

2013-1625, -1631, -1632, -1633

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**United States Court of Appeals for the Federal Circuit**

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ERICSSON, INC. and TELEFONAKTIEBOLAGET LM ERICSSON,  
*Plaintiffs-Appellees,*

v.

D-LINK SYSTEMS, INC., NETGEAR, INC., ACER, INC.,  
ACER AMERICA CORPORATION, and GATEWAY, INC.,  
*Defendants-Appellants,*

and

DELL, INC.,  
*Defendant-Appellant,*

and

TOSHIBA AMERICA INFORMATION SYSTEMS, INC. and TOSHIBA CORPORATION,  
*Defendant-Appellants,*

and

INTEL CORPORATION,  
*Intervenor-Appellant,*

and

BELKIN INTERNATIONAL INC.,  
*Defendant.*

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Appeal from the United States District Court for the Eastern District of Texas  
in case no. 10-CV-0473, Chief Judge Leonard Davis

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**MOTION OF AMICI WI-FI CHIP COMPANIES BROADCOM CORPORATION, MARVELL  
SEMICONDUCTOR, INC., AND MEDIATEK INC. FOR LEAVE TO FILE AMICUS BRIEF**

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December 23, 2013

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Pursuant to Federal Rule of Appellate Procedure 29(b), Amici Wi-Fi Chip Companies Broadcom Corporation, Marvell Semiconductor, Inc., and MediaTek Inc. move for leave to file the accompanying amicus brief. The appellants have consented to the filing of this brief, but the Ericsson appellees have not consented and may file an opposition to this motion.

The proposed brief focuses on a single issue: the reasonableness of the royalty awarded to Ericsson for infringement of three patents allegedly essential to practice the 802.11n version of the 802.11 (Wi-Fi) standard. As companies that design and sell Wi-Fi chips, amici have an important interest in the size of the purportedly “reasonable royalty” awarded in this case. As explained in the brief, any ruling regarding what is a reasonable and nondiscriminatory (RAND) royalty rate for standard-essential Wi-Fi patents will inevitably affect amici even though Ericsson chose, for its own strategic reasons, not to sue amici in this case.

To begin with, the accused technology is technology inside Wi-Fi chips. As noted above, Ericsson claims that practicing the patents-in-suit is essential to compliance with 802.11n version of the standard. Wi-Fi chip companies were key leaders in developing the 802.11 standard, and Broadcom chaired the subcommittee responsible for the 802.11n version in particular. Moreover, the 802.11 standard was defined and is implemented at the level of the semiconductor chips that amici design and sell. In an effort to increase royalties, Ericsson has chosen to

sue original equipment manufacturers (OEMs) that buy Wi-Fi chips and incorporate them into laptops, routers, etc. rather than pursuing the companies that supply the chips that contain the allegedly infringing technology. But the fact remains that Ericsson is targeting Wi-Fi chips designed and sold by amici.

Furthermore, the royalties awarded in this case would, if affirmed, affect amici even though they were not parties to the case. Because the accused technology is inside amici's chips, the award would affect demand for those chips and may also provoke indemnification issues. More generally, for reasons explained in the brief, the high and unreasonable royalty awarded here could severely disrupt the Wi-Fi industry and injure companies associated with it.

Amici are well positioned to assist the Court in assessing the reasonableness of the royalty awarded and whether it comports with Ericsson's commitment to license under RAND principles. The brief focuses on the practical economics of Wi-Fi chips, which are critical to both the reasonable royalty to which parties would have agreed and the real-world effects of the royalty awarded here. Amici are familiar with the prices, volumes, and profits of Wi-Fi chips and can explain why a "mere" 15¢ per unit royalty represents an extraordinary portion of the margin on Wi-Fi chips and would translate into an annual tax of hundreds of millions of dollars. Amici can also explain why a very real royalty stacking

problem affects an industry in which at least 3,000 U.S. patents may be standard-essential, and why the district court erred in not taking that into account.

The proposed amicus brief is short and will provide helpful context and guidance to the Court. Amici request that the Court accept the brief and sincerely hope that the Court will consider their views in deciding this important case.

Respectfully submitted,

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