IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EVOLVED WIRELESS, LLC,	)	
	)	
Plaintiff,	)	
	)	
V.	)	Civil Action No. 15-542-JFB-SRF
	)	
APPLE INC.,	)	
	)	
Defendant.	)	

_____

EVOLVED WIRELESS, LLC,	)	
	)	
Plaintiff,	)	
	)	
V.	)	Civil Action No. 15-543-JFB-SRF
	)	
HTC CORPORATION and	)	
HTC AMERJCA, INC.,	)	
	)	
Defendants.	)	

_____

EVOLVED WIRELESS, LLC,	)	
	)	
Plaintiff,	)	
	)	
V.	)	Civil Action No. 15-544-JFB-SRF
	)	
LENOVO GROUP LTD., LENOVO	)	
(UNITED STATES) INC., and	)	
MOTOROLA MOBILITY,	)	
	)	
Defendants.	)	

_____

1

EVOLVED WIRELESS, LLC,   )
)
    Plaintiff,   )
)
  V.   )   Civil Action No. 15-545-JFB-SRF
)
SAMSUNG ELECTRONICS CO., LTD.)
and SAMSUNG ELECTRONICS)
AMERICA, INC.   )
)
    Defendants.   )
_____)

EVOLVED WIRELESS, LLC,   )
)
    Plaintiff,   )
)
  V.   )   Civil Action No. 15-546-JFB-SRF
)
ZTE (USA) INC.,   )
)
    Defendant.   )
_____)

EVOLVED WIRELESS, LLC,   )
)
    Plaintiff,   )
)
  V.   )   Civil Action No. 15-547-JFB-SRF
)
MICROSOFT CORPORATION,   )
MICROSOFT MOBILE OY and   )
NOKIA INC.,   )
)
    Defendants.   )

This matter is before the court on defendant Apple Inc.'s ("Apple") motion for a summary judgment of non-infringement, D.I. 193.[1]   These are actions for patent

_____

[1] All docket items ("D.I.") refer to Civil Action No. 15-542-JFB-SRF unless otherwise stated. Corresponding motions in the related cases are: D.I. 207 in *Evolved Wireless LLC ("Evolved") v. HTC Corp. and HTC Am., Inc.* ("*HTC*"), 1:15cv543; D.I. 182 in *Evolved v. Motorola Mobility, LLC and Lenovo Corp.* ("*Motorola*"), 1:15cv544; D.I. 223 in *Evolved v. Samsung Elecs. Co., Samsung Elecs. Am. Inc.,*

infringement pursuant 35 U.S.C. § 101, et seq.   This Court has jurisdiction under 28 U.S.C. § § 1332, 1331, 1332, 1338(a), 1367, and 2201.   The above-captioned cases have been consolidated for discovery.

Plaintiff Evolved Wireless, LLC ("Evolved") alleges infringement of certain claims of United States Patent Nos. 7,809,373 ('the '373 patent") and 7,881,236 ("the '236 patent"), which involve LTE wireless communication systems.[2]   Apple and the defendants in related cases (collectively, "the defendants") move for a summary judgment of noninfringement.   They contend that the record shows they do not infringe the asserted claims of the '373 patent and the '236 patent as a matter of law.

I.   FACTS

A.   Background

Relevant background and facts are set out in the Court's previous orders and will be repeated only as necessary to the Court's opinion.   Briefly, the '373 Patent contains independent claims covering methods for performing a "handover" of a terminal to a target base station, that is, of "transmitting" and "receiving" "access information" performed by the source base station (claim 1), the target base station (claim 8), and the mobile device (claim 15).   Additionally, claims 24 and 25 are directed at "mobile terminals," or mobile devices, capable of performing the claimed handover.   The inventions claimed in the '373 Patent are directed to an improved handover of a mobile device from one base station to another by using the claimed "dedicated preamble."   A

_____

("*Samsung*"), 1:15cv545; D.I. 196 in *Evolved v. ZTE (USA) Corp.* ("*ZTE*"), 1:15cv546; and D.I. 197 in *Evolved v. Microsoft Corp.* ("*Microsoft*"), 1:15cv547.
[2] Evolved has asserted claims 15 through 21 and 23 through 25 (covering the operation of mobile devices) against all defendants, as well as claims 1 through 10, 12, and 13 (covering the operation of base stations) against the Samsung defendants.

preamble is an identifier used, for example, to synchronize and identify a mobile device to a base station. D.I. 245, Ex. 3, '373 Patent at 2, 6. In prior art communications systems, preambles had been randomly selected. The claims of the '373 Patent address the problem of disruption of the handover between base stations that results when more than one mobile device selects a preamble at the same time. *Id.* at 6. The '373 Patent solved this problem by communicating a "previously defined signature"— i.e., the claimed "dedicated preamble"—prior to the handover procedure. *Id.*

The '236 Patent relates to the improved random-access procedure incorporated into the LTE telecommunications standard. The random-access procedure is used to establish communications between a mobile device and a base station and consist of four message exchanges between the base station and mobile device. The asserted claims of the '236 Patent ensure that the right data is transmitted in the third of those four messages.

      B.   Parties' Contentions

           1.   Claim Construction

As a threshold matter, the defendants' motion is based in part on arguments involving the claim language "preamble," "dedicated preamble" and "preamble index" in the '373 Patent and interpretation of the word "if" in the '236 Patent. Those arguments are also addressed as an "additional matter" in the Proposed Pretrial Order (D.I. 448) in this case. In the parties' Proposed Pretrial Order, Apple contends that there are two claim construction issues that will require resolution before the jury hears the case. Apple states that there is a fundamental dispute regarding the meaning of "dedicated preamble" in the asserted claims of the '373 patent—namely, whether the scope of the

term excludes a preamble index. It also contends that there is a fundamental dispute regarding the meaning of "if" in certain limitations of the asserted claims of the '236 patent based on Evolved's representations about the scope of the claims in *inter partes* review ("IPR") proceedings. It contends that both issues arose after the Court issued its claim construction order.

Evolved asserts there is no such dispute on claim construction and further contends that Apple has waived the issue by not raising it earlier. Evolved contends that the defendants' experts understand the full scope of these terms and applied the full breadth of that understanding in their Invalidity Reports.   It argues that the defendants should be precluded from arguing a more limited construction than that considered by the experts.

2.   Infringement

With respect to the '373 patent, the defendants argue that Evolved amended the asserted claims of the '373 patent during prosecution to require transmitting "a dedicated preamble used only for a specific terminal" from a base station to a terminal in order to overcome the prior art. They contend that, in a related but unasserted patent, United States Patent No. 8,219,097 ("the '097 Patent"), Evolved separately claimed transmitting "an index of the dedicated preamble." They argue that construing "dedicated preamble" in the '373 patent to include a preamble index would render the limitation "an index of the dedicated preamble" in the '097 Patent redundant. They contend that because the '373 and '097 Patents share a common specification and use the same claim language in near-identical fashion, the term "dedicated preamble" must mean the same thing in both. Although the defendants concede that "dedicated

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

fastcase®
Smarter legal research.