

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

3G LICENSING, S.A.,
KONINKLIJKE KPN N.V.,
and ORANGE S.A.,

Plaintiffs,

v.

HTC CORPORATION,

Defendant.

C.A. No. 17-83
Redacted
Public Version

MEMORANDUM ORDER

Plaintiffs 3G Licensing, S.A., Koninklijke KPN N.V. (“KPN”), and Orange S.A. (together, “Plaintiffs”) assert claims 3 and 4 of U.S. Patent No. 6,212,662 (the “662 patent”) against Defendant HTC Corporation (“HTC” or “Defendant”). (See D.I. 530 at 1) The patent-in-suit relates to a method for the transmission of data with transmission error checking.

Pending before the Court are Defendant’s *Daubert* motions (D.I. 529, 530 at 15-20) and summary judgment motions (D.I. 524; D.I. 529, 530 at 1-14) as well as Plaintiffs’ *Daubert* motions (D.I. 519, 520 at 2-5) and partial summary judgment motions (D.I. 517, 518 at 3-10, 23-27).¹ The Court heard oral argument on May 11, 2021. (See D.I. 593) (“Tr.”)

¹ The Court also carefully considered several motions filed in C.A. No. 17-85, Plaintiffs’ action against LG Electronics Inc. (“LGE”) and LG Electronics U.S.A., Inc. (“LGEKR”). These motions included Plaintiffs’ *Daubert* motion (D.I. 429, 430 at 5-8) and partial summary judgment motion (D.I. 427, 428 at 10-23); LGE’s *Daubert* motion (D.I. 434, 435 at 5-7) and summary judgment motion (D.I. 434, 435 at 2-4); and LGEKR’s summary judgment motion (D.I. 434, 435 at 4-5). On June 25, 2021, after the Court heard oral argument on the motions, Plaintiffs and the LG Defendants notified the Court that they had finalized an agreement to resolve their dispute and stipulated to dismissal. (See D.I. 508) The claims and counterclaims in C.A. No. 17-85 have been dismissed with prejudice, and the motions listed in this footnote are no longer pending before the Court.

LEGAL STANDARDS

***Daubert* Motions to Exclude**

In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597 (1993), the Supreme Court explained that Federal Rule of Evidence 702 creates “a gatekeeping role for the [trial] judge” in order to “ensur[e] that an expert’s testimony both rests on a reliable foundation and is relevant to the task at hand.” Rule 702(a) requires that expert testimony “help the trier of fact to understand the evidence or to determine a fact in issue.” Expert testimony is admissible only if “the testimony is based on sufficient facts or data,” “the testimony is the product of reliable principles and methods,” and “the expert has reliably applied the principles and methods to the facts of the case.” Fed. R. Evid. 702(b)-(d).

There are three distinct requirements for proper expert testimony: (1) the expert must be qualified; (2) the opinion must be reliable; and (3) the expert’s opinion must relate to the facts. See *Elcock v. Kmart Corp.*, 233 F.3d 734, 741 (3d Cir. 2000).

Summary Judgment

Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” The moving party bears the burden of demonstrating the absence of a genuine issue of material fact. See *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-87, 585 n.10 (1986). An assertion that a fact cannot be – or, alternatively, is – genuinely disputed must be supported either by “citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials” or by “showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse

party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1)(A) & (B). If the moving party has carried its burden, the nonmovant must then “come forward with specific facts showing that there is a genuine issue for trial.” *Matsushita*, 475 U.S. at 587 (internal quotation marks and emphasis omitted). The Court will “draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000).

To defeat a motion for summary judgment, the nonmoving party must “do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita*, 475 U.S. at 586; *see also Podobnik v. U.S. Postal Serv.*, 409 F.3d 584, 594 (3d Cir. 2005) (stating party opposing summary judgment “must present more than just bare assertions, conclusory allegations or suspicions to show the existence of a genuine issue”) (internal quotation marks omitted), *abrogated on other grounds by Rotkiske v. Klemm*, 890 F.3d 422 (3d Cir. 2018). The “mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). A factual dispute is genuine only where “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* at 248. “If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at 249-50 (internal citations omitted); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (stating entry of summary judgment is mandated “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial”). Thus, the “mere existence of a scintilla of evidence” in support of the nonmoving party’s position is insufficient to defeat a motion for summary judgment. *Anderson*, 477 U.S. at 252. To defeat the motion, “there must be evidence on which the jury could reasonably find” for the nonmoving party. *Id.*

DISCUSSION

Daubert Motions

Plaintiffs' Motion (D.I. 519) To Exclude Dr. Jeffay's "Check Data" Construction

Plaintiffs move to exclude Dr. Kevin Jeffay's testimony regarding the "check data" limitation, arguing it is inconsistent with the intrinsic record and with this Court's construction of the term. (D.I. 520 at 2-3) Plaintiffs contend that Defendant seeks through Dr. Jeffay to renew its unsuccessful argument that "check data" should be construed narrowly as being used for detecting but not correcting errors.² (*Id.*)

The Court previously construed "check data" as meaning "supplementary data for use in *checking for* transmission errors." (D.I. 484 at 7-8) (emphasis added) Although the Court declined to adopt Defendant's construction, which substituted the term "detecting" for "checking for," the Court did not consider at the *Markman* stage whether "checking for" *differs* from "detecting" or whether – as Plaintiffs assert – "checking for" encompasses both detecting and correcting. (*See id.*) These issues were not raised by the parties; instead, the Court's focus during *Markman* was on whether "check data" had to be a short-hand representation of the original data. (*See id.*)

The Court refines its construction of "check data" as used in claim 1 of the '662 patent to clarify that "check data" does not *preclude* error correction. This is consistent with the Court's previous construction, which implicitly rejected Defendant's narrowing construction, which would have limited "check data" merely to "detection," without allowing for the possibility also

² Defendant clarified its position in its opposition brief, stating it is "not arguing that error correction and detection are mutually exclusive, or that the claims do not allow for error correction when performed in conjunction with the claimed error detection." (D.I. 573 at 3) This position appears to be inconsistent with Dr. Jeffay's opinion that "the '662 patent only proposes a method for detecting . . . errors, but not for correcting them." (D.I. 521 Ex. 33 ¶ 64)

of error correction. Plaintiffs point to persuasive evidence from the specification (*see* '662 patent at 6:36-57) (depicting, in one embodiment, an example of error correction and detection) and file history (*see* D.I. 521 Ex. 34 at 187, 289) (Examiner pointing to “error correction” as non-limiting example of “error checking” in two prior art references) suggesting that the patentee did not intend to limit error checking to error detecting.

In light of this clarified construction, Dr. Jeffay’s testimony, which asserts that the ’662 patent is not at all directed to error correction, is inconsistent with the Court’s claim construction. The Court, therefore, grants Plaintiffs’ motion.

**Plaintiffs’ Motion (D.I. 519) To Exclude Dr. Jeffay’s
“Modify the Permutation in Time” Construction**

Plaintiffs move to exclude Dr. Jeffay’s testimony regarding the “modify the permutation in time” limitation, arguing it is inconsistent with the Court’s construction of the term. (D.I. 520 at 4-5) The Court previously construed “modify the permutation in time” as meaning “change the permutation *from time to time*,” precisely as Plaintiffs had proposed. (D.I. 484 at 8-9) (emphasis added)

Plaintiffs argue that Dr. Jeffay’s opinion that claim 2 of the ’662 patent requires the device to “consider the passage of time” has been rejected by the Court; instead, all that is required is that the permutation be configured to change. (D.I. 520 at 4) Defendant responds that Dr. Jeffay has only applied the Court’s construction to *rebut* the opinion of Plaintiffs’ expert, which Defendant argues removes the “from time to time” requirement by opining that the claims only require a varying device capable of changing the permutation. (D.I. 573 at 3-5) In Defendant’s view, Dr. Jeffay’s opinion simply explains why the “from time to time” limitation is not “superfluous” (Tr. at 70), adding that in the two embodiments cited in the Court’s *Markman* opinion, “the device measures the passage of time by counting the number of bits processed

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