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

FASTVDO LLC,
Plaintiff,

v.

AT&T MOBILITY LLC, et al.,
Defendants.

Consolidated Case No.: 3:16-cv-00385-
H-WVG
LEAD CASE

Member Cases:
3:16-cv-00386-H-WVG
3:16-cv-00394-H-WVG
3:16-cv-00395-H-WVG
3:16-cv-00396-H-WVG

**ORDER GRANTING DEFENDANTS'
MOTIONS FOR JUDGMENT ON
THE PLEADINGS**

[Doc. Nos. 290, 291, 292, 293, 297.]

1 FASTVDO LLC,
2
3
4 v.
5
6 LG ELECTRONICS MOBILECOMM
7 U.S.A., INC.,
8 Defendant.

Case No.: 3:16-cv-02499-H-WVG

**ORDER GRANTING
DEFENDANT’S MOTION FOR
JUDGMENT ON THE PLEADINGS**

[Doc. No. 35.]

9
10 On October 17, 2019, October 18, 2019, October 25, 2019, October 30, 2019, and
11 November 18, 2019, respectively, Defendants Apple Inc., LG,¹ Samsung,² ZTE (USA),
12 Inc., and Huawei³ each filed a motion for judgment on the pleadings. (Doc. Nos. 290, 291,
13 292, 293, 297.)⁴ On October 18, 2019, Defendant LG Electronics Mobilecomm U.S.A.,
14 Inc. filed a motion for judgment on the pleadings in the related case. (16-cv-2499-Doc.
15 No. 35.) On November 13 and 21, 2019, the Court took the matters under submission.
16 (Doc. Nos. 296, 300.) On November 18, 2019, FastVDO filed a response to Defendants’
17 motions for judgment on the pleadings. (Doc. No. 295; 16-cv-2499-Doc. No. 38.) Apple,
18 LG, ZTE, and Huawei filed replies. (Doc. Nos. 299, 301, 302, 303; 16-cv-2499-Doc. No.
19 39.) For the reasons below, the Court grants Defendants’ motions for judgment on the
20 pleadings.

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22
23 ¹ Defendant “LG” refers to LG Electronics, Inc. and LG Electronics U.S.A., Inc.

24 ² Defendant “Samsung” refers to Samsung Electronics America, Inc. and Samsung Electronics Co.,
25 Ltd.

26 ³ Defendant “Huawei” refers to Huawei Technologies Co., Ltd., Huawei Device Co., Ltd., Huawei
27 Technologies USA, Inc., Huawei Device USA, Inc., and Futurewei Technologies, Inc.

28 ⁴ All docket citations in this order are to the docket in Case No. 16-cv-385 unless otherwise noted
in the citation.

Background

1
2 On June 2, 2015, Plaintiff FastVDO LLC filed several complaints for patent
3 infringement against Defendants Apple, LG, Samsung, ZTE, and Huawei, among others,⁵
4 in the United States District Court for the Eastern District of Texas, alleging infringement
5 of U.S. Patent No. 5,850,482. (Doc. No. 1, Compl.; 16-cv-386-Doc. No. 1, Compl.; 15-
6 cv-394-Doc. No. 1, Compl.; 16-cv-395-Doc. No. 1, Compl.; 16-cv-396-Doc. No. 1,
7 Compl.) Specifically, Plaintiff alleges that Defendants' smartphones infringe and induce
8 infringement of the '482 patent. (See, e.g., Doc. No. 32, FAC ¶¶ 15–22.)

9 On September 28, 2015, Plaintiff filed an amended complaint against Defendants
10 Apple and AT&T. (Doc. No. 32, FAC.) On January 29, 2016, the Eastern District of Texas
11 court consolidated the actions for all pretrial issues, except venue. (Doc. No. 58.)

12 On February 11, 2016, the Eastern District of Texas court granted the parties' joint
13 motion to transfer venue and transferred the consolidated action from the Eastern District
14 of Texas to the Southern District of California. (Doc. Nos. 74, 75.) On April 5, 2016, the
15 Court issued a scheduling order for the consolidated action. (Doc. No. 125.)

16 On June 16, 2016, Apple filed a petition for *inter partes* review with the Patent Trial
17 and Appeal Board, challenging the validity of all of the asserted claims and other claims of
18 the '482 patent on obviousness grounds. (Doc. No. 217-2, Cappella Decl. Ex. A.) On June
19 16, 2016, Microsoft and Samsung also filed a petition for IPR with the PTAB, challenging
20 the validity of four of the six asserted claims and other claims of the '482 patent on
21 obviousness grounds. (Id. Ex. B.)

22 On December 16, 2016, the PTAB granted Apple's petition and instituted IPR2016-
23

24
25 ⁵ On September 9, 2015, the Eastern District of Texas district court dismissed Defendant Dell, Inc.
26 without prejudice. (16-cv-395-Doc. No. 31.) On April 29, 2016, the Court dismissed Defendants NEC
27 Corporation and NEC Corporation of America with prejudice. (Doc. No. 132.) On October 21, 2016, the
28 Court dismissed Defendants AT&T Mobility LLC and AT&T Services, Inc. without prejudice. (Doc. No.
199.) On January 6, 2017, the Court dismissed Defendant Microsoft Mobile Inc. with prejudice. (Doc.
No. 235.) Apple, Samsung, LG, Huawei, and ZTE remain as the current defendants in Consolidated Case
No. 16-cv-385.

1 01203, and the PTAB granted Microsoft and Samsung's petition and instituted IPR2016-
2 01179. (Doc. No. 217-2, Cappella Decl. Exs. C, D.) On January 23, 2017, the Court
3 granted Defendants' motions to stay and stayed the present actions – Case Nos. 16-cv-385,
4 16-cv-386, 16-cv-394, 16-cv-395, 16-cv-396, and 16-cv-2499 – pending the IPR
5 proceedings. (Doc. No. 269.)

6 On December 11, 2017, the PTAB issued a final written decision pursuant to 35
7 U.S.C. § 318(a) in IPR 2016-01203, ordering that claims 1-3, 5, 7-10, 12-14, 16, 22-25,
8 28, and 29 of the '482 patent are unpatentable under 35 U.S.C. § 103. (Doc. No. 281-2,
9 Ex. 2 at 58.) On December 11, 2017, the PTAB also issued a final written decision pursuant
10 to 35 U.S.C. § 318(a) in IPR 2016-01179, ordering that claims 1-3, 5, 6, 12-14, 16, 17, and
11 28 of the '482 patent are unpatentable under 35 U.S.C. § 103. (Doc. No. 281-1, Ex. 1 at
12 40-41.) As a result of the PTAB's final written decisions, all of the claims asserted in this
13 litigation against all of the Defendants, *i.e.*, claims 1, 12, 14, 17, 22, 28, and 29, were found
14 to be unpatentable. (Doc. No. 281 at 1.) In light of this, on January 16, 2018, the Court
15 administratively closed the consolidated case, the member cases, and the related case.
16 (Doc. No. 287.)

17 FastVDO subsequently appealed the PTAB's final written decisions in IPR 2016-
18 01179 and IPR 2016-01203 to the Federal Circuit. On September 25, 2018, the Federal
19 Circuit issued a mandate dismissing FastVDO's appeal of IPR2016-01179 pursuant to
20 Federal Rule of Appellate Procedure 42(b). FastVDO LLC v. Samsung Elecs. America,
21 Inc., Case No. 18-1547, Docket No. 47 (Fed. Cir. Sept. 25, 2018). On September 30, 2019,
22 the Federal Circuit issued a mandate dismissing FastVDO's appeal of IPR2016-01203
23 pursuant to Federal Rule of Appellate Procedure 42(b). FastVDO LLC v. Apple Inc., Case
24 No. 18-1548, Docket No. 47 (Fed. Cir. Sept. 30, 2019). By the present motions,
25 Defendants Apple, Samsung, ZTE, Huawei, LG, and LG Electronics Mobilecomm move
26 pursuant to Federal Rule of Civil Procedure 12(c) for judgment on the pleadings, arguing
27 that FastVDO's claims for patent infringement should be dismissed as moot. (Doc. No.
28 290-1 at 1-2; Doc. No. 291-1 at 1-2; Doc. No. 292-1 at 1-2; Doc. No. 293-1 at 1-2; Doc.

1 No. 297-1 at 1-2; 16-cv-2499-Doc. No. 35-1 at 1-2.)

2 Discussion

3 **I. Legal Standards for a Rule 12(c) Motion for Judgment on the Pleadings**

4 In patent cases, a motion for judgment on the pleadings pursuant to Federal Rule of
5 Civil Procedure 12(c) is governed by the “the procedural law of the regional circuit.”
6 Amdocs (Israel) Ltd. v. Openet Telecom, Inc., 841 F.3d 1288, 1293 (Fed. Cir. 2016).
7 Under Federal Rule of Civil Procedure 12(c), “[a]fter the pleadings are closed—but early
8 enough not to delay trial—a party may move for judgment on the pleadings.” “Judgment
9 on the pleadings is properly granted when[, accepting all factual allegations in the
10 complaint as true,] there is no issue of material fact in dispute, and the moving party is
11 entitled to judgment as a matter of law.” Chavez v. United States, 683 F.3d 1102, 1108
12 (9th Cir. 2012). The Ninth Circuit has explained that the standard for deciding a Rule 12(c)
13 motion “is ‘functionally identical’” to the standard for deciding a motion to dismiss under
14 Federal Rule of Civil Procedure 12(b)(6). Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys.,
15 Inc., 637 F.3d 1047, 1055 n.4 (9th Cir. 2011) (quoting Dworkin v. Hustler Magazine Inc.,
16 867 F.2d 1188, 1192 (9th Cir. 1989)); accord Chavez, 683 F.3d at 1108.

17 A complaint will survive a Rule 12(b)(6) motion to dismiss if it contains “enough
18 facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly,
19 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual
20 content that allows the court to draw the reasonable inference that the defendant is liable
21 for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “A pleading
22 that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of
23 action will not do.’” Id. (quoting Twombly, 550 U.S. at 555). “Nor does a complaint
24 suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” Id.
25 (quoting Twombly, 550 U.S. at 557). Accordingly, dismissal for failure to state a claim is
26 proper where the claim “lacks a cognizable legal theory or sufficient facts to support a
27 cognizable legal theory.” Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104
28 (9th Cir. 2008).

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