UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-04424-AG (AJWx)	Date	April 24, 2017
Title	ATEN INTERNATIONAL CO. v. UNICLASS TECHNOLOGY ET AL.		

Present: The Honorable	ANDREW J. GUILFORD	
Lisa Bredahl	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	

Proceedings: **[IN CHAMBERS] ORDER RE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ATEN'S LOST PROFITS DAMAGES (DKT. 265)**

Defendants Uniclass Technology Co., Ltd., Electronic Technology Co., Ltd. of Dongguan Uniclass, Airlink 101, Phoebe Micro Inc., Broadtech International Co., Ltd. D/B/A Linkskey, Black Box Corp., and Black Box Corp. of Pennsylvania (Collectively, "Uniclass" or "Defendants") ask the Court for summary judgment that Plaintiff ATEN Technology, Co. Ltd. ("ATEN" or "Plaintiff") is not entitled to lost profits damages. More accurately, this is a *partial* summary judgment.

The Court **GRANTS** the Motion.

1. BACKGROUND

The parties are in the business of selling keyboard-video-mouse ("KVM") switches. A KVM switch system is a signal switch that allows a single user or multiple users to share a single keyboard, video device, and mouse. (Dkt. 265 at 4.) ATEN accuses certain Uniclass KVM switches of infringing its patents. The customer defendants in this case (Airlink, Broadtech, and Black Box) are Uniclass customers that purchased Uniclass KVM switches accused by ATEN of infringing the patents-in-suit.

2. LEGAL STANDARDS

2.1 Summary Judgment

Summary judgment is appropriate when, viewing the evidence and drawing all reasonable inferences in the light most favorable to the nonmoving party, there are no genuine issues of material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). At the summary judgment stage, a court "does not assess credibility or weigh the evidence, but simply determines whether there is a genuine factual issue for trial." *House v. Bell*, 547 U.S. 518, 559-60 (2006). A fact is "material" if it "might affect the outcome of the suit under the governing law," such as those necessary to the proof of a defense or a claim, and a dispute as to a material fact is "genuine" if there is sufficient evidence for a reasonable trier of fact to decide in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50 (internal citations omitted).

"Summary judgment is as appropriate in a patent case as in any other." *Barmag Barmer Maschinenfabrik AG v. Murata Mach., Ltd.*, 731 F.2d 831, 835 (Fed. Cir. 1984). The moving party bears the initial burden of identifying those portions of the pleadings, discovery, and affidavits that demonstrate the absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 323. Once the moving party meets its initial burden, the nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56, "specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 250 (internal quotation marks omitted). If the non-moving party fails to produce enough evidence to show a genuine issue of material fact, "the moving party is entitled to a judgment as a matter of law." *Celotex*, 477 U.S. at 322-23.

2.2 Lost Profits

To recover lost profits for patent infringement, the patentee must show a reasonable probability that, "but for" the infringement, it would have made the infringer's sales. *Rite-Hite Corp. v. Kelley Co., Inc.*, 56 F.3d 1538, 1545 (Fed. Cir. 1995). The "but for" analysis involves a consideration of the market as it would have developed absent the infringing product to determine what profits the patentee would have made. *Grain Processing Corp. v. Am. Maize-*

Prods. Co., 185 F.3d 1341, 1350 (Fed. Cir. 1999). "Thus, the fact finder's job is to determine what would the patent holder have made (what would his profits have been) if the infringer had not infringed." *Mentor Graphics Corp. v. EVE-USA Inc.*, 851 F.3d 1275, 1285 (Fed. Cir. 2017).

An accepted, "but non-exclusive" method for establishing "but-for" causation is the four-factor *"Panduit* test," where the patentee must prove:

(1) demand for the patented product;
(2) absence of acceptable non-infringing alternatives;
(3) manufacturing and marketing capability to exploit the demand; and
(4) the amount of profit it would have made.

Rite-Hite Corp. v. Kelley Co., Inc., 56 F.3d at 1545 (citing *Panduit Corp. v. Stahlin Bros. Fibre Works, Inc.,* 575 F.2d 1152 (6th Cir. 1978)).

3. ANALYSIS

"The availability of lost profits is a question of law for the court, not the jury." *Poly-Am., L.P. v. GSE Lining Tech., Inc.*, 383 F.3d 1303, 1311 (Fed. Cir. 2004). Defendants argue that ATEN's claim for lost profits damages fails as a matter of law for two primary reasons: (1) ATEN's damages expert allegedly failed to make an adequate market share analysis; and (2) ATEN cannot satisfy the second element of Panduit, the absence of non-infringing substitutes.

3.1 Lack of Market Share Analysis

Defendants first argue that ATEN did not undertake a meaningful market analysis that would support a lost profits calculation. The Court agrees. Before diving into the details, it is helpful to establish some relevant facts for context.

Uniclass sells accused KVM switches primarily in the original equipment manufacturer ("OEM") market. (Dkt. 265-2, SOF ¶ 80.) ATEN's damages expert, Jeffrey Snell, asserts that "[i]n this case, the market at issue is the OEM market for KVM switches in the U.S." (Dkt.

297-2 at 17.) In this OEM market, KVM switch customers (such as Airlink, Broadtech, and Black Box) buy KVM switches manufactured by OEMs (such as Uniclass) and then distribute and sell these KVM switches to other distributors or end consumers under the customer's own brand name. (Dkt. 265-2, SOF ¶ 81.)

Importantly, Uniclass and ATEN are not the only KVM switch manufacturers that compete in the KVM switch OEM market in the United States. Uniclass has identified at least a handful of KVM switch manufacturers in Taiwan that compete with ATEN and Uniclass in the KVM switch OEM market. (Dkt. 265, Ex. 1 at 17.) Representatives from StarTech, a Uniclass customer that purchased accused KVM switches, informed Uniclass that it also purchased KVM switches from a company called Rextron Technology, Inc. (*Id.*, Ex. 1. at 16-17.)

ATEN's damages expert, Snell, concedes that there are competitors in addition to ATEN and Defendants in the KVM switch market in the United States:

> It is my understanding from Mr. Chen that the accused products compete with ATEN's products **as well as third parties' products**. In such circumstances, it is my understanding that a market share approach may be used to quantify ATEN's lost sales. In this case, the market at issue is the OEM market for KVM switches in the U.S. **I have not been able to identify market share data that would allow me to estimate the portion of sales that ATEN would have made**.

(Dkt. 297-2 at 17)(emphasis added).

To address the lack of actual market share data, Snell uses an "alternative method" to estimate the portion of accused sales that ATEN would have allegedly made. With the help of the Head of ATEN's OEM department, C.H. Chen, he "mapped" ATEN products to corresponding accused Uniclass products. (*Id.* at 21.) In Snell's expert report, he states, "[f]or accused products that were mapped to ATEN products, I assumed that ATEN likely would have made these sales based on my understanding from Mr. Chen, who indicated that ATEN and Uniclass have been the dominant suppliers in [the KVM switch OEM market in the United States]." (*Id.*) In essence, Snell equates his nomenclature of "dominant suppliers" with

a "two-supplier" market without independent support and makes an assumption that ATEN's actual products are sufficiently similar to Unclass's products that they may be swapped in the marketplace.

"To prevent the hypothetical from lapsing into pure speculation, this court requires sound economic proof of the nature of the market and likely outcomes with infringement factored out of the economic picture." *Grain Processing Corp.*, 185 F.3d at 1350. Here, ATEN's approach does not embody the use of sound economic principles because it does not properly account for the other competitors in the "but for" market.

There are multiple layers of guesswork in Snell's analysis. For example, Snell "started with the observation from his discussions with Chen that ATEN and Uniclass were the dominant suppliers in the KVM switch OEM market in the United States." (Dkt. 327 at 2.) He then assumes that ATEN would likely have made these sales. But he conducts no independent analysis in this regard and does not quantify what "dominant suppliers" means. As observed by Defendants, "dominant" could mean that ATEN and Uniclass represent 50% of the market and all the other competitors represent the other 50%. Snell makes no effort to account for other competitors, but claims ATEN would have made all of Uniclass's accused sales for the six identified products.

ATEN's mapping theory suffers from the same flaws as its two-supplier market theory. Again, the support for how the ATEN products are "mapped" to the accused products comes from Snell's discussion with an executive at ATEN. (Dkt. 327 at 1.) Because Snell does not have any independent qualifications to make a comparison of KVM switches, the inference is that he relied solely on ATEN to decide which of ATEN's products are sufficiently similar to Uniclass products to essentially swap them out in the market.

"Mapping" is not the answer because it assumes that no other OEMs have similar products. By only "mapping" Uniclass products to ATEN products, Snell omits a critical analytical step. To be complete, ATEN and Snell would need to map other competitor products in the KVM switch OEM market in the United States that also correspond to the Uniclass and ATEN products. Snell's mapping methodology does not overcome the existence of other competitors in the KVM OEM market.

Also, to claim lost profits from the customer defendants (Airlink, Broadtech, and Black Box), ATEN needed to analyze other competitor products in the overall KVM switch market in the United States (not just the OEM market). An accounting needs to be made for these gaps in "but for" causation.

ATEN has not met its burden to provide a basis for concluding that any sales of Defendants would be sales of ATEN in the "but for" market. Although the traditional market-share analysis is not required in every case, ATEN does not provide any other clear path to lost profits. In sum, Snell testifies to no factual basis for concluding that ATEN would have made Uniclass's sales in a multi-competitor market where he admits there is a dearth of factual data. Accordingly, ATEN cannot meet the reasonable probability standard for establishing lost profits.

3.2 Non-infringing Alternatives under the Second Panduit Factor

Having determined that Defendants are entitled to summary judgment on the basis of their first argument, the Court need not reach the second argument.

4. DISPOSITION

Defendants' Motion for Summary Judgment on ATEN's Lost Profits Damages is **GRANTED**.

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