

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

JAPAN DISPLAY INC. and PANASONIC
LIQUID CRYSTAL DISPLAY CO., LTD.,

Plaintiffs,

v.

TIANMA MICROELECTRONICS CO.LTD.,

Defendant.

CIVIL ACTION NO. 2:20-cv-00283-JRG
(LEAD CASE)

CIVIL ACTION NO. 2:20-cv-00284-JRG
CIVIL ACTION NO. 2:20-cv-00285-JRG
(CONSOLIDATED)

JURY TRIAL DEMANDED

**DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT'S ORDER
REGARDING REDUCING THE NUMBER OF ASSERTED PATENTS**



I. INTRODUCTION

As Plaintiffs well recognize, this Court has the authority and discretion to reasonably limit the number of claims asserted in patent infringement actions. *In re Katz Interactive Call Processing Pat. Litig.*, 639 F.3d 1303, 1313 (Fed. Cir. 2011). The Court's Order on November 18, 2021 (Dkt. No. 202) (the "Order") falls squarely within the Court's authority and discretion and should not be disturbed. Plaintiffs' motion (Dkt. No. 220) is both procedurally improper and substantively meritless. It should be denied.

II. ARGUMENT

A. Plaintiffs' Motion Is Procedurally Flawed

Plaintiffs argue that the Order has violated their Constitutional Due Process rights, and that their expert's damages theory gives them the right to assert more than five patents. Mot. at 1-2. But district courts' broad discretion to manage their own dockets and streamline trials has long been recognized vis-à-vis the property rights in patents. *Katz*, 639 F.3d at 1313. For example, in the *Katz* decision that Plaintiffs rely on, the Federal Circuit found that the district court's claim selection procedure was proper and did not deprive Katz of its property rights, when the district court gave Katz the opportunity to speak up. *Id.*

Importantly, Plaintiffs could have raised these arguments before but failed to do so. The parties started the discussion of reducing the number of patents and claims in early March 2021. In August, Plaintiffs finally agreed that it was necessary to narrow the scope of the case but refused to take action then. After the Parties served the expert reports, Defendant moved to limit the number of patents and claims on September 22; and Plaintiffs opposed on October 1. Dkt. Nos. 149, 155. At the hearing on October 26, 2021, the Court asked both parties:

Court: Let me ask you all: *Are there issues or problems or things you're aware of*, whether it was a part of this motion to compel or *whether it relates to narrowing of the case that you need to either*

[REDACTED]

raise with me now or give me a heads-up is coming around the corner? Are there other things that we could all benefit by, by discussing them with the benefit of everybody present in the room? If not, I will let you go; but if there are, I'd hate to give up this opportunity. Plaintiff aware of anything?

Mr. Klein, Plaintiffs' counsel: *Nothing from Plaintiffs*, your Honor.

Hr. Tr. 21:3-21. Then, on November 10, the parties submitted a joint status report on narrowing the scope of the case (Dkt. No. 189). This entire time, Plaintiffs could have raised any concern about Due Process. But they did not.

“[D]istrict court opinions ‘are not intended as mere first drafts, subject to revision and reconsideration at a litigant’s pleasure’ . . . [because] litigants ‘are expected to present their strongest case when the matter is first considered.’” *eTool Dev., Inc. v. Nat’l Semiconductor Corp.*, 881 F. Supp. 2d 745, 749 (E.D. Tex. 2012) (citations omitted). Motions for reconsideration “should not be used to raise arguments that could, and should, have been made before entry of judgment or to re-urge matters that have already been advanced by a party.” *Id.* (internal citation and quotations omitted).

Plaintiffs’ suggestion that they had planned for three trials, instead of one, is disingenuous. Mot. at 13. These three cases have long been consolidated; indeed, the Parties jointly requested consolidation “*for all purposes*” (Dkt. No. 52 at 2) and submitted a joint scheduling order with the same trial date for all three cases. *See* Dkt. No. 30, 30-1. The Court likewise has kept all three cases on the same schedule, including trial. *See* Dkt. No. 140 (Sept. 14, 2021, First Amended Docket Control Order). The discussions of narrowing the scope of the cases, from as early as March 2021, had always been for narrowing the consolidated case, not each case individually. Again, if Plaintiffs were truly concerned, they could have and should have raised the concern earlier, during the eight months of communications with Defendant or

[REDACTED]

the Court. But they did not.

Motions for reconsideration “serve the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence.” *eTool*, 881 F. Supp. 2d at 749 (quoting *Waltman v. Int’l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989)). Plaintiffs have identified no error of law or fact in the Court’s Order (DI No. 202); nor have they identified any newly discovered evidence. Their motion should be denied on procedural grounds alone.

B. Plaintiffs’ Motion Is Substantively Flawed

Essentially, Plaintiffs argue that their choice of damages model *requires* the Court to permit them a jury trial on eight patents and potentially dozens of claims. But litigants should not be able to dictate how the Court manages its docket. Mot. at 4-9. Plaintiffs do not get to dictate to the Court how many patents they need to argue at trial. It is well established that the Court has “broad discretion” to manage its own docket and is well within its rights to impose limitations on the number of claims and patents that a plaintiff advances to trial. *Murata Machinery USA v. Daifuku Co. Ltd.*, 830 F.3d 1357, 1361 (Fed. Cir. 2016); *Katz*, 639 F.3d at 1313; *see also* Dkt. No. 149 (TMC’s Motion to Limit Number of Claims, collecting cases). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Mot. at 4-5.

Plaintiffs argue that their damages model, [REDACTED]

[REDACTED] Mot. at 4. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Mot. at 6-7. But Plaintiffs chose this damages model before their damages

[REDACTED]

expert's initial report of September 13, 2021, knowing the Court would likely order the parties to eventually narrow the case to less than eight patents.

More generally, *any* narrowing of a patent case necessarily results in a "significant tangible right that could be lost," yet a district court's right to manage its docket by forcing plaintiffs to reduce claims is well established. *See* Dkt. No. 149; *see also* EDTX General Order 13-20. It was Plaintiffs' choice to adopt a damages model [REDACTED]

[REDACTED]. That does not require the court and jury to engage in a practically unrealistic trial involving eight, or conceivably more, patents.

Plaintiffs' argument that the uniqueness of their patents justifies an eight-patent trial is also substantively flawed. Mot. at 9-13. All patents are unique. All patents have unique issues relating to infringement and validity. But narrowing claims is a natural reality in nearly every trial and does not automatically violate a patentee's due process rights. Each of Plaintiffs' earlier non-elected patents presumably also had unique issues related to it (*see* Dkt. No. 172), and yet Plaintiffs recognize that they cannot proceed to trial on those either. The *Katz* decision also does not dictate a contrary result. Mr. Katz asserted a notoriously large number of claims, namely "1,975 claims from 31 patents against 165 defendants in 50 groups of related corporate entities[.]" *Katz*, 639 F.3d at 1308. There, the Federal Circuit *rejected* Mr. Katz's argument that the district court had "divested Katz of its rights in the unselected claims without due process." *Id.* at 1311. The Court held that "[t]o make out a due process claim, Katz must demonstrate that the district court's claim selection procedure risked erroneously depriving it of its rights and that the risk outweighed the added costs associated with a substitute procedure." *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). Plaintiffs here make no effort to balance the deprivation of rights against the added costs of adjudicating all eight patents. The Federal Circuit did note

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