

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INTELLECTUAL VENTURES I LLC,

Plaintiff,

v.

AT&T MOBILITY LLC;
AT&T MOBILITY II LLC;
NEW CINGULAR WIRELESS SERVICES, INC.;
SBC INTERNET SERVICES, INC.;
WAYPORT, INC.; and
CRICKET WIRELESS LLC

Defendants.

C.A. No. 12-193-LPS

REDACTED PUBLIC VERSION

INTELLECTUAL VENTURES I LLC,

Plaintiff,

v.

T-MOBILE USA, INC. and T-MOBILE US, INC.

Defendants.

C.A. No. 13-1632-LPS

INTELLECTUAL VENTURES II LLC,

Plaintiff,

v.

T-MOBILE USA, INC. and T-MOBILE US, INC.,

Defendants.

C.A. No. 13-1633-LPS

INTELLECTUAL VENTURES II LLC,

Plaintiff,

v.

NEXTEL OPERATIONS, INC. and
SPRINT SPECTRUM L.P.,
BOOST MOBILE, LLC, and
VIRGIN MOBILE USA, L.P.,

Defendants.

C.A. No. 13-1635-LPS

INTELLECTUAL VENTURES I LLC,

Plaintiff,

v.

UNITED STATES CELLULAR CORPORATION,

Defendant.

C.A. No. 13-1636-LPS

INTELLECTUAL VENTURES II LLC,

Plaintiff,

v.

UNITED STATES CELLULAR CORPORATION,

Defendant.

C.A. No. 13-1637-LPS

INTELLECTUAL VENTURES I LLC,

Plaintiff,

v.

AT&T MOBILITY LLC;
AT&T MOBILITY II LLC; and
NEW CINGULAR WIRELESS SERVICES, INC.

Defendants.

C.A. No. 15-799-LPS

INTELLECTUAL VENTURES I LLC,

Plaintiff,

v.

T-MOBILE USA, INC. and T-MOBILE US, INC.

Defendants.

C.A. No. 15-800-LPS

MEMORANDUM ORDER

Pending before the Court are: (i) Defendants' Motion to Strike Portions of the Reply Expert Report of Dr. Branimir Vojcic (C.A. No. 12-193-LPS D.I. 843)¹ ("Vojcic Motion"); (ii) Defendants AT&T Mobility LLC's ("AT&T"), T-Mobile USA, Inc.'s, and T-Mobile US, Inc.'s (collectively, "T-Mobile") Motion to Strike Portions of the Surrebuttal Expert Report of Walter Bratic (D.I. 849) ("Bratic Motion"); (iii) Plaintiff Intellectual Ventures II LLC's ("IV") Motion to Strike Portions of the Expert Reply Report of Dr. Shamos (C.A. No. 13-1633-LPS D.I. 512) ("Shamos Motion"); and (iv) Defendant United States Cellular Corporation's ("U.S.

¹Unless otherwise noted, all citations to the docket are to C.A. No. 12-193-LPS.

Cellular”) Motion to Strike the Revised and Supplemental Exhibits to Appendix A of the Expert Reports of Walter Bratic (C.A. No. 13-1636-LPS D.I. 500) (“U.S. Cellular’s Bratic Motion”). Also pending is the parties’ dispute regarding the scope of a motion for reconsideration IV seeks to file. (See C.A. No. 12-193-LPS D.I. 907, 914)

Legal Standards

Federal Rule of Civil Procedure 26(a)(2)(B)(i) requires that an expert’s report contain “a complete statement of all opinions the witness will express and the basis and reasons for them.” Rule 26(a)(2)(D)(ii) further provides “that after an initial expert report is filed, additional expert reports ‘intended solely to contradict or rebut evidence on the same subject matter’ may be filed thereafter.” *Withrow v. Spears*, 967 F. Supp. 2d 982, 1000 (D. Del. 2013) (quoting Fed. R. Civ. P. 26(a)(2)(D)(ii)). “[E]xpert reports that simply address the same general subject matter as a previously-submitted report, but do not directly contradict or rebut the actual contents of that prior report, do not qualify as proper . . . reply reports” under Rule 26(a). *Id.* at 1002. Pursuant to Rule 37(c)(1), the Court has the power to exclude evidence as a sanction for a party’s failure to comply with its obligations under the Federal Rules. In pertinent part, Rule 37(c)(1) provides that “[i]f a party fails to provide information . . . as required by Rule 26(a) . . . , the party is not allowed to use that information . . . to supply evidence on a motion, at a hearing, or at a trial, unless the [party’s violation] was substantially justified or is harmless.”

In determining whether a violation of Rule 26(a) was substantially justified or harmless, courts consider the following factors: (1) the importance of the information withheld; (2) the prejudice or surprise to the party against whom the evidence is offered; (3) the likelihood of disruption of the trial; (4) the possibility of curing the prejudice; (5) the explanation for the

failure to disclose; and (6) the presence of bad faith or willfulness in not disclosing the evidence (the “Pennypack factors”). See *Konstantopoulos v. Westvaco Corp.*, 112 F.3d 710, 719 (3d Cir.1997) (citing *Meyers v. Pennypack Woods Home Ownership Ass’n*, 559 F.2d 894, 904-05 (3d Cir.1977)). It bears emphasis that exclusion of “critical evidence” is an “extreme sanction, not normally to be imposed absent a showing of willful deception or flagrant disregard of a court order by the proponent of the evidence.” *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 791-92 (3d Cir.1994) (internal quotation marks omitted). The determination of whether to exclude evidence is committed to the discretion of the Court. See *id.* at 749.

Vojcic Motion

In his opening expert report, Dr. Vojcic presented a “network simulation model” and the source code for his model. (See D.I. 844 Ex. B) In a rebuttal report, Defendants’ expert, Dr. Valenti, opined that Dr. Vojcic’s source code “contained a critical error.” (*Id.* at 1-2) The operative scheduling order permits reply expert reports. (See, e.g., D.I. 537 ¶ 4(b)(i)) Acting pursuant to this provision, Dr. Vojcic prepared a reply report (“Vojcic Reply”), which conceded the error identified by Dr. Valenti, corrected this error, and offered a revised simulation model. (See D.I. 844 at Ex. C) Defendants seek to strike portions of the Vojcic Reply² based on their view that it “introduces new opinions” regarding the “technological benefits provided by the ’0032 patent.” (*Id.* at 1; D.I. 851 at 2) Specifically, Defendants argue that the Vojcic Reply includes “supplemental analyses not disclosed in . . . [Dr. Vojcic’s] [o]pening [r]eport,” and, thus, exceeds the scope of a proper reply report under Rule 26(a). (D.I. 844 at 2) IV counters that Vojcic Reply “contains no new, previously undisclosed opinions” but, instead, “responds to

²Defendants propose alternative relief as well, which the Court addresses below.

specific issues that Defendants' experts . . . raised for the first time in their own opposition reports."³ (D.I. 851 at 2) In IV's view, the Vojcic Reply does not in any respect violate Rule 26(a) or any Court order. (*See id.* at 2-3)

The portions of the Vojcic Reply that Defendants challenge do not solely contradict or rebut evidence raised in Defendants' rebuttal reports. (D.I. 857 at 1 ("[T]he vast majority . . . of [Dr. Vojcic's] revisions . . . [are] entirely unresponsive to Defendants' expert reports."); *see also* D.I. 853-1 Ex. 1 at 2-3) Therefore, the Court agrees with Defendants that the Vojcic Reply to some extent exceeds "the proper scope of a reply" and that portions of it are subject to being excluded under Rule 37(c)(1). (D.I. 844 at 2)

Turning to the *Pennypack* factors IV's damages expert "relie[s] entirely on [Dr. Vojcic's conclusions] to calculate . . . damages," as Defendants themselves acknowledge (*id.* at 1), making Dr. Vojcic's expert opinion undeniably important (particularly given the enormous amount of damages IV seeks), which weighs against striking it. The prejudice to Defendants can be cured by serving sur-reply reports. (*See id.* at 3; D.I. 851 at 4) While a trial date had not yet been set at the time the parties briefed the motion, it has since been set, for January 2018. (*See* D.I. 904) (setting trial date of January 9, 2018)) There is sufficient time in the approximately 11 months before trial to ameliorate the prejudice to Defendants. The record demonstrates no

³IV correctly points out that the '0032 patent claims have been dismissed for lack of standing in two of the four actions noted in the caption: C.A. No. 12-193 and C.A. No. 13-1632 (the "Original Actions"). (*See* D.I. 851 at 1; D.I. 839 at 14) The '0032 patent, however, is still among the patents-in-suit in C.A. No. 15-799 and C.A. No. 15-800 (the "2015 Actions"). (*See* D.I. 839 at 14) Therefore, the Court's ruling on the Vojcic Motion is directed to the 2015 Actions. Additionally, the Court agrees with Defendants' suggestion that the pertinent analysis is whether at the Vojcic Reply violated the scheduling order in place at the time the Report was served. (*See* D.I. 857 at 1)

evidence of IV “repeated[ly] disregard[ing] . . . court orders” or otherwise acting in “egregious . . . bad faith” in connection with the Vojcic Reply. *Withrow*, 967 F. Supp. 2d at 1006 (internal quotation marks omitted). Cutting against IV, however, is IV’s failure to provide an explanation for “the vast majority” of changes to Dr. Vojcic’s model. (D.I. 857 at 1; *see also* D.I. 853-1 Ex. 1 at 2-3)

Weighing the *Pennypack* factors, in combination with the fact that the Vojcic Reply is not an entirely appropriate reply report, the Court concludes that the appropriate exercise of its discretion, under all the circumstances, is to deny the motion to strike yet also to grant much of Defendants’ requested alternative relief.

Defendants request the following alternative relief from the Court:

- (1) grant leave to Defendants to serve sur-reply reports from Drs. Valenti, Acampora, Becker, and Ms. Davis;
- (2) extend the close of expert discovery as to Drs. Vojcic, Valenti, and Acampora;
- (3) compel IV to produce within 14 days a supplemental reply report from Dr. Vojcic limited to an explanation of the bases for his new opinions . . . ;
- (4) preclude IV from serving additional reports or modified mathematical models or computer simulations from Dr. Vojcic; and
- (5) order IV to pay Defendants’ expert costs . . . associated with the[] preparation of sur-reply reports.

(D.I. 844 at 1)

IV does not oppose the first three requests (*see* D.I. 851 at 5); those requests are GRANTED. IV opposes the proposed limitation on serving additional reports or other materials from Dr. Vojcic. While it is unlikely IV will be able to persuade the Court that IV should be granted leave to serve still more such reports or materials (which, unlike the Reply Report, are not contemplated by the scheduling order), it is not impossible, and the Court sees no reason to

preclude IV in advance of IV even seeing Defendants' sur-reply reports.⁴ IV opposes paying Defendants' expert costs, but the Court agrees with Defendants that the costs of having to largely "redo" their experts' analysis in light of the Vojcic Reply should not be borne entirely by Defendants. (D.I. 857 at 2 ("Defendants should not bear the duplicative cost to rebut Dr. Vojcic's mulligan.")) Dr. Vojcic's error has had a prejudicial impact on Defendants, including by delaying their ability to complete expert discovery, and it will cost Defendants additional time and money to respond fully and fairly to the Vojcic Reply. Accordingly, the Court will require IV to pay two-thirds (2/3) of the reasonable expert costs incurred in connection with the preparation of sur-reply reports.

Thus, as explained above, Defendants' Vojcic Motion (D.I. 843) is GRANTED IN PART and DENIED IN PART.

Bratic Motion

IV's damages expert, Walter Bratic, opined in his opening report that the technology of the '0032 patent increased the amount of data traffic that can be transmitted on Defendants' networks by approximately [REDACTED], and that this "efficiency gain" saved Defendants from having to make infrastructure expenditures that would have cost approximately [REDACTED] more than they actually spent. (See D.I. 850 at 1) In this way, Mr. Bratic identified a purported causal relationship between efficiency gains enabled by the '0032 patent and Defendants' profits. (See D.I. 863 at 2) After Defendants' experts pointed to what they contended was an absence of

⁴To be clear, unless IV obtains agreement of Defendants or leave of the Court, IV may not serve an additional report from Dr. Vojcic. But the Court's decision today is without prejudice to IV's opportunity to seek such agreement or leave, should it believe it can demonstrate a persuasive reason for another report after reviewing Defendants' sur-rebuttals.

evidence supporting Bratic's assumption "that a [REDACTED] increase in download speed would equate to a [REDACTED] increase in profits" (D.I. 869 at 1), Mr. Bratic served a reply report ("Bratic Reply") that offered a "confirmatory analysis," i.e., that publications in 2011 and 2012 indicate that data flow is so important to approximately 2.3% of users of Defendants' products that Defendants, without use of the technology of the '0032 patent, would lose approximately 2.3% of their customers.

(*See id.*)

Defendants seek to strike the portion of the Bratic Reply containing the purported "confirmatory analysis" based on their view that it "offers a new theory" and improperly relies on "evidence that was not produced or relied upon in Mr. Bratic's opening report." (D.I. 850 at 1) IV counters that Mr. Bratic's confirmatory opinion is consistent with Rule 26(a) because it "proper[ly] rebut[s] . . . arguments first raised in opposing [expert] reports." (D.I. 863 at 1)

The line between improper "new" opinions and acceptable "rebuttal" (or reply) opinions is not always entirely clear. Here, the Bratic Reply is most appropriately characterized as "new" rather than as "rebuttal." The evidence on which the Bratic Reply is based – a 2011 article and a 2012 conference paper – was available to Mr. Bratic at the time he served his opening report.⁵ There is nothing at all surprising in Defendants challenging Bratic's opening opinion as failing to substantiate a link between increased data capacity and increased revenues. And the "confirmatory analysis" does nothing to fill in that "missing link." Instead of responding to the failure to connect data efficiency gains with profits earned, the "confirmatory analysis" gives an

⁵While "courts need not automatically exclude anything an expert could have included in his or her original report," *Helios Software LLC v. SpectorSoft Corp.*, 2014 WL 4796111, at *3 (D. Del. Sept. 18, 2014) (internal quotation marks omitted), it is obviously also true that courts need not automatically allow every analysis that only first appears in a reply report (even a reply that is expressly permitted in a scheduling order).

entirely new, different theory of value that, at best, “confirms” that Mr. Bratic’s original (arguably unsubstantiated) analysis is in “the right ballpark.” The “confirmatory analysis” is based on subscribers Defendants would have lost, not efficiencies they purportedly gained. As Defendants put it, “While Mr. Bratic’s first theory, and [Defendants’ experts’] criticisms of that theory, pertained to data services profits, Mr. Bratic’s new theory pertains to profits from voice, messaging, and data.” (D.I. 850 at 2; *see also* D.I. 869 at 1 (“[I]t does not *confirm* anything, as it does not address the lack of a causal link between download speeds and profits.”) (emphasis in original)) Had Mr. Bratic wanted to offer a lost subscribers theory to support his opinion of value, there was nothing to prevent him from doing so in his opening report.

The *Pennypack* factors, on balance, favor exclusion. There is prejudice to Defendants, in not having had an opportunity to retain a survey expert and in having to respond to a new theory (based on which IV seeks enormous damages), although there is also time to cure that prejudice without disrupting trial. While there is no evidence of bad faith or willful misconduct, the Bratic Reply violates the scheduling order because large portions of it are not a proper reply. IV’s explanation for withholding the “confirmatory analysis” until a reply report is unconvincing, strongly suggesting that Mr. Bratic’s omission of it from his opinion from his opening report was intentional and reflected his view as to its relative unimportance.⁶

⁶IV also contends that the motion should be denied on procedural grounds, as it was filed only in C.A. No. 12-193 and C.A. No. 13-1632, which were dismissed for lack of standing. (*See* D.I. 839 at 14; *see also* D.I. 863 at 1) But the Court’s conclusions establish that the Bratic Reply violated the then-operative scheduling order in the cases in which IV served that report. It would be wrong to absolve IV of this failing simply because IV also lacked standing even to maintain the original actions. Under the circumstances, the consequences of IV’s violation of the scheduling order in the original actions appropriately extends to striking the Bratic Reply from the new actions (15-799 and 15-800), in which IV again asserts the ’0032 patent.

Accordingly, AT&T's and T-Mobile's Motion to Strike Portions of the Surrebuttal Expert Report of Walter Bratic (D.I. 849) is GRANTED.

Shamos Motion

IV argues that the Court should strike portions of Dr. Shamos's expert reply report concerning the invalidity of the '737 patent because Dr. Shamos's reply report improperly "bring[s] [U.S. Patent No. 07/972,529 ("Nazif '529")] into the case as prior art." (C.A. No. 13-1633-LPS D.I. 513 at 2)⁷ Specifically, IV contends that, while Nazif '529 is incorporated by reference in U.S. Patent No. 5,751,961 ("Smyk"), an invalidity reference, Defendants failed to mention Nazif '529 in their opening validity report or in their preliminary or final invalidity contentions. (*See id.*) IV further contends that Defendants failed to produce Nazif '529 during discovery. (*See id.*) Defendants respond that "Dr. Shamos discusses Nazif '529 only in response to the opinions of IV's expert, Dr. Williams, in his [r]ebuttal [r]eport regarding the teachings of Smyk, the '737 patent, and one of the secondary references by one of the same inventors of the '737 patent." (13-1633-LPS D.I. 519 at 2) Defendants further note that, "[c]ontrary to IV's suggestion, Dr. Shamos does not opine that Nazif '529 discloses any claim limitations, and he does not use Nazif '529 as a primary prior art reference or combination." (*Id.*) Instead, in Defendants' view, Dr. Shamos relies on Nazif '529 to respond to Dr. Williams and "[n]one of Dr. Shamos's opinions . . . are . . . supported entirely by Nazif '529." (*Id.* at 2-3)

The Court agrees with Defendants. Here, Dr. Shamos's reply report relies on Nazif '529

⁷After the Shamos Motion was filed, the Court granted Defendants' motion to dismiss the '737 patent based on Section 101. (D.I. 902; D.I. 903) Thus, the Shamos Motion is moot. (*See* D.I. 519 at 1 n.2) However, as IV has moved for reconsideration of the Court's dismissal (D.I. 906), it is appropriate to resolve the Shamos Motion, to avoid any further delay if IV prevails on the reconsideration motion.

to rebut the assertions put forth in Dr. Williams's expert report. (*See, e.g.*, C.A. No. 13-1633-LPS D.I. 513 Ex. 1 ¶¶ 108, 167, 182, 230) Moreover, in relying on Nazif '529 in his reply report, Dr. Shamos does not contend that Nazif '529 is a prior art reference. (*See, e.g., id.* ¶¶ 108, 112, 167) Instead, as Defendants argue, Dr. Shamos relies on Nazif '529 for additional support for his conclusions but not to satisfy any claim limitations. (*See id.* ¶¶ 166-67) Therefore, Dr. Shamos's reply report is proper and timely under the scheduling order.

Accordingly, IV's Shamos Motion (C.A. No. 13-1633-LPS D.I. 512) is DENIED.

U.S. Cellular's Bratic Motion

Defendant U.S. Cellular argues that the Court should strike the Revised and Supplemental Exhibits to the Expert Reports of Mr. Walter Bratic ("Supplemental Exhibits") because "IV served the Supplemental Exhibits . . . almost ten months after the deadline for IV's damages-related expert reports." (C.A. No. 13-1636-LPS D.I. 501 at 1 (emphasis omitted)) The Supplemental Exhibits support a damages figure that is more than double the damages figure U.S. Cellular was on notice it was defending until that point. (*See id.*) U.S. Cellular contends that "IV's late service of the Supplemental Exhibits violated the expert disclosure deadlines in the Court's Second Scheduling Order." (*Id.*) U.S. Cellular also points out that its own damages expert, Mr. Haas, "identified errors in Mr. Bratic's opening report" and described such errors in his responsive report. (*Id.*) In U.S. Cellular's view, "[o]nce notified of errors in Mr. Bratic's analysis, IV and Mr. Bratic should have reviewed this analysis and corrected these and any related errors, at the latest, in Mr. Bratic's Surrebuttal Report." (*Id.* at 2) IV responds that Mr. Bratic "prepared revised exhibits once he discovered inaccuracies in his report" and that "IV timely served those revised disclosures" pursuant to Federal Rule of Civil Procedure 26(e).

(C.A. No. 13-1636-LPS D.I. 506 at 1) IV also notes that it “mitigate[d] potential prejudice” by providing “a clear description of Mr. Bratic’s corrections” and “also offered to allow U.S. Cellular to serve a supplemental damages report and take a short supplemental deposition of Mr. Bratic to address these corrections.” (*Id.* at 1-2)

The Court agrees with U.S. Cellular that IV’s service of the Supplemental Exhibits was untimely under the scheduling order. (*See* C.A. No. 13-1636-LPS D.I. 501 at 1) Although parties are always under an obligation to supplement expert reports when it becomes necessary to do so, parties may not use their obligation to supplement as an excuse to violate the clear terms of a scheduling order, unilaterally buying themselves additional time to make disclosures, thereby unduly prejudicing other parties. Here, IV was made aware of errors in Mr. Bratic’s analysis on May 26, 2016, when Mr. Haas identified such errors in his Rebuttal Expert Report. (*See id.*) Mr. Bratic, however, did not make any corrections in his Surrebutal Expert Report, which was served on July 29, 2016. (*See id.*) Instead, IV served the Supplemental Exhibits on November 16, 2016, nearly six months after Mr. Haas identified the errors in Mr. Bratic’s analysis and only two days before Mr. Bratic’s scheduled deposition. (*See id.* at 1-2) Moreover, IV’s service of the Supplemental Exhibits came almost four months past the deadline for reply expert reports. (*See id.* at 1) Thus, IV’s service of the Supplemental Exhibits was inconsistent with the Scheduling Order and may be excluded under the *Pennypack* factors.

Turning to the *Pennypack* factors, the Court concludes that the factors, on balance, weigh in favor of exclusion. The information withheld by IV is undeniably important, as it supports IV’s claim for additional damages of more than [REDACTED], but its very late disclosure undoubtedly surprised U.S. Cellular and has prejudiced U.S. Cellular, for reasons including its

credible claim that “U.S. Cellular and its experts may have made different strategic decisions, had they known that IV was going to seek [REDACTED] at the eleventh hour.” (*Id.* at 3) While IV has offered to “mitigate potential prejudice” by “allow[ing] U.S. Cellular to serve a supplemental damages report and take a short supplemental deposition of Mr. Bratic to address these corrections” (C.A. No. 13-1636-LPS D.I. 506 at 2), and these steps would go a long way toward curing the prejudice – without disrupting the trial date of January 2018 – the Court agrees that it is proper for IV, not U.S. Cellular, to bear the consequences of IV’s recklessness (in serving an expert report with errors that evaded Mr. Bratic’s quality control process, and then again serving a report with errors even after Defendants’ expert had pointed them out). While “U.S. Cellular does not assert that IV acted in bad faith,” IV’s explanation for its untimely disclosure is unconvincing, especially in light of the errors Mr. Haas identified in his Rebuttal Expert Report. (*See* 13-1636-LPS D.I. 501 at 1, 3)⁸

Accordingly, U.S. Cellular’s Bratic Motion (13-1636-LPS D.I. 500) is GRANTED.

Reconsideration Dispute

On December 30, 2016, the Court issued a Memorandum Opinion concluding that three of IV’s asserted patents-in-suit – the ’737, ’200, and ’957 – were invalid pursuant to 35 U.S.C. § 101 due to nonpatentable subject matter. (*See* D.I. 902) On January 18, 2017, after an extension (D.I. 905), IV moved for reconsideration of the Court’s decision with respect to the ’737 patent (D.I. 906). That same day, the Federal Circuit issued a nonprecedential opinion in

⁸The Court does share IV’s concern as to how Mr. Bratic will testify during trial. (*See* C.A. No. 13-1636-LPS D.I. 506 at 5) (“Mr. Bratic would be faced with having to explain to the jury why it should award [REDACTED] in damages without misrepresenting the inputs underlying his model.”) This is a matter that will have to be addressed by the parties and the Court before trial.

Trading Technologies Int'l, Inc. v. CQG, 2017 WL 192716 (Fed. Cir. Jan. 18, 2017) (“*TTI*”).

Thereafter, on January 23, 2017, IV asked the Court by letter for leave to file an additional motion for reconsideration with respect to the finding of patent ineligibility of the '200 and '957 patents, based on application of *TTI*. (See D.I. 907) Defendants oppose the request. (See D.I. 914)

The Court agrees with Defendants that IV's request must be denied for failure to comply with the Court's Local Rules. As Defendants write:

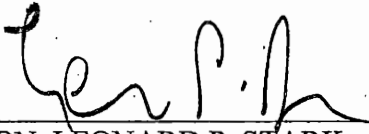
... IV's letter request should be denied for failure to comply with the local rules, including IV's failure to seek relief by motion as required by D. Del. LR 7.1:2, and for its failure to confer with Defendants before filing its request as required by D. Del. LR 7.1.1. It should also be denied as untimely under D. Del. LR 7.1.5 for failure to file a motion for reconsideration within the already extended deadline.

(D.I. 914 at 1) Additionally, it appears highly unlikely that anything in the nonprecedential *TTI* opinion would persuade the Court to alter its conclusion as to the patent ineligibility of the asserted claims of the '200 or '957 patents. See generally *Becton Dickinson & Co. v. Tyco Healthcare Grp. LP*, 2006 WL 890995, at *2 (D. Del. Mar. 31, 2006) (stating that Court will not grant reconsideration where it will not alter outcome).

Redactions

Because this Memorandum Order has been filed under seal, the parties shall meet and confer and, no later than February 2, 2017, submit a proposed redacted version of it. Thereafter, the Court will issue a publicly-available version.

January 31, 2017
Wilmington, Delaware



HON. LEONARD P. STARK
UNITED STATES DISTRICT COURT