

Judge Richard G. Stearns: ELECTRONIC ORDER entered granting in part and denying in part 229 Motion for Summary Judgment. Brainlab moves for summary judgment of noninfringement. It argues that it does not directly infringe the '360 patent because it does not manufacture or sell allegedly infringing MRI equipment; rather, Brainlab produces software that processes the output from Siemens, GE, or Philips MRIs. Brainlab also contends that it does not indirectly infringe because Siemens, GE, and Philips have each reached separate settlement agreements with plaintiffs to release the MRI manufacturers and their customers from infringement claims. Brainlab argues that absent direct customer infringement, it cannot be liable for indirect infringement. See *Dynacore Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263, 1272 (Fed. Cir. 2004). Plaintiffs, for their part, counter that at least two of the manufacturer settlement agreements exclude any alleged infringement by Brainlab. In addition, Brainlab is liable for indirect infringement because there are unauthorized independent medical practitioners who directly infringe the asserted claims. Plaintiffs also maintain that Brainlab is itself a direct infringer because it markets and sells the BrainSuite product, an integrated turnkey platform for performing neurosurgery. According to plaintiffs, BrainSuite incorporates an MRI system and performs the accused functionality. Plaintiffs finally contend that Brainlab is liable as a direct infringer for "direct[ing] or control[ling]" the users of the BrainSuite to infringe the '360 patent. *Akamai Techs. Inv. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022 (Fed. Cir. 2015). Brainlab's potential liability turns on the scope of each of the manufacturer settlement agreements. The Siemens agreement defines "Licensed Products" as any product or service, including but not limited to, MRI scanners, software components and related services, devices, systems, methods or other offerings, that has been, is or will be developed, made, used, marketed, distributed, purchased, offered for sale, leased, rented, licensed, imported, exported and/or sold by, or on behalf of, Siemens or their Affiliates that would, by itself or in combination with a Third Party's products or services, infringe any claim within the Licensed Patents but for the Licenses granted in this Agreement. Siemens Agreement § 1 (emphasis added). The Siemens agreement also extends a patent license to Siemens's "direct and indirect customers." *Id.* § 4.1. A Brainsuite user that employs a Siemens MRI system and is also a Siemens customer, and the Brainsuite product is a licensed combination of a Siemens MRI system and a third-party component. (As for Dr. Filler's suggestion that Brainlab purchases the MRI systems from a manufacturer and in turn provides it as a part of Brainsuite, Brainlab would also itself stand in the shoes of a Siemens customer.) The Philips agreement differs in several respects. Although it includes "Licensed Patents" and "Licensed Products" in the definition section, it does not grant a patent license. Rather, the signatories agreed to a release and a covenant not to sue. "[T]he covenant [not to sue] shall extend to... any direct or indirect customers of Philips... for any combination of products and/or services that included products and/or services of (i) Philips... and (ii) Brainlab," however, "[n]othing in this covenant is intended to extend to Brainlab." *Id.* § 5.1. Likewise, the release does not extend to Brainlab. See *id.* § 3.1. Thus, to the extent that Brainsuite may in combination with a Philips MRI system infringe the '360 patent (plaintiffs state in their responsive statement of facts that they have not fully explored this issue in discovery), plaintiffs have not waived the right to pursue damages from Brainlab (less any recovery already obtained from Philips for the same infringement). The GE agreement provides a patent license, but that license expressly excludes "any infringement attributable to Brainlab... even

when combined with products or services from GE." GE Agreement § 4.1. Thus, a combination of Brainsuite with a GE MRI system is excluded from the license. To the extent that Brainsuite may infringe the '360, Brainlab may be liable. Finally, with respect to indirect infringement by unauthorized independent medical practitioners, Brainlab points out plaintiffs have no evidence that any of the handful of such practitioners identified by plaintiffs used Brainlab products in their alleged infringement. For the foregoing reasons, Brainlabs motion for summary judgment of noninfringement is ALLOWED IN PART in connection with Siemens MRI systems and the so-called unauthorized independent medical practitioners, and DENIED IN PART in connection with Philips and GE MRI systems. In light of the foregoing rulings on the summary judgment motions, the court will cancel the motion hearing scheduled for August 19, 2016 at 2pm, but will see the parties on August 18, 2016 at 2pm for the Markman hearing. (RGS, int2) (Entered: 08/01/2016)

As of August 2, 2016, PACER did not contain a publicly available document associated with this docket entry. The text of the docket entry is shown above.

In re: NeuroGrafix ('360) Patent Litigation
1-13-md-02432 (MAD), 8/1/2016, docket entry 328