

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ID IMAGE SENSING, LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 20-136-RGA
	:	
OMNIVISION TECHNOLOGIES, INC.,	:	
	:	
Defendant.	:	

MEMORANDUM ORDER

Defendant filed a motion to dismiss. (D.I. 8). The Magistrate Judge filed a Report and Recommendation recommending that I grant the motion in part and deny it in part. (D.I. 16).

For no apparent reason, Plaintiff filed objections arguing one point. (D.I. 18). Plaintiff’s argument has no impact on this case; Defendant wisely did not waste paper filing a response. I **DISMISS** Plaintiff’s objection as moot, since, if the case is going to continue, Plaintiff is going to have to file an amended complaint anyway.

Defendant filed objections raising three points.¹ (D.I. 19). Plaintiff responded. (D.I. 20). The first point is a series of disagreements with various characterizations in the Report and Recommendation. (D.I. 19 at 2-5). The second point is an argument that the Report “fail[ed] to credit the binding precedent in *TLI Comm’ns*.”² (*Id.* at 5-8). The third point is a request that, if the Magistrate Judge’s ruling is adopted, it be understood to be without prejudice to renewal at a later time, after claim construction and some factual development. (*Id.* at 9).

¹ Footnote 1 notes additional objections, and footnote 2 could be read to raise an additional objection too. (D.I. 19 at 1 n.1 & 2 n.2). Objections raised in footnotes are waived.
² *In re TLI Comm’ns LLC Patent Litig.*, 823 F.3d 607 (Fed. Cir. 2016).

I am not entirely sure what to make of the first point. I am not a line editor of the Magistrate Judge's reports. Defendant does not argue that any disagreements with the Magistrate Judge's characterizations make a difference. The first point is **OVERRULED**.

The second point—that the Magistrate Judge did not find Defendant's preferred cases³ to be compelling—is true, but I agree with the Magistrate Judge that they do not control the outcome here. *TLI Comm'ns* involves a patent directed to the abstract idea of “classifying and storing digital images in an organized manner.”⁴ The patent-in-suit does not involve classifying or organizing. Claim 1 of the patent does involve storing (and processing)⁵—which are sometimes enough to establish that the patent is directed to an abstract idea—but which more than sufficiently distinguish this case from Defendant's preferred cases. The second point is **OVERRULED**.

The third point addresses an issue not specifically decided by the Magistrate Judge. Plaintiff's response is essentially that Defendant went ahead with the motion on the present record, and Defendant has not indicated any potential for change from the present understanding. Since the Magistrate Judge did not decide the issue, and since I do not think filing a motion to dismiss necessarily prevents a later filing at summary judgment or after trial, particularly if Defendant can point to some materially different basis for the motion that could not have been raised on a motion to dismiss, I decline to rule that the dismissal is with prejudice to raising a section 101 issue at some later time.

³ Defendant also relies upon *Yu v. Apple, Inc.*, 2020 WL 1429773 (N.D. Cal. Mar. 24, 2020), *appeal pending*, No. 20-1760 (Fed. Cir. filed May 1, 2020), as persuasive authority. As the Magistrate Judge implied, while the case involves digital cameras, it is factually different. (D.I. 16 at 8-9 n.5).

⁴ 823 F.3d at 609. As did the Magistrate Judge, I fully “credit the binding precedent.”

⁵ Defendant initially identified the abstract idea as “identifying which flash device is connected and associating camera settings to the different flash devices.” (D.I. 9 at 11). In the reply brief, Defendant identified the abstract idea similarly, “providing an indication of which flash device is connected to the camera” and “in response, associating gain and exposure time values to that flash device.” (D.I. 12 at 1; *see id.* at 3).

Thus, the Magistrate Judge's Report and Recommendation (D.I. 16) is **ADOPTED**. The motion to dismiss (D.I. 8) is **GRANTED** in part and **DENIED** in part.

IT IS SO ORDERED this 16th day of February 2021.

/s/ Richard G. Andrews
United States District Judge