1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4 INTELLECTUAL VENTURES I LLC)(
5)(CIVIL ACTION NO.
6)(2:17-CV-577-JRG
7 VS.)(MARSHALL, TEXAS
8)(
9 T-MOBILE USA, INC., ET AL.)(JANUARY 3, 2019
10)(10:11 A.M.
11 PRE-TRIAL HEARING
12 BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP
13 UNITED STATES CHIEF DISTRICT JUDGE
14
15 APPEARANCES:
16 FOR THE PLAINTIFF: (See Attorney Attendance Sheet docketed in minutes of this hearing.)
17
18 FOR THE DEFENDANTS: (See Attorney Attendance Sheet docketed in minutes of this hearing.)
19
20 COURT REPORTER: Shelly Holmes, CSR, TCRR
Official Reporter
21 United States District Court
Eastern District of Texas
22 Marshall Division
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23 Marshall, Texas 75670
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24
(Proceedings recorded by mechanical stenography, transcript
25 produced on a CAT system.)

I N D E X

January 3, 2019

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1 themselves.
2 Second point I'd like to make, Your Honor, they
3 spoke about the lack of any subjective belief and
4 non-infringement. We addressed this in our brief at Docket
5 No. 207 at Page 4, and there -- there is testimony of
6 Ericsson's corporate representative identifying the
7 differences between the asserted patents and the accused
8 products. And he also testified that his competence level
9 in those differences were high.
10 THE COURT: All right. With regard to this
11 motion, it's the Court's belief that while knowledge of the
12 asserted patents is necessary, there must be more than
13 simply knowledge. However, in this case, the question
14 seems to center on whether the Defendants were
15 reasonable -- reasonably put on notice as to the particular
16 patents-in-suit by their knowledge of the patent family or
17 families from which these patents-in-suit now have been
18 specified to come from.
19 I'm not aware of any case law that tells me that
20 knowledge of the family itself, without more, is adequate
21 notice to put the Defendants in a posture to potentially
22 infringe in a willful manner. And with regard to
23 willfulness pre-complaint, I'm going to grant the
24 Defendants' motion. With regard to the potential for
25 willfulness post-complaint, I'll deny the Defendants'

motion.

All right. It just seems to me there's got to be some nexus with the particular patents-in-suit. Saying you knew about the family is not too far a step from saying you knew there was this PTO in Virginia, and you should just go check everything there and see if anything there applies. It's too nebulous. It's too attenuated to meet the threshold to give the Defendants reasonable notice as an underpinning to a potential willfulness finding.

All right. We're going to break for lunch. When we come back, we'll take up the Defendants' motion for summary judgment regarding invalidity of the '206 patent.

It's five minutes until noon. I will see you back here at 20 minutes until 1:00.

We stand in recess.

COURT SECURITY OFFICER: All rise.

(Recess.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

All right. We'll reconvene and continue with the pre-trial matters related to the Intellectual Ventures versus T-Mobile, et al., case. And we'll next take up Defendants' motion for partial summary judgment of invalidity regarding the '206 patent.

Let me hear from Defendants, please.

privilege -- any issues at trial that privilege was asserted before.

THE COURT: Well, I often -- I often get motions in limine that are in effect asking the Court to order the parties to follow the pre-existing rules that govern the parties' conduct before the Court. This seems to me to fall in that what I call follow the rules category.

Is there some reason why this needs to be granted when we have already in place clear protocols for not going into privilege -- previously asserted privilege matters?

MS. LADRIERE: We agree, Your Honor. When we talked about it with IV, they were hesitant and said that this was overbroad, and that's why we're presenting it to you today.

THE COURT: Do Plaintiffs have a viewpoint that might be relevant here?

MR. BLACK: We're fine, Your Honor, with -- with your approach. We understand the rules.

THE COURT: Okay. Then this will be denied, and the existing rules will be applied.

All right. That looks like all of the motion in limine matters that are disputed before the Court.

Is anybody aware of anything else relating to motions in limine the Court hasn't taken up or dealt with?

MR. BLACK: No, Your Honor, from Plaintiffs.

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes 01/14/2019
SHELLY HOLMES, CSR, TCRR Date
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20