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 JAMES HOLDERMAN MAGISTRATE JUDGE COLE JURY TRIAL DEMANDED

FUJITSU LIMITED'S *MOTION IN LIMINE* #10 TO EXCLUDE TESTIMONY OR ARGUMENT BASED ON THE 2005 VERIZON REQUEST FOR PROPOSAL

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 or argument regarding the 2005 Verizon Request for Proposal ("Verizon bid"). Any reference to the 2005 Verizon bid would be an irrelevant distraction. Further, any evidence concerning the 2005 Verizon bid would unfairly prejudice Fujitsu. This Court should preclude Tellabs from making reference to the 2005 Verizon bid for the following reasons:

- The Verizon bid is irrelevant to whether or not Fujtsu had a RAND obligation or breached the same. Fed. R. Evid. 402; and
- Referring to the Verizon bid would be unduly prejudicial, confuse the jury, and waste time. Fed. R. Evid. 403.

II. FACTUAL BACKGROUND

In 2005, both Fujitsu and Tellabs bid to provide products and services to Verizon. Fujitsu offered to sell its Flashwave 7500 and Tellabs offered to sell its 7100 Optical Transport System. Verizon awarded the bid to Tellabs. The reason Verizon awarded the bid to Tellabs, and not to Fujitsu, was because Verizon believed the 7100 system was more advanced that the Flashwave 7500. See Memorandum Opinion and Order, Case No. 1:08-cv-03379 (D.I. 659) at pp. 3-4 (May 1, 2012) ("May 1 Order"). Tellabs may seek to introduce details of the 2005 Verizon bid at trial, and Fujitsu's internal communications following the same, during the July 2014 trial.

III. ARGUMENT

Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. Fed. R. Evid. 401. Irrelevant evidence is not admissible. Fed. R. Evid. 402. A court may

exclude evidence if its probative value is outweighed by the danger of prejudice, of confusing the jury, or causing undue delay. Fed. R. Evid. 403. District court judges have broad discretion in ruling on pre-trial motions ***in limine***. ***Jenkins v. Chrysler Motors Corp.***, 316 F.3d 663, 664 (7th Cir. 2002).

A. The Verizon Bid Is Irrelevant To The RAND Inquiry.

The RAND issue to be determined at trial has to do with whether Fujitsu was contractually obligated to offer the '737 Patent on RAND terms, and whether Fujitsu breached that obligation. The market competition between the parties, including the Verizon bid competition, is entirely irrelevant to whether or not Fujitsu had a contractual RAND obligation to Tellabs and breached the same. The RAND obligation is unrelated to the commercial products sold and developed by the parties. There is no evidentiary value related to a RAND obligation which could arise from testimony regarding the Verizon bid, the products at issue in that bid, or the results of the Verizon bid.

B. Referring To The Verizon Bid Would Be Prejudicial, Confuse The Jury, And Waste Time.

Even if the Verizon bid were relevant under FRE 401 and 402, this Court should preclude Tellabs from introducing evidence of the bid at trial because such evidence would confuse the jury, waste time, and unfairly prejudice Fujitsu, and thus should be excluded under FRE 403. Even if there is some probative value related to the Verizon bid, it is substantially outweighed by the danger of prejudice and the likelihood of jury confusion that such arguments and evidence would pose. The potential for jury prejudice and confusion is particularly pronounced here, where discovery into Tellabs' allegations regarding the Verizon bid are far from completed, numerous depositions of Tellabs, Fujitsu and third parties concerning the circumstances of the

Verizon bid remain to be conducted, many pertinent documents are yet to be produced by Tellabs and third parties, and significant discovery disputes are not yet resolved.

Introducing evidence and argument concerning the 2005 Verizon bid would make the trial in this case more complex, time-consuming, and lengthy than it otherwise will be. It will be difficult enough for the jurors to understand the ITU policies and procedures, the claims of the '737 Patent, and whether or not those claims are essential to ITU standards. Introducing evidence that a customer in 2005 chose to award Tellabs a contract instead of Fujitsu will distract from the RAND and standard-essentiality analysis the jury will be asked to undertake on the '737 Patent.

Finally, introducing this evidence would unfairly prejudice Fujitsu. The only function this evidence would serve would be to improperly bolster Tellabs's image and tarnish Fujitsu's. The Verizon bid, and testimony regarding the circumstances surrounding the Verizon bid, is merely a red herring and would potentially excite the passions of the jury. This prejudice outweighs whatever miniscule probative value the evidence may have.

IV. CONCLUSION

For all these reasons, Fujitsu requests that Tellabs be precluded from introducing evidence or argument concerning the 2005 Verizon bid.

Respectfully submitted,

Dated: June 20, 2014

/s/ David C. Van Dyke
David C. Van Dyke

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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* #10 TO EXCLUDE TESTIMONY OR ARGUMENT REGARDING THE 2005 VERIZON REQUEST FOR PROPOSAL** 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

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