

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No.: 1:22-cv-22706-SCOLA/GOODMAN**

BELL NORTHERN RESEARCH, LLC,

Plaintiff,

v.

HMD AMERICA, INC., HMD GLOBAL  
OY, SHENZHEN CHINO-E  
COMMUNICATION CO. LTD., TINNO  
MOBILE TECHNOLOGY CORP.,  
SHENZHEN TINNO MOBILE CO., LTD.,  
TINNO USA, INC., UNISOC  
TECHNOLOGIES CO. LTD.,  
WINGTECH TECHNOLOGY CO. LTD.,  
WINGTECH INTERNATIONAL, INC.,  
BEST BUY CO., INC., BEST BUY  
STORES L.P., TARGET CORP.,  
WALMART INC.,

Defendants.

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**DEFENDANTS' MEMORANDUM OF LAW REGARDING DISCOVERY DISPUTE  
OVER INADEQUACY OF PLAINTIFF'S PATENT INFRINGEMENT CONTENTIONS**

On March 9, 2023, the Court granted leave to address if BNR's Disclosure of Asserted Claims and Infringement Contentions ("ICs") comply with P.R. 3-1. (ECF No. 152.) BNR's IC's purport to accuse over 70 products of multiple forms of patent infringement, but come nowhere close to complying with this Court's Patent Rules. Defendants must defend each allegation *and* prepare responsive contentions *and* document productions; given the deficiencies below, Defendants cannot. Taken together, these deficiencies represent such disregard for the Patent Rules that BNR's contentions should be stricken in their entirety, or if not, limited as described below.

***BNR violated P.R. 3-1(c).*** This provision requires a "chart identifying specifically where each claim limitation is found "within *each Accused Instrumentality.*" ECF No. 125 at 11 (emphasis added). BNR asserts thirteen patents against over "at least" seventy named Accused Instrumentalities. *See*, Ex. 4 at 1; Ex. 5 at 1.<sup>1</sup> Yet BNR charted far fewer products than named.<sup>2</sup>

Defendants know of no rulings from this Court that permit exemplary claim charts under P.R. 3.1(c). This rule is based on the rule from the Northern District of California ("N.D. Cal."), ECF No. 125 at 9 n.1, where representative charts are allowed "only" when "supported by adequate analysis showing that the accused products share the same critical characteristics." *Geovector Corp. v. Samsung Elecs. Co.*, No. 16-CV-02463, 2017 WL 76950, at \*5 (N.D. Cal. Jan. 9, 2017) (citations omitted). Each accused product must "allegedly infringe[] in the same way." *Finjan, Inc. v. Proofpoint, Inc.*, No. 13-CV-05808, 2015 WL 1517920, at \*3 (N.D. Cal. Apr. 2, 2015). The needed "analysis cannot just be based on the patentee's say-so." *Cap Co. v. McAfee, Inc.*, No. 14-cv-05068, 2015 WL 4734951, at 2\* (N.D. Cal. Aug. 10, 2015). A patentee must "look to the

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<sup>1</sup> The source materials emailed to the Court on March 1 are attached as Exs. 1-6 for convenience.

<sup>2</sup> BNR named "at least" 71 instrumentalities for Patent Nos. RE 48,629, 8,396,072, and 8,792,432, but charted only 1; it named "at least" 50 for Patent Nos. 8,204,554 and 7,319,889 but charted only 11; it named "at least" 43 for Patent Nos. 8,416,862, 7,564,914, and 7,957,450 but charted only 9; and it named "at least" 11 for Patent No. 6,941,156 but charted only 8; 58 have no chart. *See* Ex.6.

information available to it to explain how the non-charted products work in the same material fashion as those charted.” *Silicon Lab’s Inc. v. Cresta Tech. Corp.*, No. 14-CV-03227, 2015 WL 846679, at \*3 (N.D. Cal. Feb. 25, 2015); *see also Cap Co.*, 2015 WL 4734951, at \*2.

N.D. Cal. judges have rejected attempts “to use a single chart for each patent to chart claims against hundreds of products,” including “various kinds of cell phones, tablets, and phablets,” with no “analysis why these products, many of which are not even the same general type of product, can be charted representatively....” *Geovector*, 2017 WL 76950, at \*5. Nor have they allowed such charts with no assertion “that the [products] all contain a common infringing solution (or solutions) and thus infringe each patent in the exact same way.” *Finjan*, 2015 WL 1517920, at \*4. Such “combined . . . claim charts do not provide the level of specificity required” by the rules. *Id.*

BNR has known of HMD’s products since at least October 2021 and knows that they are manufactured to different specifications by others, including many defendants BNR targets here.<sup>3</sup> Yet BNR did not chart “each Accused Instrumentality” as required. P.R. 3-1(c) is silent about representative charts, but even if allowed, BNR’s only justification was bald, conclusory assertions “that each element of each infringed claim is found within each Accused Instrumentality as shown in infringement claim charts” attached to the ICs. Ex. 1 at 9-10; Ex. 2 at 9-10; Ex. 3 at 9-10. BNR’s Contentions for uncharted products should be stricken; the ICs should be limited to the specific Accused Instrumentalities listed per patent; and “at least” should be stricken from the definition of “Accused Instrumentalities” to enforce the limit. *See Finjan*, 2015 WL 1517920, at \*6.

***BNR violated P.R. 3-1(d).*** To establish so-called “indirect” infringement (namely, “contributory infringement” or “inducement”), a patentee must show direct infringement by

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<sup>3</sup> BNR’s also improperly served generic, identical contentions against these codefendants (HMD manufacturers and customers) that identify no specific, separate alleged infringing acts by them.

someone other than the indirect infringer. *Joy Techs., Inc. v. Flakt, Inc.*, 6 F.3d 770, 774 (Fed. Cir. 1993). For “inducement” a patentee must also show “that the accused inducer took an affirmative *act* to encourage infringement ....” *Info–Hold, Inc. v. Muzak LLC*, 783 F.3d 1365, 1372 (Fed. Cir. 2015) (emphasis added). P.R. 3-1(c) thus requires, for “each claim that is alleged to have been indirectly infringed,” “an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement.” ECF No. 125 at 11. But BNR provided only boilerplate and conclusory allegations in its ICs and claim charts stating that Defendants “induce[] others to make, use, sell, import, or offer for sale in the United States, or ha[ve] induced others to make, use, sell, import, or offer for sale in the past, without authority, products, equipment, or services that infringe the Asserted Claims....” Ex. 1 at 10; *see also* Ex. 4 at 1. Such “generic allegations” fail to put a defendant “on notice of what, exactly, it does to induce infringement.” *Cap Co.*, 2015 WL 4734951, at \*3; *see also Bender v. Maxim Integrated Prods., Inc.*, No. C 09-01152, 2010 WL 1135762, at \*3 (N.D. Cal. Mar. 22, 2010). BNR’s allegations of indirect infringement should be stricken.

***BNR violated P.R. 3-1(e).*** When a claim limitation in an accused product is not “literally” present, a patentee may assert the “doctrine of equivalents” (“DOE”) to show an “‘equivalence’ between the elements of the accused product or process and the claimed elements of the patented invention.” *Intendis GMBH v. Glenmark Pharms. Inc., USA*, 822 F.3d 1355, 1360 (Fed. Cir. 2016) (citation omitted). The accused element cannot be “‘substantially different’ from any claim element that is literally lacking;” it must “perform substantially the same function in substantially the same way to achieve substantially the same result.” *Kraft Foods, Inc. v. Int’l Trading Co.*, 203 F.3d 1362, 1371 (Fed. Cir. 2000) (citation omitted). P.R. 3-1(e) thus requires “an explanation of each function, way, and result that is equivalent an[d] why any differences are not substantial” for

any DOE claim. ECF No. 125 at 12. This rule is based on the rule in the Northern District of Illinois, *id.* at 9 n.1, where courts strike “impermissibly vague” contentions that “do not sufficiently address why the purported aspects of the Accused Products are equivalent and why any differences are insubstantial.” *Oil-Dri Corp. of Am. v. Nestle Purina Petcare Co.*, No. 15 C 1067, 2018 WL 1071443, at \*5 (N.D. Ill. Feb. 26, 2018); *see also Morningware, Inc. v. Hearthware Home Prods., Inc.*, No. 09 C 4348, 2010 WL 3781254, at \*7 (N.D. Ill. Sept. 22, 2010). Similarly, in N.D. Cal, a “generic reservation of [the] right to argue” DOE, “completely unrelated to specific claim elements or the allegedly infringing technology,” does not suffice. *Finjan*, 2015 WL 1517920, at \*10.

BNR included the same boilerplate, conclusory contention at the start of each claim chart:

... BNR believes and contends that such elements are met under the doctrine of equivalents. More specifically, in its investigation and analysis of the Accused Instrumentalities, BNR did not identify any substantial differences between the elements of the patent claims and the corresponding features of the Accused Instrumentalities, as set forth herein. In each instance, the identified feature of the Accused Instrumentalities performs at least substantially the same function in substantially the same way to achieve substantially the same result as the corresponding claim element.

Ex. 4 at 2. It included an even more generic contention in the ICs. *See* Ex. 1 at 11; Ex. 2 at 11; Ex. 3 at 11. This boilerplate fails to explain “each” function, way, and result, and fails to show that all differences between the claimed and accused elements are insubstantial, thus violating P.R. 3-1(e). BNR’s allegations under the doctrine of equivalents should be stricken.

***BNR violated P.R. 3-1(b).*** Twenty-nine of BNR’s asserted claims cover methods, not devices.<sup>4</sup> For such claims, P.R. 3-1(b) requires a patentee to identify “each accused ... process, method, [or] act.” Devices, standing alone, cannot infringe method claims; only the *use* of devices *in infringing ways* can infringe. *See, e.g., Adaptix, Inc. v. Apple, Inc.*, 78 F. Supp. 3d 952, 954

<sup>4</sup> They are Patent No. 8,204,554 claims 8-9, 11-14; Patent No. 7,319,889 claims 8-9, 11-12, Patent No. 8,416,862 claims 1-4; Patent No. 7,564,914 claims 13, 17, 21; Patent No. 7,957,450 claims 1-3, 21; Patent No. 6,696,941 claims 1, 3, 6; and Patent No. 8,792,432 claim 12.

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