IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

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| INTELLECTUAL VENTURES I, LLC and INTELLECTUAL VENTURES II, LLC, | ) | |
| Plaintiffs, | ) | |
| v. | ) | Civ. No. 11-908-SLR |
| MOTOROLA MOBILITY, LLC, | ) | |
| Defendant. | ) | |

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Jack B. Blumenfeld, Esquire and Stephen J. Kraftschik, Esquire of Morris, Nichols, Arsht, & Tunnel, LLP, Wilmington, Delaware. Counsel for Defendant. Of Counsel: William H. Boice, Esquire, Candice Decaire, Esquire, D. Clay Holloway, Esquire, and Steven Moore, Esquire of Kilpatrick Townsend & Stockton LLP.

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**MEMORANDUM OPINION**

Dated: October 28, 2014
Wilmington, Delaware

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ROBINSON, District Judge

## I. INTRODUCTION

Plaintiff Intellectual Ventures I, LLC ("IV I") and Intellectual Ventures II, LLC ("IV II") (collectively "IV") brought this patent infringement action against defendant Motorola Mobility, Inc. ("Motorola") on October 6, 2011, alleging infringement of six patents: U.S. Patent Nos. 7,810,144 ("the '144 patent"), 6,412,953 ("the '953 patent"), 7,409,450 ("the '450 patent"), 7,120,462 ("the '462 patent"), 6,557,054 ("the '054 patent"), and 6,658,464 ("the '464 patent"). (D.I. 1) Motorola answered and asserted affirmative defenses of, *inter alia*, failure to state a claim, non-infringement, invalidity, prosecution history estoppel, the equitable doctrines of waiver, acquiescence, laches and unclean hands, and statutory time limitation on damages. (D.I. 10) Motorola also asserted counterclaims for non-infringement and invalidity. *Id.*

On August 20, 2013, Motorola filed a motion for summary judgment of invalidity (D.I. 230), and on September 10, 2013, Motorola filed a motion for summary judgment of non-infringement (D.I. 252). In a memorandum opinion and order dated January 2, 2014, the court issued its claim construction and resolved several summary judgment motions, finding no infringement of claim 26 of the '144 patent and invalidity of claim 1 of the '953 patent based on the asserted prior art. (D.I. 284) On January 8, 2014, the court limited trial to those issues related to the '462, '054 and '464 patents. (D.I. 288)

A nine-day jury trial was held on January 24 - February 4, 2014. The trial resulted in a hung jury and a mistrial was declared. Before the court is Motorola's renewed Rule 50 motion for judgment as a matter of law ("JMOL") on invalidity and non-infringement. (D.I. 320) The court has jurisdiction pursuant to 28 U.S.C. § 1338.

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## II. BACKGROUND

### A. The Parties

IV I and IV II are limited liability companies organized and existing under the laws of the State of Delaware, with their principal place of business in Bellevue, Washington. (D.I. 1 at ¶¶ 1-2) IV I owns the '144, '450, '054, and '464 patents. (*Id.* at ¶¶ 10, 14, 18, 20) IV II is the exclusive licensee of the '953 patent and owns the '462 patent. (*Id.* at ¶¶ 12, 16)

Motorola is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Libertyville, Illinois. (*Id.* at ¶ 3) It makes, manufactures, and/or sells the accused products. (*Id.* at ¶ 28)

### B. The Technology At Issue

The '462, '054 and '464 patents relate to a variety of technologies in information processing, computing and mobile phones. The '462 patent involves portable processor devices that provide communication and computing functionality. The '054 patent relates to computer-implemented methods for distributing software. The '464 patent describes software products for transferring data over a network. The court discusses each patent in more detail *infra*.

## III. STANDARD

Judgment as a matter of law is proper "[i]f a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue." Fed. R. Civ. P. 50(a). "A jury's inability to reach a verdict does not necessarily preclude a judgment as



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a matter of law." *Shum v. Intel Corp.*, 633 F.3d 1067, 1076 (Fed. Cir. 2010) (citations omitted); *see Stewart v. Walbridge, Aldinger Co.*, 882 F. Supp. 1441, 1443 (D. Del. 1995) ("The fact that the jury was unable to reach a unanimous verdict does not in any way affect this Court's duty to rule on the [rule 50] motion."). "[T]he standard for granting summary judgment 'mirrors' the standard for judgment as a matter of law, such that 'the inquiry under each is the same.'" *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986)).

"[I]n entertaining a motion for judgment as a matter of law, the court should review all of the evidence in the record." *Id.* "In doing so, however, the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make any credibility determinations or weigh the evidence." *Id.* (citations omitted). "The question is 'whether the evidence, construed in the light most favorable to the non-moving party, permits only one reasonable conclusion.'" *Shum*, 633 F.3d at 1076 (citation omitted).

"A mere scintilla of evidence presented by the plaintiff is not sufficient to deny a motion for judgment as a matter of law." *Stewart*, 882 F. Supp. at 1443. "The Court must determine not whether there is literally no evidence supporting the non-moving party, but whether there is evidence upon which the jury could properly find for the non-moving party." *Id.* (citing *Walter v. Holiday Inns., Ins.*, 985 F.2d 1232, 1238 (3d Cir. 1993)). "The Court should grant the motion for judgment as a matter of law only if, 'viewing all the evidence which has been tendered and should have been admitted in the light most favorable to the party opposing the motion, no jury could decide in that



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party's favor.'" *Id.* (citation omitted)

## IV. DISCUSSION

### A. Standards

#### 1. Infringement

A patent is infringed when a person "without authority makes, uses or sells any patented invention, within the United States . . . during the term of the patent." 35 U.S.C. § 271(a). To prove direct infringement, the patentee must establish, by a preponderance of the evidence, that one or more claims of the patent read on the accused device literally or under the doctrine of equivalents. *See Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.*, 261 F.3d 1329, 1336 (Fed. Cir. 2001). A two-step analysis is employed in making an infringement determination. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995). First, the court must construe the asserted claims to ascertain their meaning and scope. *See id.* Construction of the claims is a question of law subject to de novo review. *See Cybor Corp. v. FAS Techs.*, 138 F.3d 1448, 1454 (Fed. Cir. 1998). The trier of fact must then compare the properly construed claims with the accused infringing product. *See Markman*, 52 F.3d at 976. This second step is a question of fact. *See Bai v. L & L Wings, Inc.*, 160 F.3d 1350, 1353 (Fed. Cir. 1998).

"Direct infringement requires a party to perform each and every step or element of a claimed method or product." *Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1320 (Fed. Cir. 2009) (internal quotation marks omitted). "If any claim limitation is absent from the accused device, there is no literal infringement as a matter of law."



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