

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ELEMENT CAPITAL COMMERCIAL
COMPANY PTE. LTD,

Plaintiff,

v.

BOE Technology Group Co., Ltd; Beijing
BOE Display Technology Co., Ltd; and
Motorola (Wuhan) Mobility Technologies
Communication Co., Ltd.

Defendants.

Civil Action No. 2:22-cv-00118-JRG

JURY TRIAL DEMANDED

DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS

Pursuant to Local Patent Rule 3-1, Plaintiff Element Capital Commercial Company Pte. Ltd (“Plaintiff” or “Element”), hereby provides infringement contentions to Defendants BOE Technology Group Co., Ltd, Beijing BOE Display Technology Co., Ltd, and Motorola (Wuhan) Mobility Technologies Communication Co., Ltd (“Motorola”), (collectively “Defendants”).

Element’s investigation is ongoing and discovery is in its preliminary stages. Accordingly, these disclosures are based on information available to Element at this time. Element reserves the right to supplement this disclosure after further discovery from the defendants and non-parties, particularly documents and other discovery regarding the defendants accused products. Element also reserves the right to assert additional claims of the asserted patents, accuse different products, or find alternative literal and/or equivalent infringing elements in defendant’s products.

I. DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS PURSUANT TO PATENT LOCAL RULE 3-1

A. ASSERTED CLAIMS

On information and belief, all BOE OLED Display panels include each and every element of at least Claims 3-5, 7, 9, 13-17 of United States Patent No. 7,259,736B2 (“the ‘736 patent”), Claim 1 of United States Patent No. 8,164,267B2 (“the ‘267 patent”), and Claim 1 of United States Patent No. 8,525,760B2 (“the ‘760 patent”), and therefore literally infringe these claims. Accordingly, the BOE Defendants infringe all of these claims. Since Motorola makes, sells, offers to sell, and/or imports phones in the United States that include BOE OLED display panels, Motorola infringes all of these claims as well.

Pursuant to Local Patent Rule 3-6 and 3-1, Element reserves the right to add, delete, substitute, or otherwise amend this list of asserted claims should further discovery, the Court’s claim construction, or other circumstances so merit.

B. ACCUSED INSTRUMENTALITIES

Each of the asserted claims is directly infringed by the making, using, selling, offering to sell, and/or importing in the U.S. of electro-optical devices such as the OLED panels made by BOE. The Motorola RAZR phones are examples of products having BOE OLED display panels and infringe all of the asserted claims for that reason. On information and belief, any phones or other products, including but not limited to TVs, monitors, notebook computers, and automotive displays, that include BOE OLED display panels, also infringe all of the asserted claims for the same reasons.

C. CLAIM CHARTS

Claim charts identifying a location of every element of every asserted claim of the asserted patents within the accused products are attached hereto as Appendices A-C. Element believes that the Products cited in the claim charts are representative of the Accused Products. Element reserves the right to amend these claim charts as well as other information contained in this document and the appendices hereto, to incorporate new information learned during the course of discovery, including, but not limited to, information that is not publically available or readily discernible without discovery. Element further reserves the right to amend these claim charts, as well as other information contained in this document and the exhibits attached hereto, pursuant to Patent Local Rules 3-1 and 3-6.

D. LITERAL INFRINGEMENT AND DOCTRINE OF EQUIVALENTS

As shown in the attached claim charts, the accused products literally include each and every element of the asserted claims, and therefore literally infringe those claims. To the extent Defendants contend that a claim limitation should be construed so as to exclude the accused structure, and/or to the extent the Court construes any claim element to exclude an accused structure, any differences are insubstantial and the accused products would infringe under the doctrine of equivalents.

Defendants have also actively induced and contributed to infringement of others in violation of 35 U.S.C. § 271(b) and (c). Defendant BOE Technology Group Co., Ltd and its subsidiaries were previously licensed to practice ‘736 Patent, the ‘267 Patent, and the ‘760 Patent. BOE was fully aware of the patents in suit when entering into the license agreement in

2014. However, BOE chose not to take a license to these patents in 2019 when the previous license expired. BOE has been knowingly practicing these patents since 2014. The BOE Defendants continued to actively and knowingly contribute to, encourage, aid, and abet others to import, sell, offer to sell, and use the infringing active-matrix display products in the United States. Accordingly, the BOE Defendants have engaged in direct and/or indirect infringement with full knowledge of their infringement and the infringement of their customers, as well as willful infringement, since at least 2019.

Defendant Motorola has been made aware of its infringement since at least the receipt of the original Complaint in this action, yet has continued its infringement with this knowledge, including making, using, selling, offering to sell, and/or importing the accused products, as well as encouraging and aiding and abetting others to infringe, and contributing to the infringement by others by supplying at least a material part of the asserted claims that is not a staple article of commerce and that has no substantial noninfringing uses. Accordingly, Defendant Motorola has indirectly infringed and willfully infringed the asserted patents at least since it received the original Complaint in this action.

E. PRIORITY DATES

Each of the asserted claims is at least entitled to the priority date of the respective patent, which is November 29, 2002 for the '736 patent, November 20, 2002 for the '760 patent, and October 7, 2002 for the '267 patent. Element reserves the right to establish an earlier date of invention based upon actions related to conception and reduction to practice of the claimed inventions.

F. ELEMENT'S OWN PRODUCTS

Element does not make or license any products that practice the asserted claims. On information and belief, Defendant BOE Technology Group Co., Ltd and its subsidiaries were previously licensed to practice '736 Patent, the '267 Patent, and the '760 Patent from 2014-2019.

II. PRODUCTION OF DOCUMENTS PURSUANT TO PATENT LOCAL RULE 3-2

Element has documents available for inspection or production as set forth in Patent Local Rule 3-2. The asserted patents are located at the following documents: EL00000295-313, 492-505, and 1442-1471; the file histories are located at EL00000001-294, 314-491, and 506-1441. These documents were produced to Defendants on January 3, 2023. Element does not have possession or control over any conception/reduction to practice documents, or any documents relating to any third party sale or offer to sell the claimed invention prior to the date of application for any asserted patent.

This preliminary identification of documents is for convenience and is not an admission that each document falls within any exemplary categories in the Patent Local Rules, or that any document qualifies as prior art. Element is continuing with its investigation. Thus, Element reserves its right to add to, delete from, or otherwise modify its disclosures in this section as its investigation proceeds.

Production of these documents is governed by Patent Local Rule 2-2, and, with the exception of documents produced pursuant to P.R. 3.2(c) and public documents listed in the infringement charts, are considered "Highly Confidential – Outside Attorneys Eyes Only" and disclosure of the confidential documents or information shall be limited to each party's outside attorney(s) of record and the employees of such outside attorney(s).

Dated: January 5, 2023

/s/ John F. Rabena/

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record are being served with a copy of the foregoing document on January 5, 2023, by email.

/s/ John F. Rabena

John F. Rabena