

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

SIMPLEAIR, INC.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CASE NO. 2:11-CV-416-JRG
	§	
MICROSOFT CORPORATION, et al.,	§	LEAD CASE
	§	
<i>Defendants.</i>	§	
	§	
SIMPLEAIR, INC.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CASE NO. 2:13-CV-587-JRG
	§	
GOOGLE INC., et al.,	§	
	§	
<i>Defendants.</i>	§	
	§	

PRETRIAL ORDER

The Court held pretrial hearings on December 13, 2013 and January 7, 2014 and heard argument on Plaintiff's Motion to Exclude Opinions and Testimony of David Eastburn (Dkt. No. 473), Google's Motion to Exclude Testimony of Robert Mills (Dkt. No. 474), Google's Motion to Exclude Testimony of Dr. V. Seenu Srinivasan (Dkt. No. 475), Plaintiff's Motion to Exclude Opinions and Testimony of Dr. Keith R. Ugone (Dkt. No. 476), Plaintiff's Motion to Exclude Opinions and Testimony of Dr. Tim Williams (Dkt. No. 498), Defendant's Motion to Strike Supplement Expert Reports (Dkt. No. 515), SimpleAir's Motion re Scheduling of Dr. V. Seenu Srinivasan (Dkt. No. 494), Defendants' Motion for Summary Judgment of Lack of Priority and

Invalidity (Dkt. No. 470), Google and Motorola Mobility's Motion for Summary Judgment of Non-Infringement (Dkt. No. 471), Google and Motorola Mobility's Partial Motion for Summary Judgment of Non-Infringement Based on the Facebook License Agreement (Dkt. No. 472) and Simple's Cross-Motion for Motion for Summary Judgment of No License (Dkt. No. 487), Google and Motorola Mobility's Motion for Leave to File a Letter Brief Requesting Permission to File a Motion for Summary Judgment of Non-Infringement (Dkt. No. 499), Plaintiff's Motions *in Limine* (Dkt. No. 503), Defendants' Motions *in Limine* (Dkt. No. 501), Plaintiff's Motion to Strike New Non-infringement Report from Dr. Tim Williams (Dkt. No. 556), Defendants' Cross-Motion to Strike New Infringement Expert Report From Dr. James Knox (Dkt. No. 569), Defendants' Motion for Order Permitting Deposition (Dkt. No. 567), and the parties' January 5, 2014 Updated Joint Notice of Outstanding Exhibits (Dkt. No. 566).

The Court announced its rulings and reasoning into the record. Any clarification and/or modification to such motions, as stated by the Court during such hearing, fully applies to the rulings as stated below, and the ruling set forth herein do not exclude or supplant any clarification, reasoning, and/or modification as stated in the record.

I. Daubert Motions and Motions for Summary Judgment

Plaintiff's Motion to Exclude Opinions and Testimony of David Eastburn (Dkt. No. 473) is **GRANTED-IN-PART** to the extent comparisons are made between prior art and SimpleAir's infringement contentions; otherwise **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Google's Motion to Exclude Testimony of Robert Mills (Dkt. No. 474) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Google's Motion to Exclude Testimony of Dr. V. Seenu Srinivasan (Dkt. No. 475) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Plaintiff's Motion to Exclude Opinions and Testimony of Dr. Keith R. Ugone (Dkt. No. 476) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Plaintiff's Motion to Exclude Opinions and Testimony of Dr. Tim Williams (Dkt. No. 498) is **GRANTED-IN-PART** to exclude any opinion that the "receivers" and "device" must be separate and cannot be components within a single smartphone as contrary to the Court's claim construction of the phrase "receivers communicating with remote computing devices." This motion is also **GRANTED-IN-PART** to exclude any opinion that a "data channel" cannot include the path between the remote computing device and the attached receiver because that line of argument was expressly rejected in the Court's *Markman* Order. The remainder of this motion is otherwise **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Defendant's Motion to Strike Supplement Expert Reports (Dkt. No. 515) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

SimpleAir's Motion re Scheduling of Dr. V. Seenu Srinivasan (Dkt. No. 494) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record.

Defendants' Motion for Summary Judgment of Lack of Priority and Invalidity (Dkt. No. 470) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Google and Motorola Mobility's Motion for Summary Judgment of Non-Infringement (Dkt. No. 471) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Google and Motorola Mobility's Partial Motion for Summary Judgment of Non-Infringement Based on the Facebook License Agreement (Dkt. No. 472) is **DENIED** and

Simple's Cross-Motion for Motion for Summary Judgment of No License (Dkt. No. 487) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record.

Google and Motorola Mobility's Motion for Leave to File a Letter Brief Requesting Permission to File a Motion for Summary Judgment of Non-Infringement (Dkt. No. 499) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Plaintiff's Motion to Strike New Non-infringement Report from Dr. Tim Williams (Dkt. No. 556) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Defendants' Cross-Motion to Strike New Infringement Expert Report from Dr. James Knox (Dkt. No. 565) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Defendants' Motion for Order Permitting Deposition (Dkt. No. 567) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record.

II. Plaintiff's Motions *in Limine* (Dkt. No. 503) and Defendants' Motions *in Limine* (Dkt. No. 501).

The Court reminds the parties that its ruling on a motion *in limine* is not a definitive ruling on the admissibility of evidence. An order granting a motion *in limine* is an order requiring the offering party to approach the bench and seek leave from the Court prior to mentioning the matter covered by the order to the jury or the jury panel during *voir dire*. Similarly, an order denying a motion *in limine* does not relieve a party from making an objection at trial.

Plaintiff's Motion *in Limine* No. 1 (No arguments or expert opinions that contradict the Court's *Markman* rulings) is **DENIED-AS-MOOT** based on the Court's instructions.

Plaintiff's Motion *in Limine* No. 2 (No undisclosed expert opinions) is **DENIED-AS-MOOT** based on the Court's instructions.

Plaintiff's Motion *in Limine* No. 3 (No undisclosed evidence or argument of invalidity,

non-infringement, or non-infringing alternatives) is **DENIED-AS-MOOT** based on the Court's instructions.

Plaintiff's Motion in Limine No. 4 (No evidence or argument by Google or its experts comparing the prior art to SimpleAir's infringement theories rather than the Court's constructions) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record.

Plaintiff's Motion in Limine No. 5 (No evidence or argument by Google or its experts comparing the preferred embodiments or the commercial embodiment to the accused instrumentalities) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record.

Plaintiff's Motion in Limine No. 6 (No evidence or argument by Google that its accused instrumentalities practice the claims of any of Google's own patents or patents of third parties) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record.

Plaintiff's Motion in Limine No. 7 has been **WITHDRAWN**.

Plaintiff's Motion in Limine No. 8 (No evidence or argument on late-disclosed non-infringement theories) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Plaintiff's Motion in Limine No. 9 (No testimony from non-experts as to meaning of claim terms) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record.

Plaintiff's Motion in Limine No. 10 (No argument or evidence about whether Payne and von Kaenel offered a stake in SimpleAir to others, such as Rose, Katz, or Starr) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record.

Defendants' Motion in Limine No. 1 (Plaintiff Should Be Precluded From Offering Testimony, Evidence, or Argument Relating to Unasserted U.S. Patent Nos. 8,572,279, 6,167,426, and 6,735,614) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record.

Defendants' Motion in Limine No. 2 (Plaintiff Should Be Precluded From Offering Testimony, Evidence, or Argument Asserting that the Reexamination of Asserted U.S. Patent 7,035,914 Strengthens the Presumption of Validity of the Patent) is **GRANTED** as agreed.

Defendants' Motion in Limine No. 3 has been **WITHDRAWN**.

Defendants' Motion in Limine No. 4 (Plaintiff Should Be Precluded From Offering Testimony, Evidence, or Argument Regarding Plaintiff's Settlement Negotiations with Apple and RIM) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Defendants' Motion in Limine No. 5 (Plaintiff Should Be Precluded From Offering Testimony, Evidence, or Argument Regarding Any Expert Opinion Not Disclosed in Plaintiff's Experts' Reports) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Defendants' Motion in Limine No. 6 (Plaintiff Should Be Precluded From Offering Testimony, Evidence, or Argument Regarding Any Infringement Positions or Theories Not Disclosed in Plaintiff's Infringement Expert's Report) is **GRANTED** as agreed.

Defendants' Motion in Limine No. 7 (Plaintiff Should Be Precluded From Offering Testimony, Evidence, or Argument Regarding Google's Total Sales Data, Total Revenues, Size or Financial Worth) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record.

Defendants' Motion in Limine No. 8 has been **WITHDRAWN**.

Defendants' Motion in Limine No. 9 (Plaintiff Should Be Precluded From Offering Testimony, Evidence, or Argument Regarding the Court's Claim Construction Order Other Than the Actual Claim Constructions Themselves) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record. The parties may not refer, directly or indirectly, to each other's claim construction positions in the presence of the jury. Likewise, the parties should refrain from

mentioning any portion of the opinion, other than the actual definitions adopted by the Court, in the presence of the jury. Any reference to claim construction proceedings is limited to informing the jury of the definitions adopted by the Court.

Defendants' Motion in Limine No. 10 has been **WITHDRAWN**.

Defendants' Motion in Limine No. 11 has been **WITHDRAWN**.

Defendants' Motion in Limine No. 12 (Plaintiff Should Be Precluded From Offering Testimony, Evidence, or Argument Regarding the Issuance of an Injunction) is **GRANTED** as agreed.

III. January 5, 2014 Updated Joint Notice of Outstanding Exhibits (Dkt. No. 566)

On January 7, 2014 the Court heard argument on the disputed exhibits listed in the parties' January 5, 2014 Updated Joint Notice of Outstanding Exhibits (Dkt. No. 566) and announced its rulings and reasoning in the record. Any disputed exhibit for which the Court has overruled the opposing party's objection is deemed pre-admitted. Any exhibit on each side's exhibit list not specifically objected to or withdrawn at the January 7, 2014 hearing and otherwise contained within the parties' January 5, 2014 Updated Joint Notice of Outstanding Exhibits is also deemed pre-admitted. As the Court informed the parties at the pretrial hearing, a pre-admitted exhibit will not become part of the record in this case unless it is introduced, published, or otherwise used before the jury at trial. Further, objections not made during the pre-admission process are considered waived and may not be raised during trial. Objections overruled during the pre-admission process are preserved for appeal without being re-urged during the case in chief in the event the underlying exhibit is utilized at trial.

IV. Trial Procedure

Jury Selection is scheduled for 9:00 am on January 13, 2014. The parties each have 30 minutes per side for *voir dire*, and up to 3 minutes of such *voir dire* time may be used for general high-level background or case introduction purposes. The parties are expressly instructed to refrain from argument during *voir dire*.

Trial is scheduled to begin immediate following jury selection. As the Court has previously instructed, the parties will have 12 hours per side to present their evidence, not including opening and closing statements. The parties each have 30 minutes per side for opening statements and 30 minutes per side for closing statements. Court will use its best efforts to be in chambers and available by 7:30 am each day before the start of evidence to take up any housekeeping matters or late-arriving disputes that might come up during trial. Any deposition clip objections must be brought to the Court's attention on a rolling basis during the morning hour on the day *before* such clip is expected to be played at trial. In addition, pre-admitted exhibits used before the jury each day will be identified and their exhibit numbers read into the record the next morning before the jury is brought into the Courtroom.

So ORDERED and SIGNED this 8th day of January, 2014.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE