

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

DOCUMENT SECURITY
SYSTEMS, INC.,

Plaintiff,

v.

CREE, INC.,

Defendant.

Civil Action No. 2:17-cv-04263-JVS-JCG

JOINT RULE 26(F) REPORT

Scheduling Conference:
October 16, 2017 at 11:30 a.m.
Courtroom 10C

Before: The Hon. James V. Selna

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Local Rule 26-1, and the Court's August 25, 2017 Order Setting Rule 26(f) Scheduling Conference (Dkt. 22), Plaintiff Document Security Systems, Inc. ("DSS" or "Plaintiff") and Defendant Cree, Inc. ("Cree" or "Defendant") (collectively "the Parties"), by and through their respective counsel of record, conferred, starting on September 25, 2017, and discussed the various procedural and substantive matters pertinent to the instant litigation and hereby jointly submit this Joint Rule 26(f) Report. The Parties further note that substantially similar Joint Rule 26(f) Reports have also been submitted in each of the other related cases scheduled for a concurrent Case Management Conference on October 16, 2017.¹

¹ Those other cases are as follows (the "Related Cases"):

Case No. 8:17-cv-00981-JVS-JCG, *DSS v. Seoul Semiconductor Co., Ltd. et al.*;

Case No. 2:17-cv-05184-JVS-JCG, *DSS v. OSRAM GmbH. et al.*; and

Case No. 2:17-cv-06050-JVS-JCG, *DSS v. LITE-ON, INC. et al.*

DSS proposed that the parties to these cases file a consolidated Rule 26(f) report, but some Defendants requested the submission of separate reports. DSS notes that Case No. 2:17-cv-04273-JVS-JCG, *DSS v. Everlight Electronics Co., Ltd. et al.*, is also a related case, but that the Court has set that case for a different Case Management Conference date of December 18, 2017.

I. SYNOPSIS

Plaintiff's statement: This is a patent litigation action. On July 13, 2017, DSS filed a complaint against Defendant alleging infringement of U.S. Patent Nos. 6,949,771 (the "'771 patent"), 7,524,087 (the "'087 patent"), 7,256,486 ("the '486 patent") and 7,919,787 ("the '787 patent") (collectively, the "patents-in-suit"). The patents-in-suit are assigned to DSS, a global leader in brand protection, digital security solutions and anti-counterfeiting technologies.

The patents-in-suit claim technologies used in Light-Emitting Diode ("LED") lighting products. For example, the '771 patent is directed to "a light source suitable for surface mounting onto a printed circuit board" with the light source including "a planar substrate with a centrally positioned aperture." (Abstract, '771 patent). The '087 patent is directed to "a lead frame with a plurality of leads and a reflector housing formed around the lead frame." (Abstract, '087 patent). The '486 patent is directed to "a packaging device [that] includes a substrate, a mounting pad, a connecting pad and an interconnecting element" where the "packaging device has a volume that is only a few times that of the semiconductor die and can be fabricated from materials that can withstand high-temperature die attach processes." (Abstract, '486 patent). Finally, the '787 patent is directed to a "semiconductor device."

DSS has asserted that various of Defendant's LED products infringe the patents-in-suit and that Defendant's infringing products further include light bulbs, displays and fixtures that contain infringing LED components. DSS has asserted that Defendant infringes the patents-in-suit both directly under 35 U.S.C. §271(a) and by inducing others to infringe the patents under 35 U.S.C. §271(b).

Defendant's statement: Defendant Cree, Inc. ("Cree") is a North Carolina Corporation, headquartered in Durham, North Carolina, which manufactures and sells light emitting diode ("LED") products in the United States. The patents-at-issue in this matter were acquired from a Korean non-practicing entity based on an

apparent scheme to obtain licensing revenue from various manufacturers of LED products. According to Plaintiff's SEC filings, this plan has been funded by Brikel Key Investment LP ("BKI") which has paid six million dollars to cover attorney's fees for carrying out this scheme. The scheme includes bringing several allegedly related cases each of which including different products and different combinations of patents. Defendant Cree maintains that the infringement allegations made by Plaintiff against it have been inadequately pled, were not appropriately investigated prior to the filing of this suit and are otherwise meritless.

II. LEGAL ISSUES

This is an action for patent infringement. The principal issues are likely to be as follows:

1. Whether Plaintiff has standing to bring suit;
2. Whether Defendant has infringed the patents-in-suit in violation of 35 U.S.C. §§ 271(a), (b);
3. Whether the patents-in-suit meet the conditions for patentability and satisfy all of the requirements set forth in the provisions of 35 U.S.C. §§ 101, 102, 103, and 112;
4. Whether the patents-in-suit are enforceable;
5. The proper construction of the asserted claims of the patents-in-suit;
6. The amount of damages, if any, under 35 U.S.C. § 284;
7. Whether Plaintiff's alleged damages are limited under 35 U.S.C. §§ 286 and/or 287;
8. Whether attorneys' fees, costs, or expenses are recoverable under 35 U.S.C. §§ 284 and/or 285; and
9. Relief, including attorney's fees and costs, to be awarded to Defendant Cree.

III. DAMAGES

Plaintiff's statement: The Defendant does not publicly disclose their revenue or sales for the products accused of infringement by DSS. DSS cannot therefore provide a realistic range of provable damages. At this time, DSS intends to seek damages in the form of a reasonable royalty.

Defendant's statement: Defendant Cree intends to seek attorney's fees, costs and other sanctions as the Court may determine to be appropriate in the event the patents-in-suit are found not infringed, unenforceable and/or invalid.

IV. INSURANCE

The Parties are unaware of any insurance coverage relating to the subject matter of this litigation.

V. MOTIONS TO ADD PARTIES, AMEND PLEADINGS OR TRANSFER VENUE

Plaintiff's statement: DSS does not currently believe it is likely that it will file a motion to (i) add other parties or claims or (ii) transfer venue. DSS, however, reserves the right to file a motion to add other parties or claims, or amend its pleadings if the need become apparent through discovery or other proceedings.

Defendant's statement: Defendant Cree has filed a motion to transfer venue and that motion has been fully briefed and is scheduled for hearing on October 16, 2017. Defendant Cree reserves the right to file a motion to dismiss for lack of Plaintiff's standing or other issues that may require amendment of the Complaint.

VI. DISCOVERY PLAN

A. Changes to Disclosures under Rule 26(a)

The Parties do not believe that any changes to the disclosures under Rule 26(a) are necessary.

B. Subjects on Which Discovery May Be Needed and Whether Discovery Should Be Phased

The Parties do not propose phasing discovery.

The Parties expect that discovery may be needed on at least the following subjects:

- The patents-in-suit;
- Defendant's knowledge of the patents-in-suit;
- Licensing of the patents-in-suit;
- Defendant's LED products and products incorporating infringing components;
- Defendant's development, production, and sales of the relevant products;
- Plaintiff's acquisition of the patents-in-suit, any related commercial activities, and licensing activities and practices;
- Plaintiff's infringement allegations and investigations concerning the same;
- Conception, reduction to practice, and prosecution of the patents-in-suit;
- Prior art to the patents-in-suit;
- Any secondary considerations of non-obviousness;
- Expert discovery;
- Defendant's patent licensing practices/activities;
- Any affirmative defenses ultimately raised by Defendant;
- Any counterclaims ultimately raised by Defendant.

C. Discovery Conducted So Far

The Parties agree to exchange initial disclosures no later than October 30, 2017.

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