**** NOT FOR PRINTED PUBLICATION ****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

REALTIME DATA, LLC, d/b/a IXO,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 6:10-cv-493
v.	§	
	§	JUDGE CLARK
T-MOBILE USA, INC.,	§	
	§	
Defendant.	§	

ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW AS TO INVALIDITY

Plaintiff Realtime Data LLC, d/b/a IXO originally filed suit against multiple Defendants, claiming infringement of a number of different patents. When the case was tried in February 2013, Realtime proceeded to trial against one Defendant—T-Mobile USA, Inc.—and only claimed literal infringement of claims 93 and 94 of United States Patent No. 7,161,506; claims 23, 36, 42, 46, and 59 of United States Patent No. 7,352,300; and claims 17, 19, 21, and 23 of United States Patent No. 7,415,530. The jury found all asserted claims not infringed, and all asserted claims obvious in light of one or more combinations of prior art. Realtime now moves for judgment as a matter of law on the issue of invalidity.

After careful review of the record, and taking into consideration T-Mobile's burden to prove invalidity by clear and convincing evidence, the court will grant Realtime's motion for JMOL in part. The court upholds the jury's verdict that: (1) claims 36, 42, and 59 of the '300 patent were rendered obvious by the Hoffman/Lafe combination; and (2) claims 93 and 94 of the '506 patent were

rendered obvious by the Hoffman/Franaczek and Lafe/Franaczek combinations. The court reverses the jury's verdict that: (1) claims 23 and 46 of the '300 patent were rendered obvious by the Tanaka/POSITA combination; and (2) claims 17, 19, 21, and 23 of the '530 patent were rendered obvious by the Hoffman/Sebastian and Dye/Aakre combinations. The Final Judgment will reflect this ruling.

I. BACKGROUND

At trial, Realtime asserted claims 93 and 94 of the '506 patent; claims 23, 36, 42, 46, and 59 of the '300 patent; and claims 17, 19, 21, and 23 of the '530 patent. With the exception of claim 42 of the '300 patent, all asserted claims are dependent claims: (1) claims 93 and 94 of the '506 patent depend from claim 86 of the '506 patent; (2) claims 23 and 36 of the '300 patent depend from claim 19 of the '300 patent; (3) claims 46 and 59 of the '300 patent depend from claim 42 of the '300 patent; and (4) claims 17, 19, 21, and 23 of the '530 patent depend from claim 1 of the '530 patent.

T-Mobile asserted that the claims of the patents-in-suit were obvious over one or more of the following prior art combinations:

Patent	Claims	Prior art combination
'506	93 and 94	Hoffman, "Data Compression in Digital Systems" in combination with U.S. Patent No. 5,870,036 to Franaszek
'506	93 and 94	U.S. Patent No. 6,449,658 to Lafe in combination with U.S. Patent No. 5,870,036 to Franaszek
'300	23, 36, 42, 46, and 59	U.S. Patent No. 5,832,126 to Tanaka in combination with the knowledge known to a person of ordinary skill in the art ("POSITA")
'300	36, 42, and 59	Hoffman, "Data Compression in Digital Systems" in combination with U.S. Patent No. 6,449,658 to Lafe
'530	17, 19, 21, and 23	U.S. Patent No. 7,190,284 to Dye in combination with U.S. Patent No. 4,956,808 to Aakre

'530	17, 19, 21, and 23	Hoffman, "Data Compression in Digital Systems" in combination with U.S. Patent No. 6,253,364 to Sebastian

During trial, both T-Mobile's expert Dr. Clifford Reader and Realtime's expert Dr. Kenneth Zeger testified on the issue of whether the asserted claims of the patents-in-suit were obvious in light of one or more of the above prior art combinations. Tr. at 1603:22-1701:5 (Reader); 1702:19-1719:6 and 1741:6-1835:24 (Zeger).[1] It is undisputed the above prior art combinations were the only combinations discussed by the parties' experts, and the only combinations submitted to the jury. No other theories of invalidity were submitted to the jury.[2] The jury returned a verdict that all asserted claims of the patents-in-suit were obvious in light of every prior art combination listed above.

Realtime moved for judgment as a matter of law on validity twice: orally at the close of T-Mobile's case on February 8, 2013, Tr. at 1729:11-1736:10, and in writing after the close of all evidence on February 11, 2013. Doc. # 644. Both the oral and written motions raise the same five points, which the court will address below.

II. STANDARD OF REVIEW

Judgment as a matter of law is appropriate where "a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient

[1]When the court cites to "Tr." in this Order, it is referring to the February 2013 trial transcript. Citations are provided as "Tr. at [page]:[line]."

[2]During trial, the court excluded the opinion of Dr. Reader that the Hoffman reference anticipated the asserted claims of the '530 patent. The court explained in some detail on the record, after an extended colloquy with T-Mobile's counsel, why it considered Dr. Reader's opinion on this particular point to be untimely. Tr. at 1279:1-1292:10. No question on anticipation was submitted to the jury, and no party has asked the court to reconsider this ruling.

evidentiary basis to find for the party on that issue . . . .” Fed. R. Civ. P. 50(a)(1); *see also Reeves v. Sanderson Plumbing Products, Inc.,* 530 U.S. 133, 150, 120 S. Ct. 2097, 2109 (2000).

In entertaining a motion for judgment as a matter of law, the court must review all of the evidence in the record. *Reeves,* 530 U.S. at 150, 120 S. Ct. at 2110. In doing so, “the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence.” *Id.* “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Id.* Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. *Id.* That is, the court should give credence to the evidence favoring the non-movant as well as that “evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that evidence comes from disinterested witnesses.” *Id.* A jury’s verdict is given great weight and all reasonable inferences are drawn in the light most favorable to the verdict. *Thomas v. Tex. Dep’t of Criminal Justice*, 220 F.3d 389, 392 (5th Cir. 2000); *see also Krystek v. Univ. of S. Miss.*, 164 F.3d 251, 258 (5th Cir. 1999) (“We accord great deference to a jury’s finding of facts.”).

The Federal Circuit reviews an appeal from a grant or denial of a motion for JMOL under the law of the regional circuit in which the appeal from the district court would usually lie. *See ACCO Brands, Inc. v. ABA Locks Mfrs. Co. Ltd.*, 501 F.3d 1307, 1311 (Fed. Cir. 2007). A finding in a patent case by a jury in the Fifth Circuit is reviewed under the “substantial evidence” rule. *Function Media, L.L.C. v. Google, Inc.*, –F.3d–, 2013 WL 516366 at *3 (Fed. Cir. Feb. 13, 2013). “Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable

mind might accept as adequate to support a conclusion." *Eli Lilly & Co. v. Aradigm Corp.* ,376 F.3d 1352, 1363 (Fed. Cir. 2004).

III. APPLICABLE LAW ON INVALIDITY

T-Mobile bears the burden to prove invalidity by clear and convincing evidence, and the burden of proof never shifts to Realtime, the patentee, to prove validity. *Scanner Techs. Corp. v. ICOS Vision Sys. Corp. N.V.*, 528 F.3d 1365, 1380 (Fed. Cir. 2008).Clear and convincing evidence has been described as "evidence that places in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable." *Pfizer, Inc. v. Apotex*, *Inc*., 480 F.3d 1348, 1359 n.5 (Fed. Cir. 2007) (citing *Colorado v. New Mexico*, 467 U.S. 310, 316, 104 S. Ct. 2433 (1984)). It is true that once T-Mobile presented a *prima facie* case of invalidity, Realtime had the burden of going forward with rebuttal evidence. However,

> all that means is that even though a patentee never must submit evidence to support a conclusion by a judge or jury that a patent remains valid, once a challenger introduces evidence that might lead to a conclusion of invalidity – what we call a prima facie case – the patentee would be well advised to introduce evidence sufficient to rebut that of the challenger.

Pfizer, 480 F.3d at 1360 (internal quotation omitted). This requirement does not shift the burden of persuasion to Realtime, because the presumption of patent invalidity "remains intact and the ultimate burden of proving invalidity remains with the challenger throughout the litigation." *Id*. On a motion for JMOL, the court must therefore consider "the totality of the evidence, including any rebuttal evidence presented by the patentee." *Id.*

IV. MOTIVATION TO COMBINE

Realtime's first argument is that T-Mobile provided no motivation to combine any of the asserted prior art references.

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