

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

L-3 Communications Corporation,

Plaintiff;

v.

Civil Action No. 10-734-RGA

**Sony Corporation, Sony Electronics Inc., and
Sony Mobile Communications (USA) Inc.,**

Defendants.

MEMORANDUM ORDER

One issue remains at this time. It is what the Final Judgment should look like. The parties have proposed competing versions. (D.I. 266-1 at 25, D.I. 270-1).

There are issues as to how to handle the judgment as it pertains to infringement. Plaintiff asserted claims of two patents. After claim construction (D.I. 78), Plaintiff “withdrew” claims 16 and 18 of the ‘004 Patent and claims 1, 3, and 4 of the ‘654 Patent. Subsequently, Plaintiff withdrew three other claims (24, 25, and 45) of the ‘654 Patent prior to serving expert reports. (D.I. 211 at 2 n.3). At some point, it appears that Plaintiff also withdrew claims 28, 29, 34, and 37 of the ‘654 Patent (*compare* D.I. 270-1 at 1 *with* D.I. 211 at 2 [listing disputed claims for validity trial]), but it is not clear to me when or why that was done. Plaintiff appears to distinguish between the claims withdrawn after claim construction and the ones that disappeared for no apparent reason, on the one hand, and those that were withdrawn prior to expert reports on the other, since L-3’s proposed final judgment does not mention the latter.

While there seems to be a minor dispute about the breadth of the resolution of validity issues, I believe I can resolve that. I think the only validity issues that were resolved at the trial were those that were described in the pretrial order and that were actually tried.

I do not believe the submissions to date have sufficiently addressed the legal and factual issues I need to work through in order to make the correct decision on the final judgment as it relates to infringement. I will thus **DENY WITHOUT PREJUDICE** the two pending motions for entry of final judgment. (D.I. 256, 262). Therefore, I request that the parties file by April 28, 2014, a joint appendix with all documents either party thinks are relevant to deciding what the understanding, if any, between the parties was as to how handle the “withdrawn” claims, whether there would be a stipulated judgment, why no stipulated judgment was reduced to writing, etc. The Court further directs that L-3 file a motion and brief in support of its proposed judgment by May 7, 2014; that Sony file a cross-motion and brief¹ in support of its proposed judgment by May 21, 2014; and that the parties then complete the briefing as provided for in the rules, or by agreement.²

Entered this 21st day of April, 2014.


United States District Judge

¹ All citations in the accompanying briefs should be to the joint appendix, and should cite the numbering given by the Court’s docketing system.

² If either party thinks an evidentiary hearing is necessary, it should make such a request and proffer what evidence it would offer at such a hearing.