

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

WI-LAN INC.,

Plaintiff,

v.

ALCATEL-LUCENT USA INC.; *et al.*

Defendants.

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Civil Action No. 6:10-cv-521-LED
Civil Action No. 6:13-CV-00252-LED
CONSOLIDATED CASES

JURY TRIAL DEMANDED

**DEFENDANTS' OPPOSITION TO WI-LAN'S MOTION FOR JUDGMENT AS A
MATTER OF LAW OF NO INVALIDITY**

I. Introduction

In bringing its motion for judgment as a matter of law, Wi-LAN ignores the great weight of evidence showing that the asserted claims of U.S. Patent No. 6,381,211 (“the ‘211 patent”), U.S. Patent No. 6,088,326 (“the ‘326 patent”), and U.S. Patent No. 6,222,819 (“the ‘819 patent”) are invalid as a matter of law. (See D.I. 419.) Defendants presented conclusive evidence that claims 2 and 5 of the ‘326 patent and claims 2 and 5 of the ‘211 patent are anticipated by Tiedemann (DX-124). Further, Defendants presented evidence that the asserted claims of the ‘211, ‘326, and ‘819 patents are obvious in view of Tiedemann, IS-95-A (DX-149), and Gitlin (DX-148).

II. Legal Standard

Judgment as a matter of law (JMOL) is proper when “there is no legally sufficient evidentiary basis for a reasonable jury to have found for that party with respect to that issue.” *Ford v. Cimarron Ins. Co.*, 230 F.3d 828, 830 (5th Cir. 2000). Under this standard, the jury’s determination must be supported by “substantial evidence.” *ACCO Brands, Inc. v. ABA Locks Mfrs. Co.*, 501 F.3d 1307, 1312 (Fed. Cir. 2007) (“We have interpreted the Fifth Circuit’s standard to mean that the jury’s determination must be supported by substantial evidence.”), citing *Med. Care Am., Inc. v. Nat’l Union Fire Ins. Co.*, 341 F.3d 415, 420 (5th Cir.2003) (“If there is substantial evidence opposed to [JMOL] . . . [it] should be denied.”).

III. Argument

A. Defendants Presented Sufficient Evidence to Prove Tiedemann Anticipates the Asserted Claims of the ‘211 and ‘326 Patents

Mr. Lanning showed that the Tiedemann reference (DX-124) discloses each and every element of claims 2 and 5 of the ‘326 patent and claims 2 and 5 of the ‘211 patent. Mr. Lanning described claim 2 of the ‘326 patent and claims 2 and 5 of the ‘211 patent as an orthogonal code

and generator, a TDM encoder, and an overlay code and a second encoder. (July 12 AM Tr. at 28:9-29:3.) Mr. Lanning then identified Tiedemann as containing all of these elements, including “TDM techniques” as that term has been construed by the Court.¹ (*Id.* at 41:9-55:9.) Then, Mr. Lanning identified claim 5 of the ‘326 patent as requiring all of the elements of claim 2, plus Rademacher-Walsh codes and storage. (*Id.* at 55:10-56:3, 56:10-16.) Mr. Lanning then identified Tiedemann as disclosing these elements as well. (*Id.* at 56:4-9, 56:17-57:15.) Therefore, because more than sufficient evidence exists in the record that claims 2 and 5 of the ‘326 and ‘211 patents are anticipated by Tiedemann, the Court should deny Wi-LAN’s motion for judgment as a matter of law..

B. The Asserted Claims of the Overlay Code Patents Are Obviousness

Wi-LAN’s motion for judgment as a matter of law on no obviousness fails as well. There is no dispute that all of the elements of all of the asserted claims of the overlay code patents were known in the art. In addition, Mr. Lanning demonstrated that each of the claim elements could be found in the IS-95-A (DX-149), Tiedemann (DX-124), and Gitlin (DX-148) references. And not only were all of the claim elements known, they were all known in the same technical field—cellular wireless.

Mr. Lanning presented evidence, arguments, and reasons why the asserted claims would have been obvious to one of ordinary skill in the art. For claim 9 of the ‘326 patent and claim 11 of the ‘819 patent, Mr. Lanning testified that it would be obvious in light of Tiedemann for one of skill in the art to apply overlay codes to a control channel as required by claim 9 and to apply

¹ Wi-LAN’s expert, Dr. Wells, admits that a “TDM system that just takes turns” in a “predefined repeated sequence” would satisfy the term “TDM techniques” according to the Court’s claim construction. (July 9 AM Tr. at 85:8-86:4; *see also* July 12 PM Tr. at 43:18-21.) Moreover, in its March 5, 2013 Order, the Court clarified that the term “TDM techniques cannot be interpreted to exclude characteristics described in the specification” and noted that the “specification discloses in Figure 9B the use of predefined repeated sequences as a TDM technique.” (D.I. 341 at 3.)

“TDM techniques” to a traffic channel as required by claim 11. (July 12 AM Tr. at 60:10-61:62:21.) Further, Mr. Lanning explained the motivation for such a combination. (*Id.* at 62:22-64:6.) In addition, Gitlin describes combining CDMA with TDM. (*Id.* at 64:9-18.) Gitlin is properly combined with Tiedemann, which discloses overlay codes, to make the asserted claims of the ‘211, ‘326, and ‘819 patents invalid for obviousness as Mr. Lanning testified. (*Id.* at 68:23-70:14.) Thus, Defendants have shown sufficient evidence that the asserted claims are invalid for obviousness in light of the prior art. Wi-LAN’s motion for judgment as a matter of law must fail.

IV. Conclusion

Defendants have set forth sufficient evidence to show that each asserted claim on the ‘211, ‘326, and ‘819 patents is invalid. Wi-LAN’s motion for judgment as a matter of law should be denied.

Dated: July 14, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on all counsel of record on July 14, 2013, by electronic mail.

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