

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

PANTECH CORPORATION and PANTECH
WIRELESS, LLC,

Plaintiffs,

v.

LG ELECTRONICS INC. and LG
ELECTRONICS U.S.A., INC.,

Defendants.

Case No. 5:22-cv-00113-RWS

JURY TRIAL DEMANDED

**PLAINTIFFS' RULE 72(b) OBJECTIONS TO THE ORDER DENYING
DEFENDANTS' MOTION FOR DISQUALIFICATION (Dkt. 93)**

I. INTRODUCTION

Pantech respectfully object to the Magistrate Judge's findings in his Order denying Defendants' Motion to Disqualify Mayer Brown LLP ("the Order") that the *MTT* and *Core Wireless* matters fall outside the *Jenam* Engagement Letter's waiver provision. Dkt. No. 93 at 46, 49. Specifically, Pantech objects to the findings that LGE met its burden to establish a substantial relationship between the technologies at issues in the *MTT* and *Core Wireless* matters and the technologies at issue in the present case.

As the Order recognized, "a substantial relationship may be found only after 'the moving party delineates with specificity the subject matters, issues and causes of action' common to prior and current representations and the court engages in a 'painstaking analysis of the facts and precise application of precedent.'" *Id.* at 33 (citations omitted). In finding that the *MTT* and *Core Wireless* technologies are substantially related, however, the Order relies on conclusory allegations from LGE's counsel and an exhibit that purports to compare claim language. This evidence was insufficient to establish a substantial relationship. At best, LGE's "evidence" merely highlights similar terminology across claim language, which in isolation does not inform the Court of the underlying technological relationship much less delineate that relationship with specificity. And the attorney arguments merely demonstrate general similarities in technical subject matter, which the Order correctly acknowledges is insufficient. *Id.* at 34-35 (citations omitted). Accordingly, LGE did not provide sufficient evidence to allow for "a 'painstaking analysis' [] comparing the patents and products in the current and prior representations," and the Order's findings that a substantial relationship exists between the technologies at issue in the present matter and those at issue in the *Core Wireless* and *MTT* matters should be overruled.. *Id.* at 37.

II. ARGUMENT

A. LGE's Comparison Evidence is Insufficient

While Pantech agrees with the Order's ultimate conclusion that Mayer Brown should not be disqualified, it objects to the Order's findings that LGE met its burden¹ to establish that the technologies at issue in the *MTT* and *Core Wireless* matters are substantially related to the technology at issue in any of Pantech's asserted patents. LGE's motion to disqualify advanced broad and conclusory characterizations of the patents in *MTT* and *Core Wireless* and argued that the "same or similar features" are accused in the present case. Mot. at 4; *see also* Reply at 8 ("*MTT* and *Core Wireless* also concerned messaging services/applications and user interfaces, respectively, similar to those accused here[.]") Recognizing the deficiencies in its evidence, LGE submitted a comparison chart (Dkt. No. 65) during the hearing, which attempted to draw a comparison between claim 19 of U.S. Patent No. 5,894,506 ("the '506 Patent") asserted in *MTT* and claim 1 of U.S. Patent No. 7,283,839 ("the '839 Patent") asserted here, as well as the Abstract and claim 20 of U.S. Patent No. 8,713,476 ("the '476 Patent") asserted in *Core Wireless* and the Abstract and claim 1 of U.S. Patent No. 9,575,634 ("the '631 Patent") asserted here. This is the extent of LGE's comparison of the technologies at issue in each of these cases; it falls well short of the "painstaking analysis" required.

In its supplemental briefing on the hearing exhibit requested by the Court (Dkt. No. 90), to which Pantech was not afforded the opportunity to respond, LGE relied on *Micrografx v. Samsung*, 2014 WL 12586177, at *3 (N.D. Tex. Mar. 7, 2014) in arguing that "one way to assess whether a substantial relationship exists is to compare the patent claims at issue in the current and

¹ While the Order applied the "substantial relationship" test in deciding the scope of the waiver agreement, it correctly noted both parties conceded that the appropriate test for the purpose of interpreting the waiver. Order at 33 ("The language of the specific waiver and the parties' arguments both strongly suggest the specific waiver adopted the "substantial relationship" test used in case law.")

former cases.” Dkt. No. 90 at 1. This is not only a blatant mischaracterization of the case law—as nowhere does the court make such a finding—but it is deceptively misleading with respect to the court’s analysis in *Micrografx*. In *Micrografx*, Samsung provided substantial evidence to demonstrate a technical relationship, including copies of the relevant patents and an expert declaration from Dr. Andries van Dam “explain[ing] how the cases are substantially related.” *Micrografx v. Samsung*, C.A. No. 3:13-CV-03599 (Samsung’s Mot. to Disqualify, Dkt. No. 32, at 23). And the court did not once reference the claims. Rather, the court considered the patents in full, including detailed descriptions of the inventions in the specification and compared that language. *See Micrografx*, 2014 WL 12586177, at *3. From this comparison, the court found that “the patent technology involved in both cases allows graphic designers or third parties to update images or graphical objects in a library and deploy the objects to computer programs without rewriting the underlying programs.” *Id.* (emphasis added). This level of analysis was not performed here, as LGE did not provide such evidence for the Court to consider.

Instead, LGE merely provided claim language from a single claim of each patent purporting to compare the inventions of each patent. But a comparison of the claims standing alone is not sufficient. As this Court is well aware, “[p]atent claims are viewed and understood in light of the specification, the prosecution history, and other relevant evidence, as ‘would have allowed a skilled artisan to know the scope of the claimed invention with reasonable certainty.’” *Nature Simulation Sys. Inc. v. Autodesk, Inc.*, 50 F.4th 1358, 1364 (Fed. Cir. 2022). Thus, on its face, LGE’s evidence—which the Order relies on—is not sufficient to sustain the findings that *MTT* and *Core Wireless* fall outside of the waiver due to a substantial relationship in technologies.

Specifically, with respect to the *MTT* matter, the Order found:

“[b]oth matters involve the same messaging app on the same devices. Further, both matters concern how the app displays message content. Both cited claims require

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analyzing the messages for additional information to display (claim 1 [sic] of the '506 patent analyzes the message code related to the message while claim 1 of the '839 Patent analyzes the type of message and description data associated with the message)."

Dkt. No. 93 at 46 (emphasis added). Thus, aside from general similarities in broad technical subject matter, *i.e.*, "messaging app" and "displays message content," the Order relies exclusively on exemplary claim language without reference to the specification or a POSITA's understanding of the respective technologies described in the patents.

Further, LGE has not even established that the same "messaging app" was at issue in both cases.² The complaint in *MTT* alleges infringement by certain LGE products "that include or are compatible with messaging services and other applications that allow these message terminals to send messages that include a predefined sequence of characters such as emoticons, calendar invitations, contact cards, and similar messages, and embody claims and/or practice the methods of the '506 Patent." Mot. (Dkt. No. 15), Ex. 9 at ¶ 33. This is the extent of the evidence and it fails to show that the same "messaging app" is at issue here. Moreover, the accused products in the *MTT* case are from 2014, or earlier, when versions 6.0-7.0 of the operating systems were in use. LGE has not put forth any evidence that the accused products in this case (dating no further back than 2016) implement the same messaging applications and operating systems. *See Power Mosfet Techs., LLC. v. Siemens AG*, 2002 WL 32785219, at *3 (E.D. Tex. Sept. 30, 2002) ("[A]s advances have propelled technology forward, earlier products can differ dramatically from later products.").

The same is true for the analysis of the *Core Wireless* matter where the Order relies on the comparison chart to find that "both claims concern user inputs on display via selecting 'menu

² The Order states that "Pantech does not dispute that both cases involve the same messaging application on some of the same devices[.]" however, this is not the case. While Pantech was provided an opportunity to address LGE's comparison chart exhibit, the same order limited arguments "to the specific comparisons raised in LGE's sealed exhibit 1," (Dkt. No. 89 at 2 (emphasis original)). More importantly, LGE did not previously present evidence that the same messaging application was at issue for Pantech to dispute.

listings’/‘icons’ to launch ‘applications’/display ‘work processes.’” *Id.* at 48 (emphasis added). Again, a comparison of claim language alone is not sufficient for LGE to meet its burden. And because the findings rely only on the claim language to find a substantial technical relationship, such findings should be overruled.

At bottom, it was LGE’s burden to show a substantial relationship in the technologies and the record is devoid of such evidence.

B. The Technology in *MTT* is Not Substantially Related

The technology at issue in *MTT* at best includes general similarities in broad technical subject matter as compared to the technology at issue here, but the relationship stops there. With respect to the ’506 Patent from the *MTT* case, this Court has already found that the ’506 Patent and its claims “relates to conveying so-called ‘canned’ messages.” *See Mobile Tele. Tech. v. LG Electronics*, No. 2:13-cv-00947, Dkt. No. 94 (E.D. Tex. May 13, 2015) at 5. In particular, this Court construed “canned messages” to mean “predefined sequence of characters,” (*id.* at 38) and explained that the ’506 Patent is directed to sending a canned message by selecting a stored canned message, transmitting a code assigned to the message, and receiving the message code to retrieve the canned message. *Id.* at 5. Thus, *MTT*’s infringement allegations for the ’506 Patent related to implementation of a coding scheme to send predefined messages, such as, “emoticons, calendar invitations, contact cards.” Mot. (Dkt. No. 15), Ex. 9 at ¶ 33.

While claim 19 of the ’506 Patent and claim 1 of the ’839 Patent include common terminology, such as messages, display, and storing, this common terminology fails to establish a substantial relationship. *See Network Apps, LLC v. AT&T Mobility LLC*, 598 F. Supp. 3d 118, 131 (S.D.N.Y. 2022) (“The fact that generic telecommunications concepts like “SMS messaging,” “provisioning,” and “call interception” are named in both the ’728 Patent and in AT&T’s prior patent matters is insufficient to create a substantial relationship.”); *Secure Axxess, LLC v. Dell Inc.*,

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2012 WL 12919543, at *3 (E.D. Tex. Feb. 23, 2012) (“Cases are not substantially related just because they involve the same general subject matter and area of the law.”); *Biax Corp. v. Fujitsu Computer Sys. Corp.*, 2007 WL 1466638, at *2 (E.D. Tex. May 16, 2007) (“[Movant’s] argument that both representations involve server architecture is too broad for purposes of establishing a substantial relationship.”); *Power Mosfet Techs., LLC. v. Siemens AG*, 2002 WL 32785219, at *3 (E.D. Tex. Sept. 30, 2002) (“Just because two devices fall into the same general category, *e.g.* photocopiers ... does not necessarily mean patent infringement cases in that same category will be substantially related.”).

The Order equates “analyz[ing] the message code” from the ’506 Patent to “analyz[ing] the type of message and description data associated with the message” from the ’839 Patent, however, no such relationship can be gleaned from the claim language (the term “analyze” does not appear in either claim) and no claim construction analysis was performed. In the parties’ Joint Supplemental Briefing (Dkt. No. 90), LGE attempted to draw a comparison to “means for selecting one of the canned messages” (’506 Patent) with “determining a message kind of the message to the transmitted” (’839 Patent), but this does not demonstrate any relationship. In fact, this Court’s previously construed the term “means for selecting one of the canned messages and at least one of the multiple response options appropriate for the selected canned message for communication to a designated other message terminal,” as a means-plus-function terms with the function being “selecting one of the canned messages and at least one of the multiple response options appropriate for the selected canned message for communication to a designated other message terminal,” and the corresponding structure being “terminal keypad 126; or a mouse; or a cursor; and equivalents thereof.” *See Mobile Tele. Tech. v. LG Electronics*, No. 2:13-cv-00947, Dkt. No. 94 (E.D. Tex. May 13, 2015) at 47. Nowhere does the Court’s construction require “analyzing” the message

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code. Rather, the construction requires selecting “canned messages” using, for example, a keypad or mouse. This does not relate at all to “determining a message kind” as required in claim 1 of the ’839 Patent (the limit of LGE’s evidence).

Claim 1 of the ’839 Patent has nothing to do with selecting “canned messages” or sending messages by implementing a coding scheme. Instead, claim 1 of the ’839 Patent is directed to storing an “integrated messaging service program” to provide an “integrated user interface (IUI).” See Complaint, Ex. 6 at 8:7-9. Further, claim 1 of the ’839 Patent is directed to displaying the message content along with description data in the IUI, determining a kind of message to be sent which is inputted in the IUI, generating displaying the message content and the description data, and “dividing the received message into a message content and description data” in the IUI. Put simply, claim 19 of the ’506 Patent is directed to storing canned messages (*e.g.*, emoticons) and message codes, and then using these message codes to implement a message sending and receiving scheme. In contrast, claim 1 of the ’839 Patent has nothing to do with using canned messages, but instead is directed to implementing an IUI that provides a very specific type of Graphical User Interface (GUI) to display a message and descriptive data in the specific GUI. The technologies are distinct, one is about implementation of a transmission scheme (*i.e.*, canned messages and message codes) and the other is about implementing an IUI for a display scheme (*i.e.*, “displaying content and description data”).

C. The Technology in *Core Wireless* is Not Substantially Related

The Order finds that claim 20 of the ’476 Patent in *Core Wireless* and claim 1 of the ’631 Patent in the instant case involve substantially related technology: “both claims concern user inputs on display via selecting ‘menu listings’/‘icons’ to launch ‘applications’/display ‘work processes.’” Dkt. No. 93 at 48. While Pantech does not dispute the relatedness of certain claim terms, it disagrees that this alone establishes a substantial relationship. These are simply generic

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functionalities that would be found in countless patents and products in a broad technology space. *See Network Apps, LLC v. AT&T Mobility LLC*, 598 F. Supp. 3d at 131. Looking past these generic similarities, the two patents are clearly distinct. In particular, claim 20 of the '476 Patent involves selecting from "a menu listing one or more applications" and "launching the respective application associated with the selected data to enable the selected data to be seen within the respective application." *Id.* at 47. In contrast, claim 1 of the '631 Patent, which includes substantially more detail than the excerpts included in the Order, relates to "a method for controlling a predetermined function of a second work process during a first work process in a multitasking mobile terminal." Complaint Ex. 7 at 7:37-39. The displaying in claim 1 of the '631 Patent is directed to displaying an icon corresponding to a "work process" and then displaying a screen corresponding to the "first work process," after which the claim is directed to "controlling the multitasking of the second work process and the first work process" based on a "first command," "second command," "third command," and "fourth command," such that the commands correspond to control of predetermined functions. Importantly, the displaying of work processes does not equate to launching an application. Rather, the work processes are already operational and the claim is describing a method to control certain functions of the work processes in order to multitask on the device. That is, the '476 Patent claim is directed to launching an application based on a user selection whereas the '631 Patent claim is directed to controlling multitasking of two separate work processes after both have been launched.

III. CONCLUSION

In sum, claim language alone cannot be relied upon to establish substantial relatedness. Given that the claims are all that LGE presented, and all that underlies the discreet findings that the technologies in *Core Wireless* and *MTT* are substantially related to the present technologies, Pantech respectfully requests the Court overrule those findings.

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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served this 11th day of May, 2023, with a copy of this document via electronic mail pursuant to Local Rule CV-5(d).

/s/ James Fussell

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