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* #16 TO EXCLUDE
EVIDENCE OF SPECIFIC ROYALTY RATES

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 specific royalty rates. 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 during 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 a possible specific RAND rate is not an issue or relevant. This Court should preclude Tellabs from introducing any and all references of specific royalty rates 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 Royalty Rates 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. What the specific possible RAND rate that applies is irrelevant to whether the obligation exists.

It is expected that Tellabs will attempt to have its expert Timothy Simcoe testify regarding [redacted] This lack of knowledge is sufficient to bar Mr. Simcoe's testimony on the subject. *Apple Inc. v. Motorola Inc.*, -- F.3d --, Nos. 2012-1548; 2012-1549, 2014 WL 1646435, at *28 (Fed. Cir. April 25, 2014).

The only relevance as explained by Mr. Simcoe is that the [redacted] Putting aside the fact that there is no evidence that the WCDMA patent pool has any relation to a RAND obligation, whether Fujitsu has issued RAND licenses in the past for a completely different technology is irrelevant to the issue of whether Fujitsu has a RAND obligation in relation to the '737 Patent and ITU-T Recommendation G.692. [redacted] Royalty rates for an unrelated technology are arbitrary and speculative to the determination of a royalty rate for the accused patented technology. *LaserDynamics, Inc. v. Quanta Computer, Inc.*, 694 F.3d 51, 81 (Fed. Cir. 2012). Proof of damages must be carefully tied to the claimed invention. *Apple Inc.*, -- F.3d --, 2014 WL 1646435, at *28. If the testimony is not, it is inadmissible. *Id.*

It is further expected that Tellabs will attempt to introduce evidence at trial regarding both parties' experts' determination of a reasonable royalty rate under both RAND and non-RAND terms. Such evidence is irrelevant considering Tellabs' stipulation that a particular damages amount is not an issue. To the extent 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 a specific RAND royalty rate for 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 royalty rate is substantially outweighed by the danger of prejudice and likelihood jury confusion. Allowing such evidence to be considered by the jury would also be unduly consumptive of trial time. As stated above, the issues at trial are whether Fujitsu has a RAND obligation and if so, whether that obligation was breached, not what that RAND obligation would be. Evidence of specific RAND and non-RAND royalty rates can only confuse the jury in its fact-finding task. This is especially true of Mr. Simcoe's speculative testimony regarding the WCDMA patent pool.

III. CONCLUSION

For all these reasons, Fujitsu requests that Tellabs be precluded from introducing any and all references to specific royalty rates.

Respectfully submitted,

Dated: June 20, 2014

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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* #16 TO EXCLUDE EVIDENCE OF SPECIFIC ROYALTY RATES** to be served on all counsel of record by electronic mail and/or as agreed to by the parties.

Dated: June 20, 2014

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