

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

CPC PATENT TECHNOLOGIES PTY LTD.,)
)
 Plaintiff,)
)
 v.) Case No. 6:21-cv-00165-ADA
)
 APPLE INC.,) **JURY TRIAL DEMANDED**
)
 Defendant.)

**PLAINTIFF CPC PATENT TECHNOLOGIES PTY LTD.'S
OPPOSITION TO DEFENDANT APPLE INC.'S MOTION
TO DISMISS FOR LACK OF STANDING**

This is the third motion that defendant, Apple, Inc. (“Apple”) has filed in an effort to forestall the instant litigation. This time, the basis is a purported lack of standing on the part of CPC to bring the subject patent claims. There is no dispute between the parties as to the applicable legal standard – to have standing, CPC must have a valid ownership interest in the Asserted Patents¹ at the time the complaint was filed resulting from valid assignments from CPC’s predecessors-in-interest. *See* Dkt. No. 45 (“Apple. Motion”) at 8-9. Put another way, Apple does not dispute the proposition that, if CPC acquired the Asserted Patents as a result of a series of valid assignments, it would have standing in this matter.

In support of its motion, Apple cites to a November 2017 assignment of the patents in suit from Securicom NSW Pty Ltd. (“Securicom”) to CJ Burke Nominees (“CJ Burke”) that antedates a July 2019 assignment² of such patents from Securicom to plaintiff, CPC Patent Technologies Pty Ltd. (“CPC”). *See* Dkt. No. 45 at 9. According to Apple, while the December 2019 agreement purported to “rescind” the November 2017 agreement, it did not do so *ab initio*. *See id.* Thus, at most, the December 2019 agreement returned ownership of the Asserted Patents to Securicom with no effective transfer thereafter from Securicom to CPC. *See id.*

CPC disagrees with Apple’s characterization of the December 2019 agreement as being ineffective to void the November 2017 transfer *ab initio*.³ However, the Court need not reach that issue to resolve the instant motion, as CPC and Securicom executed an agreement in January 2020

¹ The Asserted Patents are U.S. Patent Nos. 8,620,039 (“the ’039 patent”), 9,269,208 (“the ’208 patent”), and 9,665,705 (“the ’705 patent”).

² Steven Cole Declaration, Ex. A-1 (“July 2019 Deed”).

³ The parties’ dispute as to whether CPC acquired ownership of the patents in suit in July 2019 will, at most, affect the damage calculus in this matter. Because CPC acquired ownership of the patents in suit by the time the complaint was filed as a result of a document that Apple failed to discuss in its motion, CPC had standing as of that time.

providing that, *inter alia*, Securicom assigned rights in the Asserted Patents as of that date “to the extent that any rights are not effectively assigned” through the July 2019 agreement. Steven Cole Declaration, Ex. A-2 (“January 2020 Deed”), Operative Provisions, ¶ 2. Apple has called upon the Court to rule on the issue of standing, which, as Apple itself acknowledges, merely “requires legal ownership at the time of the alleged infringement.” Dkt. No. 45 at 8. There is no requirement that the Court resolve the question of how much in advance of the complaint’s filing such ownership existed.

CPC has now filed the subject assignment(s) with the United States Patent and Trademark Office. Ex. B-1–B-3 (Screenshots of USPTO Websites). This filing, as the authority cited by Apple acknowledges, “creates a presumption of validity as to the assignment and places the burden to rebut such a showing on one challenging the assignment.” *See* Dkt. No. 45 at 11, *citing SiRF Tech., Inc. v. International Trade Commission*, 601 F.3d 1319, 1327-28 (Fed. Cir. 2010). Of course, Apple did not address this assignment at all.

Apple may complain that it was unaware of the January 2020 assignment in making this motion. However, before filing the instant motion, Apple could have awaited CPC’s responses to general discovery, which undoubtedly would have included documents regarding CPC’s ownership of the patents in suit, including the January 2020 assignment. That Apple determined to pull the trigger on the instant motion before receiving that discovery is a problem of Apple’s own making, and does not relieve Apple of its obligation to rebut the presumption of assignment validity. *See SiRF Tech.*, 601 F.3d at 1327-28.

In any event, CPC has presented evidence that it had ownership in the Asserted Patents required for standing, and the instant motion should be dismissed.

Date: December 3, 2021

Respectfully submitted,

/s/ James A. Shimota

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**ATTORNEYS FOR CPC PATENT
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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ James A. Shimota

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