

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* #14 TO EXCLUDE
EVIDENCE OF SPECIFIC DAMAGE AMOUNTS CLAIMED BY FUJITSU**

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 of the specific damages amounts claimed by Fujitsu. The threshold issue in this trial is whether Fujitsu is obligated to offer Tellabs a RAND license on the ‘737 Patent because Fujitsu submitted this patent in the ITU-T Recommendation G.692 review process. Assuming there is such an obligation, the next issue is whether the obligation was breached, and if so, whether it was willful. Tellabs has further stipulated that a specific damages amount is not an issue for the trial. Therefore, evidence regarding any specific damages amounts claimed by Fujitsu are not at issue or relevant. This Court should preclude Tellabs from introducing any and all references of specific damages amounts claimed by Fujitsu because such evidence has no bearing on the merits of the case, and would cause undue prejudice, confuse the jury, and be unduly consuming time in this short July 2014 RAND trial.

II. ARGUMENT

Relevant evidence is generally admissible unless an exception applies, however irrelevant evidence is never admissible. Fed. R. Evid. 402. Even if the evidence is relevant, 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.

A. Evidence of Specific Damages Claimed by Fujitsu Has No Bearing On The Issues to be Tried.

Relevant evidence is generally admissible unless an exception applies, however irrelevant evidence is never admissible. Fed. R. Evid. 402. The threshold issue in this trial is whether Fujitsu is obligated to offer Tellabs a RAND license on the ‘737 Patent because Fujitsu submitted this patent in the ITU-T Recommendation G.692 review process. Dkt. 1258.

It is expected that Tellabs will attempt to have the specific damages amounts claimed by Fujitsu for infringement of the '737 Patent entered into evidence. Such evidence is irrelevant considering Tellabs' stipulation that a particular damages amount is not an issue. To the extent that this evidence is related to Fujitsu's alleged bad faith and alleged willful breach, this evidence is irrelevant because it was produced in discovery in the context of litigation. The relevant time period for any alleged bad faith on Fujitsu's part is prior to the filing of the lawsuit.

Because evidence of the specific damages claimed by Fujitsu for infringement of the '737 Patent is irrelevant to whether Fujitsu has a RAND obligation, the Court should exclude it.

B. Even If Relevant, Such Evidence Should Be Excluded As Prejudicial, Confusing, And Unduly Consumptive of Time Under FRE 403.

Finally, even if the evidence is relevant, 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.

The probative value of evidence of any specific damages claimed by Fujitsu is substantially outweighed by the danger of prejudice, likelihood of confusing the jury, and would be unduly consumptive of time. As stated above, the issues at trial is whether Fujitsu has a RAND obligation and if so, whether that obligation was breached, not what Fujitsu has claimed as damages for infringement in this action. This evidence can only confuse the jury in its fact-finding task.

III. CONCLUSION

For all these reasons, Fujitsu requests that Tellabs be precluded from introducing any and all references to the specific damages claimed by Fujitsu for infringement of the '737 patent.

Respectfully submitted,

Dated: June 20, 2014

/s/ 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 AND MOTION IN LIMINE #14 TO EXCLUDE EVIDENCE OF SPECIFIC DAMAGES AMOUNTS** 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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