

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IPA TECHNOLOGIES, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 16-1266-RGA
	:	
AMAZON.COM, INC., et al.,	:	
	:	
Defendants.	:	

ORDER

IPA asserted three patents containing 189 claims. At some point, it appears that IPA reduced the number of asserted claims to a mere 116 of them. (D.I. 202 at Exh. 1 p. 31).

Pursuant to a mutual reduction in force approach, in July 2020, I directed that IPA reduce its asserted claims to 30, and that Amazon reduce its prior art.¹ IPA did so on August 7, 2020.

Meanwhile, IPRs filed by other Defendants against the three patents have been pending, and shortly before October 21, 2020, decisions started coming down, invalidating some claims and upholding others. As to the thirty asserted claims, for the ‘128 patent, none of its five asserted claims were invalidated. For the ‘560 patent, seven of the nine asserted claims were invalidated, but IPA is satisfied to proceed on the two remaining claims. For the ‘115 patent, six of the sixteen asserted claims were invalidated. Of the other ten, five are still in jeopardy from one remaining IPR that will probably be decided on or about November 6. IPA has now “reasserted” (by which I take it to mean that the claims were part of the 116) seven other claims of the ‘115 patent. (D.I. 197).

¹ Amazon hasn’t done so good on its reduction of prior art. (D.I. 198).

Amazon objects. (D.I. 202). Amazon pulls out the usual parade of horrors, including fact discovery is nearly complete and that Amazon has carefully calibrated its reduction of prior art and combinations and that would be upset by the reassertion of these claims. Amidst the completely unconvincing,² Amazon does mention what I consider to be the one good argument; what is IPA's "good cause" to reassert these claims? IPA still has at least five and maybe up to ten asserted claims from the '115 patent. Why does it need to add another seven that were not good enough to make the cut on August 7?

I request that the parties confer (which I think they are already supposed to be doing in regard to the Amazon reduction in prior art) and see if they can't reach a resolution to all outstanding assertion issues. But, if they cannot, then they need to propose a schedule providing me with all the information and argument I need to make the best decision, which would include at a minimum IPA's explanation of its good cause and Amazon's identification and explanation of the prior art it has dropped that it now needs to substitute for its currently asserted prior art.

Perhaps the resolution of the remaining '115 patent IPR is an event worth waiting for.

IT IS SO ORDERED this 30th day of October 2020.

/s/ Richard G. Andrews
United States District Judge

² Amazon cites to third party discovery it did in 2019 as if that had some impact on the present situation.