

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ON TRACK INNOVATIONS LTD., : 12 Civ. 2224 (AJN) (JCF)

Plaintiff, : MEMORANDUM
: AND ORDER

- against -

T-MOBILE USA, INC.,

Defendant.

T-MOBILE USA, INC.,

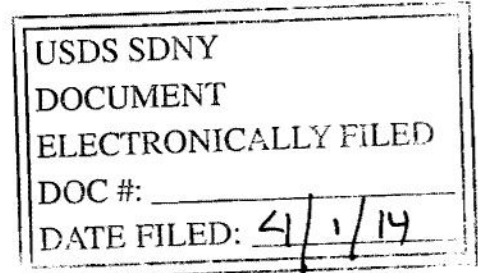
Counter Claimant,

- against -

ON TRACK INNOVATIONS LTD.,

Counter Defendant.

JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE



On Track Innovations Ltd. ("On Track") has moved for reconsideration of my text order dated February 25, 2014, denying On Track's application to supplement the report of one of its expert witnesses to identify NFC SIM cards manufactured by G&D as additional infringing products. A motion for reconsideration is governed by Rule 6.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York and is committed to the sound discretion of the court. Idowu v. Middleton, No. 12 Civ. 1238, 2013 WL 371657, at *1 (S.D.N.Y. Jan.

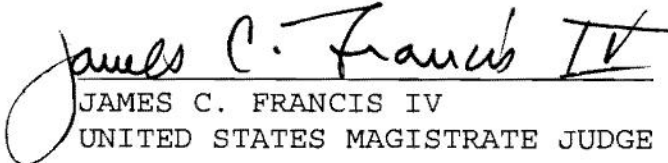
31, 2013). "The standard for granting such a motion is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked -- matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.'" Space Hunters, Inc. v. United States, 500 F. App'x 76, 81 (2d Cir. 2012) (quoting Shrader v. CSX Transportation, Inc., 70 F.3d 255, 257 (2d Cir. 1995)). Generally, reconsideration "requires 'an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.'" Capitol Records, Inc. v. MP3tunes, LLC, No. 07 Civ. 9931, 2013 WL 1987225, at *1 (S.D.N.Y. May 14, 2013) (quoting Virgin Atlantic Airways Ltd. v. National Mediation Board, 95 F.2d 1245, 1255 (2d Cir. 1992)). Reconsideration is "an extraordinary remedy to be employed sparingly in the interest of finality and conservation of scarce judicial resources." Hinds County, Mississippi v. Wachovia Bank N.A., 700 F. Supp. 2d 378, 407 (S.D.N.Y. 2010) (internal quotation marks omitted).

On Track's motion does not meet this standard. In its initial disclosures served in August 2012, the defendant and counterclaimant, T-Mobile USA, Inc. ("T-Mobile"), identified G&D as "likely to have discoverable information on matters related to SIM cards used in the Accused Products." (Defendant and

Counterclaimant T-Mobile USA, Inc.'s Initial Disclosures, attached as Exh. 1 to Declaration of Ellisen S. Turner dated March 21, 2014, at 4). On Track had ample opportunity after that to take discovery relevant to any potential claims regarding the G&D cards. If its application were now granted, T-Mobile would be prejudiced by the need to conduct substantial fact and expert discovery, including foreign discovery. By contrast, the only prejudice to On Track from the denial of its application is that it would have to instigate new litigation with respect to the G&D cards, assuming its claims are not foreclosed by determinations made in this case. While that result would involve some additional cost to On Track, that is a consequence of its own failure to pursue discovery on the G&D cards in this case in a timely manner.

Accordingly, On Track's motion for reconsideration (Docket no. 125) is denied.

SO ORDERED.


JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York
April 1, 2014

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