

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

TOUCHSTREAM TECHNOLOGIES, INC.,

Plaintiff,

V.

CHARTER COMMUNICATIONS, INC. et al.,

Defendants.

TOUCHSTREAM TECHNOLOGIES, INC.,

Plaintiff,

V.

COMCAST CABLE COMMUNICATIONS,
LLC, d/b/a XFINITY, et al.,

Defendants.

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

**COMCAST’S MOTION TO DISMISS PLAINTIFF’S CLAIMS OF
PRE-SUIT WILLFUL INFRINGEMENT OF THE ’751 AND ’934 PATENTS**

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I. INTRODUCTION

Touchstream's SAC repleads pre-suit willful infringement of the '751 and '934 Patents (the "2021 Patents") but fails to allege that Comcast had pre-suit knowledge of them.¹ It also fails to provide any plausible basis to infer that Comcast had such knowledge, pointing instead to meetings and events regarding other patents, which this Court already rejected as insufficient to support pre-suit willfulness. Accordingly, the Court should again dismiss Touchstream's claims of pre-suit willful infringement of the '751 and '934 Patents, this time with prejudice.

II. FACTUAL BACKGROUND

This case involves three related patents. The '251 Patent was filed in 2011 and issued in 2013. Dkt. No. 30 ("SAC") Ex. 1 at 2. The 2021 Patents are continuations-in-part of the '251 Patent's parent application and issued in 2021. SAC Ex. 1 at 3, Ex. 2 at 3, Ex. 3 at 3.

Touchstream asserted willful infringement of all three patents in its FAC but asserted no pre-suit notice of any of them. *See* Dkt. No. 55 ("FAC") ¶¶ 26–32. Accordingly, on March 14, 2024, this Court dismissed the FAC's claims of pre-suit willfulness. *See* Dkt. No. 156 (the "Order") at 5–6, 8.

Touchstream reasserts pre-suit willfulness in its SAC but again fails to allege pre-suit knowledge of the 2021 Patents. *See* SAC ¶¶ 26–51, 85, 90. To the contrary, the SAC makes no reference to those patents in the allegations purportedly supporting its willfulness claims. *See id.* Instead, the SAC offers various allegations unconnected to those patents, such as: (1) the alleged

¹ This Motion refers to Plaintiff Touchstream Technologies, Inc. as "Touchstream"; Defendants Comcast Cable Communications, LLC, Comcast Cable Communications Management, LLC, Comcast of Houston, LLC, and Comcast Corporation as "Comcast"; the First Amended Complaint as the "FAC"; the Second Amended Complaint as the "SAC"; U.S. Patent No. 8,356,251 as the "'251 Patent"; U.S. Patent No. 11,048,751 as the "'751 Patent"; U.S. Patent No. 11,086,934 as the "'934 Patent"; and all three of the asserted patents collectively as the "Asserted Patents."

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