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** **JURY TRIAL DEMANDED** **(Consolidated Lead Case)**
CELLULAR COMMUNICATIONS EQUIPMENT LLC, Plaintiff, **v.** **SONY MOBILE COMMUNICATIONS INC., et al.,** Defendants.	**Civil Action No. 6:14-cv-983** **JURY TRIAL DEMANDED**
CELLULAR COMMUNICATIONS EQUIPMENT LLC, Plaintiff, **v.** **KYOCERA CORPORATION, et al.,** Defendants.	**Civil Action No. 6:15-cv-049** **JURY TRIAL DEMANDED**

PLAINTIFF CELLULAR COMMUNICATIONS EQUIPMENT LLC'S SURREPLY IN OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFF'S CONTRIBUTORY INFRINGEMENT CLAIMS

Short on substantive arguments, Defendants lead with a "gotcha" point, farcically alleging that CCE conceded the insufficiency of certain contributory infringement claims by identifying exemplary, rather than exhaustive, citations to applicable complaint paragraphs. This exemplifies the gamesmanship underlying Defendants' motion.

CCE has conceded nothing. Its Response expressly defends all of the contributory infringement allegations, pointing out that the Amended Complaints[1] adequately plead *combinations* (plural — referring to each subject patent) and identify particular hardware components and software functionality material to the subject *inventions* (again, plural). *See* Response at 1, 4. Moreover, the citations applicable to the '966 patent are plainly illustrative, not limiting. *See, e.g.*, Response at 4 ("With respect to the '966 patent, for instance, CCE notes . . .") (emphasis added). Such exemplary citations are proper because CCE's arguments apply identically to its allegations under the '966 and '060 patents.[2]

CCE's Response demonstrates that, for each accused combination (in *both* the '060 and '966 patents), there is no substantial non-infringing use and the applicable component(s) is (are) a material part of each invention. Defendants allege that, because the same hardware components (baseband processor and related components) are accused in the infringements of the '966 and '060 patent claims, there must necessarily be substantial non-infringing uses. But such a contention falsely premised. CCE's allegations are not so nonspecific. Rather, CCE alleges infringement by particular combinations of (1) hardware and (2) specially-programmed

[1] As with its Response, CCE cites to the current complaint in Case No. 6:14-cv-982, Dkt. No. 28, as exemplary. Each of the complaints at issue contains allegations that are substantively the same.

[2] CCE's Response discusses paragraphs 27 and 28 of its representative complaint relative to the '966 patent. Substantively identical paragraphs discussing the '060 patent are found at paragraphs 55 and 56.

software. Defendants simply ignore the fact that the identified software instructions are, themselves, actual component structure.

Instead, Defendants argue that software instructions are transient and applicable "only at the time the software is instructing the [hardware] component to perform a specific task." Reply at 2. While it is true that infringement of a method step occurs when the method is performed, CCE's allegations are unlike those in *Bill of Lading*. In that case, the Federal Circuit held the plaintiff's allegations deficient because the accused system, in its entirety, could be used for purposes other than infringement — in other words, the accused system had no structure specific to the performance of the claimed process. *See In re Bill of Lading Transmission and Processing System Patent Lit.*, 681 F.3d 1323, 1338 (Fed. Cir. 2012). In this case, the specifically-identified hardware and software combinations have no functionality or purpose other than commission of the claimed process. *See id.* (citing *Ricoh Co v. Quanta Computer Inc.*, 550 F.3d 1325, 1336, 1340 (Fed. Cir. 2008) and noting that, in *Ricoh*, the court held that "summary judgment of no contributory infringement could not be granted in favor of an optical disc drive manufacturer because, although its drives were capable of writing data by either an infringing method or a non-infringing method, the drives contained 'at least some distinct and separate components used only to perform the allegedly infringing write methods.'").

Defendants' argument regarding *U.S. Ethernet Innovations* is equally unavailing. To this end, they argue that CCE is running away from allegations of induced infringement. This is not the case. The induced infringement allegations identify instructional materials (*e.g.*, accused phone user manuals) that precipitate infringement by teaching users to operate accused devices in infringing ways. The gravamen of Defendants' position seems to be that such instructional

materials are directed to the accused devices as a whole, and not to any discrete component combination.

Of course, CCE does not deny that the phone, itself, has non-infringing uses. But Defendants' contributory infringements involve specific component combinations that have no other purpose than to perform infringing functions. Device components (as opposed to the device, as a whole) can properly substantiate a contributory infringement case. *See, e.g., Tierra Intellectual Borinquen, Inc. v. Asus Computer Int'l, Inc.*, Case No. 2:13-cv-44, Dkt. 36 at 3-4 (E.D. Tex. Mar. 24, 2014) ("TIB has accused, not the entire Pantech Flex mobile phone, which no doubt does have substantial noninfringing uses, but rather its 'authentication methods,' which it alleges are a material part of the invention with no substantial noninfringing use… The Court finds that TIB's allegations as pled are sufficient.") (internal citations omitted).

Finally, Defendants incorrectly allege that Judge Davis has already rejected portions of CCE's Amended Complaints that address that the accused components. But the Amended Complaints now identify specific hardware components by name and more precisely characterize the software involved in the accused combinations. *See, e.g.*, Response at 4. These additions to the Amended Complaints assuage Judge Davis' concern that prior complaints did not "identify any components of the accused devices that are a material part of the invention." *See Cellular Communications Equipment LLC v. HTC Corp., et al.* ("*CCE Wave I*"), Case No. 6:13-cv-507, Dkt. No. 373 at 10.

Because CCE's contributory infringement allegations are proper, CCE asks that the Court deny Defendants' motion to dismiss and order that they formally answer.

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Respectfully submitted,

/s/ Edward R. Nelson III
Edward R. Nelson III
ed@nelbum.com
Texas State Bar No. 00797142
S. Brannon Latimer
Brannon@nelbum.com
Texas State Bar No. 24060137
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
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

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