[redacted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUMMIT 6 LLC

Plaintiff,

v.

RESEARCH IN MOTION CORP., RESEARCH IN MOTION LIMITED SAMSUNG ELECTRONICS CO. LTD., SAMSUNG TELECOMMUNICATIONS AMERICA LLC, MULTIPLY INC., FACEBOOK, INC., AND PHOTOBUCKET CORP.,

Defendants.

CIVIL ACTION NO. 3:11-CV-00367-O

[redacted]

SUPPLEMENTAL EXPERT REPORT OF DR. V. THOMAS RHYNE REGARDING THE INVALIDITY OF THE ASSERTED CLAIMS OF U.S. PATENTS NOS. 6,895,557 AND 7,765,482

1. INTRODUCTION

1. In this litigation Plaintiff Summit 6 LLC ("Summit 6") has asserted that the defendants listed above infringe various claims of U.S. Patents Nos. 6,895,557 ("the '557 patent") and 7,765,482 ("the '482 patent"). This supplemental expert report addresses issues related to the claims being asserted against defendants Samsung Electronics Co. Ltd. and Samsung Telecommunications America LLC (collectively "Samsung") and Facebook, Inc. ("Facebook") (collectively "Defendants").

2. In this supplemental expert report I address additional evidence recently produced by Fenwick & West LLP on or around August 31, 2012 [redacted]

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

[redacted]

[redacted] including evidence about Point2's Web-Based Image Submission Tool and Point2 Demo (the "Fenwick Material"). This evidence was produced after I submitted my August 1, 2012 Expert Report Regarding the Invalidity of the Asserted Claims of U.S. Patents Nos. 6,895,557 and 7,765,482 (hereinafter my "Opening Expert Report").[1]

3. In addition, in this supplemental expert report I address whether there are any secondary indicia of nonobviousness attributable to the alleged inventions of the '557 and '482 patents. [redacted]

[redacted]

[redacted]

[1] I incorporate my Opening Expert Report in its entirety herein by reference.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

[redacted]

1.1. Retention and Qualifications

6. My retention and qualifications for forming the opinions set forth in this supplemental expert report were summarized in ¶¶ 2-5 and 15-29 of my Opening Expert Report, and were addressed more fully in my resume which was attached as **Exhibit A** to my Opening Expert Report.

1.2. The Scope of this Supplemental Expert Report

7. For this supplemental expert report, I have been asked to address the additional evidence provided in the Fenwick Material regarding [redacted], and to address whether there are any secondary indicia of nonobviousness attributable to the alleged invention claimed in the '557 and '482 patents. This supplemental expert report provides my opinions on those issues and the bases for those opinions.

1.3. Preparation of This Report and Materials Considered

8. In my Opening Expert Report and **Exhibit B** attached to that expert report, I provided the bases for my understanding and the list of materials considered for that report. *See* Opening Expert Report ¶¶ 30-32 and **Exhibit B.**

9. In writing this supplemental expert report, the additional materials I have reviewed and considered include:

[redacted]

10. A more complete list of the documents and materials I reviewed and considered in forming the opinions set forth in this supplemental expert report and in my Opening Expert Report, including the materials listed in **Exhibit B** and the additional material considered for this supplemental expert report, is attached hereto as **Amended Exhibit B**.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

[redacted]

1.4. Overview of Analysis and Opinions Formed

11. This supplemental expert report explains the analysis I have done for this report and the opinions I have formed based on the study and analysis outlined above. To summarize:

[redacted]

d. It is my opinion that there are no secondary indicia of nonobviousness attributable to the '557 and '482 patents, as I more fully explain in § 4 below.

2. MY UNDERSTANDING OF THE RELEVANT LEGAL PRINCIPLES

12. In my Opening Expert Report, I explained my understanding of the currently applicable legal principles which I have used for my opinions in my Opening Expert Report and this supplemental expert report. *See* Opening Expert Report at ¶¶ 34-60. I incorporate those previously provided legal principles fully herein by reference, to the extent those principles are applicable to the issues in this supplemental expert report.

2.1. Secondary Factors of Non-Obviousness

13. As I noted in my Opening Expert Report, I understand that a patent cannot be properly granted for subject matter that would have been obvious to a person of ordinary skill in the art at the time of the alleged invention, and that a patent claim directed to such obvious subject matter is invalid under 35 U.S.C. § 103. It is also my understanding that in assessing the obviousness of

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

[redacted]

claimed subject matter one should evaluate obviousness over the prior art from the perspective of one of ordinary skill in the art at the time the invention was made (and not from the perspective of either a layman or a genius in that art). It is my further understanding that the question of obviousness is to be determined based on:

a. The scope and content of the prior art;

b. The difference or differences between the subject matter of the claim and the prior art (whereby in assessing the possibility of obviousness one should consider the manner in which a patentee and/or a Court has construed the scope of a claim);

c. The level of ordinary skill in the art at the time of the alleged invention of the subject matter of the claim; and

d. Any relevant objective factors (the "secondary indicia") indicating non-obviousness.

14. To the extent the claims of the '557 and '482 patents are anticipated, it is my understanding it is unnecessary to consider whether those claims are obvious in light of the prior art. I also understand that if a *prima facie* showing of obviousness is made, a plaintiff can rebut that showing with secondary factors of nonobviousness attributable to the alleged invention.

15. I understand that secondary factors indicating non-obviousness can include the following evidence:

a. Commercial success of the products or methods covered by the patent claims;

b. A long-felt need for the alleged invention;

c. Failed attempts by others to make the alleged invention;

d. Copying of the alleged invention by others in the field;

e. Unexpected results achieved by the alleged invention;

f. Praise of the alleged invention by the alleged infringer or others in the field;

g. The taking of licenses under the patent by others and the nature of those licenses;

h. Expressions of surprise by experts and those skilled in the art at the subject matter of the claim; and

i. Whether the patentee proceeded contrary to accepted wisdom of the prior art.

16. It is also my understanding that, in order to be relevant to the issue of obviousness, such secondary considerations must have some nexus to the claimed invention.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

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.