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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

INTELLECTUAL VENTURES I LLC) (

) (CIVIL ACTION NO.

) (2:17-CV-577-JRG

VS.) (MARSHALL, TEXAS

) (

T-MOBILE USA, INC., ET AL.) (JANUARY 3, 2019

) (10:11 A.M.

PRE-TRIAL HEARING

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: (See Attorney Attendance Sheet docketed
in minutes of this hearing.)

FOR THE DEFENDANTS: (See Attorney Attendance Sheet docketed
in minutes of this hearing.)

COURT REPORTER: Shelly Holmes, CSR, TCRR
Official Reporter
United States District Court
Eastern District of Texas
Marshall Division
100 E. Houston Street
Marshall, Texas 75670
(903) 923-7464

(Proceedings recorded by mechanical stenography, transcript
produced on a CAT system.)

1 resource involves the publisher putting a mylar jacket on
2 the reference and then sending it to the library. And
3 these sorts of delays simply don't result in a two-year
4 delay, which is what we have here between the reference
5 being received by the library and its availability.

6 And so even if we take IV's theoretical
7 possibilities to their logical conclusion, there's simply
8 no basis for a reasonable juror to conclude that any delay
9 between the date on the MARC record and the item's
10 publicity availability results in the reference post-dating
11 the patent.

12 It's additionally not the case that Dr. Hall-Ellis
13 analyzed the incorrect MARC records. There is only one
14 MARC record for the reference in its different forms, and
15 that ensures that the reference is authoritative. And,
16 though, it can be updated, Dr. Hall-Ellis testified that
17 this enter date that shows July 8th, 1997, upon which she
18 relies is machine automated and cannot be changed or
19 updated.

20 And, finally, the bias that IV -- alleged bias
21 that IV refers to with respect to Dr. Hall-Ellis, the PTAB
22 testimony they refer to are simply written declarations
23 which don't fall within the scope of Federal Rule of Civil
24 Procedure 26, and hence was not included in her report.

25 And, finally, Dr. Hall-Ellis testified that she

1 didn't know the priority dates for the patents in
2 investigating these records. And so she didn't know in
3 finding that Dyson was cataloged and indexed no later than
4 July 8th, 1997, that in so finding that meant that -- that
5 Dyson would be prior art.

6 THE COURT: All right. Anything further?

7 MS. BUTLER: Nothing further, Your Honor.

8 THE COURT: All right. Thank you, Ms. Butler.

9 The Court's persuaded that the copyright date is
10 adequate to establish publication during the year of the
11 copyright, which is indisputably in advance of the priority
12 dates these would be used in connection with.

13 Given that there's no contravening declaration
14 from an expert by the Plaintiffs, I'm inclined to accept on
15 its face the statements by Defendants' declarant that these
16 were publicly available in a library prior to the time they
17 were placed online by the IEEE.

18 The fact that these may be part and parcel of a
19 conference as opposed to a serial publication is of no
20 import in the Court's view. They are clearly IEEE
21 publications.

22 There is indicia of reliability here that doesn't
23 exist in different context or situations with other
24 publications or publishers.

25 The arguments by Plaintiff that Defendants'

1 declarant is not reliable, while they may be -- while they
2 may be persuasive, if you can defeat this motion for
3 summary judgment without offering contravening summary
4 judgment evidence, no competing declaration, and merely say
5 the Defendants' declarant might not be believed, then I
6 don't think you could ever grant a summary judgment motion.

7 I'm going to grant the motion. I think on -- on
8 balance, there's no reason why these should not be treated
9 as prior art. They've been addressed by the experts.
10 We've got competing opinions from the experts about their
11 effect. The Court's going to grant the motion with regard
12 to these prior art references.

13 Okay. That brings us to Defendants' Daubert
14 motion regarding Williams. That's Document 209. And
15 that's what we'll take up next.

16 Let me hear from the Defendants, please.

17 MR. BECKER: Your Honor, may I approach with
18 copies of the slides?

19 THE COURT: You may. Counsel, we've got four more
20 of these motions, including this one, and then we've got to
21 get to motions in limine. Let's see if we can't -- I've
22 tried to give everybody a lot of latitude on how much
23 argument they want to present. But let's see if we can't
24 pick up the pace a little bit.

25 Go ahead, counsel.

1 MR. BECKER: Thank you, Your Honor. My name is
2 Jeff Becker for Defendants Ericsson and T-Mobile. I'm here
3 to -- I'm going to be arguing Defendants' Daubert motion to
4 strike portions of IV's validity report which is Docket
5 209, and this relates to the exclusion of certain claim
6 construction opinions which are present in that -- in that
7 report which were never disclosed through the claim
8 construction process in this case.

9 If you'd please go to Slide 2.

10 So these terms -- there's four terms that I'd like
11 to talk about, and I'll try to get through them quickly.

12 There's no dispute that there was no claim
13 construction offered by IV for any of these terms during
14 the claim construction process that took place in this
15 case.

16 "Packet" was a term that was involved in several
17 disputed claim terms. Neither party proposed a specific
18 construction for that term.

19 And then the term "packet-centric" was not
20 addressed during claim construction.

21 "Reservation algorithm," not addressed except
22 through a -- I guess collaterally through some
23 means-plus-function terms that were addressed in a patent
24 that has been -- since been found invalid.

25 And then the "scheduling" term which is recited by

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