

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GODO KAISHA IP BRIDGE 1,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 15-634-SLR-SRF
)	
TCL COMMUNICATION TECHNOLOGY)	JURY TRIAL DEMANDED
HOLDINGS LIMITED, <i>a Chinese</i>)	
<i>Corporation</i> , TCT MOBILE LIMITED, <i>a</i>)	
<i>Hong Kong Corporation</i> , TCT MOBILE (US),)	
INC., <i>a Delaware Corporation</i> , and TCT)	
MOBILE, INC., <i>a Delaware Corporation</i> ,)	
)	
Defendants.)	
)	

**DEFENDANTS TCT MOBILE (US), INC.’S AND TCT MOBILE, INC.’S
ANSWER, DEFENSES AND COUNTERCLAIMS TO PLAINTIFF
GODO KAISHA IP BRIDGE’S AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Defendants TCT Mobile (US), Inc. and TCT Mobile, Inc. (“Defendants” or “TCT US”) answer Plaintiff Godo Kaisha IP Bridge 1’s (“Plaintiff” or “IP Bridge”) Amended Complaint for Patent Infringement, dated July 14, 2016 (D.I. 63), as follows:

PARTIES

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1, and on that basis deny them.
2. Defendant are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2, and on that basis deny them.
3. Defendants deny this allegation as written, but admit that at least one senior management member of the TCL Group also serves in management positions in a number of wholly owned subsidiaries and is responsible for overseeing the Alcatel OneTouch business in

the United States and elsewhere. Defendants further admit that

<http://alcatelone-touch.com/global-en/company/contactus.html> can be used to contact TCL

Holding. Unless expressly admitted, Defendants deny the allegations set forth in Paragraph 3.

4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 and on that basis deny them.

5. Defendants admit that TCT US is a Delaware corporation with its principal place of business at 25 Edelman, Irvine, California 92618. Defendants further admit that TCL Holding indirectly owns 100% of TCT US and that TCT US is involved in the sale of mobile devices under the “Alcatel OneTouch” brand in the United States. Unless expressly admitted, Defendants deny the allegations set forth in Paragraph 5.

6. Defendants admit that TCT Mobile, Inc. is a Delaware corporation with its principal place of business at 25 Edelman, Irvine, California 92618. Unless expressly admitted, Defendants deny the allegations set forth in Paragraph 6.

7. Defendants deny the allegations set forth in Paragraph 7.

JURISDICTION AND VENUE

8. Defendants admit that this is an action for infringement arising under the Patent Laws of the United States, Title 35 of the United States Code. Unless expressly admitted, Defendants deny the allegations set forth in Paragraph 7.

9. Defendants admit that this Court has subject matter jurisdiction over a controversy under 28 U.S.C. §§ 1331 and 1338(a).

10. For purposes of this case only, Defendants admit that this court has personal jurisdiction over Defendants. Unless expressly admitted, Defendants deny the allegations set forth in Paragraph 10.

11. For purposes of this case only, Defendants admit that this court has personal jurisdiction over Defendants. Unless expressly admitted, Defendants deny the allegations set forth in Paragraph 11.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 and on that basis denies them.

13. For purposes of this case only, Defendants admit that this court has personal jurisdiction over Defendants. Defendants admit that they are incorporated in Delaware and that they regularly import or cause the importation of mobile phones and mobile devices in the United States. Unless expressly admitted, Defendants deny the allegations set forth in Paragraph 13.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 and on that basis denies them.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 and on that basis denies them.

16. Defendants deny the allegations set forth in Paragraph 16.

17. Defendants admit that venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(a)-(d) and 1400(b).

TCL'S FAILURE TO ENGAGE IN GOOD FAITH NEGOTIATIONS

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18 and on that basis deny them.

19. Defendants were not an addressee of IP Bridge's December 15th letter, and admit that they never wrote a letter responsive to IP Bridge's December 15, 2014 letter.

20. Defendants are without knowledge or information sufficient to form a belief as to

the truth of the allegations set forth in Paragraph 20 and on that basis deny them.

21. Defendants were not an addressee of IP Bridge's January 26th letter, and admit that they never wrote a letter responsive to IP Bridge's January 26th letter.

22. Defendant are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 and on that basis deny them.

23. Defendants were not an addressee of IP Bridge's February 27th letter, and admit that they never wrote a letter responsive to IP Bridge's February 27th letter.

24. Defendant are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24 and on that basis deny them.

25. Defendants were not an addressee of IP Bridge's April 6th letter, and admit that they never wrote a letter responsive to IP Bridge's April 6th letter.

26. The allegations set forth in Paragraph 26 are legal conclusions, not factual assertions. Further, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26 and on that basis deny them.

THE ASSERTED PATENTS

27. Defendants admit that a document purporting to be a certified copy of U.S. Patent No. 7,373,295, entitled "Speech Coder and Speech Decoder," is attached as Exhibit R. Defendants further admit that U.S. Patent No. 7,373,295 states on its face that it was issued on May 13, 2008. Unless expressly admitted, Defendants deny the allegations set forth in Paragraph 27.

28. Defendants admit that a document purporting to be a certified copy of U.S. Patent No. 8,351,538, entitled "Radio Transmission Device and Radio Transmission Method," is attached as Exhibit S. Defendants further admit that U.S. Patent No. 8,351,538 states on its face

that it was issued on January 8, 2013. Unless expressly admitted, Defendants deny the allegations set forth in Paragraph 28.

29. Defendants admit that a document purporting to be a certified copy of U.S. Patent No. 8,385,239, entitled “Control Channel Signalling for Triggering the Independent Transmission of a Channel Quality Indicator,” is attached as Exhibit T. Defendants further admit that U.S. Patent No. 8,385,239 states on its face that it was issued on February 26, 2013. Unless expressly admitted, Defendants deny the allegations set forth in Paragraph 29.

30. Defendants deny the allegations set forth in Paragraph 28.

CLAIM 1 – INFRINGEMENT OF THE ‘295 PATENT

31. Defendants repeat, allege, and incorporate by reference as if fully set forth herein each and every response to Paragraphs 1 through 30 above.

32. Defendants deny the allegations set forth in Paragraph 32.

33. Defendants deny the allegations set forth in Paragraph 33.

34. Defendants deny the allegations set forth in Paragraph 34.

35. Defendants deny the allegations set forth in Paragraph 35.

36. Defendants deny the allegations set forth in Paragraph 36.

CLAIM 2 – INFRINGEMENT OF THE ‘538 PATENT

37. Defendant repeat, allege, and incorporate by reference as if fully set forth herein each and every response to Paragraphs 1 through 36 above.

38. Defendants deny the allegations set forth in Paragraph 38.

39. Defendants deny the allegations set forth in Paragraph 39.

40. Defendants deny the allegations set forth in Paragraph 40.

41. Defendants deny the allegations set forth in Paragraph 41.

42. Defendants deny the allegations set forth in Paragraph 42.

CLAIM 3 – INFRINGEMENT OF THE ‘239 PATENT

43. Defendants repeat, allege, and incorporate by reference as if fully set forth herein each and every response to Paragraphs 1 through 42 above.

44. Defendants deny the allegations set forth in Paragraph 44.

45. Defendants deny the allegations set forth in Paragraph 45.

46. Defendants deny the allegations set forth in Paragraph 46.

47. Defendants deny the allegations set forth in Paragraph 47.

48. Defendants deny the allegations set forth in Paragraph 48.

DENIAL OF PLAINTIFF’S PRAYER FOR RELIEF

Defendants respectfully request that the Court deny Plaintiff’s prayer for relief as stated in the Complaint.

DEFENDANTS’ DEFENSES

Further answering the Complaint, Defendants assert the following defenses. Defendants reserve the right to amend this answer with additional defenses as further information is obtained.

**FIRST DEFENSE:
INVALIDITY**

The patents-in-suit are invalid for failing to comply with one or more provisions of the Patent Laws, Title 35 U.S.C., including without limitation one or more of 35 U.S.C. §§ 101, 102, 103 and 112.

**SECOND DEFENSE:
LIMITATION ON DAMAGES**

Plaintiff has failed to plead and meet the requirements of 35 U.S.C. § 284. Plaintiff’s

recovery for alleged infringement of the patents-in-suit if any, is limited to any alleged infringement committed no more than six years prior to the filing of the current Complaint, pursuant to 35 U.S.C. § 286.

**THIRD DEFENSE:
FRAND OBLIGATIONS**

Plaintiff's claim for damages is limited by FRAND principles because Plaintiff contends that the patents are essential to the practice of standards. On information and belief, plaintiff or its predecessor-in-interest of the asserted patents participated in the relevant standardization processes, signed an agreement, and/or submitted a declaration including a FRAND commitment covering the asserted patents to the relevant standards bodies and/or otherwise committed to license one or more patents on fair, reasonable and non-discriminatory terms.

**FOURTH DEFENSE:
LIMITATION ON COSTS**

To the extent any claim of any asserted patent is invalid, Plaintiff is barred by 35 U.S.C. § 288 from recovering costs associated with its action.

**FIFTH DEFENSE:
FAILURE TO MARK**

Plaintiff has failed to plead and meet the requirements of 35 U.S.C. § 287, and has otherwise failed to show that it is entitled to any past damages. Plaintiff's claims for damages predating the filing of this action are barred by 35 U.S.C. § 287. Upon information and belief, Defendant received no constructive notice of infringement via products adequately marked under 35 U.S.C. § 287 that are or were sold by one of Plaintiff, any predecessors-in-interest to the patents-in-suit, or parties licensed to the patents-in-suit to manufacture, sell or distribute products that practice the patents-in-suit. Neither did Defendant receive actual notice of infringement prior to being served with this Complaint.

**SIXTH DEFENSE:
UNCLEAN HANDS**

On information and belief, Plaintiff has rendered the patent-in-suit unenforceable under the doctrine of unclean hands.

**SEVENTH DEFENSE:
LICENSE AND PATENT EXHAUSTION**

On information and belief, some or all of Defendant's accused products are licensed under the patent-in-suit and/or subject to the doctrines of patent exhaustion and implied license.

DEFENDANTS' DEMAND FOR A JURY TRIAL

Defendants request a trial by jury, under Rule 38 of the Federal Rules of Civil Procedure, for all issues triable of right by a jury.

DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, Defendants pray for relief as follows:

- A. That the Court enter judgment in favor of Defendants and against Plaintiff;
- B. That the Court find the patents-in-suit not infringed by Defendants;
- C. That the Court find the patents-in-suit invalid;
- D. That the Court find the patents-in-suit unenforceable;
- E. That the Court find this case exceptional under 35 U.S.C. § 285, and award Defendants their costs and fees in this action, including reasonable attorneys' fees and pre-judgment interest thereon; and
- F. That the Court grant Defendants such other and further relief as it deems just and proper.

COUNTERCLAIMS

Counterclaim-Plaintiffs TCT Mobile (US) and TCT Mobile, Inc. (collectively, “TCT US”) counterclaim against Godo Kaisha IP Bridge 1 (“IP Bridge”) as follows.

THE PARTIES

1. TCT Mobile (US) is a Delaware corporation with its principal place of business at 25 Edelman, Irvine, California 92618. In the United States, TCT US sells its products under the “Alcatel OneTouch” brand.

2. TCT Mobile, Inc. is a Delaware corporation with its principal place of business at 25 Edelman, Irvine, California 92618.

3. In its complaint, IP Bridge alleges that IP Bridge is a Japanese Corporation with its principal place of business located at c/o Sakura Sogo Jimusho, 1-11 Kanda Jimbocho, Chiyoda-ku, Tokyo, 101-0051, Japan.

INTRODUCTION

4. IP Bridge has represented that it is the owner (by assignment) of a number of patents previously declared essential to the global 2G, 3G and 4G telecommunications standards established by the European Telecommunications Standards Institute (“ETSI”). These include U.S. Patent Nos. 7,373,295 B2, 8,385,239 B2, and 8,351,538 B2 (“the asserted patents”). In declaring these patents as essential to these standards, IP Bridge’s predecessor-in-interest made public and binding commitments to the international community to license those patents on fair, reasonable, and non-discriminatory (or “FRAND”) terms.

5. IP Bridge has accused multiple Alcatel OneTouch products of infringing claims of the asserted patents.

6. In open court, IP Bridge has stated that, if it prevails in proving infringement of a valid claim of the asserted patents, it will seek more than fair, reasonable and nondiscriminatory (“FRAND”) royalty. And in IP Bridge’s May 31, 2016 responses to TCT US’s first set of interrogatories, it stated its contention that “TCT [US] is no longer eligible for a license to the Patents-in-Suit at FRAND rates.”

7. In IP Bridge’s June 9, 2016 responses to TCT US’s first set of requests for admission, IP Bridge denied not only that it was limited to a royalty no greater a FRAND royalty, but also that its predecessor had previously committed to ETSI to license the asserted patents for a FRAND royalty.

8. In addition, IP Bridge has taken the position that it will not agree to license the asserted patents until and unless TCT US agrees to enter into a license for IP Bridge’s entire patent portfolio.

9. IP Bridge also has taken the position that, if TCT US agrees to license the asserted patents, its license obligations will persist even if the asserted patents are subsequently determined to be invalid.

NATURE OF THE ACTION

10. TCT US brings this action for IP Bridge’s breach of its commitments to ETSI, the 3rd Generation Partnership Project (“3GPP”), and their members and affiliates, to license intellectual property rights (“IPRs”) that its predecessor asserted were essential to wireless technologies known as second generation (“2G”), third generation (“3G”), and fourth generation (“4G”) technologies under reasonable rates, on fair and reasonable terms, and under non-discriminatory conditions.

11. According to ETSI IPR Policy, if an ETSI member owns IPRs, including patents, that it considers essential to a particular standard or technical specification, the owner must grant irrevocable licenses on FRAND terms and conditions in return for inclusion of the IPR into the standard.

12. Clause 6 of ETSI's IPR Policy states:

When an ESSENTIAL IPR relating to a particular STANDARD or TECHNICAL SPECIFICATION is brought to the attention of ETSI, the Director General of ETSI shall immediately request the owner to give within three months an irrevocable undertaking in writing that it is prepared to grant irrevocable licenses on fair, reasonable and nondiscriminatory ("FRAND") terms and conditions.

13. Additionally, Clause 6.1bis of ETSI's IPR policy states:

FRAND licensing undertakings made pursuant to Clause 6 shall be interpreted as encumbrances that bind all successors-in-interest. Recognizing that this interpretation may not apply in all legal jurisdictions, any Declarant who has submitted a FRAND undertaking according to the POLICY who transfers ownership of ESSENTIAL IPR that is subject to such undertaking shall include appropriate provisions in the relevant transfer documents to ensure that the undertaking is binding on the transferee and that the transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding all successors-in-interest. The undertaking shall be interpreted as binding on successors-in-interest regardless of whether such provisions are included in the relevant transfer documents.

14. If the owner refuses to undertake the requested commitment and informs ETSI of that decision, the ETSI General Assembly must "review the requirement for that STANDARD or TECHNICAL SPECIFICATION and satisfy itself that a viable alternative technology is

available for the STANDARD or TECHNICAL SPECIFICATION” that is not blocked by that IPR and satisfies ETSI’s requirements. ETSI IPR Policy, cl. 8.1.1. Absent such a viable alternative, the ETSI IPR Policy requires that “work on the STANDARD or TECHNICAL SPECIFICATION shall cease.” *Id.*, cl. 8.1.2. In other words, ETSI will not agree to incorporate a member’s technology in a standard under consideration unless the member irrevocably binds itself to granting licenses on FRAND terms.

JURISDICTION AND VENUE

15. These are counterclaims over which this Court has jurisdiction under Title 35 of the United States Code, as well as under 28 U.S.C. §§ 1331 and 1332.

16. Upon information, these counterclaims involve an amount in controversy in excess of \$75,000.00, exclusive of interest and costs and is between parties of diverse citizenship.

17. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)–(c) and 1400(b).

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION **(Breach Of Contract)**

18. TCT US re-alleges and incorporates by reference the allegations set forth in all of the preceding paragraphs, as though fully set forth herein.

19. IP Bridge’s predecessor-in-interest entered into contractual commitments with ETSI, 3GPP and their respective members, participants, and implementers relating to the Mobile Cellular Standards which were binding on the successors-in-interest, including IP Bridge.

20. IP Bridge is contractually obligated to offer a license to its identified patents consistent with the applicable IPR policy of ETSI and 3GPP, including a license on FRAND terms.

21. Each third party that would potentially implement the Mobile Cellular Standards was and is an intended beneficiary of those contracts.

22. IP Bridge breached these contracts by refusing to agree to a FRAND rate to its identified patents under reasonable rates, with reasonable terms, and on a non-discriminatory basis, and by failing to provide separate rates for each of the 2G, 3G, and 4G standards.

SECOND CAUSE OF ACTION
(Sections 1-2 of the Sherman Act)

23. TCT US re-alleges and incorporates by reference the allegations set forth in all of the preceding paragraphs, as though fully set forth herein.

24. By asserting to ETSI and 3GPP that the asserted patents (through its predecessor in interest, Panasonic) are standard-essential patents, IP Bridge established itself in a position of monopoly power in the Relevant Technology Market.

25. By refusing to license the asserted patents to TCT US on FRAND terms, should it prevail in this litigation, IP Bridge has abused that monopoly power and engaged in uncompetitive conduct toward TCT US.

26. IP Bridge's conduct has damaged TCT US.

THIRD CAUSE OF ACTION
(Declaratory Judgment Of Unenforceability Of U.S. Patent Nos. 7,373,295 B2, 8,385,239 B2, And 8,351,538 B2)

27. TCT US re-alleges and incorporates by reference the allegations set forth in all of the preceding paragraphs, as though fully set forth herein.

28. IP Bridge has engaged in patent misuse by: (1) demanding a royalty higher than the FRAND royalty that its predecessor agreed to seek and by refusing to license the asserted patents to TCT US on FRAND terms; (2) conditioning any agreement to license the asserted patents on TCT US's agreement to license IP Bridge's entire patent portfolio; and (3) asserting license

obligations that would, according to IP Bridge, persist even if the asserted patents are determined to be invalid.

29. As a result of IP Bridge's patent misuse, the asserted patents should be declared unenforceable.

PRAYER FOR RELIEF

WHEREFORE, TCT US prays for relief as follows:

- A. Adjudge and decree that IP Bridge is liable for breach of contract;
- B. Adjudge and decree that IP Bridge is liable for promissory estoppel;
- C. Adjudge and decree that this is an "exceptional case" within the meaning of 15 U.S.C. § 1117(a);
- D. Adjudge and decree that TCT US is entitled to its reasonable attorney and investigatory fees and disbursements incurred and as otherwise appropriate herein pursuant to 15 U.S.C. § 1117;
- E. Adjudge and decree that U.S. Patent Nos. 7,373,295 B2, 8,385,239 B2 and 8,351,538 B2 are unenforceable due to patent misuse; and
- F. Award TCT US all statutory and actual damages to which it is entitled pursuant to 15 U.S.C. § 1117(a).

Respectfully submitted,

ROSS ARONSTAM & MORITZ LLP

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*Counsel for Defendants TCT Mobile (US),
Inc., and TCT Mobile, Inc.*

Dated: August 3, 2016

CERTIFICATE OF SERVICE

I, Benjamin J. Schladweiler, hereby certify that on August 3, 2016, a true copy of the foregoing *Defendants TCT Mobile (US), Inc.'s and TCT Mobile, Inc.'s Answer, Defenses and Counterclaims to Plaintiff Godo Kaisha IP Bridge's Amended Complaint for Patent Infringement* was served via electronic mail upon the following counsel of record:

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