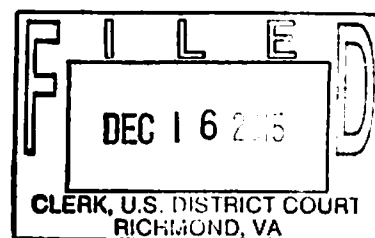


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



SAMSUNG ELECTRONICS CO., LTD,
et al.,

Plaintiffs,

v.

Civil Action No. 3:14cv757

NVIDIA CORPORATION,
et al.,

Defendants.

MEMORANDUM OPINION

This matter is before the Court on Defendant NVIDIA's MOTION FOR PARTIAL SUMMARY JUDGMENT (Docket No. 294). For the reasons set forth below, the motion will be granted in part and denied in part.

I. BACKGROUND

Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. ("Samsung") filed this case against NVIDIA Corporation, Old Micro, Inc. f/k/a Velocity Micro, Inc. and Velocity Holdings, LLC ("NVIDIA") alleging violation of several claims of several patents. (Compl., Docket No. 1). Discovery is now complete and the parties have filed cross-motions for partial summary judgment, although Samsung subsequently withdrew its motion for partial summary judgment.

The papers relevant to this motion are DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT (Docket No. 294), DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT (Docket Nos. 295 and 307) (Def.'s PSJ Mem.), SAMSUNG'S OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT (Docket Nos. 367 and 429) (Pl.'s PSJ Opp.), and DEFENDANTS' REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT (Docket Nos. 440 and 443) (Def.'s PSJ Reply).¹

II. ISSUES

NVIDIA alleges that it is entitled to partial summary judgment on three grounds:

- (1) In inter partes proceedings against the Patent Trial and Appeal Board ("PTAB"), Samsung made several statements that, in NVIDIA's view, contradict the positions that Samsung has taken in this case, such that Samsung is judicially estopped from asserting a contrary position here. NVIDIA further contends that, if Samsung cannot assert that contrary position in this case due to judicial estoppel, then the '602 patent is invalid for lack of written description. (Def.'s PSJ Mem. 3-11);

¹ These docket numbers reflect the unsealed and sealed versions of the papers.

- (2) Samsung is not entitled to pre-suit damages for the '902 or '675 patents because NVIDIA lacked actual notice that NVIDIA was importing infringing products, and is thus protected from pre-suit damages under the safe harbor provision of 35 U.S.C. § 287(b)(1). (Def.'s PSJ Mem. 11-21); and
- (3) The '902 patent is predated by certain prior art, and Samsung cannot establish conception and diligent reduction to practice of the '902 patent to antedate that prior art. (Def.'s PSJ Mem. 21-29).

Samsung's responses state, in brief, that:

- (1) (A) Samsung's statements before the PTAB are not inconsistent and do not evince intent to deceive a tribunal, such that judicial estoppel is inapplicable.
(B) Moreover, even if Samsung is estopped from arguing that '602 covers the use of memory data buffers, the patent need not disclose every embodiment, and is thus not invalid for lack of written description. (Pl.'s PSJ Opp. 1-10);
- (2) There is a genuine dispute of material fact about NVIDIA's control over its overseas manufacturer which precludes summary judgment on the availability of pre-suit damages. (Pl.'s PSJ Opp. 11-22); and

- (3) There is a genuine dispute of material fact about Samsung's diligence in reduction to practice which precludes summary judgment on antedating the asserted prior art. (Pl.'s PSJ Opp. 22-30).

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

The standard principles for resolving motions for summary judgment govern the analysis made here.

Pursuant to Federal Rule of Civil Procedure 56, a party may move for summary judgment, and the Court must ascertain whether the case contains sufficient evidence from which a jury could reasonably find for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In essence, the Court must determine whether a genuine dispute of material fact exists to prevent factually unsupported claims and defenses from proceeding to trial. See Hostettler v. Auto-Owners Ins. Co., 744 F. Supp. 2d 543, 545 (E.D. Va. 2010). If "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, disposition by summary judgment is appropriate." U.S. v. Lee, 943 F.2d 366, 368 (4th Cir. 1991).

In reviewing a summary judgment motion, a court "must draw all justifiable inferences in favor of the nonmoving party."

United States v. Carolina Transformer Co., 978 F.2d 832, 835 (4th Cir. 1992) (citing Anderson, 477 U.S. at 255). However, a mere scintilla of evidence will not preclude summary judgment. Anderson, 477 U.S. at 251 (citing Improvement Co. v. Munson, 81 U.S. (14 Wall.) 442, 448, 20 L.Ed. 867 (1872)). " '[T]here is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party ... upon whom the onus of proof is imposed.'" Id. (quoting Munson, 81 U.S. at 448).

IV. JUDICIAL ESTOPPEL AND LACK OF WRITTEN DESCRIPTION ('602)

A. Judicial Estoppel

The law of the regional circuit governs the analysis of judicial estoppel. Minnesota Min. & Mfg. Co. v. Chemque, Inc., 303 F.3d 1294, 1302-03 (Fed. Cir. 2002). As explained by the Fourth Circuit:

[j]udicial estoppel is a principle developed to prevent a party from taking a position in a judicial proceeding that is inconsistent with a stance previously taken in court Three elements must be satisfied before judicial estoppel will be applied. First, the party sought to be estopped must be seeking to adopt a position that is inconsistent with a stance taken in prior litigation The position at issue must be one of fact as opposed to one of law or legal theory Second, the prior inconsistent position must have been

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