

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

MOBILEMEDIA IDEAS, LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Civil Action No. 10-258-SLR

APPLE INC.'S MOTION FOR JUDGMENT AS A MATTER OF LAW
PURSUANT TO RULE 50(A)

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Defendant Apple Inc. (“Apple”) respectfully moves for judgment as a matter of law. The evidence is now closed, and there is not a legally sufficient evidentiary basis for a reasonable jury to find for Plaintiff MobileMedia Ideas LLP (“MMI”) that the asserted claims of Patent No. RE 39,231 (“the ’231 patent”) are infringed, that the asserted claims are not invalid, or that MMI is entitled to damages. In addition to the briefing below, Apple incorporates its oral motions before the Court. Consequently, this Court should grant judgment as a matter of law in favor of Apple on those issues. *See, e.g.*, Fed. R. Civ. P. 50(a)(1).

I. LEGAL STANDARDS

The standard for evaluating a motion for judgment as a matter of law is whether a “reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.” Fed. R. Civ. P. 50(a)(1); *Bullen v. Chaffinch*, 336 F. Supp. 2d 342, 346 (D. Del. 2004).

II. THE COURT SHOULD GRANT JUDGMENT AS A MATTER OF LAW OF NO INFRINGEMENT

Judgment as a matter of law of no infringement is proper when no reasonable fact finder could determine “the accused devices meet every limitation of the properly construed claims.” *Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192 F.3d 973, 980-81 (Fed. Cir. 1999). MMI has not presented legally sufficient evidence that Apple has infringed either of the asserted claims.

A. MMI Has Not Shown That Any Of The Accused iPhones Have An “Alert Sound Generator” Or “Control Means”

MMI failed to present sufficient evidence from which a reasonable jury could conclude that any of the accused iPhones meet the claim limitations, “alert sound generator for generating the alert sound” and “control means for controlling said alert sound generator.” This Court, in accordance with Federal Circuit precedent, has construed these terms as means-plus-function claim limitations. (D.I. 630 at 11, 14.) Pursuant to Federal Circuit law, a means-plus-function claim limitation is “expressed as a means or step for performing a specified function without the

recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding *structure ... described in the specification and equivalents thereof.*” 35 U.S.C. § 112 ¶ 6 (emphasis added). “For an accused product to practice a [means-plus-function] claim element ... , the accused product must perform the *identical* function using an *identical or equivalent* structure.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1345-46 (Fed. Cir. 2016) (citing *Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1267 (Fed.Cir.1999)) (emphasis added). A means-plus-function claim limitation covers only structures that were “available at the time of the issuance of the claim,” thus, only such structures may be considered in determining infringement. *Al-Site Corp. v. VSI Int’l, Inc.*, 174 F.3d 1308, 1320 (Fed. Cir. 1999).

MMI failed to show that Apple’s integrated audio subsystem contains structures identical to the structures associated with the “alert sound generator” and “control means,” as construed by the Court and/or disclosed in the ’231 patent specification. *See Enfish*, 822 F.3d at 1345-46. This Court construed the structural component of the “alert sound generator” limitation to mean “alert sound generator (such as¹ alert sound generator 13 in Figure 2),” and the structural component of the “control means” limitation to mean “CPU and alert sound generator on/off controller.” MMI’s technical expert, Dr. Meldal, conceded that Apple’s integrated audio subsystem is *not* identical, and does not contain structures identical, to “alert sound generator

¹ Pursuant to Federal Circuit precedent regarding infringement of means-plus-function claim limitations, MMI must meet the standard for showing structural equivalency under 35 U.S.C. § 112 ¶ 6 to encompass anything other than the structures disclosed in the specification within the scope of the claims. *See Enfish*, 822 F.3d at 1345–46; *JVW Enter., Corp. v. Interact Accessories, Inc.*, 424 F.3d 1324, 1333 (Fed. Cir. 2005). This Court’s use of “such as” to encompass structures not disclosed in the specification necessarily implicates this standard. As discussed in greater detail below, if MMI seeks to show infringement based on structures equivalent, rather than identical, to alert sound generator 13 in Figure 2, MMI must meet this standard. *See infra* at 3-4.

(such as alert sound generator 13 in Figure 2),” as construed by the Court and disclosed in the specification, or any other structure(s) disclosed in the specification for performing the required function. (*See, e.g.*, Tr. (Meldal) at 463:22-464:17, 468:24-469:8, 469:19-470:4, 470:5-8.) And MMI failed to provide evidence sufficient for a reasonable jury to conclude that Apple’s integrated audio subsystem is identical, or contains structures identical, to “CPU and alert sound generator on/off controller,” as construed by the Court and disclosed in the specification, or any other structure(s) disclosed in the specification for performing the required function. (*See, e.g.*, Tr. (Balakrishnan) at 841:25-842:4.)

MMI also failed to show that Apple’s integrated audio subsystem contains structures equivalent to the “alert sound generator” and “control means” disclosed in the ’231 patent specification. Federal Circuit law is clear that a structure must meet two requirements to qualify as a structural equivalent under section 112 ¶ 6. First, “the differences between the structure in the accused device and any disclosed in the specification [must be] insubstantial.” *WMS Gaming Inc. v. Int’l Game Tech.*, 184 F.3d 1339, 1351 (Fed. Cir. 1999). “For example, the structure in the accused device must perform the claimed function in substantially the same way to achieve substantially the same result as the structure in the written description.” *JVW Enter.*, 424 F.3d at 1333; *see also Valmont Indus., Inc. v. Reinke Mfg. Co.*, 983 F.2d 1039, 1043 (Fed. Cir. 1993) (“In the context of section 112 ... an equivalent results from an insubstantial change which adds nothing of significance to the structure, material, or acts disclosed in the patent specification.”). Second, the structure “must have been available at the time of the issuance of the claim.” *Al-Site Corp.*, 174 F.3d at 1320. “An equivalent structure or act under § 112 cannot embrace technology developed after the issuance of the patent because the literal meaning of a claim is fixed upon its

issuance.” *Id.*; *see also Ring & Pinion Serv. Inc. v. ARB Corp., Ltd.*, 743 F.3d 831, 835 (Fed. Cir. 2014). MMI has presented no evidence to support either of these requirements.

B. MMI Failed To Identify Separate Structures In the Accused iPhones For The “Alert Sound Generator” And “Control Means”

MMI relied on the *same CPU* in the accused iPhones to meet both the “alert sound generator” and “control means” claim limitations. (*See, e.g.*, Tr. (Meldal) at 413:2-21.) But Federal Circuit law is clear that “[t]here can be no literal infringement where a claim requires two separate structures and one such structure is missing from an accused device.” *Becton, Dickinson & Co. v. Tyco Healthcare Group, LP*, 616 F.3d 1249, 1255 (Fed. Cir. 2010); *see also id.* at 1254 (“Where a claim lists elements separately, the clear implication of the claim language is that those elements are distinct components of the patented invention.”) (citations and internal quotations omitted). For this independent reason, judgment as a matter of law of non-infringement is warranted.

C. MMI Failed To Show The iPhone 3G, iPhone 4 (GSM), Or iPhone 4 (CDMA) Meet Numerous Other Claim Limitations

MMI failed to present sufficient evidence from which a reasonable jury could conclude that the iPhone 3G, iPhone 4 (GSM), or iPhone 4 (CDMA) meet numerous other limitations of the asserted claims. Dr. Meldal provided infringement opinions based exclusively on evidence regarding the accused iPhone 3GS. But there are three other products accused in this case: iPhone 3G, iPhone 4 (GSM), and iPhone 4 (CDMA). To prove infringement of the asserted claims by these other iPhones, MMI relied exclusively on conclusory statements that the iPhones are the same or similar to the iPhone 3GS for purposes of the infringement analysis. (*See, e.g.*, Tr. (Meldal) at 412:13-17, 416:13-16, 417:19-23, 422:19-23, 424:20-425:4, 426:6-10.) In particular, Dr. Meldal testified the iPhone 3GS performs the function required by the “RF signal processing means ...” limitation, but stated only that the iPhone 3G and iPhone 4 perform a

“similar function.” (*Id.* at 422:19-23.) A similar, but not identical, function is insufficient to demonstrate infringement. *Enfish*, 822 F.3d at 1345-46 (“[f]or an accused product to practice a [means-plus-function] claim element ..., the accused product must perform the *identical* function ...”) (emphasis added). Dr. Meldal also relied on the fact that the iPhone 3GS operates pursuant to the GSM standard to demonstrate infringement of the “antenna for transmitting ...” limitation. (Tr. (Meldal) at 424:20-425:4.) But he provided no evidence to show how iPhone 4 (CDMA), which does not use the GSM standard, performs that same limitation. (*Id.* at 424:20-425:4, 426:6-10.) Finally, Dr. Meldal relied on numerous statements that the iPhone 3G and iPhone 4 are the same or similar to the iPhone 3GS to demonstrate infringement. (*Id.* at 412:13-17, 416:13-16, 417:19-23, 426:6-10.) These conclusory statements devoid of any analysis are legally insufficient.

III. THE COURT SHOULD GRANT JUDGMENT AS A MATTER OF LAW OF INVALIDITY

Apple presented to the jury clear and convincing evidence that all asserted claims are invalid as obvious over prior art references, Panasonic and Motorola, and for lack of written description. MMI failed to rebut this evidence or provide contrary evidence. In light of the evidence at trial, Apple also respectfully requests that the Court find the asserted claims invalid as indefinite pursuant to 35 U.S.C. § 112 ¶ 6, 1.

A. The Asserted Claims Are Obvious In Light Of Panasonic And Motorola

Judgment as a matter of law of invalidity for obviousness is proper when a reasonable fact finder must conclude that “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *TriMed, Inc. v. Stryker Corp.*, 608 F.3d 1333, 1340-41 (Fed. Cir. 2010) (quoting 35

U.S.C. § 103(a)). Dr. Balakrishnan testified that both asserted claims would have been obvious to a person of ordinary skill in the art in view of Motorola and, independently, in view of Panasonic. (*See, e.g.*, 864:3-874:3, 877:1-4, 889:13-17, 894:19-897:12; *see also* DTX-260, DTX-271, DTX-272.) MMI presented no compelling response that would allow a reasonable jury to find the asserted claims valid. Accordingly, judgment as a matter of law of obviousness is warranted.

B. There Is No Written Support In The Specification For “Alert Sound Generator” Or “Control Means”

Judgment as a matter of law of invalidity for lack of written description is proper when a reasonable fact finder must conclude that “the specification does not ‘indicate to persons skilled in the art that as of the [filing] date the applicant had invented what is now claimed.’” *Ziarno v. Am. Nat’l Red Cross*, 55 F. App’x 553, 555 (Fed. Cir. 2003) (quoting *All Dental Prods., LLC v. Advantage Dental Prods., Inc.*, 309 F.3d 774, 779 (Fed.Cir.2002)). Apple presented clear and convincing evidence that the claim limitations, “alert sound generator” and “control means,” are invalid for lack of written description. (*See, e.g.*, Tr. (Balakrishnan) at 854:19-22, 855:4-10.) MMI did not sufficiently rebut Apple’s evidence or present adequate counter evidence. Accordingly, judgment as a matter of law of invalidity for inadequate written description is warranted.

C. The Asserted Claims Are Invalid As Indefinite Under §112 ¶ 6

While this Court denied Apple’s motion for summary judgment that the asserted claims were invalid as indefinite, (D.I. 631), Apple respectfully submits the evidence presented at trial proves the indefiniteness of such claims. A patent claim is indefinite if, when read in light of the specification and the prosecution history, it fails to inform a person skilled in the art about the scope of the invention with reasonable certainty. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134

S. Ct. 2120, 2124 (2014). A patent claim that includes a limitation subject to § 112 ¶ 6 is indefinite if the specification fails to disclose corresponding structure to perform all of the claimed functions of that limitation. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1351-52 (Fed. Cir. 2015) (en banc), *superseding* 770 F.3d 1371 (Fed. Cir. 2014). Section 112 ¶ 6 prohibits claiming a function that is unbounded by any structure. *See Williamson*, 792 F.3d at 1349-50; *see also Ergo Licensing, LLC v. CareFusion 303, Inc.*, 673 F.3d 1361, 1364 (2012) (term “control means” indefinite, where expert explained there were “at least three different types” of structures that met that limitation); *Blackboard, Inc. v. Desire2Learn, Inc.*, 574 F.3d 1371, 1385 (Fed. Cir. 2009) (“A patentee cannot avoid providing specificity as to structure simply because someone of ordinary skill in the art would be able to devise a means to perform the claimed function.”).

Dr. Meldal’s trial testimony makes clear that the “alert sound generator,” “control means,” and “RF signal processing means” claimed in the ’231 patent are unbounded by any structure and, thus, are invalid as indefinite under section 112 ¶¶ 6, 1 and Federal Circuit precedent. (*See, e.g.*, Tr. (Meldal) at 392:17- 393:5, 391:23-392:11, 401:7-20, 402:7-17, 421:20-422:2, 440:20-23, 442:8-10, 472:13-18.) Dr. Meldal explained that “the underlying details are put together to create [the alert sound generator] is really not material as long as it generates an alert sound,” and “[t]he specifics of them can vary without being relevant to this.” (*Id.* at 392:17-393:5.) Dr. Meldal also explained that several different types of structures, not disclosed in the specification, can meet the structural elements of these means-plus-function claim limitations. By Dr. Meldal’s own admission, the ’231 patent fails to disclose particular structures corresponding to any of these claim limitations.

IV. THE COURT SHOULD GRANT JUDGMENT AS A MATTER OF LAW OF NO DAMAGES

Even if Apple is found to have infringed valid claims of the '231 patent, judgment as a matter of law of no damages is warranted. MMI's damages evidence was not sufficient to support its damages claim, and the trial testimony also makes clear that intervening rights preclude damages before and after April 3, 2012.

A. MMI Failed To Present Evidence Sufficient To Support Its Damages Claims

It is MMI's burden to prove damages. *See, e.g., Lucent Techs. v. Gateway, Inc.*, 580 F.3d 1301, 1324 (Fed. Cir. 2009). A patentee cannot rely on license agreements that are "radically different from the hypothetical agreement under consideration." *Id.* at 1327; *see also ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 870-72 (Fed. Cir. 2010). A damages expert must "carefully tie proof of damages to the claimed invention's footprint in the market place." *Id.* at 869. And an expert cannot use licenses "with no relationship to the claimed invention to drive the royalty rate up," rely on licenses that do not mention the patents or have no "other discernible link to the claimed technology." *Id.* at 870. MMI's damages expert Mr. Jarosz failed to carefully tie proof of damages to the claimed invention's footprint and instead relied on evidence that did not establish the '231 patent's value. (*See* Simmons Decl., Exs. A and B.) For example, Jarosz built his opinions on non-comparable portfolio licenses, the purported value of Apple's cut-copy-paste feature, and the royalty rates proposed by Apple for a license for Samsung to Apple's patents in an unrelated litigation without showing comparability or particular value related to the '231 patent. Mr. Jarosz provided a valuation of the '231 patent well above the average patent value in MMI's portfolio, with no evidence that anyone, much less Apple, would place particular value on this patent.

B. Intervening Rights Preclude A Damages Award

Finally, there should be no damages award because Apple's absolute and equitable intervening rights preclude recovery. While the Court denied Apple's motion for summary judgment on intervening rights because the Court found that the asserted claims remained substantially identical before and after reexamination, Apple respectfully submits that the trial evidence demonstrated that the claims were narrowed in reexamination. Apple's absolute intervening rights therefore preclude MMI from recovering damages for any alleged infringement before April 3, 2012—the date the reexamination certificate issued. (*See* PTX-214.) Because all accused products made, purchased, used, or sold after the reexamination certificate issued were identical to those sold before the reexamination certificate issued, Apple respectfully requests that the Court find that equitable intervening rights preclude recovery for those products as well. *See id.*; *see also Senju Pharm. Co., Ltd. v. Lupin Ltd. & Lupin Pharm., Inc.*, No. CV 11-271-SLR, 2013 WL 4101820, at *13 (D. Del. Aug. 9, 2013), *aff'd sub nom. Senju Pharm. Co. v. Lupin Ltd.*, 780 F.3d 1337 (Fed. Cir. 2015).

V. CONCLUSION

For these reasons, the Court should grant judgment as a matter of law of no infringement, invalidity, and no damages.

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