

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IPA TECHNOLOGIES INC.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 18-1-RGA

MEMORANDUM OPINION

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April 25, 2024


ANDREWS, U.S. DISTRICT JUDGE:

Before me are Plaintiff's "Motion for Summary Judgment and *Daubert*" (D.I. 236) and Defendant's "Motion for Summary Judgment and to Exclude IPA Technologies Inc.'s Expert Opinions" (D.I. 239). I have considered the parties' briefing (D.I. 237, 258, 282 (Plaintiff's motion); D.I. 240, 259, 280 (Defendant's motion)). I heard oral argument on March 19, 2024 (Hearing Tr.).¹ The parties submitted supplemental letters in response to requests I made during oral argument. (D.I. 298, 299). At my request, the parties submitted supplemental claim construction briefing. (D.I. 312).

For the reasons set forth below, Plaintiff's summary judgment and *Daubert* motions are GRANTED IN PART, DENIED IN PART, and DISMISSED AS MOOT IN PART.

Defendant's summary judgment and *Daubert* motions are GRANTED IN PART, DENIED IN PART, and DISMISSED AS MOOT IN PART.

I. BACKGROUND

Plaintiff owns U.S. Patent No. 6,851,115 ("the '115 patent") and U.S. Patent No. 7,069,560 ("the '560 patent"). The patents are directed to software-based architecture that "supports cooperative task completion by flexible and autonomous electronic agents." ('115 patent, Abstract; '560 patent, Abstract). Plaintiff filed this case in 2018, alleging infringement of its patents by products that incorporate Cortana, a virtual assistant developed by Defendant. (D.I. 1). More specifically, the infringement claims are directed towards two iterations of Cortana software called the Legacy Architecture and the Cortex Architecture. (Hearing Tr. at 46:23–47:7). The accused products include both client devices running Defendant's Windows

¹ Citations to the transcript of the argument, which is docketed as D.I. 305, are in the format "Hearing Tr. at ___."

10 operating system and Defendant’s server systems that process commands received from these Cortana-enabled client devices. (D.I. 263-1, Ex. 1 ¶ 75). “[T]he only way for a user to access Cortana . . . is through client devices running Windows 10, into which Cortana is embedded.” (D.I. 259 at 18).

The Second Amended Complaint raised infringement claims based on six patents. (D.I. 16). Plaintiff now only asserts claims 29, 33, 38, 41, and 43 of the ’115 patent and claims 50, 53, and 54 of the ’560 patent. (D.I. 216). Claims 33, 38, 41, and 43 of the ’115 patent depend from independent claim 29 of the same patent. (’115 patent, 32:55, 33:18, 33:44, 33:59). Claim 54 of the ’560 patent depends from claim 53 of the same patent. (’560 patent, 36:28–29).

Plaintiff previously asserted the patents at issue against Amazon. *See IPA Techs. Inc. v. Amazon.com, Inc.*, No. 16-cv-1266 (D. Del. filed Dec. 19, 2016) (the “Amazon case”); *IPA Techs., Inc. v. Amazon.com, Inc.*, 2021 WL 5003254 (D. Del. Oct. 28, 2021), *aff’d*, 2023 WL 234192 (Fed. Cir. Jan. 18, 2023). The parties agreed to many of the claim constructions adopted in the Amazon case. (*See* D.I. 143; Amazon case, D.I. 128). Of relevance here, the term “request for service”/“service request” was construed as “the ‘request for a service’/‘service request’ must be recited in the claimed ICL and must meet every requirement of the claimed ICL,” the term “inter-agent language”/“inter-agent communication language”/“ICL” was construed as “an interface, communication, and task coordination language,” and the term “compound goal”/“complex goal” was construed as “a single-goal expression comprising multiple sub-goals.” (D.I. 143 at 4–5).

II. LEGAL STANDARD

A. Summary Judgment

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party has the initial burden of proving the absence of a genuinely disputed material fact relative to the claims in question. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Material facts are those “that could affect the outcome” of the proceeding. *Lamont v. New Jersey*, 637 F.3d 177, 181 (3d Cir. 2011). “[A] dispute about a material fact is ‘genuine’ if the evidence is sufficient to permit a reasonable jury to return a verdict for the non-moving party.” *Id.* The burden on the moving party may be discharged by pointing out to the district court that there is an absence of evidence supporting the non-moving party’s case. *Celotex*, 477 U.S. at 323.

The burden then shifts to the non-movant to demonstrate the existence of a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); *Williams v. Borough of West Chester*, 891 F.2d 458, 460–61 (3d Cir. 1989). A non-moving party asserting that a fact is genuinely disputed must support such an assertion by: “(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials; or (B) showing that the materials cited [by the opposing party] do not establish the absence . . . of a genuine dispute” Fed. R. Civ. P. 56(c)(1). The non-moving party’s evidence “must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance.” *Williams*, 891 F.2d at 460–61.

When determining whether a genuine issue of material fact exists, the court must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party’s favor. *Scott v. Harris*, 550 U.S. 372, 380 (2007); *Wishkin v. Potter*,

476 F.3d 180, 184 (3d Cir. 2007). If the non-moving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. *See Celotex Corp.*, 477 U.S. at 322.

B. Infringement

A patent is directly infringed when a person “without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent.” 35 U.S.C. § 271(a). Determining infringement is a two-step analysis. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (en banc), *aff’d*, 517 U.S. 370 (1996). First, the court must construe the asserted claims to ascertain their meaning and scope. *Id.* The trier of fact must then compare the properly construed claims with the accused infringing product. *Id.* This second step is a question of fact. *Bai v. L & L Wings, Inc.*, 160 F.3d 1350, 1353 (Fed. Cir. 1998). The patent owner bears the burden of proving infringement by a preponderance of the evidence. *SmithKline Diagnostics, Inc. v. Helena Lab’ys Corp.*, 859 F.2d 878, 889 (Fed. Cir. 1988).

“Literal infringement of a claim exists when every limitation recited in the claim is found in the accused device.” *Kahn v. Gen. Motors Corp.*, 135 F.3d 1472, 1477 (Fed. Cir. 1998). “If any claim limitation is absent from the accused device, there is no literal infringement as a matter of law.” *Bayer AG v. Elan Pharm. Research Corp.*, 212 F.3d 1241, 1247 (Fed. Cir. 2000). If an accused product does not infringe an independent claim, it also does not infringe any claim depending thereon. *See Wahpeton Canvas Co. v. Frontier, Inc.*, 870 F.2d 1546, 1553 (Fed. Cir. 1989). However, “[o]ne may infringe an independent claim and not infringe a claim dependent on that claim.” *Monsanto Co. v. Syngenta Seeds, Inc.*, 503 F.3d 1352, 1359 (Fed. Cir. 2007) (internal quotations omitted). A product that does not literally infringe a patent claim may still

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