

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

<p>CELLULAR COMMUNICATIONS EQUIPMENT LLC,</p> <p>Plaintiff,</p> <p>v.</p> <p>HTC CORPORATION, et al.,</p> <p>Defendants.</p>	<p>CIVIL ACTION NO. 6:13-cv-507</p> <p><b>CONSOLIDATED LEAD CASE</b></p>
<p>CELLULAR COMMUNICATIONS EQUIPMENT LLC,</p> <p>Plaintiff,</p> <p>v.</p> <p>SAMSUNG ELECTRONICS CO., LTD., et al.,</p> <p>Defendants.</p>	<p>CIVIL ACTION NO. 6:14-cv-759</p>
<p>CELLULAR COMMUNICATIONS EQUIPMENT LLC,</p> <p>Plaintiff,</p> <p>v.</p> <p>LG ELECTRONICS, INC., et al.,</p> <p>Defendants.</p>	<p>CIVIL ACTION NO. 6:14-cv-982</p> <p><b>CONSOLIDATED LEAD CASE</b></p>

**MEMORANDUM OPINION AND ORDER**

Before the Court are Defendants' Joint Motions to Dismiss Plaintiffs' Contributory Infringement Claims in each of the above-styled cases (6:13-cv-507, Doc. No. 396; 6:14-cv-

759, Doc. No. 85; 6:14-cv-982, Doc. No. 45). The Court scheduled a hearing on September 22, 2015 to take up the Joint Motions to Dismiss. At the hearing the motions for all three cases were argued together. The motions in all three cases deal with substantially similar issues of law and fact and therefore will all be discussed together. For the reasons set out below, the Joint Motions to Dismiss are **DENIED**.

### **BACKGROUND**

#### ***6:13-cv-507***

Plaintiff Cellular Communications Equipment LLC (“CCE”) originally filed complaints against six of the mobile device manufacturers and the mobile carriers that operate networks on which the manufacturers’ accused devices allegedly function (collectively, “Original Defendants”) on June 25, 2013 and August 2, 2013. The cases were consolidated into this lead case for pretrial purposes, with the exception of venue, on February 27, 2014. Doc. No. 72. In April 2014, CCE filed a similar complaint against Apple and the same mobile carriers already accused in this consolidated case (“Apple Defendants”). Cause No. 6:14-cv-251, Doc. No. 1. In June 2014, the Court consolidated the Apple case into this existing lead case. Doc. No. 194.

After the first consolidation, the Original Defendants filed motions to dismiss their respective amended complaints (Doc. Nos. 109, 110, 111, 112, 113, 114). On the same date that those motions were filed, CCE filed its initial complaint in the Apple case. Cause No. 6:14-cv-251, Doc. No. 1. Prior to consolidation of the Apple case with this lead case, CCE filed two amended complaints and then Apple Defendants filed a Motion to Dismiss Plaintiff’s Second Amended Complaint. Cause No. 6:14-cv-251, Doc. No. 42. In each of those motions to dismiss, the Original Defendants argued that the Plaintiff’s claims of

contributory infringement<sup>1</sup> should be dismissed for failure to state a claim. Judge Davis found that the contributory infringement claims failed to state a claim, and he ordered CCE to file amended complaints. Doc. No. 373 at 10-11. CCE subsequently filed its Second Amended Complaints<sup>2</sup> which are the Complaints at issue in the present motions. Defendants AT&T Mobility LLC, HTC Corporation, HTC America, Inc., Exedeia, Inc., Sprint Solutions, Inc., Sprint Spectrum L.P., Boost Mobile, LLC, Dell Inc., T-Mobile USA, Inc., T-Mobile US, Inc., Pantech Co., Ltd., Pantech Wireless, Inc., LG Electronics, Inc., LG Electronics USA, Inc., Amazon.com, Inc., Cellco Partnership d/b/a Verizon Wireless, ZTE Corporation, ZTE USA, Inc., ZTE Solutions, Inc., and Apple Inc. (collectively, “-507 Defendants”) filed this Joint Motion to Dismiss Plaintiffs’ Contributory Infringement Claims (Doc. No. 396). The -507 case involves the ’174<sup>3</sup> and the ’820 patents.

#### ***6:14-cv-759***

CCE filed its First Amended Complaint in the -759 case on September 22, 2014. Doc. No. 10. After Judge Davis ordered CCE to amend its complaints in the -507 cases, CCE also amended its complaint in the -759 case (Doc. No. 76). Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., AT&T Mobility LLC, Sprint Solutions, Inc., Sprint Spectrum L.P., Boost Mobile, LLC, T-Mobile USA, Inc., T-Mobile US, Inc., and Cellco Partnership d/b/a Verizon Wireless (collectively “-759 Defendants”) filed this Joint Motion to Dismiss Plaintiffs’ Contributory Infringement Claims (Doc. No. 85). The -759 case

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<sup>1</sup> Original Defendants also moved to dismiss the claims of induced infringement and willful infringement but those arguments have no bearing on the instant motions.

<sup>2</sup> The relevant complaints are: Case No. 6:13-cv-507, Doc. No. 390; Case No. 6:13-cv-508, Doc. No. 79; Case No. 6:13-cv-509, Doc. No. 57; Case No. 6:13-cv-511, Doc. No. 82; Case No. 6:13-cv-568, Doc. No. 49; Case No. 6:13-cv-569, Doc. No. 33; and Case No. 6:14-cv-251, Doc. No. 73.

<sup>3</sup> On September 23, 2015, the Court entered an Order staying all claims and issues pertaining to U.S. Patent No. 7,941,174 (the ’174 patent) pending Inter Partes Review in the -507 case. Doc. No. 470. There is no stay in effect for claims and issues relating to the ’174 patent in the -759 case and thus the sufficiency of the pleading will be discussed in relation to the -759 case.

involves the '820, '8923, '174, '786, and '872 patents. The -759 Defendants argue that the allegations regarding the '820 and '174 patents suffer from the same deficiencies as the -507 case.

### ***6:14-cv-982***

CCE originally filed Complaints in two separate cases on December 19, 2014. Cause No. 6:14-cv-982, Doc. No. 1; Cause No. 6:14-cv-983, Doc. No. 1. The -983 case was then consolidated into this lead case for pretrial purposes, with the exception of venue, on February 18, 2015. Doc. No. 17. On January 15, 2015, CCE filed a Complaint in another case. Cause No. 6:15-cv-049; Doc. No. 1. The -049 case was then consolidated into this lead case for pretrial purposes, with the exception of venue, on April 30, 2015. Doc. No. 42. After Judge Davis ordered CCE to amend its complaints in the -507 cases, CCE also amended its complaints in the -982 case<sup>4</sup>. Defendants LG Electronics, Inc., LG Electronics U.S.A., Inc., Sony Mobile Communications Inc., Sony Mobile Communications (USA) Inc., Kyocera Communications, Inc., AT&T Mobility LLC, Cellco Partnership d/b/a Verizon Wireless, Sprint Nextel Corporation, Sprint Solutions, Inc., Sprint Spectrum L.P., Boost Mobile LLC, T-Mobile USA, Inc., T-Mobile US, Inc. (collectively “-982 Defendants”) filed this Joint Motion to Dismiss Plaintiffs’ Contributory Infringement Claims (Doc. No. 45). The -982 case involves the '966 and '060 patents.

### ***Hearing***

Following the written Motions to Dismiss in all three of the above-styled cases, Judge K. Nicole Mitchell held a hearing on September 22, 2015. The parties argued the substance of all three motions together at the hearing, and Judge Mitchell took the motions under

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<sup>4</sup> The relevant complaints are: Case No. 6:14-cv-982, Doc. No.28 and Doc. No. 29 and Case No. 6:15-cv-049, Doc. No. 44.

advisement. Doc. No. 478 at 5-13.

### APPLICABLE LAW

Regional circuit law applies to motions to dismiss for failure to state a claim. *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1355-56 (Fed. Cir. 2007). “The central issue is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief.” *Id.* at 1356 (internal quotations omitted); *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008).

To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a). In deciding a motion under Rule 12(b)(6), a court “accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004)). Detailed factual allegations are not required, but facts must be pled that, when accepted as true, state a claim for relief that is “plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Determining whether a complaint states a plausible claim for relief is a very context-specific task.” *In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1337 (Fed. Cir. 2012) (internal quotations omitted). The court may consider “the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint.” *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010). In the patent context, a patentee need only plead facts sufficient to place the alleged infringer on notice as to what he must defend.” *McZeal*, 501 F.3d at 1357 (citing *Twombly*, 550 U.S. at 565 n. 10).

To establish contributory infringement, a plaintiff must plead sufficient facts to show: (1)

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