IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

M2M SOLUTIONS LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 12-030 (RGA)
	)	
SIERRA WIRELESS AMERICA, INC. and	)	**CONFIDENTIAL –**
SIERRA WIRELESS, INC.,	)	**FILED UNDER SEAL**
	)	
Defendants.	)	
M2M SOLUTIONS LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 12-032 (RGA)
	)	
ENFORA, INC., NOVATEL WIRELESS	)	**CONFIDENTIAL –**
SOLUTIONS, INC. and NOVATEL	)	**FILED UNDER SEAL**
WIRELESS, INC.,	)	
	)	
Defendants.	)	
M2M SOLUTIONS LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 12-033 (RGA)
	)	
MOTOROLA SOLUTIONS, INC., TELIT	)	**CONFIDENTIAL –**
COMMUNICATIONS PLC and TELIT	)	**FILED UNDER SEAL**
WIRELESS SOLUTIONS INC.,	)	
	)	
Defendants.	)	

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR
RECONSIDERATION OF THE COURT'S CLAIM CONSTRUCTIONS OF
"PROCESSING MODULE" AND "PROGRAMMABLE INTERFACE"
BASED ON THE FEDERAL CIRCUIT *EN BANC* DECISION IN
WILLIAMSON v. CITRIX ONLINE AND MOTION TO STRIKE**

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I.   M2M'S OPPOSITION IS DEFECTIVE, SUPPORTS DEFENDANTS' MOTION AND RELIES ON IRRELEVANT EXPERT OPINION

A motion for reconsideration is not a "second bite at the apple," and is not an opportunity to argue new facts or issues that were previously available. This principle applies equally to non-movants, especially where the ground for reconsideration is a change in controlling law and, more particularly (as here), a change in a legal presumption. None of the exhibits to Dr. Nettleton's Declaration (D.I. 193), supposedly showing the "programmable interface" was decades old, was used at the *Markman* hearing.[1] M2M's current argument is inconsistent with its previous assertions, where it highlighted the supposed innovation of the "programmable interface" and its alleged difference from the prior art. (D.I. 68 at 37 and 82). The same is true regarding the "processing module."   (Compare Ex. A ¶4 ("sufficient intelligence to be simultaneously capable of performing the multiple different types of the data monitoring and processing…") with Ex. B ¶¶13-14 ("simple"; "very simple and basic").[2]

In any event, Dr. Nettleton's testimony on the understanding of a skilled artisan (Ex. B ¶¶11-14) is irrelevant to determining whether the patent discloses structure.

> "The testimony of one of ordinary skill in the art cannot supplant the total absence of structure from the specification. The prohibition against using expert testimony to create structure where none otherwise exists is a direct consequence of the requirement that the specification adequately disclose corresponding structure."

Williamson v. Citrix Online, LLC, No. 2013-1130, 2015 U.S. App. LEXIS 10082 at *29 (Fed. Cir. Jun. 16, 2015) (citations omitted).

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[1]   All docket entries cited are in C.A. No. 12-033-RGA. The Scheduling Order (D.I. 32 at 10) did not permit testimony at the *Markman **hearing*** without the Court's prior approval. The Order did not, however, preclude M2M from offering an expert declaration in support of its *Markman **brief***. M2M elected not to submit expert testimony.

[2]   "Ex. __" refers to exhibits to the Declaration of Keren Livneh, submitted herewith.

Therefore, M2M's argument that a person skilled in the art "would readily have been able to write a software program [for authentication]" (Opp. at 6) is totally irrelevant, and conflates the enablement standard (§ 112, ¶1) with the test for means-plus-function limitations (§ 112, ¶6). *EON Corp. IP Holdings, LLC v. AT&T Mobility LLC*, 785 F.3d 616, 624 (Fed. Cir. May 6, 2015); *Aristocrat Techs. v. Int'l Game Tech.*, 521 F.3d 1328, 1336 (Fed. Cir. 2008). M2M's argument is identical to one the Federal Circuit repeatedly rejected:

> "EON also argues that a microprocessor can serve as sufficient structure for a software function if a person of ordinary skill in the art could implement the software function. This argument is meritless. In fact, we have repeatedly and unequivocally rejected this argument: a person of ordinary skill in the art plays no role whatsoever in determining whether an algorithm must be disclosed as structure for a functional claim element."

EON at 623; *Aristocrat* at 1337 ("It is not enough for the patentee simply to…argue that persons of ordinary skill in the art would know what structures to use to accomplish the claimed function."); *Noah Sys., Inc. v. Intuit Inc.*, 675 F.3d 1302, 1313 and 1317 (Fed. Cir. 2012).

As Defendants explained both in their *Markman* brief and in their motion for reconsideration, neither the claims nor the specification discloses hardware, software or an algorithm of any kind that performs the claimed functions. *Aristocrat* at 1337 ("[B]ecause in this case there was no algorithm at all disclosed in the specification[, t]he question thus is not whether the algorithm that was disclosed was described with sufficient specificity, but whether an algorithm was disclosed at all.").

Indeed, all arguments M2M made in its *Markman* brief and opposition are directed to black-box *functions* of the processing module and programmable interface – not *how* the functions are performed or by what structure. This leaves ambiguity that M2M tried to exploit in its infringement contentions by asserting that the processing module's authentication function covered virtually any authentication procedure. (*See* D.I. 68 at 76; Exs. A ¶¶4 and 6; C ¶40).

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