

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INTERDIGITAL COMMUNICATIONS	:	
INC., et al.,	:	
	:	
Plaintiffs,	:	
	:	C.A. No. 13-10-RGA
v.	:	
	:	
NOKIA CORPORATION, et al.,	:	
	:	
Defendants.	:	

ORDER

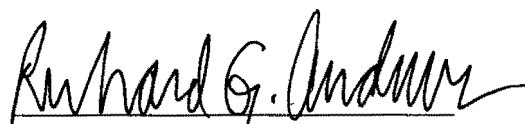
I have read D.I. 344, 350, and 356. I agree that the '151 IPR denial is a final decision. I do not agree that it is a decision on the merits, any more so than a grant of an IPR is a decision on the merits. It is akin to a ruling on a preliminary injunction, where the merits are assessed with less than a full record and with less than a full adversarial proceeding.

It may be a part of the prosecution history, as Interdigital argues, but, if so, it is a relatively unique part of the prosecution history. First, a patent examiner cannot allow a patent to issue saying there is a reasonable likelihood that it is not obvious. The patent examiner has to come to a conclusion that it is not obvious, or not allow the issuance of the patent. Second, the patent examiner is a person of ordinary skill in the art, whereas the IPR decisions are made by lawyers who are not persons of ordinary skill in the art. (D.I. 344 at 2 n.1). Further, in this case, the Defendants were not a party to the IPR.

Thus, as I said before, the PTAB's actions in relation to the '151 patent are of marginal relevance, and the probative value is greatly outweighed by the expenditure of time that would be required to give the jury the full context necessary to fairly evaluate the evidence. Further,

<p>IPR Licensing, Inc. Exhibit 2002 Microsoft Corp v. IPR Licensing, Inc. IPR2015-00074</p>

because of the complexity involved in giving the full context, there would also be a significant risk of confusion of the issues. Thus, I exclude the '151 IPR denial under Rule 403.¹


United States District Judge 9/19/2014

¹ There is also no need for anyone to mislead the jury. The Defendants can truthfully state that the PTO did not have the Siemens reference before issuing the patent.