

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

FUJITSU LIMITED,

Plaintiff,

v.

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

Defendants.

Civil Action No. 1:09-CV-4530

Civil Action No. 1:12-CV-3229

JUDGE HOLDERMAN
MAGISTRATE JUDGE COLE

JURY TRIAL DEMANDED

**FUJITSU LIMITED'S MOTION *IN LIMINE* #6 TO EXCLUDE EVIDENCE THAT
AN INJUNCTION VIOLATES RAND OBLIGATIONS**

I. INTRODUCTION

Fujitsu Limited (“Fujitsu”) moves this Court to enter an Order *in limine* to preclude Tellabs Operations, Inc., Tellabs Inc., and Tellabs North America, Inc. (“Tellabs”) from introducing evidence that requesting an injunction violates any alleged RAND obligation. Any such evidence is inconsistent with recent Federal Circuit precedent.

II. ARGUMENT

In his expert report and deposition, Tellabs’ expert Timothy Simcoe stated that Fujitsu’s request for an injunction on the ‘737 Patent was inconsistent with its RAND obligations. This testimony should be barred because it is inconsistent with the recent Federal Circuit opinion in *Apple Inc. v. Motorola, Inc.*, -- F.3d --, Nos. 2012-1548, 2102-1549, 2014 WL 1646435 (Fed. Cir. April 25, 2014). In *Apple*, the Federal Circuit expressly overruled Judge Posner’s determination, while sitting by designation on the District Court, that an injunction is fundamentally inconsistent with RAND. *Apple Inc.*, -- F.3d --, 2014 WL 1646435, at *35 & at *36 (Rader C.J., dissenting on result). The Federal Circuit held that an injunction may be appropriate depending on the facts of the case, such as when the purported RAND licensee refuses or unreasonably delays RAND negotiations. *Id.*, at *35 & at *36 . Arguing that the request for an injunction itself violates an alleged RAND obligation is therefore against controlling Federal Circuit precedent and should not be allowed.

For all these reasons, Fujitsu requests that Tellabs be precluded from introducing any and all evidence that requesting an injunction violates Fujitsu’s alleged RAND obligations.

Respectfully submitted,

Dated: June 20, 2014

/s/ David C. Van Dyke

David C. Van Dyke

David C. Van Dyke

Joseph W. Barber

Emily E. Bennett

Howard & Howard Attorneys PLLC

200 South Michigan Ave., Suite 1100

Chicago IL 60604

Telephone: (312) 456-3641

Facsimile: (312) 939-5617

Email: dvd@h2law.com

Email: jwb@h2law.com

Email: eeb@h2law.com

James C. Brooks

Michael Owens

Orrick, Herrington & Sutcliffe, LLP

777 South Figueroa Street, Suite 3200

Los Angeles, CA 90017-5855

Telephone: (213) 629-2020

Facsimile: (213) 612-2499

Email: jbrooks@orrick.com

Email: mowens@orrick.com

Mark P. Wine

Mark J. Shean

Glen Liu

Orrick, Herrington & Sutcliffe, LLP 2050

Main Street, Suite 1100

Irvine, CA 92614

Telephone: (949) 567-6700

Facsimile: (949) 567-6710

Email: mwine@orrick.com

Email: mshean@orrick.com

Email: gliu@orrick.com

Attorneys for FUJITSU LIMITED

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2014, I provided service to the persons listed below by causing a true and correct copy of **FUJITSU LIMITED'S MOTION *IN LIMINE* #6 TO EXCLUDE EVIDENCE THAT AN INJUNCTION VIOLATES RAND OBLIGATIONS** to be served on all counsel of record by electronic mail and/or as agreed to by the parties.

Dated: June 20, 2014

s/ David C. Van Dyke
David C. Van Dyke (#6204705)
Howard & Howard Attorneys PLLC
200 South Michigan Ave. Suite 1100
Chicago IL 60604
Telephone: (312) 456-3641
Facsimile: (312) 939-5617
Email: dvd@h2law.com