UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.　**CV 14-03009 JVS(PJWx)**　　　　　　Date　October 16, 2015
　　　　　　Consolidated with CV 14-04989 JVS(PJWx)

Title　　Kinglite Holdings Inc. V. Micro-Star International Co. Ltd.
　　　　　Consolidated with Kinglite Holdings Inc -v- Giga-Byte Technology Co. Ltd et al.

Present: The Honorable　　　James V. Selna

Karla J. Tunis	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants
Not Present	Not Present

Proceedings:　**(IN CHAMBERS) Order GRANTING IN PART and DENYING IN PART Plaintiff's Motion to Amend Infringement Contentions (Fld 07-28-15, Dkt 109 in 3009 and Dkt 128 in 4989);**

Order GRANTING Defendants and Counterclaim plaintiffs' Motion for Judgment on the Pleadings (3009 Dkt 110 & 4989 Dkt 129 filed 8-10-15); and

DENYING Defendants and Counterclaim plaintiffs' Motion for Partial Summary Judgment (3009 Dkt 114 & 4989 Dkt 133 filed 8-11-15) & Intervening Defendants Motion for Partial Summary Judgment (3009 Dkt 121 & 4989 Dkt 14, Fld 8-18-15)

Before the Court are three motions.[1]

First, pursuant to Patent Local Rule 3-6,[2] Plaintiff Kinglite Holdings, Inc. ("Kinglite") seeks leave to amend its infringement contentions. (Mem. P. & A. Supp. Mot. Amend ("Mot. Amend"), 3009 Docket ("Dkt.") No. 109-1.) Defendants American Megatrends, Inc. ("AMI"); Micro-Star International Co. Ltd., MSI Computer Corp.

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[1] For the convenience of the parties and the Court, the Court will typically cite to the briefs of only one case docket because the briefs filed on both dockets are identical. All citations to "3009 Dkt. No." are in reference to the docket for Case No. 2:14-cv-03009 JVS (PJWx) and all citations to "4989 Dkt. No." are in reference to the docket for Case No. 2:14-cv-4989 JVS (PJWx).

[2] The Court has adopted the Northern District of California's Patent Local Rules for patent matters. (See also Order Setting Rule 26(f) Scheduling Conference 5, 3009 Dkt. No. 17.)

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(collectively "MSI"); and Giga-Byte Technologies Co., Ltd., and G.B.T. Inc. (collectively "GBT"), (all collectively "Defendants") oppose. (Opp'n Mot. Amend, 3009 Dkt. No. 122.) Kinglite has replied. (Reply Supp. Mot. Amend, 3009 Dkt. No. 133.)

Second, Kinglite asserts that Defendants are infringing, *inter alia*, Kinglite's U.S. Patent No. 6,892,304 ("the '304 Patent"). (Compl. ¶¶ 17–19, 3009 Dkt. No. 1; Pl.'s Am. Compl. ¶¶ 17–19, 3009 Dkt. No. 87; Pl.'s Am. Answer & Countercls. 13:20–14:1, 3009 Dkt. No. 84.) However, Defendants move for partial judgment on the pleadings that the asserted claims of the '304 Patent are patent ineligible under 35 U.S.C. § 101. (Mem. P. & A. Supp. Mot. J. Pleadings ("Mot. J. Pleadings"), 3009 Dkt. No. 110-1.) Kinglite opposes. (Opp'n Mot. J. Pleadings, 3009 Dkt. No. 123.) Defendants have replied. (Reply Supp. Mot. J. Pleadings, 3009 Dkt. No. 132.)

Third, Defendants move for partial summary judgment on their counterclaims alleging that Kinglite violated its reasonable and non-discriminatory ("RAND") licensing obligations. (Mem. P. & A. Supp. Mot. Summ. J. ("Mot. Summ. J."), 3009 Dkt. No. 121-1; see also AMI's Countercls. ¶¶ 72–81, 3009 Dkt. No. 56; MSI's Countercls. ¶¶ 73–82, 3009 Dkt. No. 39; GBT's Countercls. ¶¶ 108–17, 3009 Dkt. No. 96.) Kinglite opposes. (Opp'n Mot. Summ. J., 3009 Dkt. No. 136.) Defendants have replied. (Reply Supp. Mot. Summ. J., 3009 Dkt. No. 138.)

For the following reasons, the Court (1) **GRANTS IN PART** and **DENIES IN PART** Kinglite's Motion for Leave to Amend; (2) **GRANTS** Defendants' Motion for Partial Judgment on the Pleadings; and (3) **DENIES** Defendants' Motion for Partial Summary Judgment.

I.   **Background**

Kinglite filed a Complaint against MSI on April 18, 2014, asserting claims for infringement of thirteen patents. (3009 Dkt. No. 1.) Kinglite filed a Complaint against GBT on June 26, 2014, asserting claims for infringement of twenty patents. (4989 Dkt. No. 1.) The cases were consolidated by stipulation on August 1, 2014. (4989 Dkt. No. 48.)

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The Court allowed AMI to intervene as a defendant and counterclaimant in the consolidated case. (3009 Dkt. No. 51.) The parties identified the following six patents on which the consolidated case shall initially proceed: (1) the '304 Patent; (2) U.S. Patent No. 5,987,604 ("the '604 Patent"); (3) U.S. Patent No. 6,523,123 ("the '123 Patent"); (4) U.S. Patent No. 6,791,572 ("the '572 Patent"); (5) U.S. Patent No. 6,222,562 ("the '562 Patent"); and (6) U.S. Patent No. 8,095,783 ("the '783 Patent"). (Mot. Leave Amend 2, 3009 Dkt. No. 78.)

II.   **Motion for Leave to Amend Infringement Contentions**

A.   Legal Standard

Under Patent Local Rule 3-6, a party may amend its preliminary infringement contentions "only by order of the Court upon a timely showing of good cause." The "good cause" inquiry "first considers whether plaintiff was diligent in amending its contentions and then considers prejudice to the non-moving party." CBS Interactive, Inc. v. Etilize, Inc., 257 F.R.D. 195, 201 (N.D. Cal. 2009) (citing O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc., 467 F.3d 1355, 1366–68 (Fed. Cir. 2006)). "The party seeking to amend its contentions bears the burden of establishing diligence." CBS Interactive, 257 F.R.D. at 201 (citing O2 Micro, 467 F.3d at 1366–67). "Unlike the liberal policy for amending pleadings, the philosophy behind amending claim charts is decidedly conservative, and designed to prevent the 'shifting sands' approach to claim construction . . . ." Integrated Circuit Sys., Inc. v. Realtek Semiconductor Co., 308 F. Supp. 2d 1106, 1107 (N.D. Cal. 2004) (citation omitted). Keeping that policy in mind, the Court also recognizes that "preliminary infringement contentions are still preliminary." General Atomics v. Axis-Shield ASA, No. C 05-04074 SI, 2006 WL 2329464, at *2 (N.D. Cal. Aug. 9, 2006).

B.   Discussion

Kinglite moves to amend its infringement contentions for three patents-at-issue in response to the Court's June 10, 2015 Claim Construction Order regarding various terms in those three patents. (Mot. Amend 2; see also Order re Claim Construction, 3009 Dkt. No. 106.) More specifically, Kinglite seeks to amend its infringement contentions for the

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'572 Patent, '783 Patent, and '562 Patent.[3] (Mot. Amend 2–9.) The Court first considers whether Kinglite meets its burden of showing diligence in seeking to amend its infringement contentions before considering any prejudice that could befall Defendants from such amendments.

1. **Diligence by Kinglite**

Kinglite argues that it acted diligently because it seeks to amend its infringement contentions soon after the Court adopted constructions of terms that were different from its proposed constructions. (Mot. Amend 2:17–18.) With respect to the differing terms adopted, for the '572 Patent, the Court adopted a slightly modified version of Defendants' proposed construction for the term "boot period." (Order re Claim Construction 11–12.) For the '783 Patent, the Court adopted the Defendants' proposed construction for the terms "fast boot mode" and "standard boot procedure," but for the term "load[ing] designated bootloader code . . . from [BIOS] code," the Court adopted Kinglite's proposed construction with two amendments suggested by Defendants. (Id. at 20–26.) With respect to the '562 Patent, the Court adopted "most of the first clause of Defendants' proposed construction" for the term "save-in-non-volatile-memory command," and the entirety of Defendants' proposed construction for the term "fast memory." (Id. at 16–20.) Thus, the Court did not adopt the entirety of Kinglite's proposed constructions for any of the terms in the three patents for which Kinglite now seeks to amends its infringement contentions.

Kinglite adds that it informed Defendants' counsel of its intent to amend its infringement contentions at the claim construction hearing on June 8, 2015. (Summerfield Decl. ¶ 2, 3009 Dkt. No. 109-2.) The Court issued its Claim Construction Order on June 10, 2015 and Kinglite shared its proposed amended infringement contentions with Defendants twenty days thereafter. (Opp'n Mot. Amend, Ex. E, 3009 Dkt. No. 122-7.) The parties met and conferred regarding Kinglite's intention to amend its infringement contentions, but those efforts broke down on July 27, 2015. (Summerfield Decl., Ex. B, 3009 Dkt. No. 109-4.) Kinglite filed this Motion to Amend

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[3] As noted by Kinglite in its motion, any amended infringement contentions with respect to the '562 Patent will not be asserted against MSI. (Mot. Amend 7 n.1.)

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the following day.

     Notwithstanding, Defendants assert that Kinglite did not act diligently because they argue the following rule applies: "the moving party's diligence, without which there is no good cause, is measured from the day the moving party received the proposed constructions, not the date of the issuance of the Court's claim construction opinion." (Opp'n Mot. Amend 10:2–5 (quoting France Telecom S.A. v. Marvell Semiconductor Inc., No. 12-CV-04967-WHO, 2014 WL 1899616, at *4 (N.D. Cal. May 12, 2014).) Because Defendants provided Kinglite with their proposed constructions on March 9, 2015 (Ganti Decl., Exs. B-1, B-2, 3009 Dkt. Nos. 122-3, 122-4), Defendants assert that the over three-month delay until Kinglite filed the instant motion indicates a lack of diligence. (Opp'n Mot. Amend 10.)

     The Court disagrees with Defendants for four reasons. First, Patent Local Rule 3-6 provides that a finding of good cause may be supported when "[a] claim construction by the Court [is] different from that proposed by the party seeking amendment." Patent L.R. 3-6(a). Although the Court's "differing claim construction in and of itself does not constitute good cause," Verinata Health, Inc. v. Sequenom, Inc., No. C 12-00865 SI, 2014 WL 789197, at *2 (N.D. Cal. Feb. 26, 2014) (internal quotation marks and citation omitted), Kinglite still establishes its diligence in trying to amend its infringement contentions after the Court's Claim Construction Order. The Court's adoption of differing constructions from those proposed by Kinglite gives rise to good cause because those differences are material to Kinglite's theory of infringement, not simply because the constructions are different. See MyMedicalRecords, Inc. v. Quest Diagnostics, Inc., No. 2:13-cv-02538-ODW (SHx), 2014 U.S. Dist. LEXIS 158113, at *9–10 (C.D. Cal. Nov. 6, 2014); (see also Summerfield Decl., Ex. E (Proposed Am. Chart for '572 Patent), Ex. F (Proposed Am. Chart for '783 Patent), Ex. H (Proposed Am. Chart for '562 Patent), 3009 Dkt. Nos. 109-7, 109-8, 109-9.)

     Second, this is not a case in which the Court simply adopted every construction proposed by Defendants. See, e.g., Verinata, 2014 WL 789197, at *2 (finding no diligence by defendant seeking to amend its invalidity contentions when the court completely adopted the plaintiff's proposed constructions and the defendant had notice of such proposed constructions for a year). Rather, for at least one term in each of the three

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patents for which Kinglite seeks to amend its infringement contentions, the Court adopted a modified version of Defendants' or Kinglite's proposed constructions. Accordingly, the Court does not believe it is appropriate here to start the clock for determining Kinglite's diligence on March 9, 2015 when "[n]either party had any way of predicting how the Court would rule on the claim construction dispute before it issued the Claim-Construction Order." MyMedicalRecords, 2014 U.S. Dist. LEXIS 158113, at *11.

Third, the Court is hesitant to adopt the rule advanced by Defendants. Assuming this rule applies, Kinglite would be expected to anticipate that its proposed construction would not prevail. Kinglite thus would have to amend its infringement contentions in accordance with the Defendants' proposed constructions. But if Kinglite took these steps prior to the Court's Claim Construction Order and the Court adopted Kinglite's proposed constructions, then Kinglite's actions would have prematurely negated its own infringement theories. The fact the Court in fact did not fully adopt Kinglite's proposed constructions for the relevant patent terms is of no consequence. Requiring Kinglite to anticipate that its own constructions would not prevail unfairly forces Kinglite to revamp its infringement theory based on its opponents' strategy rather than the Court's findings. Additionally, although the rule advanced by Defendants was established by a Northern District of California court, other courts in that district have held that Patent Local Rule 3-6(a) "does not require a party to seek leave to amend prior to issuance of the final claim construction order." See, e.g., Chrimar Sys. v. Cisco Sys., No. 13-cv-01300-JSW (MEJ), 2015 U.S. Dist. LEXIS 73935, at *17 (N.D. Cal. May 14, 2015), adopted by 2015 U.S. Dist. LEXIS 73931. These courts have also not required the plaintiff to seek leave to amend in the time between the court's issuance of a tentative claim construction order and its final order; whereas here, Defendants assert that Kinglite should have sought leave prior to any tentative or final claim construction order by the Court. See, e.g., Chrimar, 2015 U.S. Dist. LEXIS 73935, at *17; GPNE Corp. v. Apple Inc., No. 5:12-cv-02885-LHK-PSG, 2013 U.S. Dist. LEXIS 166723, at *12 (N.D. Cal. Nov. 22, 2013).

Fourth, Kinglite shared its proposed amended infringement contentions with Defendants only twenty days after the Court's Claim Construction Order. (Opp'n Mot. Amend, Ex. E.) This is not the significant delay that other courts have viewed as demonstrating a lack of diligence. See, e.g., MyMedicalRecords, 2014 U.S. Dist. LEXIS 158113, at *10 ("[C]ases that denied leave to amend infringement contentions after claim

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construction did so because a significant amount of unaccounted time lapsed between the claim construction order and amendment and the amendments were filed near the end of discovery or close to trial."); Apple, Inc. v. Samsung Elecs. Co., No. 12-cv-00630-LHK, 2014 WL 1322028, at *7–8 (N.D. Cal. Mar. 28, 2014) (finding no diligence when party sought leave to amend infringement contentions nearly a year after the claim construction order and less than three weeks before trial).

Therefore, Kinglite sufficiently demonstrates "diligence in discovering the basis for amendment" and "diligence in seeking amendment once the basis for amendment has been discovered." See Positive Techs., Inc. v. Sony Elecs., Inc., No. C 11-2226 SI, 2013 U.S. Dist. LEXIS 11271, *8–12 (N.D. Cal. Jan. 28, 2013) (holding that the party seeking leave showed "reasonable efforts in both phases" of showing diligence).

2.   **Prejudice to Defendants**

The focus of Defendants' prejudice arguments is that fact discovery ended on September 4, 2015. (Joint Rule 26(f) Report (Second Am.), Ex. A, 3009 Dkt. No. 69.) Consequently, Defendants contend that the "mere 65 days in discovery during which to consider these new contentions and attempt [to] identify prior art for new invalidity contentions" was insufficient and prejudicial. (Opp'n Mot. Amend 14:12–17.) But Defendants' 65-day calculation asks the Court to look at the proposed amendments in a vacuum. Kinglite's amended infringement contentions are in response to the Court's adoption, in large part, of Defendants' proposed claim constructions. Defendants knew of their own proposed claim constructions since at least March 9, 2015, when they shared them with Kinglite. (See Ganti Decl., Exs. B-1, B-2.) Thus, Defendants had about six months to anticipate infringement contentions and discover prior art that was reliant on their proposed claim constructions. Even if March 9, 2015 is the not appropriate starting point, Defendants' receipt of the proposed amended contentions two months prior to the fact discovery cut-off provided them with "ample time" to react to the proposed amendments. See Yodlee, Inc. v. CashEdge, Inc., No C 05-01550 SI, 2007 WL 1454259, at *3 (N.D. Cal. May 17, 2007); cf. Altera Corp. v. PACT XPP Techs., AG, No. 14-cv-02868, 2015 WL 928122, at *2 (N.D. Cal. Feb. 19, 2015) (noting that a non-moving party's possession of the moving party's proposed amended contentions for two months additionally indicates a lack of prejudice).

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With respect to the proposed amended contentions for the '562 and '572 Patents, the Court also discounts any of Defendants' arguments that it would suffer prejudice from having to endure more discovery when it already has limited time to conduct its remaining pre-planned discovery. (Opp'n Mot. Amend 15–16.) First, any delay by Kinglite in filing this motion was in part due to Kinglite's failed attempts to meet and confer with Defendants about the proposed amended contentions. Such meet and confer efforts do not appear to have been motivated by gamesmanship. OpenDNS, Inc. v. Select Notifications Media, LLC, No. C11-05101 EJD (HRL), 2013 WL 2422623, at *3 (N.D. Cal. June 3, 2013) ("Courts have allowed amendments when . . . the request to amend did not appear to be motivated by gamesmanship . . . ."). Second, trial is not scheduled to begin until May 10, 2016. (3009 Dkt. No. 68.) The Court is thus willing to entertain a request from Defendants for more time to conduct discovery.

As for the proposed amended contentions for the '783 Patent, however, Defendants at oral argument contended that they would suffer prejudice from the addition of new products. See, e.g., MyMedicalRecords, 2014 U.S. Dist. LEXIS 158113, at *12 (holding that proposed amendments did not cause prejudice because they did not add new products). More specifically, Defendants point to the open-ended inclusion of: "for example, Winbound 25Q64FV chipsets or MXIC MX25L12873F chipsets." (Proposed Am. Chart for '783 Patent 1.) Additionally, Defendants contest the inclusion of references to "legacy boot mode option" and "legacy boot order." (See, e.g. id. at 1, 5, 10.) The Court agrees the inclusion of such new products, or the consequent inclusion of new products that would likely result from the open-ended nature of the cited amendments, constitutes sufficient prejudice to Defendants. Therefore, the Court will not allow leave for any amended contentions that reference: (1) Winbound 25Q64FV chipsets; (2) MXIC MX25L12873F chipsets; (3) legacy boot mode option; and (4) legacy boot order.

Otherwise, no unfair prejudice will befall Defendants from allowing Kinglite to file its proposed amended infringement contentions. For the most part, this appears to be a case in which Kinglite's preliminary infringement contentions were simply preliminary, General Atomics, 2006 WL 2329464, at *2, and not one in which Kinglite is attempting to take a "shifting sands approach" after the completion of claim construction. Integrated

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Circuit Sys., 308 F. Supp. 2d at 1107.

III. **Motion for Partial Judgment on the Pleadings**

A. Legal Standard

Under Federal Rule of Civil Procedure 12(c), "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." A motion for judgment on the pleadings should be granted only if "taking all the allegations in the pleading as true, the moving party is entitled to judgment as a matter of law." McSherry v. City of Long Beach, 423 F.3d 1015, 1021 (9th Cir. 2005). A Rule 12(c) motion asserting a failure to state a claim is governed by the same standard as a Rule 12(b)(6) motion to dismiss. United States ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1054 n.4 (9th Cir. 2011); Chavez v. United States, 683 F.3d 1102, 1108 (9th Cir. 2012).

In resolving a 12(b)(6) motion, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Nor must the Court "accept as true a legal conclusion couched as a factual allegation." Id. at 678-80 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Second, assuming the veracity of well-pleaded factual allegations, the Court must "determine whether they plausibly give rise to an entitlement to relief." Id. at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Id.

B. Discussion

1. **Overview of the Patent-Eligibility Analysis**

"It is well established that whether the asserted claims . . . are invalid for failure to claim statutory subject matter under 35 U.S.C. § 101, is a question of law." In re

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Comiskey, 554 F.3d 967, 975 (Fed. Cir. 2009) (internal quotation marks and citation omitted). Courts may address whether a patent is ineligible under § 101 through a motion for judgment on the pleadings or a motion to dismiss. See, e.g., buySAFE, Inc. v. Google, Inc., 765 F. 3d 1350, 1352 (Fed. Cir. 2014) (affirming district court's grant of a motion for judgment on the pleadings based on a § 101 analysis); Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A., 2014 U.S. App. LEXIS 24258 at *4 (Fed. Cir. Dec. 23, 2014) (affirming district court's grant of a motion to dismiss based on a § 101 analysis).

Under § 101, an invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. However, § 101 has a longstanding, "important implicit exception: [l]aws of nature, natural phenomena, and abstract ideas are not patentable." Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 134 S. Ct. 2347, 2354 (2014) (quoting Assoc. for Molecular Pathology v. Myriad Genetics, Inc., 133 S. Ct. 2107, 2116 (2013)). "[A]n invention is not rendered ineligible for patent simply because it involves an abstract concept," but only applications of an abstract concept "to a new and useful end" remains eligible for patent protection. Alice, 134 S. Ct. at 2354 (internal quotation marks omitted) (citing Diamond v. Diehr, 450 U.S. 175, 187 (1981); Gottschalk v. Benson, 409 U.S. 63, 67 (1972)).

The U.S. Supreme Court has set forth a two-step "framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent eligible applications of those concepts." Alice, 134 S. Ct. at 2355 (citing Mayo Collaborative Servs. v. Prometheus Labs., Inc., 132 S. Ct. 1289 (2012)). First, the Court must "determine whether the claims at issue are directed to one of those patent-ineligible concepts." Alice, 134 S. Ct. at 2355 (citing Mayo, 132 S. Ct. at 1296–97). If so, then the second step requires the Court to search for an "inventive concept" by considering the elements of each claim—both individually and as an ordered combination—"to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." Alice, 134 S. Ct. at 2355 (citing Mayo, 132 S. Ct. at 1297–98). If the claims at issue are directed to a patent-ineligible concept and the

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elements of each claim do not transform it into a patent-eligible application, then the claims are patent-ineligible under 35 U.S.C. § 101. See Alice, 134 S. Ct. at 2355, 2360.[4]

2.   **Application of the Patent-Eligibility Analysis**

Kinglite alleges that Defendants infringe the '304 Patent, but Defendants assert that the relevant claims of the '304 Patent are patent-ineligible under 35 U.S.C. § 101. The Court is familiar with the '304 Patent from its Claim Construction Order in which it construed the Claim 9 term "signing the service request with a service request signature." (Order re Claim Construction 3–6.) In construing the term, the Court adopted Kinglite's proposed construction of the term, which provides: "generating a service request digital signature."

Before proceeding with the patent-eligibility analysis, the Court provides a brief overview of the '304 Patent. The '304 Patent "provides a system and method for securely utilizing Basic Input and Output (BIOS) services." (Pl.'s Opening Br., Ex. A ('304 Patent) 2:17–19, 3009 Dkt. No. 90-1.) BIOS is machine code that is "[t]ypically stored in some form of non-volatile memory." (Id. at 1:66–67.) It is an example of "extremely sensitive" data stored on a computer system that can be updated or configured. (Id. at 1:62–66.) BIOS is usually part of an operating system that allows the central processing unit ("CPU") to "perform tasks such as initialization, diagnostics . . . and routine input/output [] functions." (Id. at 2:1–5.) For example, "[u]pon power up, the CPU will 'boot up' by fetching the instruction code residing in the BIOS." (Id. at 2:5–6.)

A problem arises, however, if the BIOS lacks security protection. Without such protection, the BIOS "is vulnerable to attacks through capturing and replaying of service requests to invoke functions provided by the BIOS." (Id. at 2:7–9.) Because such attacks can "corrupt the BIOS and disable the computer system," the '304 Patent seeks to address the need to "verify the integrity of service requests to access or modify data in the BIOS .

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[4] For the remainder of this Order, this two-step analysis will be referred to as the "patent-eligibility analysis" or the "§ 101 analysis."

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. . ." (Id. at 2:9–13.) Claims 9 and 11 are method claims directed to addressing this need and read as follows:[5]

> 9. A method to securely invoke Basic Input and Output System (BIOS) services, comprising:
>
> > creating a service request to invoke BIOS services;
> > signing the service request with a service request signature
> > > generated using a private key in a cryptographic key
> > > pair; and
> > verifying the service request signature using a public key in the
> > > cryptographic key pair to ensure the integrity of the
> > > service request.
>
> 11. The method of claim 9, further comprising:
>
> > performing a BIOS service indicated by a service operation
> > > code included in the service request.

(Id. at 24:36–45, 24:55–57.) The '304 Patent additionally defines "key" as "an encoding and/or decoding parameter in accordance with conventional cryptographic algorithms." (Id. at 19:37–39.) A "key pair" includes: (1) a private key, which is "held by the owner of the key pair and is used to *generate* digital signatures"; and (2) a public key, which is "widely published and is used to *verify* digital signatures." (Id. at 19:43–46 (italics supplied).) Thus, the key pair allows for verification to "confirm that the digital message is indeed the one which was signed and that the signature was generated using the private key corresponding to the public key." (Id. at 19:54–57.)

Defendants argue that Claims 9 and 11 fail both steps of the patent-eligibility analysis. (Mot. J. Pleadings 3:4–17.) Kinglite responds that the asserted claims pass step

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[5] Although Kinglite alleges that Defendants are infringing only Claim 11 of Kinglite's '304 Patent, the Court must look at Claim 9 in conjunction with Claim 11 because Claim 11 is dependent on Claim 9. (Mot. J. Pleadings 3:9 n.1.)

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one and thus a step two analysis is unnecessary, but in the alternative argues that the asserted claims also pass step two. (Opp'n Mot. J. Pleadings 10:23–25.)[6] After engaging in the two-step analysis below, the Court agrees with Defendants.

          a.   *Step One*

Defendants contend that Claims 9 and 11 of the '304 Patent are directed to an abstract idea. (Mot. J. Pleadings 10-13.) More specifically, Defendants assert that the claims are directed to the abstract idea of "authenticating a request using further abstractions (numerical keys and a signature produced by an algorithm." (Id. at 2:21–22.) In response, Kinglite tries to narrow what constitutes an abstract idea in an effort to argue that its claims are not directed to a patent-ineligible concept. (Opp'n Mot. J. Pleadings 8–10.) Kinglite contends that an abstract idea is only a "basic tool of science." (Id. at 9:4–23.)

The U.S. Supreme Court did not "delimit the precise contours of the 'abstract ideas' category" in Alice, but it made clear that the "abstract-ideas category" is not limited to "preexisting, fundamental truths." Alice, 134 S. Ct. at 2356 (internal quotation marks and citation omitted). The Supreme Court also recognized some important principles that have since been applied by the Federal Circuit. Alice, 134 S. Ct. at 2357. For example, "mathematical algorithms, including those executed on a generic computer, are abstract ideas." DDR Holdings, LLC v. Hotels.com, L.P., 773 F.3d 1245, 1256 (Fed. Cir. 2014) (citing Benson, 409 U.S. at 64). Moreover, "some fundamental economic and conventional business practices are also abstract ideas." DDR Holdings, 773 F.3d at 1256 (citing Bilski v. Kappos, 130 S. Ct. 3218, 3231 (2010) (concept of risk hedging is an abstract idea)). In Alice, the Supreme Court explained that even though the concept of risk hedging in Bilski was not a fundamental truth, it was still an abstract idea because it was a fundamental economic practice and a method of organizing human activity. Alice, 134 S. Ct. at 2356–57 (citing Bilski, 130 S. Ct. at 3231). The Supreme Court concluded

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[6] The Court rejects any argument by Kinglite that a patent obtained by AMI, which uses similar language to that at issue in the '304 Patent, should affect the Court's judgment as to the patent-eligibility of Claims 9 and 11 in the '304 Patent. (Opp'n Mot. J. Pleadings 1:15–25.) AMI's other patent is not before the Court at this time.

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in Alice that the concept of intermediated settlement was also a fundamental economic practice that thereby placed the concept within the same "realm of abstract ideas" as the concept in Bilski. Alice, 134 S. Ct. at 2356–57 (internal quotation marks omitted).

The Court agrees with Defendants that the '304 Patent claims are directed to a concept similar to those in Alice and Bilski. Thus, like the claims in those two cases, the claims at issue here are also directed to an abstract idea. As is evident from the claim language itself, Claim 9 simply describes steps for invoking the use of a particular service by (1) creating a request to use that service, and (2) ensuring that the request is capable of authentication through the use of mathematical algorithms. (See '304 Patent 24:36–45.) The Court agrees with Defendants' characterization that these steps simply "implicate the concept of authentication or verification of a request." (Mot. J. Pleadings 11:9–10.) As seen in CyberSource Corp. v. Retail Decisions, Inc., 654 F.3d 1366, 1370–73 (Fed. Cir. 2011), claims reciting a method of authentication for security purposes are directed to an abstract idea. CyberSource involved a patent which recited a "method for verifying the validity of a credit card transaction over the Internet." Id. at 1370. The Federal Circuit held that such a method "is drawn to an unpatentable mental process—a subcategory of unpatentable abstract ideas." Id. at 1371. More specifically, the Federal Circuit reasoned that "[a]ll of [the] method steps can be performed in the human mind, or by a human using a pen and paper." Id. at 1372. For example, a step involving "'obtaining information about other transactions that have utilized an Internet address that is identified with the [ ] credit card transaction'—can be performed by a human who simply reads records of Internet credit card transactions from a preexisting database." Id. Similarly, the steps in Claim 9 of generating a signature using a "private key" and verifying that signature with a "public key" can be performed by a human who is capable of reading such keys. The fact that mathematical algorithms are involved in reading such keys is of no consequence because even algorithms performed on a generic computer are abstract ideas. See DDR Holdings, 773 F.3d at 1256. Thus, the steps in Claim 9, as well as dependent Claim 11, can be performed by human thought alone and thus are "merely an abstract idea." CyberSource, 654 F.3d at 1373 ("Methods which can be performed entirely in the human mind are unpatentable . . . because computational methods which can be performed entirely in the human mind are the types of methods that embody the 'basic tools of scientific and technological work' that are free to all men and reserved exclusively to none." (citing Benson, 409 U.S. at 67).

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Kinglite objects that "whether the claimed invention requires machinery for its performance" is a factor in determining the abstractness of an idea. (Opp'n Mot. J. Pleadings 9:21–23.) Thus, because the "service request" in Claim 9 is one for BIOS services and such a request can only be done on a computer, Kinglite essentially argues that authentication of this "service request" cannot be performed by human thought alone. (Id. at 10.) Kinglite asserts that "[m]achinery is undoubtedly needed, as the notion of BIOS services, and the invocation of such service, without a computer is meaningless." (Id. at 10:14–15.) But this argument ignores the multiple cases which hold that "a computer does not convert a mental process into something concrete." Intellectual Ventures II LLC v. JP Morgan Chase & Co., No. 13-CV-3777 (AKH), 2015 WL 1941331, at *8 (S.D.N.Y. Apr. 28, 2015); see also Compression Tech. Sols. LLC v. EMC Corp., No. C-12-01746 RMW, 2013 WL 2368039, at *5 (May 29, 2013) (rejecting argument that "if digital data is required, the human mind cannot utilize or comprehend it," because a computer readable medium limitation or digital data limitation do not convert a patent-ineligible idea into a patent-eligible one). Compression Tech. Sols. gleaned from numerous U.S. Supreme Court and Federal Circuit decisions that "[p]erforming digital calculations may be more difficult, but . . . manipulations of digital data alone are not sufficient for a finding of patentability." Id.

Kinglite additionally tries to analogize to DDR Holdings, which held that claims "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks" are not directed to an abstract idea. DDR Holdings, 773 F.3d at 1257. The Court disagrees with Kinglite that the claims here are similar to those in DDR Holdings. The claims in DDR Holdings "address the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host's website after 'clicking' on an advertisement and activating a hyperlink." Id. at 1257. However, the Federal Circuit cautioned that "not all claims purporting to address Internet-centric challenges are eligible for patent." Id. at 1258. The claims at issue in DDR Holdings stood out from other patent claims directed to an abstract idea because they "specif[ied] how interactions with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink." Id. Said another way, the claims at issue in DDR Holdings

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"recite[d] an invention that is not merely the routine or conventional use of the Internet." Id. at 1259.

Unlike the claims in DDR Holdings, the claims here recite an invention that involves conventional use of a computer. Neither Claim 9 nor Claim 11 manipulate interactions between the BIOS and other data stored on computer systems. Rather, the claims simply add an authentication procedure that is triggered by a conventional request for BIOS services. The '304 Patent attempts to solve a problem of authentication for security purposes. Even if this solution occurs in the context of triggering BIOS services, authentication is not a problem "necessarily rooted in computer technology." Id. at 1257. This seems especially true given the '304 Patent's recognition that authentication procedures similar to the one in Claims 9 and 11 are known in the prior art:

> In the art of cryptography, the act of creation of a digital signature for a message is known as "signing" the message. It should be noted that algorithms to sign a message or to create digital signatures for a message are known in the art.

('304 Patent 21:6–10.)

Therefore, the '304 Patent claims are directed to the abstract idea of authenticating a request using further abstractions. The Court must continue to step two to determine if the claims are still patent eligible.

          b.   *Step Two*

Because the claims are directed to an abstract idea, the second step of the § 101 analysis requires the Court to analyze if the claims—both individually and as an ordered combination—contain an "inventive concept" to "transform" the claimed abstract idea into patent-eligible subject matter. Alice, 134 S. Ct. at 2357 (quoting Mayo, 132 S. Ct. at 1294, 1298). The transformation requires "more than simply stating the abstract idea while adding the words 'apply it.'" Alice, 134 S. Ct. at 2357 (quoting Mayo, 132 S. Ct. at 1294) (internal brackets omitted). Instead, the claims "must include additional features to ensure that the claim[s] [are] more than a drafting effort designed to monopolize the

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abstract idea." Alice, 134 S. Ct. at 2357 (quoting Mayo, 132 S. Ct. at 1297) (internal quotation marks and brackets omitted).

These restrictions "cannot be circumvented by attempting to limit the use of the [abstract] idea to a particular technological environment." Alice, 134 S. Ct. at 2358 (quoting Bilski, 561 U.S. at 610–11) (internal brackets omitted). Thus, the claims' simple invocation of computer implementation or the Internet cannot alone add an inventive concept. Alice, 134 S. Ct. at 2357 ("[M]ere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention."); Ultramercial, Inc. v. Hulu, LLC, 772 F.3d 709, 716 (Fed. Cir. 2014) ("[T]he use of the Internet is not sufficient to save otherwise abstract claims from ineligibility under § 101."). Instead, to be an inventive concept, the claims' invocation of computer implementation or the Internet must involve more than the performance of "well-understood, routine, conventional activities previously known to the industry." Alice, 134 S. Ct. at 2359 (quoting Mayo, 132 S. Ct. at 1294) (internal quotation marks and brackets omitted).

Defendants argue that the '304 Patent's claims do nothing more than carry out an authentication procedure using mathematical algorithms on a general purpose computer. (Mot. J. Pleadings 17:4–5.) Kinglite responds that the inventive concept arises from the fact that authentication through the use of digital signatures is in the specific context of invoking BIOS services. (Opp'n Mot. J. Pleadings 11:9–13.) Kinglite also emphasizes the '304 Patent's use of a cryptographic key pair, as opposed to other authentication methods used in non-computer settings, as well as the patent's role in protecting BIOS services from unauthorized service requests. (Id.) The Court agrees with Defendants. In light of Alice and Ultramercial, these claims cannot be viewed as adding an inventive concept.

In Alice, the representative method claim recited steps for a practitioner, more specifically an intermediary, to create "shadow" bank accounts that mirrored the balances of two parties' real-world accounts. Alice, 134 S. Ct. at 2352, 2359. The claims further instructed how the shadow accounts would be updated in real time as permitted transactions were entered and at the end of the day would issue instructions to the relevant banks to actually carry out those transactions. Id. The Supreme Court held that

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these claims did not include an inventive concept because "using a computer to create and maintain 'shadow' accounts amounts to electronic recordkeeping—one of the most basic functions of a computer." Id. at 2359 (citing Benson, 409 U.S. at 65). Similarly, in Ultramercial, the Federal Circuit held that the claims at issue, which involved "[t]he process of receiving copyrighted media, selecting an ad, offering the media in exchange for watching the selected ad, displaying the ad, allowing the consumer access to the media, and receiving payment from the sponsor of the ad," lacked an inventive concept. Ultramercial, 772 F.3d at 715–16. The court concluded that the "claimed sequence of these steps comprises only conventional steps, specified at a high level of generality," and that invoking the Internet to implement these steps also added no inventive concept. Id. at 716 (internal quotation marks and citations omitted).

Similar to the claims at issue in Alice and Ultramercial, the '304 Patent claims, viewed individually and as an ordered combination, simply instruct the practitioner to implement the abstract idea of authentication with routine, conventional activity on a generic computer. That mathematical algorithms are used in the authentication process, or that the process is used solely to invoke BIOS services, are of no consequence. Limiting the use of the abstract idea to a particular technological environment does not add an inventive concept. Alice, 134 S. Ct. at 2358. Moreover, Kinglite's argument that the "service request" feature of the '304 Patent adds an inventive concept because the prior art lacked such a feature is also inconsequential. See Ultramercial, 772 F.3d at 716 (holding that even if some of the steps in the claims "were not previously employed in this art it is not enough—standing alone—to confer patent eligibility upon the claims at issue").

Neither party specifically addresses the machine-or-transformation test, but Kinglite hints at it by arguing that the '304 Patent's use of a machine either makes it not directed at an abstract idea or shows that it adds an inventive concept. (Opp'n Mot. J. Pleadings 10–11.) The asserted claims fail the machine-or-transformation test, which is not the sole test governing the § 101 analysis, but is a "useful and important clue" in the second step of the analysis. Ultramercial, 772 F.3d at 716 (quoting Bilski, 561 U.S. at 604). Under this test, a claimed process can be patent-eligible under § 101 if: "(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing." Ultramercial, 772 F.3d at 716 (internal quotation marks and

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citations omitted). The Court cannot accept Kinglite's argument that the '304 Patent is tied to a generic computer and thus falls into the first category because such an argument would wholly ignore Alice's holding that simple invocation of a generic computer cannot alone add an inventive concept. Alice, 134 S. Ct. at 2357. Any argument that the '304 Patent falls into the second category of the machine-or-transformation test also lacks merit. See Ultramercial, 772 F.3d at 717 ("Any transformation from the use of computers or the transfer of content between computers is merely what computers do and does not change the analysis.").

Therefore, Defendants have met their burden in showing by clear and convincing evidence that Claim 9 and Claim 11 are patent-ineligible under 35 U.S.C. § 101.[7]

IV.   **Motion for Partial Summary Judgment**[8]

A.   Legal Standard

Summary judgment is appropriate where the record, read in the light most favorable to the nonmovant, indicates "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Summary adjudication, or partial summary judgment "upon all or any part of [a] claim," is appropriate where there is no genuine dispute as to any material fact regarding that portion of the claim. Fed. R. Civ. P. 56(a); see also Lies v. Farrell Lines, Inc., 641 F.2d 765, 769 n.3 (9th Cir. 1981)

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[7] The Court rejects Kinglite's argument that Defendants have failed to show patent-ineligibility by clear and convincing evidence. (Opp'n Mot. J. Pleadings 11-12 (citing CLS Bank Int'l v. Alice Corp. Pty., 717 F.3d 1269, 1305 (Fed. Cir. 2013)).) The '304 Patent alone, and the obvious deficiencies therein, is the clear and convincing evidence.

[8] The Court notes that Kinglite failed to submit a "Statement of Genuine Disputes" in response to Defendants' Motion for Summary Judgment as is required under Local Rule 56-2. Kinglite's Opposition Brief sporadically mentions which of the facts in Defendants' Statement of Uncontroverted Facts it either admits to or denies. (See, e.g., Opp'n Mot. Summ. J. 3:13–14 ("Kinglite consequently denies the defendants' proposed statement of fact no. 13.").) In spite of this Local Rule violation, the Court still considers Kinglite's Opposition Brief, but any further violation of this rule in relation to future motions for summary judgment could warrant sanctions. See L.R. 83-7.

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("Rule 56 authorizes a summary adjudication that will often fall short of a final determination, even of a single claim . . . .") (internal quotation marks omitted).

Material facts are those necessary to the proof or defense of a claim, and are determined by referring to substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In deciding a motion for summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson, 477 U.S. at 255.[9]

The moving party has the initial burden of establishing the absence of a material fact for trial. Anderson, 477 U.S. at 256. "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact . . ., the court may . . . consider the fact undisputed." Fed. R. Civ. P. 56(e)(2). Furthermore, "Rule 56[(a)][10] mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322. Therefore, if the nonmovant does not make a sufficient showing to establish the elements of its claims, the Court must grant the motion.

B. Discussion[11]

Defendants ask the Court to determine as a matter of law that Kinglite violated its RAND licensing obligation, but they do not yet seek a determination of the substance of

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[9] "In determining any motion for summary judgment or partial summary judgment, the Court may assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the 'Statement of Genuine Disputes' and (b) controverted by declaration or other written evidence filed in opposition to the motion." L.R. 56-3.

[10] Rule 56 was amended in 2010. Subdivision (a), as amended, "carries forward the summary-judgment standard expressed in former subdivision (c), changing only one word — genuine 'issue' becomes genuine 'dispute.'" Fed. R. Civ. P. 56, Notes of Advisory Committee on 2010 amendments.

[11] Unless otherwise noted, the facts set forth in this section are undisputed.

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the RAND license terms or the damages flowing from any violation thereof. (Mot. Summ. J. 3:1–5.)

In 2004, several computer technology companies, including AMI and Phoenix Technologies, Ltd. ("Phoenix"), established the Unified Extensible Firmware Interface ("UEFI")[12] Forum, Inc. ("UEFI Forum") to modernize and standardize the computer booting process. (Shankar Decl. ¶¶ 3–4, 6, 3009 Dkt. No. 121-4.)[13] The founding companies of the UEFI Forum entered into a UEFI Forum Promoters Agreement ("Promoters Agreement"), which is a contract governing the terms of the standard-setting effort. (Id. at ¶ 7; Promoters Agreement, 3009 Dkt. No. 117.) Phoenix and AMI signed the Promoters Agreement. (Id.)[14] Paragraph 3.1 of the Promoters Agreement provides that signatories must license patents encompassed by the standards on a RAND basis. (Id. at ¶ 3.1) More specifically, paragraph 3.1 provides:

> Each Promoter and its Affiliates (collectively, "Licensor") hereby agree that following publication of a Published Specification they will, upon request and subject to Section 6 (Withdrawal), grant to any Promoter or Adopter and their respective Affiliates (collectively, "Licensee"), a nonexclusive, nontransferable, non-sublicenseable, worldwide license on reasonable and nondiscriminatory terms under their *Necessary Claims* . . . .

(Id. (italics supplied).) Paragraph 3.1 further provides that:

> Each Promoter and its Affiliates agree and warrant that any transfer or assignment of a patent or patent application having *Necessary Claims* to a

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[12] UEFI is "a specification that defines a software interface between an operating system and platform firmware, also referred to in the industry as a Basic Input/Output System ("BIOS")." (Pl.'s Am. Compl. ¶ 7.)

[13] The booting process involves the initialization of a computer system prior to the time that the operating system takes control. (Shankar Decl. ¶ 5.)

[14] Defendants claim that although MSI and GBT did not sign the Promoters Agreement, they are "Adopters" and thus are beneficiaries of the Promoters Agreement. (Shankar Decl. ¶ 9.)

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third party will be subject to this Agreement and will not affect . . . the obligation to grant licenses pursuant to this Agreement; provided, however, that the inclusion, in any agreement for transferring or assigning a Necessary Claim, of a provision that such transfer or assignment is subject to existing licenses and obligations to license imposed by standards bodies, specification development organizations, or similar organizations (or substantially similar language) shall be sufficient to comply with this obligation.

(Id. (italics supplied).)

In November 2012, Kinglite purchased a portfolio of patents from Phoenix. (Purchase Agreement, Dkt. No. 118.) Kinglite alleges that inventions of various patents from this portfolio, which Kinglite collectively designates as "Phoenix UEFI Patents," are contained in each version of the UEFI specification. (See Pl.'s Am. Compl. ¶¶ 7–10; Compl. ¶¶ 7–10; Pl.'s Am. Answer & Countercls. 10:22–11:4.) Additionally, Kinglite alleges that Defendants' products "comply with a version of the UEFI specification and thus practice the inventions of the Phoenix UEFI patents." (See, e.g., id. at 11:3–4.) Defendants do not admit either of these allegations. Their Statement of Uncontroverted Facts states only that "Kinglite contends through its allegations that certain of the patents it asserts are 'Phoenix UEFI patents.'" (Def.'s Statement Uncontroverted Facts, 3009 Dkt. No. 121-2.)

Notwithstanding, Defendants contend that Kinglite is subject to the Promoters Agreement because paragraphs 1.12, 2.3, 6.11, and Exhibit C of the Purchase Agreement allegedly assigned the obligations of the Promoters Agreement to Kinglite. (Mot. Summ. J. 9–10; Reply Supp. Mot. Summ. J. 4–6.) But Defendants are putting the cart before the horse. Paragraph 3.1 of the Promoters Agreement states that the agreement only applies to "Necessary Claims." (Promoters Agreement ¶ 3.1.) Not only is it disputed by Defendants that the patents-at-issue are UEFI patents, but the Court has also not yet established that such patents contain "Necessary Claims." Thus, even if Kinglite is subject to the Promoters Agreement—which the Court does not decide at this time—it remains unclear if the Promoters Agreement would be triggered. Defendants respond that "Kinglite's position in the complaint that it is asserting UEFI patents is more than enough

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to trigger the RAND obligations." (Reply Supp. Mot. Summ. J. 6:4–6.) The Court disagrees. Rule 56(a) provides for the granting of summary judgment when "there is no genuine dispute as to any material fact," Fed. R. Civ. P. 56(a); not when a defendant disputes an allegation, but accepts it as true for partial summary judgment on a narrow issue. Even if the Court accepted Kinglite's allegation as an undisputed fact, the allegations do not speak to whether the patents-at-issue contain "Necessary Claims."

Defendants additionally argue that the Court should construe Kinglite's allegations as binding judicial admissions. See Am. Title Ins. Co. v. Lacelaw Corp., 861 F.2d 224, 226 (9th Cir. 1988). But again, the allegations do not state or admit that the patents-at-issue contain "Necessary Claims" or that the claims in such patents fall into the definition of "Necessary Claims" in the Promoters Agreement. (See Promoters Agreement § 3.2(b).) Without such specificity, such allegations can still be contradicted at later stages in the litigation. Therefore, the Court cannot determine at this time whether the Promoters Agreement applies in this case and whether Kinglite has breached that agreement. Summary judgment on this issue is not warranted at the stage in the litigation.

V.   **Conclusion**

For the foregoing reasons, the Court (1) **GRANTS IN PART** and **DENIES IN PART** Kinglite's Motion for Leave to Amend Infringement Contentions; (2) **GRANTS** Defendants' Motion for Partial Judgment on the Pleadings; and (3) **DENIES** Defendants' Motion for Partial Summary Judgment.

IT IS SO ORDERED.

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