

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

ELBIT SYSTEMS LAND AND C4I LTD. and)
ELBIT SYSTEMS OF AMERICA, LLC,)

Plaintiffs,)

v.)

C.A. No. 2:15-cv-00037-RWS-RSP

HUGHES NETWORK SYSTEMS, LLC,)
BLACK ELK ENERGY OFFSHORE)
OPERATIONS, LLC, BLUETIDE)
COMMUNICATIONS, and COUNTRY)
HOME INVESTMENTS, INC.,)

JURY TRIAL DEMANDED

Defendants.)

**DECLARATION OF KURT G. CALIA IN SUPPORT OF PLAINTIFFS’
MOTION TO STRIKE DEFENDANTS’ INVALIDITY CONTENTIONS**

I, Kurt G. Calia, declare and state as follow:

1. I am over the age of eighteen years, of sound mind, and competent to make this declaration. The facts stated in this declaration are of my personal knowledge, and I know them to be true and correct.

2. I am an attorney at the law firm of Covington & Burling LLP that represents Plaintiffs in the above-captioned case.

3. I submit this declaration in support of Plaintiff's Motion to Strike Defendants' Invalidation Contentions.

4. On January 15, 2016, Defendants served their Local Patent Rule 3-3 Joint Invalidation Contentions (Defendants' Contentions"). A true and correct copy of Defendants' Contentions (not including appendices) is attached as **Exhibit 1**.

5. Attached as **Exhibit 2** is a true and correct copy of an exemplary claim chart from Defendants' Contentions (claim chart A35).

6. Attached as **Exhibit 3** is a true and correct copy of exemplary claim chart B4.

7. On January 26, 2016, my colleague, Patrick Flynn, wrote to Defendants to notify them of the deficiencies in Defendants' Contentions and demand that they be remedied by February 1, 2016 (more than two weeks after they came due). Attached as **Exhibit 4** is a true and correct copy of that January 26, 2016 letter.

8. Defendants responded by email on January 29, 2016, but they promised only to "investigate" the concerns raised by Plaintiffs by February 8. Attached as **Exhibit 5** is a true and correct copy of the January 29 email from Ali Dhanani, counsel for Defendants.

9. I responded to Mr. Dhanani's email on February 1, 2016, again setting forth Plaintiffs' position as to the deficiencies of their invalidity contentions, and asking Defendants to

remedy them by February 3. Attached as **Exhibit 6** is a true and correct copy of my February 1, 2016 email to Mr. Dhanani.

10. Counsel for Defendants responded later that day by email. In that response (a true and correct copy of which is attached as **Exhibit 7**), Defendants merely reiterated that they would “investigate” Plaintiffs’ complaints and respond by February 8, 2016.

11. On February 4, 2016, I called counsel for Defendants, Mr. Dhanani, to see whether this issue might be resolved. I explained Plaintiffs’ position—namely, that Defendants’ Contentions were deficient, that three weeks had passed since the Court-ordered deadline to served them, and that we had received no more commitment from Defendants than that they would “investigate” our concerns. I also indicated that while I understood he had been busy with depositions in another matter, at least three other lawyers from his firm are identified in the pleadings, and that depositions in another matter coming weeks after the due date for Defendants’ Contentions could not fairly excuse their deficiencies. When Mr. Dhanani asked what supplementation would satisfactorily address Plaintiffs concerns, I replied that Local Patent Rule 3-3 is clear in terms of the required disclosures, and that Plaintiffs expected full and immediate compliance. I also asked Mr. Dhanani to concede that the originally-served contentions were deficient since he appeared to be amenable to some form of supplementation. Mr. Dhanani disagreed (although he did not explain the basis for his disagreement). Although Mr. Dhanani indicated that some form of supplementation would be provided on February 8, it was not clear (to me, at least) what it would be.

12. That evening, clarification arrived in the form of an email Mr. Dhanani, a true and correct copy of which is attached as **Exhibit 8**. Counsel’s February 4 email commits only to

providing a “specific listing of the combinations identified in the invalidity contentions by Monday, February 8.” **Exhibit 8.**

13. To date, Defendants have not committed to recitation of specific prior art combinations on an element-by-element basis (i.e., which elements would be combined from which references), nor have they committed to providing any explanation for the motivation to combine any of their combinations. And to date, Plaintiffs are unaware that Defendants have filed a motion for leave to amend their invalidity contentions to comport with Local Patent Rule 3-3.

Executed on February 5, 2016 at Redwood Shores, California.

/s/ Kurt G. Calia
Kurt G. Calia