

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

COMPUTER DOCKING
STATION CORPORATION,

Plaintiff,

v.

DELL INC., GATEWAY, INC.,
TOSHIBA AMERICA, INC., and
TOSHIBA INFORMATION
SYSTEMS, INC.,

Defendants.

ORDER

06-C-0032-C

Plaintiff Computer Docking Station Corporation has moved for entry of final judgment of non-infringement in favor of defendants Dell Inc., Gateway, Inc., Toshiba America and Toshiba Information Systems, Inc. Plaintiff concedes that none of the allegedly infringing devices sold by defendants infringe its '645 patent if the court's construction of the terms "portable computer" or "portable computer microprocessing system" is correct. In plaintiff's view, if the construction is upheld on appeal, the case will be moot; plaintiff will have no viable claim of infringement against defendants.

In addition to the "portable computer" term, plaintiff wishes to appeal the court's

construction of a second term, “said single connector for making all connections from the microprocessor to said specific computer peripheral devices.” With respect to this term, however, plaintiff is unwilling to agree that none of defendants’ devices infringe the ‘645 patent under the court’s construction of this term. Defendants oppose entry of final judgment unless plaintiff concedes that none of defendants’ devices infringe the patent under the court’s construction. They argue that they are entitled to present a non-infringement case on the “all connections” limitation. Moreover, they maintain, doing so would promote judicial efficiency. If the court of appeals were to uphold this court’s “all connections” construction but not the “portable computer” limitation, the case might be back in this court for a determination of which other computers sold by defendants infringed the patent under the “all connections” limitation. If the court denies the motion for entry of final judgment, the parties can develop the factual record and the court can determine from that record which of defendants’ devices, if any, infringe the ‘645 patent under the “all connections” limitation.

One threshold matter needs to be addressed. Defendants moved for leave to file a surreply brief; plaintiff objected to the filing, but to be on the safe side, sent a letter to the court, outlining the reasons why defendants’ assertions in the surreply were inaccurate. I have reviewed both the surreply and the response to the surreply and conclude that nothing in these submissions affects the resolution of plaintiff’s motion.

Although I can appreciate plaintiff's desire to seek a quick resolution of its appeal of this court's claim construction, I agree with defendant that it would be premature to enter final judgment before a determination can be made of which devices infringe the '645 patent because they meet the "all connections" limitation. The primary consideration is whether the court of appeals would have to review the case twice. If so, the decision should be to deny entry of final judgment. If the case were to be appealed now, the court of appeals would have three options. It could reverse both of the critical claim constructions or it could reverse only one of them. In the first instance, the chances are high that the court of appeals will see the case again, but this is true whenever it reverses the trial court. If the appellate court chose a second option and reversed only the "all connections" construction, the case would be over because of plaintiff's concession that none of defendants' devices include the "portable computer" limitation. The problem comes if the appellate court reverses only the "portable computer" construction, making additional litigation necessary to determine which devices infringe this limitation of the '645 patent and whether defendants are entitled to judgment on any of their counterclaims. If the litigation resulted in another appeal, the appellate judges would be required to familiarize themselves all over again with the meaning of "all connections" before determining the application of the term to the accused devices. This is the kind of unnecessary work that the final judgment rule is intended to avoid.

Therefore, I will deny plaintiff's motion. This resolution of the motion makes it

unnecessary to decide how to characterize a dismissal of defendants' counterclaims. The counterclaims remain pending.

ORDER

IT IS ORDERED that plaintiff Computer Docking Station Corporation's motion for entry of final judgment on its claims is DENIED.

Entered this 11th day of October, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge