

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

FUJITSU LIMITED,)	
)	
Plaintiff,)	
)	
v.)	Nos. 09 C 4530
)	12 C 3229
TELLABS, INC.,)	
TELLABS OPERATIONS, INC., and)	
TELLABS NORTH AMERICA, INC.,)	
)	
Defendants.)	

**ORDER REGARDING FURTHER REVISION
OF QUESTION 2 OF THE PRELIMINARY VERDICT FORM**

JAMES F. HOLDERMAN, Judge:

After further reviewing the July 11, 2014 Preliminary Copy of the Verdict Form [Dkt. No. 1365], the court has again revised Question 2. The Form remains the same in all other respects. The further revised Form is attached to this Order.

STATEMENT

The first sentence of ITU-T’s seminal “Summary” section of Recommendation G.692 sets forth the Recommendation’s purpose and states:

This recommendation specifies multichannel optical line system interfaces for the purpose of providing future transverse compatibility among such systems.

(Tellabs Exhibit 99, page i) (emphasis added)

The first two paragraphs of the “Scope” section of the ITU-T’s Recommendation G.692 states:

This Recommendation applies to optical interfaces for multichannel optical line systems with optical amplifiers for terrestrial long-haul applications. This Recommendation defines and provides values for optical interface parameters of interoffice and long-hall systems with target lengths up to 160 km without line

amplifiers and with target lengths up to 640 km with optical line amplifiers. Descriptions of system reference configurations and their constituent functional blocks are contained in Recommendation G.681.

The purpose of this Recommendation is to provide optical amplifier specifications for SDH and optical amplifier equipment towards future realisation of transverse compatible multichannel systems. Not all specifications required to obtain full transverse compatible systems could be finalised at the present stage of development. However, because of industry interest and emerging implementations, this initial version is issued. A complete specification is left to future versions of this Recommendation.

(Tellabs Exhibit 99, page 1) (emphasis added)

As is clear from the ITU-T's Recommendation G.692, the purpose of its specifications, which address "multichannel optical line system interfaces," was to provide "future transverse compatibility among such systems." Id. Any patented technology that comes within G.692's specifications that can be used to implement the Recommendations' goal of standardization to provide compatibility should be subject to a RAND royalty commitment. Otherwise, the owner of that patented technology could engage in "patent hold-up" by requiring implementers of the G.692 standard to conduct a work-around so as not to infringe that standard-compliant patented technology.

In the "Intellectual Property Rights" section of the ITU's Recommendation G.692, the ITU states:

The ITU draws attention to the possibility that the practice or implementation of this Recommendation may involve the use of a claimed Intellectual Property Right. The ITU takes no position concerning the evidence, validity or applicability of claimed Intellectual Property Rights, whether asserted by ITU members or others outside the Recommendation development process.

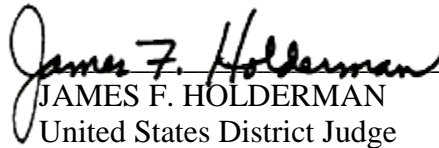
As of the date of approval of this Recommendation, the ITU had received notice of intellectual property, protected by patents, which may be required to implement this Recommendation. However, implementors are cautioned that this may not represent the latest information and are therefore strongly urged to consult the TSB patent database.

(Tellabs Exhibit 99, page ii) (emphasis added)

By choosing the words “patents, which may be required to implement the Recommendation,” the ITU articulated its understanding of the patented technology that required a RAND commitment. That phrase, “may be required to implement the Recommendation,” is now appropriately used in Question 2 for the jury to answer at this trial.

Fujitsu’s “Conclusion” in “Fujitsu Limited’s Motion to Amend the Court’s July 11 Preliminary Jury Verdict Form [Dkt #1365] and Jury Instructions [Dkt #1368]” (Dkt. No. 1387, page 10) is wrong. Tellabs can meet its burden of proving Fujitsu’s RAND obligation merely by showing that Fujitsu’s ‘737 Patent is one way to implement the ITU’s Recommendation G.692, despite that fact that G.692 can also be practiced in multiple other ways that do not infringe Fujitsu’s ‘737 Patent.

ENTER:


JAMES F. HOLDERMAN
United States District Judge

Date: July 14, 2014

IN THE UNITED STATES DISTRICT COURT
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FUJITSU LIMITED,)	
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Plaintiff,)	
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v.)	Nos. 09 C 4530
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TELLABS, INC.,)	
TELLABS OPERATIONS, INC., and)	Judge James F. Holderman
TELLABS NORTH AMERICA, INC.,)	
)	
Defendants.)	

VERDICT OF THE JURY
(Preliminary Copy)

We, the jury, unanimously find and report based on the evidence presented at the trial and the law provided to us in the Final Jury Instructions, the following as the verdict of the jury:

Question 1: Has Tellabs proven that Fujitsu in its May 27, 1996 letter and Patent Statement (Joint Exhibit 2) agreed it was willing to grant a license of Fujitsu’s ‘737 Patent’s technology on RAND terms in compliance with the ITU’s Patent Policies?

Answer: Yes _____ No _____

If the answer to Question 1 is “Yes,” please answer Question 2. If the answer to Question 1 is “No,” please sign the verdict form and do not answer any other questions.

Question 2: Has Tellabs proven that Fujitsu’s ‘737 Patent’s technology was included in (meaning the ‘737 Patent’s technology may be required to implement) one or more of the necessary specifications of the standardized technology recommended by the ITU-T Recommendation G.692 titled, “Optical interfaces for multichannel systems with optical amplifiers”?

Answer: Yes _____ No _____

If the answer to Question 2 is “Yes,” please answer Question 3. If the answer to Question 2 is “No,” please sign the verdict form and do not answer any further questions.

Question 3: Has Tellabs proven that Fujitsu breached its agreement that it was willing to grant a license of Fujitsu's '737 Patent's technology on RAND terms by:

(a) Fujitsu not offering to grant Tellabs a license on RAND terms for Fujitsu's '737 Patent's technology?

Answer: Yes _____ No _____

(b) Fujitsu filing a lawsuit against Tellabs seeking injunctive relief based upon the alleged infringement of Fujitsu's '737 Patent?

Answer: Yes _____ No _____

(c) Fujitsu filing a lawsuit against Tellabs seeking a non-RAND royalty rate based on alleged infringement of Fujitsu's '737 Patent?

Answer: Yes _____ No _____

(d) Fujitsu filing a lawsuit against Tellabs seeking damages in the form of lost profits based on alleged infringement of Fujitsu's '737 Patent?

Answer: Yes _____ No _____

(e) Fujitsu filing a lawsuit against Tellabs alleging infringement of the '737 Patent that damaged Tellabs' business?

Answer: Yes _____ No _____

(f) Fujitsu filing a lawsuit against Tellabs alleging infringement of the '737 Patent that required Tellabs to devote management attention and time, as well as other resources to defending the lawsuit, such as attorney's fees, expert fees, and related costs?

Answer: Yes _____ No _____

If the answer to any part of Question 3 is "Yes," please answer Question 4. If the answer to all parts of Question 3 is "No," please sign the verdict form, and do not answer any further questions.

Question 4: Has Tellabs proven that Tellabs would have been willing to negotiate a license of Fujitsu’s ‘737 Patent’s technology from Fujitsu on RAND terms in compliance with the ITU’s patent policies, if Fujitsu had offered Tellabs RAND terms for such a license?

Answer: Yes _____ No _____

If the answer to Question 4 is “Yes,” please answer question 5. If the answer to Question 4 is “No,” please sign the verdict form and do not answer any further questions.

Question 5: Has Tellabs proven that Fujitsu was willful in Fujitsu’s breach of its agreement that it was willing to grant a license on RAND terms for Fujitsu’s ‘737 Patent’s technology, in that Fujitsu’s breach was intentional, knowing and with conscious disregard for Tellabs’ rights, or alternatively, was done with reckless disregard for Tellabs’ obvious or known rights?

Answer: Yes _____ No _____

If the answer to Question 5 is “Yes,” please answer question 6. If the answer to Question 5 is “No,” please sign the verdict form and do not answer any further questions.

Question 6: Has Tellabs proven by clear and convincing evidence that Fujitsu was willful in its breach of its agreement that it was willing to grant a license for its ‘737 Patent on RAND terms?

Answer: Yes _____ No _____

Please each sign and date below. Then notify the marshal. The Foreperson should bring this signed and dated Final Verdict Form into the courtroom to return the Jury’s Verdict.

Foreperson

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Date: