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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

COMCAST CABLE
COMMUNICATIONS, LLC,

     Plaintiff,

  v.

OPENTV, INC., and NAGRAVISION SA,

     Defendants.

                                  /

No. C 16-06180 WHA

**ORDER RE PILOT MOTIONS
FOR SUMMARY JUDGMENT**

INTRODUCTION

In this patent action for declaratory judgment of non-infringement, as part of a pilot procedure to more quickly and efficiently reach the merits, both sides move for summary judgment on one asserted claim of one patent-in-suit. Plaintiff's motion for summary judgment is **GRANTED** as to non-infringement and **DENIED AS MOOT** as to invalidity. Defendants' motion for summary judgment of infringement is **DENIED**.

STATEMENT

The procedural background of this action thus far has been summarized in a prior order (Dkt. No. 145 at 1–2) and need not be repeated here. In brief, plaintiff Comcast Cable Communications, LLC, brought this action for declaratory judgment of non-infringement against defendants and patent owners OpenTV, Inc., and Nagravision SA (collectively, "OpenTV"), both subsidiaries of Kudelski SA, after OpenTV approached Comcast to negotiate a licensing deal based on the premise that certain Comcast products infringed Kudelski's patent

1   portfolio. After an initial case management conference, a case management order required each

2   side to bring a pilot summary judgment motion on one chosen claim — OpenTV, to set forth its

3   strongest case for infringement, and Comcast, to set forth its strongest case for non-

4   infringement or invalidity (Dkt. No. 82). The parties agreed to both cross-move for summary

5   judgment on Claim 1 of United States Patent No. 6,895,595 ("the '595 patent") (Dkt. No. 114).

6   The technology at issue in this case concerns the provision of interactive television

7   experiences to subscribers. As of May 1998, when the '595 patent was filed, television

8   providers wanting to provide such experiences would typically transmit to a subscriber's

9   television a broadcast signal that included both audio-video and interactive data. An interactive

10   television receiver connected to the television, known as a "set-top box," would receive the

11   signal and separate the audio-video data from the interactive data. The set-top box would then

12   feed the audio-video data consisting of the television program to the television and use the

13   interactive data to execute an interactive television application and generate interactive graphics

14   or audio to be displayed along with the television program (Dkt. No. 149-2 at 1:30–57).

15   This transmission method consumed expensive bandwidth and was further constrained

16   by the limited amount of memory available on set-top boxes. To alleviate these restrictions,

17   television providers would often divide applications into "modules" of data and transmit the

18   modules to all subscribers in a repeating cycle called a "carousel," from which set-top boxes

19   could extract any needed modules (while skipping unneeded ones) and reassemble the modules

20   to run applications. The carousel method conserved set-top box memory by enabling the

21   sharing of commonly-used modules between different applications and saved bandwidth by

22   reducing the amount of data transmitted (*see id.* at 2:9–17; 150-11 at 28:10–19, 30:17–32:25).

23   Carousels, however, did not differentiate between different subscribers who needed

24   different applications, and the necessary components of any given application could reside in

25   different carousels or in modules available at different times. A subscriber who "missed" a

26   particular module needed to execute an application would therefore have to wait for the

27   carousel to come back around with that module (*see* Dkt. No. 149-2 at 2:17–20).

28   Against this technological backdrop, the '595 patent describes and claims an improved

"system and method for managing modules" that shifts transmission of some modules to a

1   second signal received over a second input port while monitoring both signals for modules

2   needed for applications (*see id.* at 2:20–31). For example, "[t]he system may provide for

3   modules which are in greater demand among subscribers of the system to be transmitted to all

4   of the subscribers via a broadcast channel, while modules which are in less demand are

5   transmitted to individual subscribers via a modem channel" (*id.* at 3:4–9).

6   Specifically, Claim 1 recites:

7   An interactive television receiver for retrieving modules for an
                    interactive television application, the receiver comprising:

8   a first input port configured to receive a broadcast signal;
                             a second input port configured to receive a second signal;

9   a microprocessor coupled to said first input port and said
                                    second input port, said microprocessor being

10   configured to:
                             execute said interactive television application;

11   store one or more requests generated by said
                                    interactive television application for one or

12   more corresponding requested interactive
                                     television application modules;

13   monitor both said broadcast signal received by said
                                    first input port and said second signal

14   received by said second input port for said
                                     requested interactive television application

15   modules;
                             retrieve said requested interactive television

16   application modules from one or both of
                                     said broadcast signal and said second signal;

17   and
                             store said retrieved interactive television application

18   modules;
                    a data storage device coupled to said microprocessor and

19   configured to store said requests and said retrieved
                             interactive television application modules.

20   The carousel method is not expressly mentioned in Claim 1 but is expressly and repeatedly

21   referenced in other claims and in the rest of the specification.

22   OpenTV accuses 16 models of set-top boxes, each of which runs Comcast's Xfinity X1

23   platform, of infringing Claim 1. According to OpenTV, all 16 models work the same way with

24   respect to Claim 1 and any differences are irrelevant to non-infringement (Dkt. No. 148-3 at 4,

25   8). Each of the accused set-top boxes includes a *single* coaxial cable input that receives a

26   modulated composite signal from Comcast's cable head-end. The modulated composite signal

27   contains both "linear video," representing television programs intended for multiple subscribers,

28   and "IP data" intended for a specific subscriber. Inside the set-top box, a front-end systems-on-

chip captures and digitizes the composite signal. Tuners in the front-end filter and segregate the digitized signal into a "linear video" signal and an "IP data" signal, each of which is demodulated and sent to a different part of a video systems-on-chip for further processing. The "linear video" signal is ultimately displayed to the subscriber as a video stream, whereas the "IP data" signal is passed on to applications that use the data (*see* Dkt. No. 148-5 at 12–13, 38).

Comcast's X1 platform, first released in 2012, uses a "cloud-based" design significantly different from the technology that informed the '595 patent in 1998. The accused set-top boxes do not download or run applications, nor do they use carousels to receive modules for local processing. Instead, each set-top box contains software called the Cross-Platform Runtime Environment ("XRE") Receiver, which serves as a display vehicle for applications executed on Comcast's remote XRE Servers. When a set-top box receives user input, it passes that input along to an XRE Server. In response, the XRE Server executes the application and issues commands to the XRE Receiver on the set-top box, instructing it on what to display and how to display it. This kind of cloud-based design requires low latency and high bandwidth because it depends on the prompt transmission of messages going both ways between set-top boxes and remote servers. It is practicable now due to modern cable network infrastructure, which has significantly improved on the latency and bandwidth constraints of older networks like those that existed in 1998 (*see* Dkt. Nos. 150-26 ¶¶ 73–74, 77; 148-3 at 7–8).

Comcast describes the '595 patent as an outdated solution to an outdated problem in light of modern advances in cable network infrastructure, citing its own X1 platform as the proof, and moves for summary judgment of non-infringement and invalidity based on obviousness. OpenTV insists that the invention described in the '595 patent nevertheless remains a core part of Comcast's X1 platform and moves for summary judgment of infringement. This order follows full briefing on each side's motion for summary judgment (*i.e.*, three rounds of briefing per side) and oral argument.

ANALYSIS

1.   LEGAL STANDARD.

Summary judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. F.R.C.P. 56(a). A genuine dispute

1   of material fact is one that "might affect the outcome of the suit under the governing law."

2   *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). In deciding a motion for

3   summary judgment, the court must believe the non-movant's evidence and draw all justifiable

4   inferences in their favor. *Id.* at 255.

5   **2.   NON-INFRINGEMENT (OR INFRINGEMENT).**

6   Comcast contends it is entitled to summary judgment of non-infringement as to Claim 1

7   because the accused set-top boxes do not have two distinct "input ports" that receive two

8   distinct signals or "monitor both" signals for requested modules (Dkt. No. 150-4 at 6–19).

9   Instead, Comcast claims, the coaxial cable connected to each set-top box is the *sole* input port

10   for a composite signal transmitted to the set-top box. OpenTV disagrees that this feature of the

11   accused set-top boxes is dispositive, and theorizes that other circuitry *inside* the accused set-top

12   boxes actually meets each limitation of Claim 1. To determine whether summary judgment of

13   non-infringement (or infringement) is warranted, this order must first construe Claim 1 to

14   determine its scope and then determine whether the properly-construed Claim 1 reads on

15   Comcast's accused set-top boxes. *See Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d

16   1298, 1304 (Fed. Cir. 1999).

17   Claim terms "are generally given their ordinary and customary meaning," *i.e.*, "the

18   meaning that the term would have to a person of ordinary skill in the art in question at the time

19   of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005). To

20   properly construe a claim, a court must examine the claim, the rest of the specification, and, if

21   in evidence, the prosecution history. *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d

22   1313, 1324 (Fed. Cir. 2003). When legal "experts" offer views on claim construction that

23   conflict with each other or with the patent itself, such conflict does not create a question of fact

24   or relieve the court of its obligation to construe the claim according to the tenor of the patent.

25   *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 983 (Fed. Cir. 1995).

26   To prove infringement, OpenTV must show that Comcast's accused set-top boxes meet

27   each properly-construed limitation of Claim 1 either literally or under the doctrine of

28   equivalents. *See Deering Precision Instruments, LLC v. Vector Distribution Sys., Inc.*, 347 F.3d

     1314, 1324 (Fed. Cir. 2003). To establish literal infringement, all of the elements of the claim

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