

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

PERSONALIZED MEDIA  
COMMUNICATIONS, LLC

v.

ZYNGA, INC.

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Case No. 2:12-CV-00068-JRG-RSP

**ORDER REGARDING MOTIONS IN LIMINE**

Before the Court are Defendant's Motions in Limine (Dkt. 178) and Plaintiff's Motions in Limine (Dkt. 179). The Court rules as follows.

**PMC's Motions in Limine (Dkt. 179)**

- A: **Denied** as moot. The parties have agreed in principle to a covenant not to sue.
- B: **Granted**.
- C: **Granted**. Equitable defenses shall be tried to the bench.
- D: **Granted** as agreed that neither party will suggest that ownership of a patent precludes infringement of a different patent. **Denied** as to the parties' ability to provide general background information on their business, including a brief summary of their patents.
- E: **Granted**. Any reference shall be only to the bench.
- F: **Granted** as agreed.
- G: CARRIED BY THE COURT
- H: See the Court's Order on the Motion for Leave to File Supplemental Invalidity Contentions (Dkt. 140).
- I: **Granted**. The Court finds that the parties shall not be permitted to introduce the admittedly flawed computer simulation – the danger of undue prejudice is extremely high, and the probative value is highly questionable due to the substantial, unanswered questions about the accuracy of the simulation.
- J: The parties agree that this motion rises and falls with motion "I", above.
- K/M/N/O. The parties agree that these motions are properly grouped together. The motions are **granted** as to discussion of PMC's prosecution strategy, including but not

limited to discussions of “submarine patents”, prosecution timelines, daisy chain, or serial prosecution, etc.

The motions are **denied** to the limited extent that if a specific document from the prosecution history is otherwise admissible, this motion shall not govern that admissibility (the Court presumes that this will be handled at the exhibit objection stage). Additionally, the parties agree that motion “K” is denied as properly tried to the bench.

- L. **Granted** as to the content of other patents (e.g., the claims of an unasserted patent).
- P. **Granted** as agreed. The parties agree that neither party can argue that the claims plus the Court’s constructions are not what defines the scope of patent protection.
- Q. **Denied** as overbroad – must be handled on a case-by-case basis.
- R. **Granted**, with the exception that if an independent basis exists for admissibility of a document (e.g. exhibit or deposition), the Court may permit the use of that document without specific reference to the other lawsuit, after the parties approach and obtain such approval.
- S. **Granted** as to being challenged or excluded in another case.
- T. **Denied**. PMC provides no reason that its demands from other negotiations on these same patents are not relevant. Contrary to Zynga’s argument, the mere fact that such a category is not specifically identified as a factor in *Georgia Pacific* does not mean that it is wholly irrelevant or otherwise inadmissible.
- U. **Granted**. While the pending *Inter Partes Review* may have some relevance (see *Commil USA, LLC v. Cisco Sys., Inc.*, 720 F.3d 1361, 1368 (Fed. Cir. 2013)), the Court finds that the danger of undue prejudice is extremely high and that danger cannot be mitigated simply by the use of a limiting instruction.
- V. **Granted** as agreed.
- W. **Granted** as to the dollar amount, but may inquire into ownership interest (i.e. percent of interest).
- Y/Z/DD. **Granted** as agreed.
- AA. **Denied** as moot. The parties agree that this motion is governed by Defendant’s motion in limine 9.
- BB/CC. Withdrawn.

**Zynga's Motions in Limine (Dkt. 178)**

1. **Granted** as agreed. The parties agree that both sides will limit evidence to the financial performance of the accused games.
2. **Denied.**
3. **Granted** as agreed.
4. **Granted** as to allegations of copying. But the Court notes that a statement that a party is not an innovator is different than an accusation of copying. The parties agree that there are only three remaining exhibits to which this motion pertains: 255, 1223, and 386, and the Court's ruling is based on its review of these exhibits.
5. **Granted** as agreed.
6. **Denied.**
7. **Denied.**
8. **Granted.** PMC did not object to the exclusion of this evidence if the evidence pertaining to the *Inter Partes Review* is not admitted. (See PMC's Motion U.)
9. **Denied.** The parties agree that neither side will reference confidentiality designations.
10. Withdrawn.
11. **Granted** as agreed.
12. **Granted.**

**SIGNED this 30th day of October, 2013.**

  
ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE