

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

AMBIT CORPORATION,

Plaintiff,

v.

DELTA AIR LINES, INC., AND  
AIRCELL LLC,

Defendants.

CIVIL ACTION NO. 1:09-CV-10217-WGY

JURY TRIAL DEMANDED

**DEFENDANTS' MOTION FOR CLARIFICATION  
OF THE COURT'S JANUARY 22, 2010 ORDER  
AND MEMORANDUM IN SUPPORT**

Defendants Delta Air Lines, Inc. ("Delta") and Aircell LLC ("Aircell") (collectively "Defendants") move the Court to clarify its January 22, 2010 Order, Docket Number 135 ("January 22 Order"). In its January 22 Order, the Court indicated that it is considering granting summary judgment on the question of "obviousness" against Defendants and invited the parties to submit additional briefs "on this question" within fourteen days of the Order. However, in its Motion for Summary Judgment of Noninfringement, Or In the Alternative Invalidity, Defendants moved for summary judgment of obviousness based on only one of the many possible combinations of prior art that Defendants have disclosed in their Invalidity Contentions and expert reports in this case. As noted in Defendants' opening brief in support of their motion, there are numerous other pieces of prior art that Defendants contend anticipate all of the asserted claims of U.S. Patent No. 7,400,858 ("the '858 patent") and numerous additional combinations of prior art that Defendants contend render the asserted claims obvious. (Dkt. No. 111 at n.13). In an effort to avoid burdening the Court with hundreds of pages of expert declarations, claim charts and prior art references, Defendants did not move for summary judgment based on all of these defenses. Moreover, Plaintiff did not move for summary judgment of validity, despite being on notice of all of these defenses.

In light of the extremely voluminous submission that would be required to present to the Court all obviousness defenses that Defendants plan to present at trial, and because none of Defendants' other anticipation or obviousness defenses have been the subject of any motion for summary judgment, Defendants respectfully request that the Court clarify that it is only considering granting partial summary judgment against Defendants based on the one combination of references (Papavramidis in combination with Admitted Prior Art) that Defendants raised in their motion for summary judgment and thus would only like submissions directed at this particular question. Defendants would like to avoid having to burden this Court with more voluminous submissions than what the Court needs to see in order to resolve the specific issue the Court intends to consider.

Dated: January 26, 2010

OF COUNSEL:

David T. Pritikin  
Email: dpritikin@sidley.com  
Thomas D. Rein  
Email: trein@sidley.com  
Stephanie P. Koh  
Email: skoh@sidley.com  
Thomas F. Hankinson  
Email: thankinson@sidley.com  
**SIDLEY AUSTIN LLP**  
One South Dearborn  
Chicago, IL 60603  
Tel: 312-853-7000  
Fax: 312-853-7036

Tung T. Nguyen  
Email: tnguyen@sidley.com  
**SIDLEY AUSTIN LLP**  
717 N. Harwood, Suite 3400  
Dallas, Texas 75201  
Tel: 214-981-3300  
Fax: 214-981-3400

*/s/ Marc C. Laredo*

---

Marc C. Laredo, BBO#543973  
Email: laredo@laredosmith.com  
Mark D. Smith, BBO#542676  
Email: smith@laredosmith.com  
**LAREDO & SMITH, LLP**  
15 Broad Street, Suite 600  
Boston, MA 02109  
Tel: 617-367-7984  
Fax: 617-367-6475

**ATTORNEYS FOR DEFENDANTS DELTA AIR  
LINES, INC. AND AIRCELL LLC**

**CERTIFICATE OF CONFERENCE**

I hereby certify that counsel for Defendants Delta Air Lines, Inc. and Aircell LLC have conferred with counsel for Plaintiff Ambit Corporation ("AMBIT") in a good faith attempt to resolve or narrow the issues set forth in this motion. The parties were unable to reach an agreement and counsel for AMBIT has indicated that AMBIT will oppose Defendants' Motion for Clarification of the Court's January 22, 2010 Order.

January 26 2010

/s/ Marc C. Laredo

Marc C. Laredo BBO#543973  
Email: [laredo@laredosmith.com](mailto:laredo@laredosmith.com)  
LAREDO & SMITH, LLP  
15 Broad Street, Suite 600  
Boston, MA 02109  
Tel: 617-367-7984  
Fax: 617-367-6475

**CERTIFICATE OF SERVICE**

I hereby certify that this document has been filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

January 26, 2010

/s/ Marc C. Laredo

Marc C. Laredo BBO#543973  
Email: [laredo@laredosmith.com](mailto:laredo@laredosmith.com)  
LAREDO & SMITH, LLP  
15 Broad Street, Suite 600  
Boston, MA 02109  
Tel: 617-367-7984  
Fax: 617-367-6475