UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CELLULAR COMMUNICATIONS EQUIPMENT LLC, Plaintiff, v. LG ELECTRONICS, INC., et al, Defendants.	§	Civil Action No. 6:14-cv-00982-JRG Consolidated Lead Case JURY TRIAL DEMANDED
CELLULAR COMMUNICATIONS EQUIPMENT LLC, Plaintiff, v. SONY MOBILE COMMUNICATIONS INC., et al, Defendants.	§	Civil Action No. 6:14-cv-00983-JRG JURY TRIAL DEMANDED
CELLULAR COMMUNICATIONS EQUIPMENT LLC, Plaintiff, v. KYOCERA COMMUNICATIONS, INC., et al., Defendants.	§	Civil Action No. 6:15-cv-00049-JRG JURY TRIAL DEMANDED

DEFENDANTS' REPLY IN SUPPORT OF JOINT MOTION TO DISMISS PLAINTIFFS' CONTRIBUTORY INFRINGEMENT CLAIMS

Defendants jointly moved to dismiss CCE's contributory infringement claims for the '060 and '966 Patents because the operative complaints fail to allege facts from which one can infer that (i) any accused component has no substantial non-infringing uses, or (ii) any accused "component" is a material part of the invention. Dkt. No. 45.[1] CCE's Opposition (Dkt. No. 63) does not meaningfully dispute either point. Accordingly, Defendants' Motion to Dismiss should be granted.

I. ARGUMENT

As an initial matter, CCE's Opposition discusses only the allegations in the complaints regarding the '966 Patent. CCE does not mention the '060 Patent or address any allegations in the complaints regarding the '060 Patent. Accordingly, Defendants' Motion should be granted – at a minimum – with respect to the '060 Patent.

The arguments CCE makes with respect to the '966 Patent are unavailing, and cannot save that contributory infringement claim either. Namely, CCE failed to properly allege two basic elements of any contributory infringement claim, "[1] that the component has no substantial noninfringing uses, and [2] that the component is a material part of the invention." *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1326 (Fed. Cir. 2010).

First, CCE's Opposition underscores the fact that the allegations in CCE's complaints actually confirm that the accused components do indeed have substantial non-infringing uses. As explained in Defendants' Motion, at best, CCE merely alleges that the baseband processor and related components can be "programmed and/or configured" to perform two different sets of

[1] "Defendants" refers to 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 Solutions, Inc., Sprint Spectrum L.P., Boost Mobile, LLC; T-Mobile USA, Inc. and T-Mobile US, Inc. "CCE" refers to Plaintiff Cellular Communications Equipment LLC.

functions—one concerning the '060 Patent and the other concerning the '966 Patent. *See* Dkt. No. 45 at 7. CCE's Opposition claims the accused component is "identified hardware" combined with "targeted software instructions . . . for performing specific predetermined tasks." Dkt. No. 63 at 6. However, this is just a convoluted way of alleging that the identified hardware component has no substantial non-infringing use ***only at the time the software is instructing the component to perform a specific task***. Such allegations are insufficient because they "say nothing more than 'if you use this device to perform the patented method, the device will infringe and has no non-infringing uses.'" *See* Dkt. No. 45 at 7 (quoting *In re Bill of Lading Transmission and Processing System Patent Lit.*, 681 F.3d 1323, 1336–37 (Fed. Cir. 2012)).

Furthermore, CCE cannot deny that its allegation that Defendants provide instructions on how to use the accused products creates an inference that there are substantial non-infringing uses. *See* Dkt. No. 45 at 7 (citing *U.S. Ethernet Innovations, LLC v. Digi Int'l, Inc.*, 2013 U.S. Dist. LEXIS 114309, at *14 (E.D. Tex. Apr. 2, 2013)). Here, CCE claims that "the presence of ***instructions . . . pertaining to use of such extraneous components*** does not imply that the identified components have non-infringing uses." Dkt. No. 63 at 5 (emphasis added). However, the allegations CCE actually pleaded do not state that the instructions are divorced from the alleged infringement, as CCE now claims. Namely, the complaints allege:

> Defendants have provided, and continue to provide, instructional materials . . . ***that specifically teach the customers and other end users to use the [accused devices] in an infringing manner***. By providing such instructions, Defendants know (and have known), or should know (and should have known), that their actions have, and continue to, actively induce infringement.

Case No 6:14-cv-982, Dkt No. 28, at ¶¶ 26 & 54; Dkt No. 29, at ¶¶ 22 & 48; Case No. 6:15-cv-49, Dkt No. 44, at ¶¶ 25 & 42 (emphasis added). Indeed, in defending identical induced infringement allegations in related cases, CCE told the Court:

> [The] complaints expressly state that each Defendant specifically intends for its customers to use the identified products (among others) in an infringing manner and that each Defendant 'instructs customers and end users regarding use of the [accused] devices.' *See, e.g.*, HTC FAC, at ¶ 22. ***In other words, Defendants tell their customers how to use the accused products to infringe***. There is no mystery to how this is accomplished.

Case No. 6:13-cv-00507, Dkt. No. 146 at 7 (emphasis added). Thus, even if CCE's allegations are taken at face value, they support the inference that the accused components do have substantial non-infringing uses.

Second, CCE asserts that its complaints "identify particularly the hardware components and software functionality that are material to the subject inventions." Dkt. No. 63 at 4. However, CCE points to nothing in the complaints from which the Court can infer that the alleged "components" are a material part of the invention. Instead, CCE relies on the same language that Judge Davis already found to be insufficient to support a claim for contributory infringement with respect to CCE's complaint filed against Defendant Apple Inc. *Id.*

In sum, CCE has failed to allege facts from which the Court could infer that any accused component has no substantial non-infringing uses, or that any accused "component" is a material part of the invention. Accordingly, Defendants' Motion to Dismiss should be granted.[2]

II. CONCLUSION

Defendants respectfully request that the Court dismiss CCE's claims against Defendants for contributory infringement for failure to state a claim upon which relief may be granted.

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[2] CCE claims that Defendants' Motion was filed to "once again, achieve procedural delay." Dkt. No. 63 at 6. This unfounded accusation ignores the fact that it is CCE's deficient allegations that have necessitated the present motion practice, which constitutes Defendants' first and only response to CCE's allegations. Indeed, "once again" appears to be a misplaced reference to earlier motions filed in related cases. Those motions were ***granted*** with respect to contributory infringement. *See* Case No. 6:13-cv-00507, Dkt. No. 373 at 10-11. Furthermore, despite CCE's refusal to drop the claims it cannot adequately plead, no procedural delay has resulted.

Dated: June 1, 2015

Respectfully submitted,

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