

# In the United States Court of Federal Claims

SCIENCE APPLICATIONS  
INTERNATIONAL CORPORATION,

Plaintiff,

v.

THE UNITED STATES,

Defendant,

and

MICROSOFT CORPORATION,

Intervenor-Defendant,

and

L3 TECHNOLOGIES, INC.,

Third-Party Defendant.

No. 17-cv-825

Filed Under Seal: February 14, 2024

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*Matthew D. Tanner*, United States Department of Justice, Civil Division, Washington, D.C. argued for Defendant. With him on the briefs were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, Washington, D.C.; and *Scott Bolden*, *Hayley A. Dunn*, and *Gary L. Hausken* of the United States Department of Justice, Civil Division, Washington, D.C.

*Ahmed J. Davis* and *Thomas L. Halkowski* of Fish & Richardson P.C., Washington, D.C. argued for Intervenor-Defendant. With them on the briefs were *W. Freeman, Jr.*, *Daniel Y. Lee*, and *Laura*

<sup>1</sup> This Memorandum and Order was filed under seal, in accordance with the Protective Order entered in this case (ECF No. 34) and was publicly reissued after incorporating all appropriate redactions proposed by the parties (ECF No. 425-1). The two versions are substantively identical, except for the publication date and this footnote.

*C. Whitworth* of Fish & Richardson P.C., Washington, D.C.; and *John Thornburgh*, Fish & Richardson P.C., San Diego, C.A.

*William C. Bergmann* of Baker & Hostetler LLP, Washington, D.C. argued for Third-Party Defendant. With him on the briefs were *Charles C. Carson* of Baker & Hostetler LLP, Washington, D.C.; and *Phillip D. Wolfe* of Baker & Hostetler LLP, Philadelphia, P.A.

## MEMORANDUM AND ORDER

### I. Introduction

On June 19, 2017, Plaintiff Science Applications International Corporation (SAIC) filed the present action alleging literal patent infringement pursuant to 28 U.S.C. § 1498(a) against Defendant the United States (the Government). Complaint (ECF No. 1) (Compl.) ¶¶ 1–3. SAIC contends that the Government has infringed several of SAIC’s patents including “by entering into contracts with Plaintiff’s competitors for the manufacture and subsequent use of night vision goggle weapon systems with specialized heads up displays that allegedly use Plaintiff’s patented technology.” *Sci. Applications Int’l Corp. v. United States*, 148 Fed. Cl. 268, 269 (2020); see Compl. ¶¶ 2, 37. Though this case has persisted through six years of extensive litigation, and involves staggeringly high contract values of over ██████████,<sup>2</sup> at its heart rests cutting-edge technology emblematic of American ingenuity and critical to the safety of military men and women across the globe.

This Court has issued several opinions throughout the course of this litigation, familiarity with which is presumed.<sup>3</sup> See, e.g., *Sci. Applications Int’l Corp. v. United States*, 135 Fed. Cl. 661

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<sup>2</sup> See Hearing Transcript, dated July 26, 2021 (ECF No. 191) at 8:7–17 (referencing ██████████ contract between the Government and Microsoft).

<sup>3</sup> Since its inception in June 2017, this action has been reassigned four times to different judges. See *Sci. Applications Int’l Corp.*, 148 Fed. Cl. at 270; see also ECF No. 25 (Notice of Reassignment, dated April 5, 2018); ECF No. 68 (Notice of Reassignment, dated June 21, 2019); ECF No. 85 (Notice of Reassignment, dated July 23, 2019); ECF No. 113 (Notice of Reassignment to undersigned judge, dated February 27, 2020).

(2018); *Sci. Applications Int'l Corp. v. United States*, 154 Fed. Cl. 594 (2021) (*Markman* Opinion or *Markman Op.*); *Sci. Applications Int'l Corp. v. United States*, 156 Fed. Cl. 486 (2021); *Sci. Applications Int'l Corp. v. United States*, 161 Fed. Cl. 373 (2022); *Sci. Applications Int'l Corp. v. United States*, 162 Fed. Cl. 213 (2022); *Sci. Applications Int'l Corp. v. United States*, 163 Fed. Cl. 257 (2022). The following seven motions are pending before this Court and are ripe for adjudication:

- Intervenor-Defendant Microsoft Corporation's Motion for Summary Judgment of Invalidity Based on Indefiniteness (ECF No. 339) (MSFT MSJ Inv.)<sup>4</sup>;
- Plaintiff SAIC's Motion for Partial Summary Judgment of Infringement by the Government and for Summary Judgment regarding the Desert's Edge Prior Art Status (ECF No. 340) (SAIC MSJ Inf.)<sup>5</sup>;
- Third-Party Defendant L3 Technologies, Inc.'s Motion for Summary Judgment of Non-Infringement (ECF No. 341) (L3 MSJ NI)<sup>6</sup>;
- Defendant the United States and Third-Party Defendant L3 Technologies, Inc.'s Joint Motion for Summary Judgment of Invalidity Based on Indefiniteness (ECF No. 342) (L3/Gov. MSJ Inv.)<sup>7</sup>;

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<sup>4</sup> See SAIC's Opposition to Intervenor-Defendant Microsoft Corporation's and the United States' and Third-Party Defendant L3 Technologies, Inc.'s Motions for Summary Judgment of Invalidity Based on Indefiniteness (ECF No. 364) (MSFT MSJ Inv. – SAIC Resp.); Intervenor-Defendant Microsoft Corporation's Reply in Support of its Motion for Summary Judgment of Invalidity Based on Indefiniteness (ECF No. 374) (MSFT MSJ Inv. – MSFT Reply).

<sup>5</sup> See Defendants' Combined Opposition to SAIC's Motions for Partial Summary Judgment of Infringement by the Government and Prior Art Status of Desert's Edge (ECF No. 359) (SAIC MSJ Inf. – Def. Resp.); SAIC's Reply to Defendants' Combined Opposition to SAIC's Motion for Partial Summary Judgment of Infringement by the Government and Prior Art Status of Desert's Edge (ECF No. 372) (SAIC MSJ Inf. – SAIC Reply).

<sup>6</sup> See SAIC's Opposition to Third-Party Defendant L3 Technologies, Inc.'s Motion for Summary Judgment of Non-Infringement (ECF No. 361) (L3 MSJ NI – SAIC Resp.); Third-Party Defendant L3 Technologies, Inc.'s Reply in Support of L3's Motion for Summary Judgment of Non-Infringement (ECF No. 376) (L3 MSJ Inv. – L3 Reply).

<sup>7</sup> See SAIC's Opposition to Defendant the United States of America's and Third-Party Defendant L3 Technologies, Inc.'s Motion for Summary Judgment of Invalidity Based on Indefiniteness (ECF No. 360) (L3/Gov. MSJ Inv. – SAIC Resp.); Defendant the United States' and Third-Party

- Intervenor-Defendant Microsoft Corporation’s Motion for Summary Judgment of Non-Infringement (ECF No. 343) (MSFT MSJ NI)<sup>8</sup>;
- Plaintiff SAIC’s Motion to Strike Untimely Non-Infringing Alternatives and Non-Infringement Theories (ECF No. 352) (SAIC MTS)<sup>9</sup>;
- All Defendants’ Joint Motion to Strike the Declaration of SAIC’s Infringement Expert, Dr. Bajaj, Expressing New Infringement Opinions (ECF No. 377) (Def. MTS).<sup>10</sup>

Briefing of the above motions concluded on April 20, 2023. *See* Scheduling Order, dated December 14, 2022 (ECF No. 333); Unopposed Motion for Extension of Time (ECF No. 378); Minute Order, dated April 14, 2023 (granting unopposed Motion to extend briefing deadline to April 20, 2023). The Court heard argument on these motions on June 22, 2023 (Oral Argument). *See* Minute Order, dated April 27, 2023 (setting Oral Argument); Oral Argument Transcript, dated June 22, 2023 (ECF No. 400) (OA Tr.). On September 28, 2023, the Court ruled on the pending motions and certified a partial judgment pursuant to Rule 54(b). *See* ECF Nos. 401, 402. Subsequently, the parties moved pursuant to Rules 59 and 60 to alter or amend the Court’s September 28, 2023 Memorandum and Order and entry of partial judgment. *See* ECF Nos. 409

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Defendant L3 Technologies, Inc.’s Reply in Support of Their Motion for Summary Judgment of Invalidity Based on Indefiniteness (ECF No. 373) (L3/Gov. MSJ Inv. – L3/Gov. Reply).

<sup>8</sup> *See* SAIC’s Opposition to Microsoft Corporation’s Motion for Summary Judgment of Non-Infringement (ECF No. 362) (MSFT MSJ NI – SAIC Resp.); Intervenor-Defendant Microsoft Corporation’s Reply in Support of Its Motion for Summary Judgment of Non-Infringement (ECF No. 375) (MSFT MSJ NI – MSFT Reply).

<sup>9</sup> *See* Defendants’ Opposition to SAIC’s Motion to Strike Non-Infringing Alternatives and Non-Infringement Theories (ECF No. 367) (SAIC MTS – Def. Resp.); SAIC’s Reply in Support of its Motion to Strike Untimely Non-Infringing Alternatives and Non-Infringement Theories (ECF No. 382) (SAIC MTS – SAIC Reply).

<sup>10</sup> *See* SAIC’s Opposition to Defendants’ Motion to Strike the Declaration of SAIC’s Infringement Expert, Dr. Bajaj, Expressing New Infringement Opinions (ECF No. 390) (Def. MTS – SAIC Resp.); Reply in Support of Defendants’ Motion to Strike the Declaration of SAIC’s Infringement Expert, Dr. Bajaj, Expressing New Infringement Opinions (ECF No. 391) (Def. MTS – Def. Reply).

and 412. On February 13, 2024, this Court granted Plaintiff's Rule 59 Motion, denied Defendants' Rule 60 Cross-Motion, and accordingly ordered the Clerk of Court to (1) strike from the docket the Court's September 28, 2023 Memorandum and Order, and (2) vacate the Court's entry of partial judgment. *See* ECF No. 420. As a result, the above-listed seven motions are pending once again. The present Memorandum and Order addressing these now-pending motions is substantively identical to the Court's now-stricken September 28, 2023 opinion, excepting this paragraph and Section V (Conclusion). A background summary pertinent to the pending motions follows.

**A. Background**

**a. The Alleged Infringing Parties**

The Government has entered into several contractual arrangements with various parties to develop and manufacture the accused technology. Specifically, on May 9, 2014, the Government, acting by and through the Department of the Army (the Army), awarded two contracts for the procurement of the Enhanced Night Vision Goggle-III (ENVG-III) and the Family of Weapon Sights – Individual (FWS-I) to BAE Systems, Inc. (BAE) and DRS Networks & Imaging Systems, LLC (DRS). Compl. ¶¶ 2, 37. Neither BAE nor DRS have joined this suit. Additionally, on November 20, 2018, Intervenor-Defendant Microsoft Corporation (Microsoft) entered into a contract with the Government to develop an [REDACTED], which includes implementation of the [REDACTED] feature relevant to SAIC's infringement claims. *See* Microsoft's Unopposed Motion to Intervene Pursuant to Rule 24 (ECF No. 59) at 1.<sup>11</sup> On April 30, 2019, Microsoft filed an unopposed Motion to Intervene in this action

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<sup>11</sup> Citations throughout this Memorandum and Order reference the ECF-assigned page numbers, which do not always correspond to the pagination within the document.

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