

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MOBILEMEDIA IDEAS, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:11-CV-2353-N
	§	
RESEARCH IN MOTION LTD, <i>et al.</i> ,	§	
	§	
Defendants.	§	

ORDER

This Order addresses the motion for summary judgment of Defendants Research in Motion Ltd. and Research in Motion Corp. (collectively, “BlackBerry”) [420] and the motion for partial summary judgment of Plaintiff MobileMedia Ideas, LLC (“MMI”) [425]. For the reasons stated below, the Court grants BlackBerry’s motion in part and grants MMI’s motion.

I. BLACKBERRY’S MOTION

BlackBerry moves for summary judgment of noninfringement and invalidity on essentially all of MMI’s claims in suit.¹

A. Patent No. 6,389,301

The ’301 patent discloses a way to organize messages on a pager into hierarchical levels that the user could navigate easily, given the limited capabilities of pagers at the time. MMI now seeks to apply the ’301 patent to the operation of an internet browser on a

¹All of the Court’s discussion and rulings are limited to the patents-in-suit for the scheduled December 2, 2013 trial.

BlackBerry smartphone. The language at issue in claims 1 and 2 is a method or apparatus “for executing information control of a multilayer structure having a plurality of layers including a top layer, a middle layer, and a lower layer on which a plurality of messages terminated at said portable radio information terminal apparatus are placed” Col. 1, ll. 22-26, 46-50. In the Court’s Order of February 27, 2013 at 15-16 [361] [hereinafter *Markman* Order], the Court determined that the three layers need to be preexisting, not created in the course of operation of the apparatus.

MMI argues that the accused devices’ default screen constitutes the top layer, the browser start screen constitutes the middle layer, and the displayed web page constitutes the lower layer. BlackBerry argues that in that analysis, the lower layer is not preexisting, but rather is created whenever the browser displays a web page. MMI responds that the content (i.e., the web page) is not preexisting, but the hierarchical organization is preexisting. MMI analogizes to a bookcase with three shelves, the lower of which is empty; the fact that the shelf is empty until books are placed on it does not mean the shelf did not exist until books were placed there.

This argument reveals the peril of argument by analogy. The accused devices do not have any shelves. They are not bookcases. Simply analogizing a device without layers to a structure with layers does not make it so. There is no evidence that the accused devices have three preexisting layers. The Court therefore grants BlackBerry’s motion for summary judgment of noninfringement of the ’301 patent.

B. Patent No. 5,737,394

The '394 patent is directed to a way of controlling a multifunction cell phone with a limited number of buttons by utilizing “soft” keys, which can have multiple functions depending on the state of the device, in conjunction with a “hard” book key, which invokes the device’s address book function. The parties dispute the nature of a soft key, primarily differing on whether a soft key of necessity must be adjacent to a display that can provide a label for the key that can change as the function of the key changes. The Court finds it unnecessary to resolve that dispute.

The '394 patent provides that “the book key 23 is a dedicated or so-called hard key and is utilized to access the book function.” Col. 5, ll. 65-67. MMI argues that the assignable convenience key on the accused devices can be set by the user to invoke the address book function and thus constitutes a book key. Because this argument requires that the convenience key be assigned to the address book function, it is not “a dedicated or so-called hard key.” The accused devices therefore do not infringe the '394 patent and the Court grants BlackBerry’s motion for summary judgment of noninfringement as to the '394 patent.

C. Patent No. 6,871,048

MMI claims that certain BlackBerry devices having either a web browser or software for handling podcasts infringe the '048 patent. BlackBerry moved for summary judgment of noninfringement with regard to the web browser accused devices. MMI, in its response, abandons its claim regarding those devices. The Court therefore grants BlackBerry’s motion

for summary judgment of noninfringement of the '048 patent for the web browser accused devices.

D. Conclusion

The Court grants BlackBerry's motion for summary judgment on the claims discussed above. The Court finds that the record reflects genuine issues of material facts regarding the other issues raised in BlackBerry's motion and denies the balance of the motion.

II. MMI'S MOTION

MMI moves for partial summary judgment on BlackBerry's affirmative defenses of laches, waiver, equitable estoppel, estoppel defense, unclean hands, 35 U.S.C. §§ 286 and 287, 28 U.S.C. § 1498, implied license, patent exhaustion, and express license. MMI's motion argued that BlackBerry had no evidence to support those defenses.

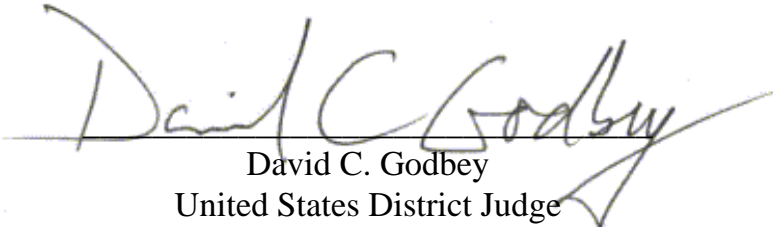
In response to MMI's interrogatories asking for the factual basis for BlackBerry's affirmative defenses, BlackBerry replied as follows:

Plaintiff and/or its predecessors-in-interest and/or assignors delayed filing suit for an unreasonable and inexcusable length of time from the time they knew or reasonably should have known of any claims against RIM. Further, Plaintiff and/or its predecessors-in-interest and/or assignors through their course of conduct, including by entering into license agreements and through supplying components for RIM's products, led RIM to reasonably infer that the patentees did not intend to enforce their patents against RIM. RIM was not notified of any alleged infringement until just before the bringing of this lawsuit, and the delay in bringing this lawsuit has operated to the detriment of RIM, and RIM has otherwise been materially prejudiced by the patentees' conduct.

BlackBerry's response was thus a pro forma recitation of the elements of the affirmative defenses devoid of actual factual content. MMI also took a Rule 30(b)(6) deposition of BlackBerry on the same topic, to little further benefit.

In BlackBerry's response to MMI's motion for partial summary judgment, BlackBerry abandoned several of those defenses, but BlackBerry identified extensive facts not previously disclosed in discovery regarding its course of conduct in dealing with MMI's predecessor in interest, Sony, in support of its remaining affirmative defenses. MMI objected to this new evidence on the basis that it was never disclosed in discovery. This is precisely the vice that Fed. R. Civ. P. 37(c)(1) attempts to prevent. The Court sustains MMI's objection to BlackBerry's summary judgment evidence not previously disclosed in discovery. The Court finds that BlackBerry thus fails to raise sufficient evidence on its affirmative defenses to go to the jury, and therefore grants MMI's motion for partial summary judgment on BlackBerry's affirmative defenses.

Signed November 15, 2013.


David C. Godbey
United States District Judge