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

EON CORP. IP HOLDINGS, LLC,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**No. 6:10-CV-379 LED-JDL**
	§	
T-MOBILE USA, INC., et al.,	§	**JURY DEMANDED**
	§	
Defendants.	§	
	§	
	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Alcatel-Lucent USA, Inc.'s ("ALU") Motion to Strike Portions of the Expert Report of Dr. David Lyon (Doc. No. 878) ("Motion"). Plaintiff Eon Corp. IP Holdings, LLC ("Eon") has filed a Response (Doc. No. 926) and ALU has filed a Reply (Doc. No. 948). The Court heard argument on August 16, 2012. For the reasons stated below, the Motion is **GRANTED.**

BACKGROUND

Once again before the Court is a dispute regarding Eon's infringement contentions in this case. On August 4, 2010, Eon filed its original complaint against ALU, among others, identifying two ALU accused products. *See* COMPLAINT (Doc. No. 1). On January 28, 2011, Eon served ALU its infringement contentions pursuant to P.R. 3-1, accusing ALU of indirect infringement and identifying four accused products. *See* ALU OPPOSITION TO EON'S MOTION FOR LEAVE TO FILE AMENDED INFRINGEMENT CONTENTIONS (Doc. No. 466, at 3). On August 10, 2011, Eon filed its Fourth Amended Complaint alleging indirect infringement against ALU, but failed to include any products by name. *See* (Doc. No. 394) at ¶ 43. On September 7, 2011, Eon filed a motion seeking leave to amend its infringement contentions against ALU to include

seventy-six products, seventy-two of which were not included in its initial infringement contentions. *See* (Doc. No. 453).

At a November 28, 2011 hearing on the September 7 motion, the Court was of the opinion that the crux of the dispute between Eon and ALU centered on the insufficiency of the infringement contentions served on ALU. *See* HEARING TRANSCRIPT (Doc. No. 556) at 27:22 – 28:12. The Court was not persuaded that the original proposed infringement contentions satisfy P.R. 3-1 because although they name infringing networks such as "T-Mobile @Home service and Network," they do not show how ALU's accused products are used in those particular networks. *Id.* The Court ordered Eon to modify its infringement contentions to articulate how particular ALU products are used in an infringing network in accordance with P.R. 3-1(b)-(c) with the understanding that there may be some gaps in the charts to be later filled in by discovery from mobile network operators like T-Mobile or Verizon. *See id.* On December 19, 2011, Eon served amended infringement contentions against ALU pursuant to the Court's November 28 Order, but included over twenty new ALU products that were not disclosed in the prior amended contentions. *See* PLAINTIFF'S NOTICE OF COMPLIANCE, Dec. 20, 2011, (Doc. No. 574).

On January 24, 2012, the Court issued an Order, directing Eon to remove any references to the twenty new products in its infringement contentions because EON did not seek leave to include those products (Doc. No. 594). Accordingly, the Court ordered Eon to serve ALU with modified contentions complying with the Court's order by January 30, 2012. *Id.* On January 30, 2012, Eon served its amended contentions but did not remove all of the products as ordered by the Court, including references to the 5060 Wireless Call Server. EX. B TO MOTION. It was not until March 9, 2012 when, without leave of the Court, Eon served ALU with an amended set of infringement contentions, excluding the twenty new products and complying with the Court's

January 24 Order. EX. G TO MOTION. Nonetheless, in response to Eon's departure from the Court's January 24 Order, the parties created an agreed upon list of sixty-eight accused products. *See* EX. D TO MOTION. Neither ALU's "5060 Wireless Call Server" nor its "1000 Wireless Controller" appeared in the agreed upon list. *See id.*

At issue in the instant Motion is the Expert Report of Dr. David L. Lyon ("Lyon Report") served by Eon. The Lyon Report describes Eon's inducement allegations against ALU through the sale, service, and support of six ALU products used in T-Mobile's network, including both the 5060 Wireless Call Server and the 1000 Wireless Controller—products the Court previously ordered Eon to remove from its infringement contentions. *See* EX. E TO MOTION at 206. ALU now brings the instant Motion to Strike the portions of the Lyon Report that relate to these two products.

DISCUSSION

As the basis of its Motion, ALU argues that the Court has already decided the core issue raised by ALU when the Court directed Eon to remove the twenty additional products from its amended infringement contentions against ALU in the Court's January 24 Order. (Doc. No. 594). In addition, ALU has put forth evidence that the parties also came to an agreement as to the exclusion of these products. *See* EX. D TO MOTION. ALU argues that Eon's attempt to include two of the excluded products as a basis for Dr. Lyon's infringement opinion is in clear violation of the Court's prior Order, the parties' agreement, and the Local Patent Rules. Eon counters that Dr. Lyon uses these products as evidence of ALU's inducement of the alleged infringing network rather than as part of a theory of infringement. Further, Eon argues that its initial disclosure of ALU's UMA Solution, the larger system within which the two component parts at

issue are contained, satisfies the requirements of P.R. 3-1, such that Eon was not required to compile component details in its inducement contentions.

The Local Patent Rules "exist to further the goal of full, timely discovery and provide all parties with adequate notice and information with which to litigate their cases." *Computer Acceleration Corp. v. Microsoft Corp.*, 503 F. Supp. 2d 819, 822 (E.D. Tex. 2007). Local Patent Rule 3-1 requires that each party claiming patent infringement disclose "each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware" as to each asserted claim.[1] Infringement contentions are intended to frame the scope of the case in order to provide for "full, timely discovery and [to] provide parties with adequate notice and information with which to litigate their case." *Nike, Inc. v. Adidas Am. Inc.*, 479 F. Supp. 2d 664, 667 (E.D. Tex. 2007); *see also Realtime Data, LLC v. Packeteer, Inc.*, No. 6:08-cv-144, 2009 WL 2590101, at *5 (E.D. Tex. Aug. 18, 2009). This Court has previously explained the role of infringement contentions:

> Infringement contentions are not intended to require a party to set forth a *prima facie* case of infringement and evidence in support thereof. While infringement contentions must be reasonably precise and detailed . . . to provide a defendant with adequate notice of the plaintiff's theories of infringement, they need not meet the level of detail required, for example, on a motion for summary judgment on the issue of infringement because infringement contentions "are not meant to provide a forum for litigation on the substantive issues."

Realtime Data, 2009 WL 2590101, at *5 (quoting *Linex Tech., Inc. v. Belkin Intern., Inc.*, 628 F. Supp.2d 703, 713 (E.D. Tex. 2008) (internal quotations omitted)). Nevertheless, a party may not rely on vague conclusory language or simply mimic the language of the claims. *Davis-Lynch, Inc. v. Weatherford Int'l*, No. 6:07-cv-559, 2009 WL 81874, at *2 (E.D. Tex. Jan. 12, 2009).

Although P.R. 3-1 does not require disclosure of evidence, *Realtime Data*, 2009 WL 2590101, at *5, it does require disclosure of the essential components of an alleged infringing

[1] The Rule also states that each identification "shall be as specific as possible."

system, so as to allow a defendant to "connect the dots" of an infringement allegation, effectively serving a notice function. Eon argues that its Original Complaint and direct infringement contentions, coupled with its identification of ALU as an indirect infringer who supplies component parts to the networks, are enough to satisfy P.R. 3-1 notice requirements. However, because a plaintiff cannot succeed on an inducement claim without identifying an underlying act of direct infringement, a plaintiff must provide sufficient information to put the alleged inducer on notice as to the underlying direct infringement. *See In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1333 (Fed. Cir. 2012) (noting that "liability for indirect infringement requires direct infringement").

In relevant part, Eon offers a very general picture of infringement, listing "every product that [ALU] sells or offers to sell…for use in their Networks" in its infringement contentions. EON'S RESPONSE TO ALU'S MOTION TO STRIKE (Doc. No. 926, at 5). Eon's broad characterization of its inducement theory against ALU in its infringement contentions cannot overcome its failure to precisely identify the components ALU provides to the infringing network. Simply accusing a large overhead system and all products supplied by a particular entity for use in that system is not enough to comply with P.R. 3-1; a party must include the relevant component parts of its direct infringement theory. If P.R. 3-1 were interpreted as Eon asserts, ALU would be left to guess the particular components ALU supplies that are part of the directly infringing network.

Further, the Court disagrees with Eon's argument that the products at issue could be reasserted as evidence of infringement through the Lyon Report. These components are not simply "evidence," but rather integral pieces of Eon's direct infringement allegations. Therefore,

the 1000 Wireless Network Controller and the 5060 Wireless Call Server should have been timely disclosed pursuant to P.R. 3-1.

In sum, the Court has already ordered removal of the 1000 Wireless Network Controller and the 5060 Wireless Call Server from Eon's amended contentions primarily due to Eon's failure to show good cause for their inclusion. Thereafter, Eon failed to seek leave to include these products as allegedly infringing components pursuant to P.R. 3-6.[2] As discussed above, Eon's attempt to now include these products as evidence of inducement violates not only P.R. 3-1, but also the Court's prior Order.

CONCLUSION

For the reasons stated herein, ALU's Motion to Strike is **GRANTED.**

So ORDERED and SIGNED this 23rd day of August, 2012.

JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE

[2] P.R. 3-6 states in relevant part, "[a]mendment or supplementation any Infringement Contentions…other than as expressly permitted in P. R. 3-6(a), may be made only by order of the Court, which shall be entered only upon a showing of good cause." P.R. 3-6(b).