CONFIDENTIAL—OUTSIDE ATTORNEYS' EYES ONLY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------- x

WI-LAN INC., **10 CV 432 (LAK) (AJP)**

Plaintiff,

v.

LG ELECTRONICS, INC. and LG ELECTRONICS U.S.A., INC.,

Defendants.

---------- x

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT

Richard A. Edlin (RE 1998)
Daniel I.A. Smulian (DS 4746)
GREENBERG TRAURIG, LLP
200 Park Avenue
New York, New York 10166
(212) 801-6528 (*telephone*)
(212) 801-5528 (*facsimile*)
edlinr@gtlaw.com
smuliand@gtlaw.com

Richard D. Harris (*pro hac vice*)
Jeffrey G. Mote (*pro hac vice*)
James J. Lukas, Jr. (*pro hac vice*)
Eric J. Maiers (*pro hac vice*)
Matthew J. Levinstein (*pro hac vice*)
GREENBERG TRAURIG, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
(312) 456-8400 (*telephone*)
harrisr@gtlaw.com
motej@gtlaw.com
lukasj@gtlaw.com
maierse@gtlaw.com
levinsteinm@gtlaw.com

Attorneys for Defendants LG Electronics, Inc. and LG Electronics U.S.A., Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

Federal Rules

I. INTRODUCTION

As discussed further in LG's contemporaneously-filed briefs, Wi-LAN has engaged in an extensive, bad-faith patent enforcement scheme with respect to U.S. Patent No. 5,828,402 ("the '402 Patent").[1] For many years, Wi-LAN has wrongfully asserted that LG and others infringe the asserted method Claims 7-11 ("Asserted Claims"), simply by manufacturing a device that has the *capability* to perform a method – a method which *has never itself been performed* and *which cannot be performed* until, at the very least, new ratings systems are broadcast in the United States. Consistent with Wi-LAN's objectively baseless infringement claims, Wi-LAN cannot show LG or any actual LG customer performing every step of the Asserted Claims with the Accused Products.

The Court should grant LG summary judgment of noninfringement of the Asserted Claims of the '402 Patent because LG's Accused Products fail to meet *numerous* limitations of the Asserted Claims, regardless of the construction applied by the Court. As overwhelmingly corroborated by Wi-LAN's own paid experts, Wi-LAN cannot provide any evidence of a direct infringer performing each and every step of the asserted method claims. Therefore, there is no genuine issue of material fact that all of the Accused Products do not perform the following limitations, each of which alone demonstrates that LG does not infringe the Asserted Claims:

- ***Store actual user program blocking preferences*** (step (e): "storing in said memory user preference information");
- ***Receive two different configuration informations on two different channels*** (Steps (a) and (c): "receiving first configuration information embedded in a first television channel" and "receiving second configuration information embedded in

[1]In addition to the present brief, LG also files herewith: (1) LG's Opening Claim Construction Brief; (2) LG's Motion for Summary Judgment of Invalidity; (3) LG's Motion for Summary Judgment of Unenforceability Based Upon Unclean Hands, Inequitable Conduct, Patent Misuse, and Equitable Estoppel; (4) LG's Motion to Dismiss or for Summary Judgment of No Fraudulent Inducement and Standing; and (5) LG's Motion to Exclude Expert Report and Testimony of Wi-LAN's Experts Mssrs. Tanner and Dolan. Unless otherwise noted, exhibits in support of LG's motions are contained in the Appendix of Exhibits in Supports of LG's Combined Rule 56.1 Statement of Facts.

a second television channel");

- Receive and store two different configuration informations describing separate informational schemes ***of which the Accused Products do not have advance or prior knowledge*** (Steps (a) - (d));

- ***Receive program rating information embedded in and extracted from the video signal*** (Steps (f) and (g): "receiving a first video signal comprising embedded information" and "extracting said embedded information");

- ***Compare extracted program rating information or CAD to stored user preference information for a received and stored configuration information describing an informational scheme*** (Step (g): "comparing said extracted information with said stored preference information for said specified informational scheme");

- ***Receive and store different configuration informations describing different informational schemes with multi-level categories of labels*** (Steps (a) - (d));

- ***Compare and selectively block a video signal*** (Preamble and Step (h): "A method for selectively blocking video signals" and "if the result of said comparison indicates that said first video signal should not be displayed, blocking said first video signal from being displayed on a video display").

Accordingly, Wi-LAN's infringement claims fail as a matter of law. As Wi-LAN never disclosed a Doctrine of Equivalents theory during fact discovery, or in expert discovery, Wi-LAN's attempt to raise a doctrine of equivalents theory for the first time in an expert report that was served after the close of expert discovery is improper and should not be considered. Finally, because LG's Accused Products do not directly infringe the Asserted Claims, LG cannot be liable for contributory infringement or inducement of infringement.

II. FACTUAL BACKGROUND

A. Wi-LAN's '402 Patent and the Alleged Inventions of the Asserted Claims.

Wi-LAN has asserted Claims 7-11, the Asserted Claims, against LG. Claim 7 is a method claim and it is the only independent claim[2] asserted by Wi-LAN. Claim 7, which is

[2]Asserted Claims 8-11 (shown in Ex. A to LG's Claim Construction Brief), which depend from Claim 7, are deemed to include all of the limitations of Claim 7. 35 U.S.C. § 112, ¶ 4. If an accused product does not infringe an

exemplary of the Asserted Claims, recites:

> A method for selectively blocking video signals, said method comprising the steps of:
>
> a) receiving first configuration information embedded in a first television channel, said first configuration information describing a first informational scheme, said first configuration information specifying, at least, numbers of levels in a first group of one or more multi-level categories of labels, in said first informational scheme;
> b) storing said first configuration information in a memory;
> c) receiving second configuration information embedded in a second television channel, said second configuration information describing a second informational scheme, said second configuration information specifying, at least, numbers of levels in a second group of one or more multi-level categories of labels, in said second informational scheme;
> d) storing said second configuration information in said memory;
> e) storing in said memory user preference information for each of said categories in each of said first and second informational schemes;
> f) receiving a first video signal comprising embedded information specifying at least, either one of said first or second informational schemes, and current levels in each of said one or more categories in said specified informational scheme;
> g) extracting said embedded information and comparing said extracted information with said stored preference information for said specified informational scheme;
> h) if the result of said comparison indicates that said first video signal should not be displayed, blocking said first video signal from being displayed on a video display; and, i) if the result of said comparison indicates that said first video signal should be displayed, allowing said first video signal to be displayed on said video display.

The Asserted Claims of the '402 Patent are generally directed to a method whereby two new, complete, and different parental control ratings systems (*i.e.*, configuration information describing informational schemes) are transmitted via broadcast transmission, received on separate television channels, and stored by television receivers. Each complete configuration information describes a distinct informational scheme (or parental control rating system) of which the user's receiving device or television has no advance or prior knowledge, *i.e.*, the informational schemes cannot be embedded or encoded in the receiving device. Parental control

---

independent claim, by definition it does not infringe any claims depending therefrom. *See, e.g., Monsanto Co. v. Syngenta Seeds, Inc.*, 503 F.3d 1352, 1359 (Fed. Cir. 2007).

preferences (or user preferences) that reference the newly downloaded parental control ratings systems are then obtained and stored, and television programming is selectively blocked based on a comparison between program rating information transmitted in the video signal portion of the television signal and the stored user preferences. In order to selectively block, the user selects and stores his/her user blocking preferences for every category in the two received and stored informational schemes.

B. LG's Accused Products.

When operated by a user, the Accused Products perform program blocking functionality in a manner consistent with the FCC regulations, which requires that they block content based on CEA-766 and the ATSC A/65 CAD. (Ex. 129, Declaration of Adam Goldberg ("Goldberg Decl. NI"), at ¶ 14.) In order to implement the blocking functionality which is required by FCC regulation, the Accused Products must have complete knowledge of the information included in CEA-766 – information that is not fully incorporated in the purportedly broadcasted RRT1. (*Id.*) Therefore, the Accused Products have the contents of CEA-766 embedded or encoded permanently during manufacturing. (*Id.* ¶¶ 18, 38-9.) Thus, the Accused Products have advance or prior knowledge of the complete Ratings System described in CEA-766.

In the Accused Products, program blocking is configured by the user by first enabling program blocking functionality. (Ex. 129, Goldberg Decl. NI at ¶ 15.) [redacted] Because CEA-766 is encoded in the Accused Products at the time of manufacture in [redacted], the Accused Products do not process RRT1 and it is discarded.[3] (*Id.* at ¶ 38.) As a result, the Accused Products do not store RRT1 in memory. After a user has turned the program blocking functionality on, default

[3]The Accused Products are capable of processing RRT5, but RRT5 has never been broadcast in the United States.

values allow display of all content, and a user may then select his/her blocking preferences. (*Id.* at ¶ 16.) The user interface for gathering blocking preferences is created based on prior knowledge of the Ratings System in use in the United States, which is defined in CEA-766 and, again, pre-coded in the Accused Products at the time of manufacture. (*Id.* at ¶ 38.) When the user is configuring blocking preferences, [redacted] (*Id.* at ¶ 17.) If a user attempts to configure blocking preferences, when television programming is received and decoded, the program rating information is extracted from the CAD – not the video signal. (*Id.* at ¶ 18.) It would then be compared against the user preferences using hard-coded prior knowledge of the ratings system. If appropriate, the television programming is blocked and not displayed.

C. Wi-LAN's Infringement Allegations

In Wi-LAN's final response to LG's Interrogatory No. 1 requesting Wi-LAN's detailed infringement contentions, Wi-LAN explained that its infringement contentions "show[]" that ***each product*** infringes Claims 7, 8, 9, 10, and 11." (SUF ¶ 37 (emphasis added).) Notably, Wi-LAN's final infringement contentions for two representative LG products further stated that each representative product "includes the ***capability*** of selectively blocking video signals." (*Id.* (emphasis added).)

D. LG's Proposed Claim Construction

Wi-LAN refused to offer any claim construction during fact or expert discovery and its experts did not construe the claims in reaching their conclusions. LG's Opening Claim Construction Brief is incorporated herein by reference along with Ex B attached thereto, which provides a summary table of LG's Proposed Constructions. For purposes of LG's Motion, unless otherwise noted, LG contends that a particular Step or limitation is absent under both parties' constructions.

III. LEGAL STANDARDS

A. Summary Judgment Standard

The Federal Rules authorize entry of summary judgment where "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). To obtain summary judgment, the movant need only show "an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). When a motion for summary judgment is supported by documentary and testimonial evidence, the nonmoving party may not rest upon the allegations or denials of its pleadings but must instead present significant probative evidence to establish a genuine issue of material fact. *Id.* at 327; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986) ("[A] party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial").

B. Patent Infringement Generally

A patent infringement analysis involves a two-step process. "First, the court determines the scope and meaning of the patent claims asserted….Second, the properly construed claims must be compared to the accused device." *Markman v. Westview Instruments, Inc.*, 52 F3d 967, 976 (Fed. Cir. 1995) (*en banc*). "Summary judgment on the issue of infringement is proper when no reasonable jury could find that every limitation recited in a properly construed claim either is or is not found in the accused device either literally or under the doctrine of equivalents." *U.S. Phillips Corp. v. Iwasaki Elec. Co.*, 505 F.3d 1371, 1374-1375 (Fed. Cir. 2007). Patentee bears the burden of proving infringement by a preponderance of the evidence. *Ultra-Tex Surfaces, Inc. v. Hill Brothers Chem. Co.*, 204 F.3d 1360, 1364 (Fed. Cir. 2000) (stating that patentee bears the burden of proving infringement and is responsible for any "shortcoming" in the evidence

regarding the components of the accused process). Where an independent patent claim is not infringed, it is axiomatic that any claims depending from that claim are also not infringed. *Wolverine World Wide Inc. v. Nike, Inc.*, 38 F.3d 1192, 1199 (Fed. Cir. 1994).

C. Standard for Direct Infringement of a Method Claim

Under Section 271(a), one who "without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefore, infringes the patent." 35 U.S.C. § 271 (a). A method may be directly infringed only by the actual performance, within the United States, of each and every claimed step of the method. *See NTP, Inc. v. Research In Motion, Ltd*., 418 F.3d 1282, 1318 (Fed. Cir. 2005) ("A method or process consists of one or more operative steps, and, accordingly, '[i]t is well established that a patent for a method or process is not infringed unless all steps or stages of the claimed process are utlilized'"); *Joy Techs. Inc. v. Flakt Inc.*, 6 F.3d 770, 775 (Fed. Cir. 1993) ("A method claim is directly infringed only by one practicing the patented method").[4] Accordingly, there can be no infringement as a matter of law if a single claim limitation is not found in the accused product or process. *See Phonometrics Inc. v. Northern Telecom Inc.*, 133 F.3d 1459, 1467 (Fed. Cir. 1998).[5]

In order to show direct infringement of a method claim, a patentee must point to specific instances of direct infringement; "hypothetical instances of direct infringement are insufficient." *ACCO Brands, Inc. v. ABA Locks Mfg. Co.*, 501 F.3d 1307, 1313 (Fed. Cir. 2007) (citing

[4]Donald S. Chisum, *Chisum on Patents*, § 16.02[6] ("A process [*i.e*. method] consists of one or more operative steps, and accordingly, direct infringement by unauthorized use of a process consists of the performance of all the process's operative steps"); *see also, In re Kollar*, 286 F.3d 1326, 1332 (Fed. Cir. 2002) ("A process…is a different kind of invention; it consists of acts, rather than a tangible item. It consists of doing something and therefore has to be carried out or performed").

[5]*See also Kraft Foods, Inc. v. Int'l Trading Co.*, 203 F.3d 1362, 1370 (Fed. Cir. 2000) (the absence of an exact match in the accused product or process "is sufficient to negate infringement"); *Bayer AG v. Elan Pharm. Research Corp*., 212 F.3d 1241, 1247 (Fed. Cir. 2000) ("If any claim limitation is absent from the accused device, there is no literal infringement as a matter of law").

Dynacore, 363 F.3d at 1275-76) (affirming a finding of noninfringement of a method claim when patentee presented "no evidence of actual users" operating the accused device in an infringing manner other than patentee's paid expert)).[6] The Court of Appeals for the Federal Circuit recently held that ***"[u]nless the claim language only requires the capacity to perform a particular claim element, … it is not enough to simply show that a product is capable of infringement; the patent owner must show evidence of specific instances of direct infringement.***" *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1329 (Fed. Cir. 2010). Finally, when the language of the steps of a method claim refer to the completed results of a prior step, a patentee must show that all of the steps were performed and were performed in order. *See E-Pass Techs., Inc. v. 3COM Corp.*, 473 F.3d 1213, 1222 (Fed. Cir. 2007). The literal infringement standard is extremely important because infringement under the doctrine of equivalents is not at issue in this lawsuit, as Wi-LAN elected not to timely claim or offer any evidence of alleged infringement under the doctrine of equivalents during fact and expert discovery. Any attempt by Wi-LAN to introduce a belated theory at this late stage should therefore be precluded and cannot defeat summary judgment. (*See* LG's Motion to Preclude, Dkt. 115.)

IV. ARGUMENT

A. LG Does Not Directly Infringe the Asserted Method Claim 7.

1. Wi-LAN and Its Experts Admit That They Cannot Show An Accused Product Being Set to A Single Television Channel, Let Alone Two Different Television Channels and Receiving Two Different Configuration Informations.

Wi-LAN and its experts cannot show even one Accused Product ever being set to a

[6] *See also Desenberg v. Google, Inc.*, Case No. 08 Civ 10121 (GBD) (AJP), 2009 U.S. Dist. Lexis 66122, at *16-25 (S.D.N.Y., July 30, 2009) (dismissing patent infringement complaint for failure to state a claim for direct infringement) (Ex.122.).

single television channel – let alone two different television channels – to receive two different configuration informations. Steps (a) and (c) claim in-part "receiving first configuration embedded in a first television channel" and "receiving second configuration embedded in a second television channel," respectively. Under either party's construction for the terms in Steps (a) and (c) and according to fundamental claim construction principals which require that different terms have different meanings, Wi-LAN cannot show that Steps (a) and (c), are met by LG's Accused Products.[7] In no more clearer terms than offered by the claim language, Steps (a) and (c) of Claim 7 require the receiving of "first configuration information" contained in a "first television channel" and the receiving of "second configuration information" contained in a "second television channel." The only way these steps can be performed is by an Accused Product being set to a "first television channel" and then to a "second television channel" to receive two different configuration informations. Indeed, as shown below Wi-LAN's expert Mr. Tanner admits that Wi-LAN cannot show infringement because it has failed to show any evidence of: (a) an Accused Product being set to a single channel, let a alone two different channels, and (b) an Accused Product receiving two different configuration informations.

a. Wi-LAN's Expert Admits That An Accused Product Must Be Set to Two Different Channels in Order to Infringe Steps (a) and (c).

According to Wi-LAN's expert, Mr. Tanner, an Accused Product must be turned on, set to one channel, and then set to a second channel in order to infringe Claim 7:

> Q: Would you say that LG's -- it's -- LG's products, in combination with a user, infringe claims 7 through 11?
>
> A: I'd have to look at my report in detail, but since -- claim 7 is a method claim. It requires certain steps to be taken. So the product alone cannot immediately infringe. At least, the TV must be turned on and ***the channel changed***. There may be other steps required, but at a minimum, it involves those issues, turning on the TV and ***changing channels***. (SUF ¶ 41 (emphasis added).)

[7] *See Agilent Techs*, 567 F.3d at 1377-78; *Bicon, Inc. v. Straumann Co.*, 441 F.3d at 950.

Wi-LAN's expert confirmed that two different channels must be received to infringe Steps (a) and (c), when he testified that in order to receive a second configuration according to Claim 7, "a second television channel is tuned to." (SUF ¶ 48.)[8] LG's expert agrees. (Ex.129, Goldberg Decl. NI at ¶ 22.)

b. Wi-LAN's Expert Admits That the First and Second Configuration Informations Must Be Different In Order To Infringe Steps (a) and (c).

Wi-LAN's expert, Mr. Tanner, states in his report that RRT1 is a table of data which is further defined in CEA-766. (SUF ¶ 42.) It is undisputed that Wi-LAN is relying on the alleged broadcast of RRT1 alone to meet both the "first configuration information" and "second configuration information" limitations of Steps (a) and (c). In fact, Wi-LAN's expert stated that in his report on infringement. (SUF ¶ 42 ("when the [Accused Products] are turned on and receive or have been turned on and received over-the-air television signals including RRT1"). Mr. Tanner confirmed in his deposition that RRT1 is the sole configuration information received for any alleged informational schemes[9]:

> Q: And according to you, it's your opinion that RRT-1 is the only configuration information for three separate informational schemes?
>
> A: It's my opinion that, according to the definition in claims 7(a) and 7(c), which define what configuration information is, ***that RRT-1 meets that definition for all three of the informational schemes contained therein***. (SUF ¶ 56 (emphasis added).)

Consistent with fundamental claim construction principals,[10] Mr. Tanner also testified that the "first configuration information" cannot be the same as the "second configuration information":

[8]Although Mr. Tanner testified that he did in fact change channels to "watch[] the blocking occur" when he operated an Accused Product (Ex. 126, Tanner Dep. at 115-117), controlling law requires that Wi-LAN point to specific instances of an actual user performing the claimed method and holds that a paid expert's alleged performance of Claim 7 is simply not enough to show infringement. *Acco*, 501 F.3d at 1313.
[9]Wi-LAN claims that two or three informational schemes are contained in ***one*** Rating Region ***Table*** 1 (RRT1).
[10]*See Agilent Techs*, 567 F.3d at 1377-78; *Bicon, Inc. v. Straumann Co.*, 441 F.3d at 950.

> Q: Can first configuration information be the same as second configuration information?
>
> A: No, I don't believe so. To the extent that the second configuration information describes a second and different informational scheme, I believe the ***configuration information is intended to be different***. (SUF ¶ 56 (emphasis added).)

Thus, Wi-LAN's own expert admits that RRT1 cannot meet both the "first configuration information" and "second configuration information" limitations. LG's expert agrees. (Ex. 129, Goldberg Decl. NI at ¶ 23 .)

As Wi-LAN cannot adduce any evidence of: (a) an Accused Product being set to a single channel, let a alone two different channels[11], and (b) an Accused Product receiving two different configuration informations, Wi-LAN cannot show direct infringement of Steps (a) and (c) and cannot raise a genuine issue of material fact regarding infringement of the "receiving first configuration embedded in a first television channel" and "receiving second configuration embedded in a second television channel" limitations of Claim 7.[12] Accordingly, LG is entitled to summary judgment of noninfringement.

2. LG's Accused Products Cannot Infringe Because They Have Advance or Prior Knowledge of Any Alleged Informational Schemes.

a. <u>The Specification and the Prosecution History Define Informational Schemes as Schemes Of Which The Receiving Device Has No Advance or Prior Knowledge.</u>

Steps (a) through (d) of Claim 7 require the receipt and subsequent storage of two different configuration informations describing two different informational schemes. (Claim 7).

[11]Consistent with Wi-LAN's assertions in this case, both of Wi-LAN's experts' opinions are limited to the analysis of the Accused Products without any user involvement. (SUF ¶ 42 (stating that the statement "in order to infringe claims 7 through 11, the accused products need to be plugged in and turned on at the minimum" is "roughly correct"); Ex. 125, Dolan Dep. at 170 (responding "that's correct" to the question: "but a user doesn't need to be involved in the performance of this method?"; S*ee also* SUF ¶ 43).)

[12]*Acco*, 501 F.3d at 1313; *Fujitsu*, 620 F.3d at 1329 ("[u]nless the claim language only requires the capacity to perform a particular claim element, … it is not enough to simply show that a product is capable of infringement; the patent owner must show evidence of specific instances of direct infringement").

As further discussed in LG's Opening Claim Construction Brief, according to the purpose of the invention of the '402 Patent, a receiving device cannot have advance knowledge of the "configuration information describing a first informational scheme" and the "configuration information describing a second informational scheme" in order to infringe Claim 7. The "Summary of the Invention" section of the '402 Patent specification distinguishes prior art systems which had advance knowledge of informational schemes from the invention of the '402 Patent – which cannot have advance knowledge of any informational scheme, and makes clear that a receiving device which does not have advance knowledge of a received informational scheme is a requirement of the invention (2:11-23.)

Consistent with the specification, the prosecution is replete with disclaimers which require that the receiving device has no advance knowledge of either informational scheme according to the invention of the '402 Patent. (*See* LG's Op. Claim Construction Brief ("LG CC") at 11-15.) It is therefore appropriate to limit the scope of "configuration describing a first informational scheme" and "configuration information describing a second informational scheme" to that of which the receiver does not have prior or advance knowledge. *See Spectrum Int'l*, 164 F.3d at 1378-79 ("[B]y distinguishing the claimed invention over the prior art, an applicant is indicating what the claims do not cover").

b. Wi-LAN and Its Experts Admit That LG's Accused Products Have Advance Knowledge of CEA-766 (Which Includes RRT1) and Any Alleged Informational Schemes Contained Therein.

In order to implement the blocking functionality required by FCC regulation, television receivers must have complete knowledge of the information included in the Valenti Ratings System – information that is not fully incorporated in RRT1.[13] Thus, television receivers,

[13]Additionally, Wi-LAN's expert Mr. Tanner confirmed that since the RRT1 table was first defined in 1997, it has "not been materially altered by the revisions to the A/65 and CEA-766." (SUF ¶ 44.)

including LG's Accused Products, are effectively required to have the contents of CEA-766 embedded or encoded in a permanent, unchangeable way during manufacture. While Wi-LAN argues that RRT1 is the only configuration information that describes first and second configuration informations, RRT1 alone cannot be used by receivers to comply with FCC rules.

Wi-LAN and Wi-LAN's experts agree that the Accused Products include explicit, encoded and pre-compiled ratings system information for CEA-766 (and necessarily RRT1) and the two or three informational schemes which Wi-LAN alleges are contained in RRT1. (SUF ¶¶ 59, 61.) In fact, the inventor of the '402 Patent and a 30(b)(6) deposition designee of Wi-LAN, Mr. Collings, submitted the following statement to the FCC:

> I explained that the RRT for rating region 0x01 [RRT1] (as defined in section 4.1 of EIA-766-A) ***can not be fully interpreted by DTV receivers*** using the RRT syntax specified in PSIP ***alone***. (SUF ¶ 53 (emphasis added).)

Wi-LAN's experts Mssrs. Dolan and Tanner also agree that DTV receivers, including LG's Accused Products, cannot interpret the allegedly broadcast RRT1 and therefore disregard it. (SUF ¶ 53.) As shown below, Wi-LAN's expert Mr. Dolan testified that the Accused Products disregard and do not process any broadcast RRT1:

> Q: Do LG's accused devices disregard any broadcast RRT for rating region 0x01 [RRT1]?
>
> A: [redacted] (SUF ¶ 52 (emphasis added).)

Moreover, when asked how LG creates the on-screen user interface for parental controls Mr. Tanner explained that LG's Accused Products are hard-coded in [redacted] with that information:

> Q: With just this data in this table [RRT1] being transmitted, how is LG able to create the on-screen display where they break up MPAA, TV general audience and TV Children?

> A: I don't know how LG did it, but it was likely ***not relying upon an RRT transmission since they were in*** [redacted] ***when they did it.*** (SUF ¶ 57 (emphasis added).)[14]

Wi-LAN's expert, Mr. Tanner further confirmed that LG's Accused Products contain known and previously stored configuration information:

> Q: Yeah. Do LG's [accused] products contain known and previously stored configuration information?
>
> A: I believe they do. (SUF ¶ 58 (emphasis added).)[15]

Likewise, Wi-LAN's experts Mssrs. Tanner and Dolan also concede that certain information defined in CEA-766 such as the limits on what ratings are possible, the inter-relationships between dimensions, and additional text based providing the meaning of D, S, L and V[16] – is ***not*** included in the allegedly broadcast RRT1. (SUF ¶ 59 (stating that Table 3 from CEA-766 is not included in the RRT1 that is encoded and broadcast and that "[n]ot everything in the [CEA-]766 is in the RRT[1]").)[17] In fact, it is this exact information, which is not included in the allegedly broadcasted RRT1, that Mr. Tanner argues is the reason the prior art reference General Instruments ("GI") does ***not*** disclose more than one informational scheme. (SUF ¶ 60 ("In addition, there are no mechanisms in GI such as -- that would allow you to address one information scheme for the other -- or the other. Remember, that's implemented by CEA-766's table of 54 allowed messages. There is no such thing in GI").)

As LG's Accused Devices are encoded with CEA-766 at the time of manufacture (which necessarily includes RRT1 and all of the informational schemes Wi-LAN alleges are

[14]Wi-LAN's expert Mr. Dolan agrees that the RRT1 table that is encoded and sent to the Accused Products would not provide enough information for the Accused Products to break up the table into three groups (MPAA, TV Guidelines and Children and TV) for use in the on-screen interface. (SUF ¶ 57.)

[15]Wi-LAN's expert Mr. Dolan also admits that LG's Accused Products have advance knowledge of CEA-766 (which includes RRT1) and any alleged informational schemes. (SUF ¶ 61, Dolan Dep. at 220-21.)

[16]D stands for Dialogue, S stands for Sex, L stands for Language and V stands for Violence.

[17]Wi-LAN's expert Mr. Dolan testified that RRT1 as represented in Mr. Tanner's Infringement Report is "only table 1 from CEA-766." (Ex.125, Dolan Dep. at 93.)

contained in RRT1), Wi-LAN cannot adduce any evidence of LG's Accused Devices receiving configuration informations[18] describing informational schemes of which LG's Accused Devices do not have advance or prior knowledge. (Ex. 129, Goldberg Decl. NI at ¶¶ 14-18, 38-39.) Accordingly, Wi-LAN cannot show direct infringement of Steps (a) through (d) and cannot raise a genuine issue of material fact regarding infringement of the "receiving first configuration…describing a first informational scheme" and "receiving second configuration…describing a second informational scheme" limitations of Claim 7. Accordingly, LG is entitled to summary judgment of noninfringement.

3. In LG's Accused Products Any Received Program Rating Information or CAD For Any Informational Schemes Is Not Embedded in and Extracted From the Video Signal.

Steps (f) and (g) recite in-part "receiving a first video signal comprising embedded information specifying at least one of said first informational schemes" and "extracting said embedded information," respectively. LG's proposed construction for "video signal" is "displayable component signal of a 'television channel.'" As detailed further in LG's Claim Construction Brief, this is the proper construction because Claim 7 separately recites that certain information is embedded in first and second "television channels" (Steps (a) and (c)) while other information is embedded in a "video signal" (Step (e)). Because the Patentee chose to use different terminology – "television channel" versus "video signal" – those terms must be ascribed different meanings according to controlling claim construction law, otherwise one of those terms would improperly be rendered superfluous. *See Agilent Techs. Inc.*, 567 F.3d at 1377-78.[19] Wi-LAN's experts agree that LG's proposed construction is correct and that programs rating information or content advisory descriptor ("CAD") is not contained in the

[18]Wi-LAN's expert defines "receiving" as "receiving from a transmitted signal." (SUF ¶ 62.)
[19]LG's construction is also consistent with the meaning of "video" in the art: "***the visual (rather than the audio) component of a television signal***." (SUF ¶ 78 (emphasis added).)

"video signal" or "displayable component of a 'television channel.'" Thus. Wi-LAN cannot show infringement of Steps (f) and (g) of Claim 7.

a. Wi-LAN's Experts Admit That LG's Construction For Video Signal is the Proper Construction.

Wi-LAN's own experts, Mssrs. Tanner and Dolan agree with LG's proposed construction. Both of them testified that video signal means the displayable component of a television channel signal. (SUF ¶ 80 ("Because of the qualifier at the end of the sentence of 'displayed on a video display,' it's probably only video").) In fact, after stating that the term "video signal" meant the audible and displayable component of a television channel for a Steps (h) and (i), Mr. Tanner also admitted that the plain meaning of the term "video signal" in Claim 7 is solely the displayable component of a television channel signal:

> Q: …It's your opinion, that in (h) and (i), when the claim refers to video signal, it's referring to audio and video?
>
> A: No. I was really referring to what one of ordinary skill might implement. If you follow the ***plain meaning***[20] of claim steps 7 (h) and (i), ***there's no mention of audio***. ***So, it's not my opinion that the claim requires it***. I was only saying that it's a choice one might make. (SUF 81 (emphasis added).)[21]

b. Wi-LAN's Experts Admit that the Video Signal Does Not Contain Programs Rating Information or CAD.

Wi-LAN's experts also do not dispute that the Event Information Table ("EIT") is the

[20]LG also notes an apparent disconnect between Mr. Tanner's view of the plain meaning of the terms and how one of ordinary skill would interpret the claims. LG cannot infringe if the video signal is both the displayable and audible component of the television signal or just the displayable component because the program ratings information or CAD is not embedded in either.

[21]While Wi-LAN's experts agree with LG that "video signal" means the displayable component of the television channel signal, they also testified that the term "video signal" can have multiple meanings depending on where it appears in the same Claim 7. For example, Wi-LAN's experts now offer the following three definitions for "video signal": (1) "displayable component signal of the television channel signal"; (2) "displayable and audible components of the television channel signal"; and (3) "the entire ATSC transport stream." (SUF ¶¶ 80-82.) Of course Wi-LAN's experts' attempts to interpret the same term three different ways to support Wi-LAN's infringement allegations violate numerous canons of claim construction and the Court should either adopt LG's construction for "video signal comprising embedded information" which renders the Asserted Claims not infringed or render the term invalid as indefinite under 35 U.S.C. § 112, ¶ 2 because the same claim term cannot have multiple meanings. *See Phillips*, 415 F.3d at 1315 (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d at 978 (a patent specification is a "fully integrated written instrument" in which words are assumed to have the same meaning throughout).)

PSIP table that is part of the ATSC Transport Stream which contains the programs rating information or CAD – referred to as the "embedded information" in Steps (f) and (g) of Claim 7. (SUF ¶ 83 ("you're talking about the embedded information which I interpret to be the CAD").)[22] Wi-LAN's experts further admit that programs rating information or CAD is ***not*** embedded in the "video signal." (Ex. 125, Dolan Dep. at 183.) A figure from the A/65 Standard, reproduced in Mr. Tanner's Infringement Report[23] clearly demonstrates that program ratings information or CAD is not embedded in the "video signal." Instead, the EIT (which contains the CAD) is part of the administrative information:

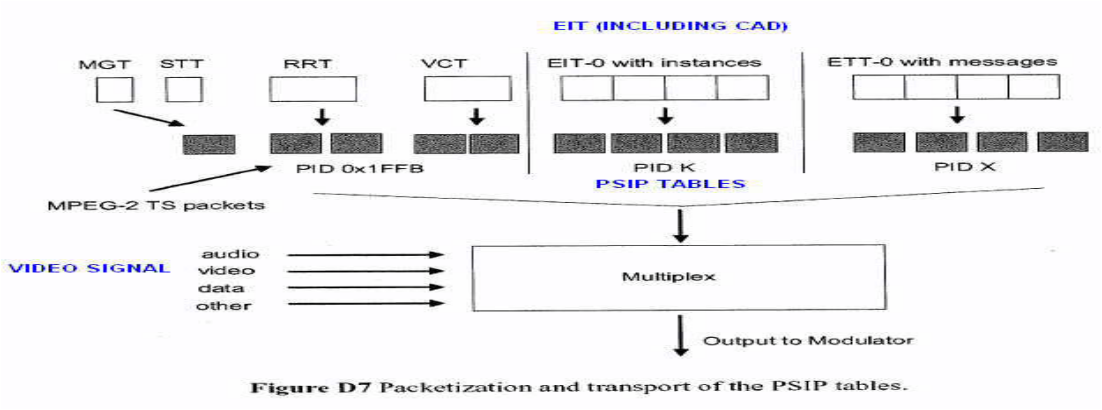

Figure D7 Packetization and transport of the PSIP tables.

As shown above, the embedded program ratings information or CAD is contained in the EIT PSIP table which along with the other PSIP tables shown (MGT, STT, RRT, VCT, VTT) is eventually multiplexed together with the completely separate "video signal" shown in the bottom left with the completely separate audio and data signals. (Ex. 129, Goldberg Decl. NI at ¶¶ 54-66.) Because Wi-LAN's experts admit that a "video signal" is the "displayable component signal of a 'television channel'" and that the program rating information or CAD is not embedded or extracted from the "video signal," Wi-LAN cannot adduce any evidence showing that in LG's Accused Devices any received program rating information or CAD for any

[22] *See also* SUF ¶ 83 ("CAD is a content advisory description. It's a data structure that's found in ATSC tables [which contains] [r]ating information for the associated program").
[23] *See* SUF ¶ 83.

informational schemes is embedded in and extracted from the video signal. Accordingly, Wi-LAN cannot show direct infringement of Steps (f) and (g) and cannot raise a genuine issue of material fact regarding infringement of the "receiving a first video signal comprising embedded information specifying at least one of said first informational schemes" and "extracting said embedded information…" limitations of Claim 7. Thus, LG is entitled to summary judgment of noninfringement.

4. Wi-LAN and Its Experts Admit That They Cannot Offer Any Evidence Of An Actual User Storing User Preference Information For Every Category In Both Informational Schemes.

Step (e) requires that "user preference information for each of said categories in each of said first and second informational schemes" be stored in memory. The proper construction of "user preference information" is "program blocking preferences selected by a user." Wi-LAN's own expert, Mr. Tanner, agrees that the proper construction requires an actual user selecting and storing his/her blocking preferences. During his deposition, Mr. Tanner testified that the "clear meaning" of "user" is "***somebody who is operating the television***" (SUF ¶ 68 (emphasis added),) and that the "***main purpose of the invention*** [of the '402 Patent] is to allow a ***parent***, ***an individual user***, ***to set user preferences***." (*Id.* (emphasis added).)[24]

Consistent with the requirement that an actual user select and store his/her user preferences to perform Step (e) of Claim 7, Wi-LAN's own experts admit that LG's Accused Products do not infringe Claim 7 because Wi-LAN cannot offer any evidence whatsoever of an actual user performing Step (e). For example, when asked whether his infringement opinion was based on any users performing all the steps of the Asserted Claims, Wi-LAN's expert Mr. Tanner, responded: "It's not based on my having set user preferences, no." (SUF ¶ 69.) Mr.

[24]As Wi-LAN's experts confirmed, the requirement that a user select and store his/her blocking preferences is consistent with the purpose of Claim 7 according to the preamble of the claim, namely to "selectively block video signals." (*See* LG CC at 21-23.)

Tanner goes on to state that in his infringement opinion, "[user preferences] clearly didn't come from the individual user of the TV." (SUF ¶ 69.)[25] In fact, Mr. Tanner concedes that with the exception of himself, he did not rely on any actual customer of LG turning on the parental controls and setting user preferences in forming his opinion that Step (e) is met by LG's Accused Devices. (*Id.* ("There's certainly, you know, no documentation of users having done that other than mine. It's not a study that I found or performed").)[26]

In addition, Wi-LAN's expert Mr. Dolan also admitted that his infringement opinion was not based on any actual users setting and storing user blocking preferences. In response to questioning regarding whether his opinion was solely based on the Accused Products or the Accused Products in combination with certain users, Mr. Dolan stated: "I believe my opinion has been clear in the report that the devices infringe [Step] E and [Steps] G through I." (SUF__, Dolan Dep. at 46.) But, Mr. Dolan goes on to confirm that he "didn't rely on any evidence of an actual user inputting his or her user preferences." (Ex. 125, Dolan Dep. at 64.)[27] Consistent with its expert's testimony, Wi-LAN cannot offer any evidence of ***even one*** actual user selecting and storing user preferences in accordance with the claimed purpose of Claim 7 and Step (e).

Realizing a complete lack of proof, Wi-LAN and its experts concocted a frivolous theory

[25]*See also* SUF ¶ 69 ("Q: But you don't provide any actual evidence of the user performing the limitations of claims 8-11? A: As we've discussed before, no, we didn't -- I didn't provide any surveys of user actions or user behavior").

[26]Controlling law requires that Wi-LAN point to specific instances of an actual user performing the claimed method and holds that a paid expert's alleged performance of Claim 7 (Ex.__, Tanner Dep. at 113) is simply not enough to show infringement. *Acco*, 501 F.3d at 1313. Moreover, despite Wi-LAN's experts testifying that, according to Step (e), a user must store preferences for each category in each of the informational schemes (SUF ¶ 70.) Mr. Tanner confirmed that when he used an Accused Product he did not set all of the categories. (Ex. 126, Tanner Dep. at 114-116.) In addition, although Mr. Tanner claims that LG tests of the Accused Products could show infringement, such testing is de minimus, LG is not an actual user, and Mr. Tanner concedes that he did not do an element-by-element analysis of any such testing and did not offer any opinions on LG's testing on an element-by-element basis. (SUF ¶ 89.)

[27]*See also* SUF ¶ 90 (confirming that in forming his opinions that LG's Accused Products meet Step (e), Mr. Dolan stated that he did not observe any actual user operating the user preferences in person or on videotape, the source code he reviewed does not show a user doing anything, he did not do a field study to show actual users inputting and storing user preferences or rely on an such field study, and he did not rely on any LG code actually executing).

that the factory default settings installed at LG's factories in [redacted] ***before*** the Accused Products are shipped to the United States (and thus before an LG customer or user purchases the Accused Product) somehow constitutes "user preferences." (SUF ¶ 71 ("These products come shipped to the consumer with a set of user preferences. All right? And before the box is ever opened and when the TV is turned on, its my understanding there are user preferences. ***It clearly didn't come from the individual user of the TV***. They came from LG, from the factory, from some initial settings") (emphasis added).)

As shown below, Wi-LAN's puerile position fails because: (1) as Wi-LAN's own experts concede, factory defaults which provide for ***no selective blocking*** do not constitute user program blocking preferences selected and stored by a user (*see supra*); (2) a finding that factory default settings are "user preferences" would require the reading out several limitations from Claim 7, further demonstrating LG's noninfringement, and the improper non-sequential performance of Claim 7; and (3) even if factory default settings were considered "user preferences," LG cannot not be liable for infringement because any alleged performance of the storing of user preferences step of the method of Claim 7 ***occurred outside the United States***.

a. Wi-LAN's Argument That LG's Factory Default Settings Are User Preferences Further Demonstrates LG's Noninfringement Of the Preamble and Steps (g) and (h).

As Wi-LAN's own experts concede, LG's factory installed default settings do not permit any comparison of any received informational schemes or the blocking of any programs whatsoever. (SUF ¶ 71 ("shipped to the consumer in a kind of no-blocking state"); at 188 (confirming that "default settings…allow all the programs to be viewed"); *see also* SUF ¶ 72).)[28] Indeed, Wi-LAN's expert Mr. Tanner was very clear that the default settings would never permit Step (h) to occur. (SUF ¶ 86.) Of course, this makes complete sense because a manufacturer

[28] *See also* SUF ¶ 87.

would not sell televisions to customers that did not permit their customers to view any programming. Wi-LAN's "default settings" theory is without merit because it improperly reads out several steps of the method of Claim 7 including the preamble, and Steps (g) and (h), and eradicates the entire purported purpose of Claim 7 – to allow a user to selectively block television programming. (1:16-19 ("The method and apparatus of the invention have particular application in controlling the content of television programming that can be displayed on a television"); *see also* Tanner Dep. at 223 ("main purpose of the invention [of the '402 Patent] is to allow a parent, an individual user, to set user preferences").) However, if the Court accepts Wi-LAN's default settings theory, the Court should grant LG summary judgment of noninfringement, because, by Wi-LAN's experts' own admissions Wi-LAN cannot show infringement of the Preamble and Steps (g) and (h) – as a comparison is never made and selective blocking never occurs. (*See also* Ex. 129, Goldberg Decl. NI at ¶¶ 40-49.)

b. Wi-LAN's Argument That LG's Factory Default Settings Are User Preferences is Meritless Because It Would Require the Non-Sequential Method Performance.

Step (e) requires "storing in said memory user preference information ***for*** each of said categories in each of ***said*** first and second informational schemes." (Claim 7 (emphasis added).) As such, the user preferences must be for both of the informational schemes which derive their antecedent basis in Steps (a) and (c), when, according to Claim 7, two different configuration informations describing two different informational schemes are received.[29] (Claim 7.) Wi-LAN's expert Mr. Dolan agrees that the informational schemes referenced in Step (e) refer to the same informational schemes that are received in Steps (a) and (c). (SUF ¶ 73 ("(e) refers to the schemes above in (a) and (c)"); *See also Id.*).) However, Wi-LAN's default settings theory is

[29] *See Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1356-57 (Fed. Cir. 1999) (noting the importance of an antecedent basis in claim construction).

based on LG "storing" default settings at the time of manufacture in [redacted], ***before*** an Accused Product could respond to broadcast transmissions and ***before*** any informational scheme could ever be received according to Claim 7. Accordingly, the default settings cannot be "***for*** each of said categories in each of ***said*** first and second informational schemes," as required by Step (e). (Claim 7 (emphasis added).) Importantly, any attempt by Wi-LAN to argue that the steps of the claim can be performed in any order in complete disregard of any antecedent bases and the clear requirement of Claim 7 that the steps be performed in sequential order is meritless. *See E-Pass Techs.*, 473 F.3d at 1222 For this additional reason, Wi-LAN's default settings theory fails.

c. Even If LG's Factory Default Settings Were User Preferences LG Cannot Infringe Because Extraterritorial Application of Patent Law is Prohibited.

The default settings in LG's Accused Products are clearly not user preferences. But even if they were, the fact that they are stored outside of the United States before the Accused Products are shipped, precludes a finding of infringement because extraterritorial application of the Patent Laws is prohibited. As LG's 30(b)(6) representative, Mr. Shin testified, the default, no-blocking settings are stored in LG's Accused Products in [redacted] before the Accused Products are shipped to the United States. (SUF ¶ 74.) Wi-LAN's experts agree that the default settings in LG's Accused Products are stored at the time of manufacture in [redacted], before they are shipped. (*Id*.) Wi-LAN's and Wi-LAN's experts' complete reliance on the extraterritorial factory-installed default settings to satisfy the "storing user preferences" limitation of Step (e) (SUF ¶ 75), by itself, precludes a finding of infringement based on controlling law on the extraterritorial application of the Patent Laws.

The law is clear that the Patent Laws are limited in application to conduct occurring within the geographical boundaries of the United States. *See* 35 U.S.C. § 154; 35 U.S.C. § 271.

More specifically, the Federal Circuit has ruled that every step of a method must be performed in the United States for a finding infringement. *NTP*, 418 F.3d at 1318 ("We therefore hold that a ***process cannot be used 'within' the United States*** as required by Section 271(a) ***unless each of the steps is performed within this country"***) (emphasis added).) Under *NTP*, a finding of infringement is precluded because LG's default settings are stored in [redacted] before they are shipped into the United States. As Wi-LAN cannot adduce any evidence of an actual user selecting and storing his/her user preferences for every category in both informational schemes[30] and because Wi-LAN's default settings theory fails for several reasons, Wi-LAN cannot show direct infringement of Step (e) and cannot raise a genuine issue of material fact regarding infringement of the "storing in said memory user preference information" limitation of Claim 7. Accordingly, LG is entitled to summary judgment of noninfringement.

5. LG's Accused Products Do Not Compare Extracted Program Rating Information to Stored User Preference Information for a Received And Stored Informational Scheme.

Step (g) of Claim 7 requires that embedded information within a video signal be compared with the user preference information stored as a result of satisfying Step (e). Even assuming *arguendo* that Steps (a) through (d) are satisfied, Step (g) is not and cannot be satisfied by the Accused Products. This is because Step (g) requires that the program rating information or CAD embedded in a video signal be compared against user preference information for "said informational scheme" which finds its original antecedent basis in Steps (a) and (c) – the steps which require the receiving of a first and second informational scheme. (SUF ¶ 85.)

The Accused Products only store user preferences for a single "hard-coded" ratings scheme of which they have prior knowledge, not for any allegedly broadcasted or downloaded

[30] *See Acco*, 501 F.3d at 1313; *Fujitsu*, 620 F.3d at 1329.

RRT1.[31] Thus, any user preference information stored in the Accused Products is not for any received and stored informational scheme according to Steps (a) through (d) as required by Step (g). Instead, it is user preference information for rating systems which the Accused Devices have prior or advance knowledge of. As Wi-LAN cannot adduce any evidence showing that in LG's Accused Devices compare stored user preferences to any received and stored informational scheme according to Step (g), Wi-LAN cannot show direct infringement of Step (g) and cannot raise a genuine issue of material fact regarding infringement of the "extracting said embedded information and comparing said extracted information with said stored preference information for said specified informational scheme" limitation of Claim 7. Thus, LG is entitled to summary judgment of noninfringement.

6. The Only Configuration Information Wi-LAN Points To – RRT1 – Does Not Describe Two Informational Schemes.

Notwithstanding Wi-LAN's failure to show receipt of two different configuration informations through the alleged receipt of RRT1 alone, Wi-LAN also cannot show that RRT1 describes two separate and distinct informational schemes as required by Steps (a) and (c). LG's proposed construction for informational scheme is, in part: "a [first, second] set of kinds of ratings information transmitted about a program that includes information assigned by one or more rating organizations, and of which the receiver has no advance knowledge." Wi-LAN's proposed construction is "a set of kinds of information that may be transmitted about a program, a set of values that may be transmitted for the different kinds of information and the meanings of those values." (SUF ¶ 54.) As discussed below, under either parties' construction Wi-LAN cannot show that two separate informational schemes are contained in RRT1. A/65 defines the RRT and the CAD format and structure. A/65 RRT includes a "rating_region" field which is

[31] The Accused Products do include source code for [redacted] However, as Wi-LAN acknowledges, RRT5 has never been broadcast.

used to identify which rating system the Rating Region Table is describing. The A/65 CAD likewise includes a "rating_region " field which is used to identify to which rating system and RRT the ratings refer. The MPAA ratings are listed in RRT1 rating dimension 7, as part of rating_region 1. The TV Parental Guidelines (including the TV Children) are listed in RRT1 ratings dimensions 0-6, as part of rating_region 1. A/65 has specific capability for accommodating multiple informational schemes through the use of the rating_region field of the RRT and related CAD. CEA-766 could have identified MPAA movie ratings as one informational scheme – a first rating_region – and it could have identified TV Parental Guidelines as a second informational scheme – a second rating_region – but it did not. This is supported by the fact that, in other instances, CEA-766 does define different informational schemes by describing them separately using different values of rating_region: the US rating region is given rating_region 0x01 (RRT1), the Canadian rating region is given rating_region 0x02 (RRT2). Therefore, different values of rating_region distinguish between different informational schemes, and, as such, RRT1 (and all of its MPAA, TV Parental Guidelines, and TV Children dimensions) define exactly ***one*** informational scheme – the U.S. rating system. (Ex. 129, Goldberg Decl. NI at ¶¶49-53.)

7. Any Alleged Infringement By LG is Limited to the Period of September 10, 2010 to October 3, 2010, As Wi-LAN Cannot Show That RRT1 Was Broadcast For More Than a Three Week Period.

Plaintiff commissioned a report that studied the availability of reception of RRT1. In the study, Plaintiff's expert witness Mr. Wallace opined that [redacted] (SUF ¶ 45.) Wi-LAN can point to no other evidence showing that RRT1 was broadcast during any periods other than [redacted]

[redacted] (Ex 126, Tanner Dep. at 251-252.)[32] Based on Wi-LAN's evidence, the earliest date that RRT1 was broadcast is [redacted][33] According to Wi-LAN's infringement theory, [redacted] is the earliest time shown that for RRT1 transmission, and, it is also the only time that Accused Products could possibly infringe under Wi-LAN's theory of infringement.

B. LG Does Not Indirectly Infringe the Asserted Claims.

Wi-LAN's experts' indicate that Wi-LAN is not pursuing indirect infringement. As a matter of law, both contributory and inducement of infringement require that direct infringement by another be proved as a predicate.[34] For the reasons discussed in the above sections, LG's Accused Products do not directly infringe. Therefore, any contributory and inducement of infringement theory Wi-LAN may attempt to introduce fails. Summary judgment of no contributory and no inducement of infringement of the Asserted Claims is therefore proper.

C. Wi-LAN Does Not Infringe The Asserted Claims Under the Doctrine of Equivalents.

Wi-LAN attempted to raise its Doctrine of Equivalents theory for the first time after the close of fact and expert discovery. For the reasons discussed in LG's Motion to Preclude Wi-LAN's Doctrine of Equivalents theory, Wi-LAN should be precluded from asserting infringement under the Doctrine of Equivalents. Summary judgment that LG's Accused

[32]Q: Okay. But beyond all the evidence you just discussed, you have no direct evidence of RRT-1 being broadcast beyond the Wallace report which shows, according to Wallace, broadcasting of RRT during 2010? A: Well, ***we did not present any direct evidence that -- based on field surveys that we done in that time period***, but I think it's pretty compelling evidence despite that. (emphasis added).

[33]On August 6, 2002 compliance with ATSC A/65 no longer required broadcast of RRT1, and, in fact, the standard recommends against broadcast. Digital television receivers are required to perform content blocking based on ATSC A/65, CEA-766-A and CFR 15.120. However, there has never been any mandate for broadcasters to comply with any prior versions of A/65 or to transmit RRT1.

[34]Indirect infringement is not at issue in this lawsuit because Wi-LAN elected not to assert it and Wi-LAN and its experts have failed to offer any evidence or opinions on indirect infringement. The two forms of indirect infringement are active inducement pursuant to 35 U.S.C. § 271(b), and contributory infringement pursuant to § 271(c). ***Both theories of indirect infringement require that direct infringement by another be proven as a predicate***. *Arthur A. Collins, Inc. v. Northern Telecom Ltd*., 216 F.3d 1042, 1048-49 (Fed. Cir. 2000).

Products do not infringe the Asserted Claims under the Doctrine of Equivalents is therefore proper.

V. CONCLUSION

For the foregoing reasons, LG respectfully requests that the Court grant its motion for summary judgment of no literal infringement of Claims 7-11 of the '402 Patent, no infringement of Claims 7-11 of the '402 Patent under the Doctrine of equivalents, and no indirect infringement of Claims 7-11 of the '402 Patent.

Dated: April 1, 2011

Respectfully submitted,

GREENBERG TRAURIG, LLP

/s/ Richard D. Harris

Richard A. Edlin (RE 1998)
Daniel I.A. Smulian (DS 4746)
200 Park Avenue
New York, New York 10166
(212) 801-6528 (*telephone*)
(212) 801-5528 (*facsimile*)
edlinr@gtlaw.com
smuliand@gtlaw.com

Richard D. Harris (*pro hac vice*)
Jeffrey G. Mote (*pro hac vice*)
James J. Lukas, Jr. (*pro hac vice*)
Eric J. Maiers (*pro hac vice*)
Matthew J. Levinstein (*pro hac vice*)
Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
(312) 456-8400 (*telephone*)
harrisr@gtlaw.com
motej@gtlaw.com
lukasj@gtlaw.com
maierse@gtlaw.com
levinsteinm@gtlaw.com

Attorneys for Defendants LG Electronics, Inc. and LG Electronics U.S.A., Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on April 1, 2011

/s/ Richard D. Harris