

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

TOUCHSTREAM TECHNOLOGIES, INC.,	§	
	§	
<i>Plaintiff,</i>	§	CASE NO. 2:23-cv-00059-JRG
	§	(Lead Case)
v.	§	
	§	
CHARTER COMMUNICATIONS, INC., et	§	
al.,	§	
	§	
<i>Defendants.</i>	§	

TOUCHSTREAM TECHNOLOGIES, INC.	§	
	§	
<i>Plaintiff,</i>	§	CASE NO. 2:23-cv-00062-JRG
	§	(Member Case)
v.	§	
	§	
COMCAST CABLE COMMUNICATIONS,	§	
LLC d/b/a XFINITY, et al.,	§	
	§	
<i>Defendants.</i>	§	

ORDER

Before the Court is Comcast’s Motion to Dismiss Plaintiff’s Claims of Pre-Suit Willful Infringement of the ’751 and ’934 Patents (the “Motion”) filed by Defendants Comcast Cable Communications, LLC; Comcast Cable Communications Management, LLC; Comcast of Houston, LLC; and Comcast Corporation (collectively, “Comcast”). (Dkt. No. 38.) In the Motion, Comcast requests the Court to dismiss with prejudice Plaintiff Touchstream Technologies, Inc.’s (“Plaintiff”) claims of pre-suit willful infringement with respect to U.S. Patent Nos. 11,048,751 and 11,086,934 (the “2021 Patents”). (*Id.* at 1.) According to Comcast, Plaintiff’s Second Amended Complaint for Patent Infringement (Dkt. No. 30, “SAC”) fails to cure pleading

deficiencies the Court addressed in its March 14, 2024 Order, which dismissed Plaintiff's First Amended Complaint for Patent Infringement's (No. 2:23-cv-00060, Dkt. No. 55) pre-suit willful infringement claims.¹ (Dkt. No. 38 at 3–7.) See *Touchstream Techs., Inc. v. Altice USA, Inc.*, No. 2:23-cv-00060, 2024 WL 1117930, at *2–3 (E.D. Tex. Mar. 14, 2024). Specifically, Comcast argues that the SAC still fails to sufficiently plead pre-suit knowledge of the 2021 Patents. (Dkt. No. 38 at 3–7.)


In response, Plaintiff filed Touchstream Technologies, Inc.'s Notice of Non-Opposition to Comcast's Motion to Dismiss Pre-Suit Willful Infringement of the '751 and '934 Patents (the "Notice"). (Dkt. No. 43.) In the Notice, Plaintiff states that it does not oppose the Motion, acknowledging that "[t]he issues raised in Comcast's Motion were already decided in Comcast's favor in the Court's March 14, 2024, Order." (*Id.* at 1 (citing *Touchstream*, 2024 WL 1117930, at *2–3).) Moreover, Plaintiff admits that its "Second Amended Complaint only added factual support for its claims of pre-suit willful infringement of the '251 patent," rather than for the 2021 Patents. (*Id.*)

Having considered the Motion and the briefing, and noting the Motion's unopposed nature, the Court is of the opinion that the Motion should be and hereby is **GRANTED**. Accordingly, Plaintiff's claims of pre-suit willful infringement with respect to the 2021 Patents are **DISMISSED WITH PREJUDICE**. This Order only impacts the issue of willfulness and does not impact any underlying infringement theory, direct or indirect.

¹ The March 14, 2024 Order also addressed a third patent Plaintiff asserts against Comcast (U.S. Patent No. 8,356,251 (the "'251 patent")). However, the '251 patent is not at issue in the Motion.

So Ordered this

Apr 30, 2024



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE