IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FUJITSU LIMITED PLAINTIFF, V. TELLABS OPERATIONS, INC., AND TELLABS, INC. DEFENDANTS.	CIVIL ACTION NO. 1:09-CV-04530 **JUDGE HOLDERMAN** **MAGISTRATE JUDGE COLE** **JURY TRIAL DEMANDED**
FUJITSU LIMITED PLAINTIFF V. TELLABS OPERATIONS, INC., TELLABS, INC., AND TELLABS NORTH AMERICA, INC., DEFENDANTS.	CIVIL ACTION NO. 1:12- CV-3229 **JUDGE HOLDERMAN** **MAGISTRATE JUDGE COLE** **JURY TRIAL DEMANDED**

TELLABS, INC.'S, TELLABS OPERATIONS, INC.'S, AND TELLABS NORTH AMERICA, INC.'S MOTION *IN LIMINE* NO. 5: FUJITSU LIMITED MAY NOT PRESENT TESTIMONY, EVIDENCE, OR ARGUMENT THAT THE ITU PATENT POLICY DISTINGUISHES BETWEEN COMMERCIALLY AND TECHNICALLY ESSENTIAL PATENTS

Fujitsu Limited ("Fujitsu") should be precluded from presenting testimony, evidence, or argument that the ITU Patent Policy distinguishes between commercially essential and technically essential patents because this issue has already been decided as a matter of law. At its core, Fujitsu's argument is that the ITU Patent Policy concerns itself only with technically essential patents and does not apply to commercially essential patents. *See Fujitsu Limited v. Tellabs, Inc. et al.*, Case 1:09-cv-04530, Dkt. 1211 (Apr. 14, 2014). But this argument fails. *See Qualcomm Inc. v. Broadcom Corp.*, 548 F.3d 1004, 1017–18 (Fed. Cir. 2008). In *Qualcomm v. Broadcom*, the Federal Circuit analyzed various sections of the ITU Patent Policy and

specifically rejected the argument that Qualcomm was not subject to a duty of disclosure if the relevant standard could be practiced without infringing Qualcomm's patents. *Id.* at 1013–18. Instead, the Federal Circuit ruled that, according to the ITU Patent Policy, the disclosure duty applies to all patents that "reasonably might be necessary" to practice the standard, not only patents that must "actually be necessary." *Id.* at 1017–18.

In attempting to distinguish between commercially essential and technically essential, Fujitsu is simply rehashing Qualcomm's rejected argument—that the duty applies only to patents that must "actually be necessary" to practice the standard. Regardless of whether the '737 Patent is commercially essential or technically essential, it "reasonably might be necessary" to practice the standard.

Fujitsu acknowledges that its duty to disclose the '737 Patent was triggered because it reasonably might be necessary to implement several standards. *See Fujitsu Limited v. Tellabs, Inc. et al.*, Case 1:09-cv-04530, Dkt. 1211, pp. 19–20 (Apr. 14, 2014). Indeed, Fujitsu disclosed to the ITU its commitment to license the '737 Patent on RAND terms, and has never attempted to modify, amend, or withdraw that commitment. *See id.* at p. 1. Accordingly, Fujitsu's argument that the ITU Patent Policy and its ITU commitment now applies only to technically essential patent claims is improper in light of *Qualcomm*.

For the foregoing reasons, Tellabs respectfully requests that the Court GRANT this motion *in limine* that Fujitsu Limited may not present testimony, evidence, or argument that the ITU Patent Policy distinguishes between commercially essential and technically essential patents.

Respectfully submitted on:
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By: */s/ James P. Bradley*

Richard O'Malley, Jr.
Robert Leighton

SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
Telephone: 312.853.7000
Facsimile: 312.853.7036

James P. Bradley (*admitted pro hac vice)*
Texas Bar No. 02826000
Li Chen (*admitted pro hac vice*)
Texas Bar No. 24001142
Steven C. Malin (*admitted pro hac vice*)
Texas Bar No. 12859750
Mark A. Dodd (*admitted pro hac vice*)
Texas Bar No. 24040815
Kelley A. Conaty (*admitted pro hac vice*)
Texas Bar No. 24040716
Kristoffer B. Leftwich (*admitted pro hac vice*)
Texas Bar No. 24046285

SIDLEY AUSTIN LLP
2001 Ross Avenue
Suite 3600
Dallas, Texas 75201
Telephone: 214.981.3300
Facsimile: 214.981.3400

ATTORNEYS FOR
TELLABS OPERATIONS, INC., TELLABS INC.,
AND TELLABS NORTH AMERICA

CERTIFICATE OF SERVICE

I certify that, on June 20, 2014, I caused a copy of the foregoing document to be served on counsel of record in this litigation through the Court's ECF system.

/s/ James P. Bradley