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

TOUCHSTREAM TECHNOLOGIES, INC., *Plaintiff*, v. **CHARTER COMMUNICATIONS, INC., et al.**, *Defendants*.	**Case No. 2:23-cv-00059-JRG**

CHARTER'S RULE 50(a) MOTION FOR JUDGMENT AS A MATTER OF LAW

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I. INTRODUCTION

The Charter Defendants ("Charter") respectfully move under Federal Rule of Civil Procedure 50(a) for judgment as a matter of law that:

1. Charter does not directly infringe any of the asserted claims of the '251, '751, or '934 patents;

2. Charter did not willfully infringe any of the asserted claims of the '251, '751, or '934 patents;

3. Touchstream is not entitled to damages; and

4. The asserted claims of the '251, '751, and '934 patents are invalid under 35 U.S.C. § 112 for lack of written description.

II. LEGAL STANDARD

Judgment as a matter of law is appropriate where "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); *see also CBE Grp., Inc. v. Lexington Law Firm*, 993 F.3d 346, 349-50 (5th Cir. 2021) (affirming grant of JMOL in favor of the defendant). To defeat a Rule 50(a) motion, "[t]he non-moving party must identify 'substantial evidence' to support its positions. . . . 'Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Finesse Wireless LLC v. AT&T Mobility LLC*, 689 F. Supp. 3d 332, 338 (E.D. Tex. Aug. 30, 2023) (quoting *Eli Lilly & Co. v. Aradigm Corp.*, 376 F.3d 1352, 1363 (Fed. Cir. 2004)).

III. TOUCHSTREAM HAS FAILED TO INTRODUCE EVIDENCE SUFFICIENT TO SUPPORT A FINDING OF INFRINGEMENT

"The patentee bears the burden of proving infringement by a preponderance of the evidence." *Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1535 (Fed. Cir. 1991). Touchstream

has not offered evidence sufficient to show that Charter infringed the asserted claims of the asserted patents, directly or willfully.[1]

"Literal infringement of a claim exists when every limitation recited in the claim is found in the accused device, *i.e.*, when the properly construed claim reads on the accused device exactly." *Engel Indus., Inc. v. Lockformer Co.*, 96 F.3d 1398, 1405 (Fed. Cir. 1996); *see also Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 40 (1997) (discussing the "all-elements" rule). This means that "the failure to meet a single limitation is sufficient to negate infringement of the claim." *Laitram Corp.*, 939 F.2d at 1535. To prove direct infringement, Touchstream must prove that Charter used an infringing method. 35 U.S.C. § 271(a).

As detailed below, Touchstream failed to introduce evidence sufficient to support a finding of infringement of any of the Asserted Patents with respect to any of the three Charter set-top box ("STBs") guides.

A. Touchstream Has Not Introduced Evidence Sufficient To Support A Finding Of Infringement By The Spectrum Guide Or iGuide Set-Top Boxes

Touchstream alleges that Charter STBs running three different "guides" infringe: the ODN/MDN Guide, Spectrum Guide, and iGuide. Dkt. 214 (Joint Pretrial Order) at 4. Touchstream has not introduced evidence sufficient to prove that the Spectrum Guide or iGuide infringe any of the Asserted Patents.

For Spectrum Guide STBs, the evidence does not show that they can control the playback of media using multiple media players. And for both Spectrum Guide and iGuide STBs, the evidence does not show that they run "software for playing media."

[1] Touchstream has not asserted infringement under the doctrine of equivalents.

1. The Evidence Does Not Show That The Spectrum Guide STBs "Control" Playback Of Media Using Multiple Media Players

Every asserted independent claim requires "controlling" playback of media on multiple, *i.e.* more than one, media players. 3/4/25 Tr. (Wicker) at 550:2-4; *see* '251 Patent Claim 1 ("controlling playing of the video content on the display device by the particular media player"); '751 Patent Claim 12 ("controlling, by the content presentation device, how the selected first media player application plays…"); '934 Patent Claim 17 ("controlling, by the media receiver, how the selected first type of media playing application plays…").

The alleged multiple media players that Touchstream accuses for every STB guide type are "Linear" (traditional broadcast TV), "VOD" (video on demand), and "DVR" (digital video recorder). 3/4/25 Tr. (Wicker) at 478:6-19. But, Touchstream did not introduce sufficient evidence to support a finding that the accused Send-to-TV feature can "control" the playback of media for "VOD" or "DVR" on Spectrum Guide STBs. And "the failure to meet a single limitation is sufficient to negate infringement of the claim." *Laitram Corp.*, 939 F.2d at 1535.

For VOD, Touchstream's expert, Dr. Wicker, admitted that he had never tested a Spectrum Guide STB, and Touchstream did not otherwise present any evidence that the accused Send-to-TV feature can "control" the playback of media on Spectrum Guide STBs. 3/4/25 Tr. (Wicker) at 552:24-553:15. Instead, Dr. Wicker admitted that he simply assumed that the Spectrum Guide STBs function similarly to the ODN Guide STB that he did test, and he "assumed" that the other STB guide types worked the same way. 3/4/25 Tr. (Wicker) at 581:4-23. Indeed, Dr. Wicker did not attempt to test the Spectrum Guide STB even after learning that Charter's expert, Dr. Shamos, had tested a Spectrum Guide STB and reached the opposite conclusion. 3/4/25 Tr. (Wicker) at 583:5-585:12. Dr. Wicker admitted that he chose not to test the Spectrum Guide STB even though doing so would only have taken him about 20 minutes. *Id.*

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