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

CELLULAR COMMUNICATIONS EQUIPMENT LLC,
 	
     Plaintiff,
 	
v.
 	
LG ELECTRONICS, INC., ET AL.,
 	
     Defendants.
	CIVIL ACTION NO. 6:14-cv-982-KNM
	LEAD CASE

DEFENDANTS' JOINT SUR-REPLY IN SUPPORT OF THEIR
<u>MOTION FOR SUMMARY JUDGMENT</u>

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I.   RESPONSE TO PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS

Defendants dispute the following numbered paragraphs from Plaintiff's Statement of Undisputed Facts (*see* D.I. 160, at 11-12).

1.   Defendants dispute that a person of ordinary skill in the art ("POSA") would understand how the variables set forth in one or more equations of the '966 patent relate to each other by virtue of knowing algebra.

2.   Defendants dispute that a POSA would necessarily understand any particular relationship between the variables of equations [1] through [5] of the '966 patent, which have no apparent relationship to each other. Plaintiff's expert, Dr. Royer, effectively concedes that a POSA would not necessarily understand such relationships when he observes that "the $P_{preamble}$ variable in Claims 5 and 14 <u>may be expanded</u> as shown in Equation 3."[1] (D.I. 160-8 ¶ 58).

4.   Disputed because the '966 patent offers no such explanation. Defendants dispute that the equation set forth in Claims 1 and 10 of the '966 patent may be expressed as $f(0) = \Delta P_{PC} + \Delta P_{rampup}$ when $P_{O\_UE\_PUSCH} = 0$ given the other requirements of the claim, including the requirement to initialize as the recited equation.

The remaining facts are undisputed, but are irrelevant to the issue of indefiniteness, for reasons described below and in previous briefing.

II.   CLAIMS 5-7 AND 14-17 OF THE '966 PATENT ARE INDEFINITE.

Claims 5 and 14 are inconsistent with the independent claims (1 and 10) from which they depend. The independent claims require that an initial transmit power depends on <u>two</u> variables: (1) a preamble power of a first message sent on an access channel; and (2) the second power control adjustment state f(0). ('966 patent at 12:67-13:3 and 14:58-61). Yet, it is undisputed that the second variable – f(0) – does <u>not</u> appear in the text of the equations for the initial transmit power (P_{Msg3}) recited in claims 5 and 14.

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[1] Unless otherwise noted, emphasis in this brief is added.

Plaintiff suggests that a summation of three other variables that can be used to calculate $P_{preamble}$ (*i.e.*, Equation [3] in the patent) may be substituted for $P_{preamble}$ in the equations of claims 5 and 14. The '966 patent, however, never indicates that such substitution must be done. In any event, such a substitution would create a new and equally fatal inconsistency: the preamble power, having been replaced, would no longer appear in the equations of claims 5 and 14, despite being required by claims 1 and 10.

Accordingly, Plaintiff has failed to raise a genuine factual dispute precluding summary judgment that claims 5-7 and 14-17 are inconsistent with the claims from which they depend, and thus are invalid as indefinite.

A.   Nothing in the Patent Requires Substituting Equation [3] into Claims 5 or 14.

As noted above, Plaintiff argues "the $P_{preamble}$ variable expressly recited in Claims 5 and 14 (Equation 5 in the specification) <u>may be</u> represented as shown in Equation 3 of the specification … That is, $P_{preamble = }P_{target} + PL + \Delta P_{rampup}$." (D.I. 160 at 13). Plaintiff suggests that "substituting this equation into claim [sic: equation] 5 (recited in Claims 5 and 14) results in" a formula that avoids the inconsistency identified by Defendants. However, nothing in claims 5 or 14 requires this substitution, as Plaintiff's permissive "may be" language confirms. (*See also* D.I. 160-8 ¶ 58).

As explained in Section II.B below, the substitution would not avoid the fatal inconsistency. In any event, as a threshold matter, the suggested substitution is not indicated anywhere in claims 5 or 14, or anywhere in the '966 patent specification. It is undisputed that claims 5 and 14 do not include Equation [3] or particularly point out or distinctly claim that $P_{preamble}$ in the claims is defined by Equation [3]. *See Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S.Ct. 2120, 2124 (2014) (internal citations omitted) (emphasis original) ("The Patent Act requires that a patent specification <u>conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as [the] invention</u>.).

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