's previous order, and in light of the above rulings, the Court **ORDERS** the parties refile compliant exhibit and deposition designation lists. Exhibit lists are limited to no more than 200 exhibits per party. Deposition designations are limited to a total of ten (10) hours of testimony per party. Exhibit lists and deposition designation are to be refiled by **Wednesday, April 4, 2012 at 12:00 p.m.** Written detailed categorized objections are due by **Wednesday, April 4, 2012 at 8:00 p.m.**

**It is SO ORDERED.**

**SIGNED this 3rd day of April, 2012.**



MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE