

# Group Exhibit A

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

**ACCOLADE SYSTEMS LLC**

**Plaintiff**

**vs.**

**CITRIX SYSTEMS, INC.**

**Defendant**

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**CASE NO. 6:07 CV 48  
PATENT CASE**

**MEMORANDUM OPINION AND ORDER**

Before the Court is Accolade Systems LLC’s (“Accolade”) motion to restrict the number of claims and prior art references permitted at trial and to establish a deadline for compliance with this proposed restriction (Docket No. 125). After considering the parties’ briefs, the Court **DENIES** Accolade’s motion.

Accolade brought this action for patent infringement against Citrix Systems, Inc. (“Citrix”), Webex Communications, Inc., and Laplink Software, Inc. Citrix is the remaining defendant in this case. See Orders of Dismissal with Prejudice, Docket Nos. 49, 171. The Court held a *Markman* hearing and issued a preliminary claim construction order. Docket Nos. 115, 116. Accolade then filed the present motion to restrict the number of claims and prior art references permitted at trial and to establish a deadline for compliance with this proposed restriction. Citrix filed a response. At the time of the motion and response, the Court had not issued a final claim construction order and the parties had not completed expert discovery or filed a proposed pre-trial order, motions for summary judgment, *Daubert* motions, and motions *in limine*. Trial is set for June 15, 2009. Docket No. 40.

Accolade argues that the Court should restrict the number of claims and references to avoid wasting the parties' resources. Accolade contends that the Court's preliminary claim construction order provides sufficient information for the parties to select the claims and references they will use at trial. Accolade points to the asserted fourteen claims and twenty-six references and the limit on trial time to suggest that the parties will not have time to use all asserted claims and references at trial. Accolade suggests that continuing the case without limiting the number of claims and references would cause the parties to waste resources addressing claims or references in pretrial discovery and motion practice that will not be asserted at trial. In light of this, Accolade requests a restriction on the number of claims and references.

Citrix counters that the Court should not restrict the number of claims and references because such a restriction would cause unnecessary prejudice. Citrix states that it has not received information that it needs to limit its references—expert discovery, the claims and evidence Accolade will present at trial, which products will be the subject of trial, and the Court's rulings on final claim constructions, summary judgment motions, *Daubert* motions, and motions *in limine*. Citrix Br. 4. Also, Citrix argues that a restriction is not necessary because the natural progression of the case and the time limit on presenting at trial will cause the parties to self-limit the number of claims and references. Thus, Citrix opposes a restriction on the number of claims and references.

While the Court always encourages parties to focus their cases to the most relevant claims and references, the Court does not usually impose a limit on the number of claims and references because parties naturally withdraw claims and references that are not viable for use at trial. Accolade has not presented any circumstances that make this case an anomaly. Restricting the claims and references in this case is not necessary because the number of claims and references are already

reasonable. Accolade asserted fourteen claims, and Citrix asserted twenty-six references. This is not an inordinate number of claims and references. While there may be a situation where it necessary to restrict the number of claims or references, Accolade has not shown that proceeding with this number of claims and references would so unduly burdensome as to outweigh the parties' prejudice if the Court were to order the restriction. Here, a restriction on the number of claims and references would carry little benefit in saving the parties' resources.

Given the relatively low number of claims and references at issue, Accolade has not shown a restriction is warranted. A restriction would have provided minimal benefit and be unduly prejudicial. Accordingly, the Court **DENIES** Accolade's motion.

**So ORDERED and SIGNED this 11th day of May, 2009.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**

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

**FRACTUS, SA.**

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v.

**NO. 6:09-cv-203**

**SAMSUNG ELECTRONICS CO.,  
LTD., et al.,**

**ORDER**

Before the Court is Defendants Research In Motion Corporation, Pantech Wireless, Inc., Kyocera Wireless Corp., Kyocera Communications Inc., Palm, Inc., High Tech Computer Corp., HTC America, Inc., Sharp Corporation, Sharp Electronics Corp., Utstarcom, Inc., Personal Communications Devices Holdings, LLC, Sanyo Electric Co., Ltd., Sanyo North America Corp., Samsung TeleCommunications America, LLC, Samsung Electronics Co., Ltd., Samsung Telecommunications America, LLP, Samsung Electronics Research Institute, Samsung Semiconductor Europe GMBH, LG Electronics Mobilecomm U.S.A., Inc., LG Electronics, Inc., LG Electronics U.S.A., Inc., and Research in Motion Ltd.’s (“Defendants”) Motion to Limit Number of Claims (Doc. No. 275). The matter is fully briefed (Doc. Nos. 281, 283, 289).<sup>1</sup> Having considered the parties’ submissions, the Court **DENIES** Defendants’ motion without prejudice to reurging.

Defendants had requested the opportunity to make oral argument to the Court (Doc. No. 330). Given the parties’ briefing, the Court found oral argument unnecessary. The Court is concerned, however, about the number of claims asserted in this case. Accordingly, the Court **ORDERS** the parties to appear telephonically for a hearing at 11:00 a.m. on March 17, 2010. The parties should

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<sup>1</sup> Defendants have also filed an opposed motion for leave to file a sur-surreply in support of their motion (Doc. No. 327). The Court has not yet ruled on that motion.

be prepared to discuss the number of disputed claim terms.

### DISCUSSION

Plaintiff Fractus, SA. (“Plaintiff”) has asserted nine patents against two dozen defendants. Collectively, the patents include 405 claims. In its infringement contentions, Plaintiff narrowed its allegations to 148 claims. Not all 148 claims are asserted against each of the defendants – against one defendant 79 claims were asserted and against another 148 claims were asserted. Defendants contend these infringement contentions are unduly broad and request the Court limit the total number of asserted claims to 30. Defendants argue this will facilitate claim construction, discovery, and trial.

Courts have the inherent power “to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Although the Federal Circuit has not squarely addressed limiting claims, it has affirmatively acknowledged the practice. *See ReRoof Am., Inc. v. United Structures of Am., Inc.*, 215 F.3d 1351 (table), 1999 WL 674517, at \*4-6 (Fed. Cir. Aug. 30, 1999) (unpublished) (affirming judgment where plaintiff failed to show prejudice from order limiting claims for trial); *Kearns v. General Motors Corp.*, 31 F.3d 1178 (table), 1994 WL 386857, at \*2-3 (Fed. Cir. July 26, 1994) (unpublished) (affirming dismissal of case where plaintiff failed to comply with court order to limit claims for trial). Courts in this district have, at times, required plaintiffs to limit the number of asserted claims to make a case manageable. *See Negotiated Data Solutions, LLC v. Dell, Inc.*, No. 2:06-cv-528, slip op. at 1 (E.D. Tex. July 31, 2008) (ordering plaintiff to limit asserted claims to 40 on or before the due date for its opening claim construction brief); *Hearing Components, Inc. v. Shure, Inc.*, No. 9:09-cv-104, 2008 WL 2485426, at \*1 (E.D. Tex. June 13, 2008) (ordering parties to elect no more than ten claim terms for construction and further ordering plaintiff to select no more

than three representative claims for each asserted patent for claim construction and trial); *Data Treasury Corp. v. Wells Fargo and Co.*, No. 2:06-cv-72, slip op. at 3-5 (E.D. Tex. Oct. 25, 2006) (limiting plaintiff to no more than fifty asserted claims).

The Court will not limit the number of asserted claims at this time. Managing a large number of asserted claims through discovery, claim construction, dispositive motions, and trial is “extremely burdensome to both the parties and the Court.” *Id.* at 3-4. As the parties recognize, this case will need to be streamlined before submission of dispositive motions or presentation to the jury. *Cf.* PL.’s RESP. at 7 (acknowledging both parties should work together “to streamline the trial”). It is too early in this litigation, however, to arbitrarily limit the number of asserted claims. *See Realtime Data v. Packeteer*, No. 6:08-cv-144, slip op. at 6 (E.D. Tex. Mar. 16, 2009) (declining to limit the number of claim terms prior to claim construction). The Court has not construed the claims and discovery may proceed for several more months. The risk of prejudice to Plaintiff is not adequately offset by increases in efficiency and manageability. This is particularly true where, as here, Defendants decline to join the simplification efforts by designating representative or exemplary products for the purposes of the infringement case. Limiting the number of claims may become necessary and appropriate at some later time. If the parties are unable to agree on a reasonable limit, Defendants may reurge the matter.

Finally, the Court appreciates Defendants’ concern about preparing for a claim construction hearing involving over a hundred asserted claims. “The court expects the parties and their attorneys to limit the terms they ultimately submit for construction to those that might be unfamiliar or confusing to the jury, or which are unclear or ambiguous in light of the specification and patent history.” *Hearing Components*, 2008 WL 2485426 at \*1. “[A]lthough every word used in a claim

has a meaning, not every word requires a construction.” *Id.* (quoting *Orion IP, LLC v. Staples, Inc.*, 406 F.Supp.2d 717, 738 (E.D.Tex.2005)). Although the P.R. 4-1 deadline has not passed, the Court expects the parties are negotiating a reasonable number of disputed claim terms to present for construction. If the parties are unable to limit the number of disputed terms, the Court may impose a limit *sua sponte*.

**CONCLUSION**

For the foregoing reasons, the Court **DENIES** Defendants’ motion without prejudice to reurging.

**So ORDERED and SIGNED this 8th day of March, 2010.**

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE



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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SPH AMERICA, LLC, a Virginia company,  
  
vs.  
  
HIGH TECH COMPUTER  
CORPORATION, a Taiwanese company, *et*  
*al.*,  
  
Defendants.

CASE NO. 08cv2146 DMS (RBB)  
  
**ORDER DENYING  
DEFENDANTS' MOTION TO  
LIMIT CLAIMS**  
  
[Docket No. 106]

This matter comes before the Court on Defendants Kyocera Wireless Corp. and Kyocera Sanyo Telecom, Inc.'s motion to limit claims. Plaintiff has filed an opposition, and Defendants have filed a reply. For the reasons discussed below, the Court denies the motion.

**I.  
BACKGROUND**

On July 9, 2008, Plaintiff SPH America, LLC filed a complaint for patent infringement against Defendants High Tech Computer Corporation, HTC America, Inc., Kyocera Corporation, Kyocera Wireless Corporation, Kyocera Sanyo Telecom, Inc., Sony Ericsson Mobile Communications AB and Sony Ericsson Mobile Communications (USA), Inc. in the United States District Court for the Eastern District of Virginia. Defendants Kyocera Wireless Corporation and Kyocera Sanyo Telecom, Inc. ("Kyocera Defendants") filed an Answer and Counterclaim on August 27, 2008. On September 22, 2008, Plaintiff filed a notice of voluntary dismissal of Defendants Sony Ericsson Mobile

1 Communications AB and Sony Ericsson Mobile Communications (USA), Inc. Defendants High Tech  
2 Computer Corporation and HTC America, Inc. were also dismissed on October 21, 2008.

3 On October 27, 2008, the Kyocera Defendants filed a motion to transfer the case to this Court.  
4 The court granted that motion on November 19, 2008, and the case was received in this Court on  
5 November 20, 2008. Plaintiff recently filed a First Amended Complaint against the Kyocera  
6 Defendants and Kyocera Corporation alleging two claims for: (1) infringement of United States Patent  
7 Number RE 40,385 (“the ‘385 Patent”), and (2) infringement of United States Patent Number  
8 5,960,029 (“the ‘029 Patent”).

9 The ‘385 Patent and the ‘029 Patent contain a total of 313 claims, 253 of which are asserted  
10 in this case. In the present motion, the Kyocera Defendants request that the Court issue an order  
11 requiring that the parties select ten representative claims from the 253 at issue for purposes of  
12 discovery, *Markman* hearing, motion practice and trial. Plaintiff opposes the motion.

13 **II.**

14 **DISCUSSION**

15 The parties do not dispute that the Court has the authority to grant the requested relief.  
16 However, neither party sets out an established test to determine whether the relief is warranted.  
17 Instead, the parties focus on factors that they believe weigh in their favor.

18 According to the Kyocera Defendants, the most compelling factor is the burden on the Court  
19 and the parties of litigating 253 patent claims. The Kyocera Defendants assert that litigating this many  
20 patent claims will be “a mammoth, if not impossible, undertaking” that “will likely require countless  
21 pages of briefing and multiple court days for the *Markman* hearing.” (Mem. of P. & A. in Supp. of  
22 Mot. at 5.) After the *Markman* order, the parties will then have to retain experts to analyze and opine  
23 on the infringement and validity of the claims, after which the parties will likely file summary  
24 judgment motions. (*Id.* at 6.)

25 Without a doubt, these tasks will require a considerable amount of effort on behalf of the  
26 parties and the Court. However, as Plaintiff points out, “[c]ourts can and regularly do manage  
27 complex cases effectively, despite a significant number of claims in dispute.” (Mem. of P. & A. in  
28 Opp’n to Mot. at 8.) Furthermore, both parties agree that there is “substantial overlap” in the asserted

1 claims. Moreover, it is unclear how many of the asserted claims will actually require construction.  
2 At this point in the litigation, the Court trusts that counsel will work cooperatively and efficiently to  
3 conserve time and expense for everyone involved in this case.

4 Having considered the possible burdens of litigating 253 patent claims, the Court turns to the  
5 factor that Plaintiff asserts warrants denial of the motion: Prejudice. Plaintiff argues that limiting the  
6 claims at this point in the litigation would deprive it of its fundamental right to redress, and jeopardize  
7 its ability to seek redress for the unauthorized use of each of its claimed inventions. Plaintiff also  
8 asserts that limiting the claims at this stage would simply result in piecemeal litigation. The Kyocera  
9 Defendants dispute these assertions, but the risk of prejudice exists. Although the Kyocera Defendants  
10 do not explain what would happen to the unrepresentative claims, their position appears to be that  
11 Plaintiff would be estopped from litigating those claims due to their similarity to the representative  
12 claims. The similarity of the claims, however, raises doubts about the burdens that may be imposed.  
13 If the claims are similar enough to warrant collateral estoppel, then the burdens of litigating all of the  
14 claims may not be as great as Defendants suggest.

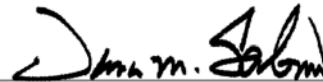
15 **III.**

16 **CONCLUSION AND ORDER**

17 In light of the factors discussed above, the Court denies without prejudice Defendants' motion  
18 to limit claims.

19 **IT IS SO ORDERED.**

20 DATED: March 4, 2009

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22 HON. DANA M. SABRAW  
23 United States District Judge

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