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 **JURY TRIAL DEMANDED**
CELLULAR COMMUNICATIONS EQUIPMENT LLC, Plaintiff, v. LG ELECTRONICS, INC., ET AL., Defendants.	CIVIL ACTION NO. 6:13-cv-508-KNM **JURY TRIAL DEMANDED**
CELLULAR COMMUNICATIONS EQUIPMENT LLC, Plaintiff, v. SONY MOBILE COMMUNICATIONS INC., ET AL., Defendants.	CIVIL ACTION NO. 6:14-cv-983-KNM **JURY TRIAL DEMANDED**

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

CELLULAR COMMUNICATIONS EQUIPMENT LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., ET AL.,

Defendants.

CIVIL ACTION NO. 6:14-cv-759-KNM

JURY TRIAL DEMANDED

CONSOLIDATED REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO DIMSISS BREACH OF CONTRACT COUNTERCLAIMS ASSERTED BY CERTAIN MANUFACTURER DEFENDANTS

There is an obvious, fatal flaw in Defendants' attempt to salvage their respective breach of contract counterclaims. Because CCE never made any declarations to ETSI regarding the patents-in-suit, CCE is not bound by the cited licensing guidelines. To the extent that CCE's predecessor-in-interest declared certain patents-in-suit to ETSI, any obligation of the predecessor does not bind CCE because the cited declarations were made before the relied-upon successor-in-interest provision was established in the ETSI rules.

The six ETSI declarations included with Defendants' response briefs were executed by representatives of NSN (the predecessor-in-interest to the subject patents), not CCE. As shown in the table below, the declarations were made between September 2009 and October 2012. It is undisputed that CCE did not own or control the subject patents in that timeframe.

Samsung and LG Exhibits			Sony Exhibits		
Exhibit	**Date of Declaration**	**Declarant**	**Exhibit**	**Date of Declaration**	**Declarant**
Ex. A	6/11/2009	Nokia Siemens Networks	Ex. A	6/21/2011	Nokia Siemens Networks
Ex. B	9/7/2009	Nokia Siemens Networks	Ex. B	10/26/2012	Nokia Siemens Networks Oy

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

Ex. C	8/12/2010	Nokia Siemens Networks	Ex. C	12/14/2010	Nokia Siemens Networks

More importantly, the declarations were made prior to promulgation of the November 26, 2014 ETSI Rules upon which Defendants rely to extend alleged contractual licensing obligations to CCE. Nevertheless, citing to the 2014 ETSI Rules, Defendants argue that "ETSI's IPR Policy [] requires that 'FRAND licensing undertakings made pursuant to Clause 6 shall be interpreted as ***encumbrances that bind all successors-in-interest,*** ' like CCE." (emphasis in original). *See, e.g.,* Samsung Response in Civil Action No. 6:14-cv-759, Dkt 158 at 11.[1]

However, each of the cited declarations was made on a licensing form which bears the marking, "ETSI Rules of Procedure, 26 November 2008." *See* Defendants' Responses at Exhs. A-C. The ETSI Rules of Procedure from November 26, 2008 are attached hereto as Exh. A and do not include any language purporting to bind successors-in-interest. Indeed, the 2008 ETSI Rules merely require that an ETSI Member transferring ownership in essential patents "exercise reasonable efforts to notify the assignee or transferee of any undertaking it has made to ETSI pursuant to Clause 6 with regard to that ESSENTIAL IPR." Exh. A at 2. In other words, the NSN's declarations (and subsequent assignments to CCE) were made pursuant to a set of rules (legally binding or not) that, in no way bound (or bind) CCE as a successor.

Defendants also cite to *Datatreasury* for the proposition that "assignees take a patent subject to the legal encumbrances thereon." *See, e.g.,* Samsung Response at 9. But *Datatreasury* does not unequivocally stand for this proposition. To the contrary, *Datatreasury* makes clear that procedural provisions in contracts unrelated to "actual use of the patent" do not run to a subsequent owner:

---

[1] Defendants Sony Mobile and LG make identical arguments in their responsive briefing which is equally defective.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

> However, the legal encumbrances deemed to 'run with the patent' in these cases involved the right to use the patented product, not a duty to arbitrate. **The cases do not support a conclusion that procedural terms of a licensing agreement unrelated to the actual use of the patent (e.g. an arbitration clause) are binding on a subsequent owner of the patent**.

522 F.3d 1368, 1372-73 (Fed. Cir. 2008) (emphasis added).

A FRAND obligation born of NSN's declarations to ETSI is, at best, a procedural framework for prospective licensing negotiations, and not a present and substantive right to use the patented technology. If Defendants here owned the right to use the patented technology, such right would, indeed, encumber the patents and transfer with them. But such is not the case.

CCE did not create, and has not created, an express or implied contract with ETSI. Defendants' counterclaims point to no such contract or viable evidence to suggest otherwise. Thus, Defendants' breach of contract counterclaims should be dismissed, at least, for this reason.

Dated: January 4, 2016

Respectfully submitted,

/s/ Edward R. Nelson III

Edward R. Nelson III
ed@nelbum.com
Texas State Bar No. 00797142
Thomas C. Cecil
tom@nelbum.com
Texas State Bar No. 24069489
NELSON BUMGARDNER PC
3131 West 7th Street, Suite 300
Fort Worth, Texas 76107
Phone: (817) 377-9111
Fax: (817) 377-3485

T. John Ward, Jr.
Texas State Bar No. 00794818
J. Wesley Hill
Texas State Bar No. 24032294
Claire Abernathy Henry
Texas State Bar No. 24053063
WARD & SMITH LAW FIRM
P.O. Box 1231

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

1127 Judson Rd. Ste. 220
Longview, Texas 75606-1231
(903) 757-6400
(903) 757-2323 (fax)
jw@jwfirm.com
wh@wsfirm.com
claire@wsfirm.com

ATTORNEYS FOR PLAINTIFF CELLULAR COMMUNICATIONS EQUIPMENT LLC

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served on all parties of record on January 4, 2016 via the Court's CM/ECF system.

/s/ Edward R. Nelson III

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.