

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

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

**DEFENDANTS TCT MOBILE (US), INC.’S AND TCT MOBILE, INC.’S
AMENDED ANSWER, DEFENSE AND COUNTERCLAIMS**

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://alcatelonetouch.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).

**DEFENDANTS' ALLEGED 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 asserted patents not infringed by Defendants;

- C. That the Court find the asserted patents invalid;
- D. That the Court find the asserted patents 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 prejudgment interest thereon; and
- F. That the Court grant Defendants such other and further relief as it deems just and proper.

COUNTERCLAIMS

TCT Mobile (US) and TCT Mobile, Inc. (collectively, "Counterclaimants" or "TCT US") counterclaim against Godo Kaisha IP Bridge 1 ("IP Bridge") and Panasonic Corporation ("Panasonic") 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.
4. Panasonic is a Japanese corporation with its principal place of business at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan.

NATURE OF THIS ACTION

5. Counterclaimants bring this action against Panasonic and IP Bridge for their anticompetitive conduct and their conspiracy to violate the antitrust laws by breaching commitments to the European Telecommunications Standards Institute (“ETSI”), the 3rd Generation Partnership Project (“3GPP”), and their members and affiliates, to license the Asserted Patents on fair reasonable, and non-discriminatory terms.

JURISDICTION AND VENUE

6. The federal antitrust counterclaims pled herein arise under Section 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2. Accordingly, the Court has jurisdiction of these federal antitrust claims pursuant to 28 U.S.C. §§ 1331, 1332 and 1337.

7. IP Bridge has asserted the claims against Counterclaimants in this Court that give rise to Counterclaimants’ counterclaims and is thus subject to the Court’s personal jurisdiction.

8. The Court has personal jurisdiction over Panasonic [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. 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.

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

PANASONIC'S FRAND COMMITMENT

11. IP Bridge claims to be the owner (by assignment) of a number of patents previously declared essential to the second generation (“2G”), third generation (“3G”), and fourth generation (“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”).

12. Panasonic declared the Asserted Patents to be Standard Essential Patents (“SEP”) with ETSI while they were still pre-issued patent applications — the application for the ’295 Patent in 2005, the ’239 Patent in 2010, and the ’538 Patent in 2013.

13. In so doing, Panasonic made public and binding commitments to the international community to license the Asserted Patents on fair, reasonable, and non-discriminatory (or “FRAND”) terms.

THE ANTICOMPETITIVE EFFECT OF VIOLATING COMMITMENTS TO LICENSE STANDARD ESSENTIAL PATENTS ON FRAND TERMS

14. The U.S. Department of Justice has advised that industry standards make networks, such as 2G, 3G and 4G telecommunications networks, more valuable to consumers by allowing products made by diverse manufacturers to interoperate. U.S. Dept. of Justice & Federal Trade Comm’n, *Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition* 6-7 (April 2007).

15. The Department of Justice has also advised that unique antitrust issues arise when such standards involve intellectual property rights. *Id.* If a technology covered by a patent is declared essential to a standard (*i.e.*, the patent is declared “standard-essential”), any firm wishing to implement the standard in question may be required to obtain a license to the patent. *Id.*

16. As the Department of Justice has also advised, the owner of any such SEP thus may be able to “hold up” the firm wishing to implement the standard by demanding higher royalties than it would have been able to demand if the patent were not standard-essential. *Id.*

17. Alternatively, a firm excluded from using the standard is excluded from participating in the market defined by that standard (*e.g.*, from providing 2G, 3G or 4G wireless connectivity).

18. In an effort to avoid these antitrust issues, standard-setting organizations (or “SSOs”) such as ETSI have required any patent owner that declares its patent to be an SEP to commit to license that patent on FRAND terms. *Id.*

19. Thus, according to ETSI Intellectual Property Rights (“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.

20. 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.

21. 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.

22. 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 commits itself to granting licenses on FRAND terms.

[REDACTED]

[REDACTED]

- [REDACTED]

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THE COUNTERCLAIM DEFENDANTS' VIOLATION [REDACTED]

35. On May 16, 2016, during a scheduled discovery review hearing, IP Bridge told the Court that, if it prevails in proving infringement of a valid claim of the Asserted Patents, it will seek more than a FRAND royalty.

36. On May 31, 2016, IP Bridge responded to Counterclaimants' first set of interrogatories [REDACTED]

37. On June 9, 2016, IP Bridge responded to Counterclaimants' first set of requests for admission [REDACTED]

38. On August 5, 2016, IP Bridge provided a supplemental response to TCT US's Interrogatory No. 7, which asked it to "[d]escribe the basis for IP Bridge's request that the Court permanently enjoin TCT or any other named defendant from making, using, importing, exporting, distributing, supplying, selling or offering to sale the Accused Products." The interrogatory further asked IP Bridge "to identify all facts supporting any contention on the part of IP Bridge that it will be irreparably harmed absent such an injunction." [REDACTED]

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Section 1 Sherman Act)

39. Counterclaimants re-allege and incorporate by reference the allegations set forth in all of the preceding paragraphs, as though fully set forth herein. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. By declaring to ETSI and 3GPP that the Asserted Patents are standard-essential patents, Panasonic — like the owner of any SEP — obtained market power with respect to the 2G, 3G, and 4G telecommunications standards. To the extent that it refused to license any SEPs (including the Asserted Patents) on FRAND terms, Panasonic could abuse that market power and engage in anticompetitive conduct. [REDACTED]

[REDACTED]

41. By refusing to license the Asserted Patents to TCT US on FRAND terms, should IP Bridge prevail in this litigation, Panasonic and IP Bridge have abused that market power and engaged in anticompetitive conduct toward the Counterclaimants and have damaged Counterclaimants.

SECOND CAUSE OF ACTION

(Section 2 of Sherman Act)

42. IP Bridge's predecessor-in-interest, Panasonic, entered into contractual commitments with ETSI, 3GPP, and their respective members, participants, and implementers

relating to the Mobile Cellular Standards. These commitments were binding on Panasonic's successors-in-interest, including IP Bridge.

43. Panasonic acquired market power in the Relevant Technology Markets represented by the 2G, 3G, and 4G telecommunications standards when 3GPP and ETSI incorporated Panasonic's SEPs, including the Asserted Patents, into the 2G, 3G and 4G standards.

44. 3GPP and ETSI relied on Panasonic's promises to adhere to the ETSI IPR Policy by accepting Panasonic's proposals for inclusion of the Asserted Patents in the standards. In particular, 3GPP relied on Panasonic to abide by its commitments to license the SEPs on FRAND terms.

45. On information and belief, when Panasonic made its FRAND commitments to the standard setting organizations, Panasonic did not intend to adhere to those commitments. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

47. [REDACTED]

[REDACTED]

[REDACTED]

48. [REDACTED] IP Bridge has [REDACTED] [REDACTED] (1) demanding non-FRAND royalties, and (2) seeking to enjoin sales of Counterclaimants' accused products.

49. Panasonic and IP Bridge's unlawful monopolization and anticompetitive conduct has damaged Counterclaimants.

PRAYER FOR RELIEF

WHEREFORE, Counterclaimants pray for relief as follows:

- A. Adjudge and decree that IP Bridge and Panasonic's unlawful conduct be declared violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2;
- B. Adjudge and decree that Counterclaimants recover damages against IP Bridge and Panasonic, including incidental and consequential damages, in an amount to be determined and multiplied to the extent provided by law;
- C. Preliminarily and permanently enjoin IP Bridge and Panasonic from seeking injunctions against Counterclaimants' sales of the accused products;
- D. Adjudge and decree that Counterclaimants are entitled to reasonable attorney and investigatory fees and disbursements incurred and as otherwise appropriate to the extent provided by law;
- E. Adjudge and decree that Counterclaimants be awarded such additional relief as the Court may deem proper.

Respectfully submitted,

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*Counsel for Defendants and Counterclaim
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Mobile, Inc.*

Dated: April 6, 2017

CERTIFICATE OF SERVICE

I, Benjamin J. Schladweiler, hereby certify that on April 6, 2017, a true copy of the foregoing *Defendants TCT Mobile (US), Inc.'s and TCT Mobile, Inc.'s Amended Answer, Defense and Counterclaims* was served via electronic mail upon the following counsel of record:

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