UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PERSONALIZED MEDIA COMMUNICATIONS, LLC, Plaintiff, v. APPLE INC. Defendant.	Case No. 2:15-cv-01366-JRG-RSP

APPLE'S REPLY IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT OF INVALIDITY
OF U.S. PATENT NOS. 8,191,091, 8,559,635, AND 7,752,649 UNDER § 101

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PMC knows that its patents have a problem meeting the standard for patent eligibility under § 101—the Federal Circuit just summarily affirmed the invalidity of seven closely-related PMC patents on this ground—and thus its opposition tries to dodge the issue. But Apple's motion must be considered on its merits, and the facts and law dictate that PMC's remaining asserted patent claims should be invalidated for claiming ineligible subject matter under § 101.

Instead of defending its patent claims on the merits, PMC spends much of its brief attempting to articulate an unintelligible "law of the case" argument. PMC's attempt to convince this Court not to even consider the merits of Apple's motion seriously misstates the law and Apple's motion. Even PMC's own cases confirm that the doctrine "does not preclude this Court from reconsidering issues on summary judgment that have initially been raised in the context of a motion to dismiss." *Nobel Ins. Co. v. City of N.Y.*, No. 00-CV-1328, 2006 WL 2848121, at *4 (S.D.N.Y. Sept. 29, 2006). Put simply, the "law of the case" doctrine has no applicability to a different motion filed under a different standard (Rule 12(b)(6) vs. Rule 56) with different (new) facts obtained during discovery for the Court to consider. Indeed, the Court's prior ruling on the motion to dismiss emphasized repeatedly that it was judging the prior motion under the 12(b)(6) standard—not making fact findings, but rather assuming all pleaded facts as true—and explicitly contemplated Apple filing a summary judgment motion to provide a more fulsome record for the Court to consider later in the case. Apple thus properly followed the Court's guidance in filing its summary judgment motion, and in fact significant factual and legal developments now inform the Court's consideration of the §101 issues on summary judgment. The full record dictates, as the Federal Circuit affirmed for seven related PMC patents, a finding of invalidity under § 101.

I. Response to Counter-Statement of Undisputed Material Facts

Apple admits that it did not file objections to the Report and Recommendation ("R&R") denying Apple's Rule 12(b)(6) motion. Apple admits that the Court made the statements in

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paragraphs 4-6 and 9-16, but denies that the Court made the statements in paragraphs 1-3 and 7-8 because the Court's 12(b)(6) analysis was about claim 1 of the '635 patent, not "the claims" of the '635 patent. Apple disputes that these statements are "material facts," however.

II. This Motion Is Not Barred By Any Legal Doctrine

Desperate to avoid the merits of the §101 challenge on summary judgment, PMC confusingly argues that the motion is somehow barred by the review standard announced in *Douglass v. United States Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) and the "law of the case" doctrine. Neither argument finds any support in logic or the law.

A. The *Douglass* Review Standard Has No Applicability

PMC's arguments (Dkt. 290 at 1-2) about the standard of review to be applied to the earlier decision on Apple's motion to dismiss are confusing to say the least. This Court does not sit in review of its own or other court rulings, and Apple is not asking the Court to review that prior ruling. The present motion is a new motion filed under a different standard relying on the facts and law now available that were not available at the motion to dismiss stage. It is illogical for PMC to be discussing the R&R's guidance regarding appellate review of the earlier decision when the instant motion is not a request for review of that decision. Apple has filed a new motion under Rule 56, exactly as the Court invited it to do so in its prior ruling, and PMC's reference to the *Douglass* standard of review simply has no relevance.[1]

B. The Law of the Case Doctrine Does Not Apply

PMC also mischaracterizes the law of the case doctrine and its applicability to the instant

[1] PMC's unsupported argument that *Douglass* applies beyond appellate review of the ruling to which it attaches would result in every litigant in this Court reflexively objecting to every single ruling of this Court, without regard to the procedural posture or how to most efficiently present issues to the Court. Apple should not be punished for taking up the Court's suggestion (and Apple's right) to raise the issue in a more full context on summary judgment without in parallel objecting unnecessarily to the Court's Rule 12(b)(6) analysis.

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