

Lead Case No. 2:23-cv-00059-JRG  
Member Case No. 2:23-cv-00062-JRG



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**TABLE OF EXHIBITS**

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<b>EXHIBIT</b>	<b>DESCRIPTION</b>
Ex. M	Deposition transcript of J. Seiden, taken in this case on June 4, 2024
Ex. N	Rebuttal Report of Dr. Kevin Almeroth in Response to the June 24, 2024 Opening Invalidity Expert Report of Dr. Kevin Jeffay
Ex. O	Expert Report of Russell W. Mangum III, Ph.D.

Touchstream's Reply abandons Touchstream's original position that the Court should strike all opinions of Comcast's technical expert, Dr. Jeffay, regarding the 2010 Xfinity TV App System.<sup>1</sup> Touchstream now requests only that the Court "strike the portions [of Dr. Jeffay's reports] referring to versions other than the November 2010 commercial release." Reply at 5. However, it provides no reason to limit Dr. Jeffay's testimony in this way, and the Court should deny Touchstream's Motion in its entirety.

### **I. Dr. Jeffay Appropriately Considered the May 2010 Prototype**

As Comcast explained in its Opposition, Dr. Jeffay opines that the Asserted Claims are anticipated and/or rendered obvious by the 2010 Xfinity TV App System commercially released by Comcast on November 15, 2010. Ex. A (Jeffay Op. Rpt.) ¶¶ 26, 223 (at p. 92); Ex. B (Jeffay Dep. Tr.) at 215:3-9. Because Touchstream asserts a conception date for the Asserted Patents of October 8, 2010, Dr. Jeffay also traces the development of the 2010 Xfinity TV App System, including a May 2010 prototype, to explain Comcast's conception and diligent reduction to practice of the system under § 102(g).<sup>2</sup> Ex. A (Jeffay Op. Rpt.) ¶ 223; Ex. B (Jeffay Dep. Tr.) at 215:10-25. Under that section, "priority of invention goes to the first party to reduce an invention to practice unless the other party can show that it was the first to conceive of the invention and that it exercised reasonable diligence in later reducing that invention to practice." *Cooper v. Goldfarb*, 154 F.3d 1321, 1327 (Fed. Cir. 1998). Evidence of the conception and diligent reduction to practice of a prior art reference is relevant under § 102(g) even when that

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<sup>1</sup> This brief refers to Comcast's Response to Touchstream's Motion (Dkt. 119) as the "Opposition" or "Opp."; Touchstream's Reply in Support of the Motion (Dkt. 138) as "Reply"; exhibits to Touchstream's Motion as "Mot. Ex."; and exhibits to the Sur-Reply Declaration of Alena Farber as "Sur-Reply Ex." All other terms carry the same meaning as in Comcast's Opposition.

<sup>2</sup> Dr. Jeffay also opines that the Asserted Patents are not entitled to the October 8, 2010, priority date and that the 2010 Xfinity TV App System therefore anticipates them under § 102(a) as well. Ex. A (Jeffay Op. Rpt.) ¶ 223 (at p. 92).



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