

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROSETTA-WIRELESS CORP., an Illinois
Corporation,

Plaintiff

v.

APPLE INC., a California Corporation,
SAMSUNG ELECTRONICS CO. LTD., a
Foreign Corporation, SAMSUNG
ELECTRONICS AMERICA, INC., a New
York Corporation, MOTOROLA MOBILITY
LLC, a Delaware Corporation, LG
ELECTRONICS CO., a Foreign Corporation,
LG ELECTRONICS USA INC., a Delaware
Corporation, HIGH TECH COMPUTER
CORP., a/k/a HTC CORP., a Foreign
Corporation, and HTC AMERICA INC., a
Washington Corporation,

Defendants.

Civil Action No. 15-cv-00799

Judge Joan H. Lefkow

Date: June 24, 2015

Time: 10:00am

Courtroom: 2201

**DEFENDANTS' MEMORADNUM OF LAW IN SUPPORT OF THEIR
MOTION TO TEMPORARILY SUSPEND THE PATENT LOCAL RULE DEADLINES
PENDING RESOLUTION OF THE RULE 12(b)(6) MOTION TO DISMISS**

Defendants Apple, HTC, LG, Motorola, and Samsung (collectively, “Defendants”)¹ hereby submit their memorandum of law in support of their Motion to Temporarily Suspend the Patent Local Rule Deadlines Pending Resolution of the Rule 12(b)(6) Motion to Dismiss. For the reasons set forth below, there is good cause to grant the requested relief. *See* Fed. R. Civ. P. 1; LPR 1.1.

I. BACKGROUND

On January 27, 2015, Rosetta-Wireless Corp. (“Rosetta”) filed a Complaint accusing Defendants of infringing U.S. Patent No. 7,149,511 (“the ’511 patent”) “directly and indirectly” via “acts [that] include, but are not limited to, the manufacture, use, sale, or offer for sale within the United States, or the importation into the United States of products that embody the patented invention, including the products listed for each Defendant in the attached Exhibit B.” (Dkt. No. 1 at ¶ 18.) Approximately 300 smartphones and tablets sold by five Defendants are listed in Exhibit B. (*Id.* at Exhibit B.) Each of these accused products contains many hundreds of features and functionalities, but Rosetta’s Complaint did not identify which of these features or functionalities are accused of infringement. (*See id.* at ¶ 18 and Exhibit B.)

Because this single conclusory paragraph in Rosetta’s Complaint—the only allegation in the entire Complaint purporting to describe the alleged infringement—failed under Fed. R. Civ. P. 8(a) to sufficiently notify Defendants of the claims being asserted against them, Defendants individually reached out to counsel for Rosetta for more detail. (*See* Declaration of Jenny Colgate (“Colgate Decl.”) at ¶¶ 2, 4.) In response, Rosetta provided Defendants with exemplary

¹ Rosetta’s Amended Complaint names as Defendants the following entities: Apple Inc. (referred to herein as “Apple”); Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc. (referred to herein as “Samsung”); Motorola Mobility LLC (referred to herein as “Motorola”); LG Electronics Co. and LG Electronics USA Inc. (referred to herein as “LG”); and High Tech Computer Corp. a/k/a HTC Corp. and HTC America Inc. (referred to herein as “HTC”). Rosetta had originally named but later voluntarily dismissed Motorola, Inc. and Samsung Telecommunications America, LLC from this action. (*See* Dkt. Nos. 9, 37.) It should additionally be noted that several of the aforementioned defendants were misnamed. For example, LG Electronics Co. should be LG Electronics, Inc.

infringement claim charts under Federal Rule of Evidence 408 for purposes of possible settlement. (*Id.* at ¶¶ 3-4.) Rule 408, however, prohibits the use of the information for purposes of proving the validity or amount of a disputed claim; therefore, Defendants could not use such information to define the scope of Plaintiff's infringement claims. Furthermore, requiring Defendants to rely on these settlement-related claim charts to prepare responsive pleadings would put Defendants in an untenable situation of being bound by their responsive pleading while Rosetta was not bound by its Rule 408 claim charts.

In view of these issues, Defendants collectively contacted Rosetta on May 21, 2015, notifying Rosetta of the deficiencies in its Complaint. (*Id.* at ¶ 5 and Exhibit 1.) Rosetta responded on May 26, 2015, disagreeing with Defendants' position that Rosetta's claims of direct infringement were not properly pled, but agreeing to drop its claims of indirect infringement. (*Id.* at ¶ 6 and Exhibit 2.) On June 1, 2015, Rosetta did just that, filing an Amended Complaint that dropped the indirect infringement allegations. (Dkt. No. 82.) However, the Amended Complaint, like its now-discarded predecessor, again recites only the barest of allegations with respect to the direct infringement claim. These allegations, in their entirety, accuse Defendants of having

“infringed directly and continu[ing] to infringe directly” the '511 patent via acts that “include, but are not limited to, the manufacture, use, sale, or offer for sale within the United States, or the importation into the United States of products that embody the patented invention, including the products listed for each Defendant in the attached Exhibit B.” (*Id.* at ¶ 15.)

The same Exhibit B, listing approximately 300 smartphones and tablets sold by Defendants, is attached to Rosetta's Amended Complaint. (*Id.* at Exhibit B.)

On June 9, 2015, Defendants responded to Rosetta, maintaining Defendants' position that Rosetta should file an Amended Complaint setting forth with more specificity the

functionality(ies) accused of infringing the asserted patent. (Colgate Decl. at ¶ 8 and Exhibit 3.) Defendants also alerted Rosetta that, without this additional information, Defendants would have to produce technical documents pursuant to the Local Patent Rule disclosure obligations in the absence of a complaint that identifies the features or functionalities that are relevant to Rosetta's infringement claims. Thus, Defendants offered to meet and confer with Plaintiff on June 10. (*Id.*) Rosetta responded on June 10, 2015, maintaining its position that it has properly pled its direct infringement claims and failing to address Defendants' offer to meet and confer. (*Id.* at ¶ 9 and Exhibit 4.) Consequently, on June 15, 2015, Defendants acknowledged the impasse that the parties had reached and asserted that they would be filing their motions on June 18, 2015. (*Id.* at ¶ 10 and Exhibit 5.) Defendants are filing their Rule 12(b)(6) Motion to Dismiss, or In the Alternative, For a More Definite Statement concurrently with this motion.

II. ARGUMENT

This Court should temporarily stay or suspend the Local Patent Rule deadlines in this case because Rosetta's Amended Complaint does not identify *what features or functionalities of the accused smartphones and tablets* are accused of infringement. Further, it is not apparent from the patent-in-suit alone what features or functionalities of the accused smartphones and tablets are accused of infringement, as there are 80 possible claims covering multiple different devices (including a wireless intelligent personal network server ("WIPs") ('511 patent, independent claims 1 and 58), a wireless telephone (independent claim 23), and/or a display device (independent claims 35 and 73)). The patent-in-suit has a large number of claims, and the claims have substantial breadth. Each of the accused products contains hundreds of features and functionalities.² In the face of these issues, Defendants' production of technical documents

² For example, the devices can be used to (1) send and receive text messages; (2) send and receive email; (3) send and receive audio or video files; (4) play audio or video files; (5) stream audio or video files to another device;

pursuant to Local Patent Rule 2.1 would occur based on Rosetta's general and vague pleading and without information about what features and functionalities are relevant to infringement.

This Court has the authority to stay proceedings or suspend deadlines. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). In considering whether or not to issue a stay, courts typically consider the following factors:

- (i) whether a stay will reduce the burden of litigation on the parties and the court;
- (ii) whether a stay will simplify the issues in question and streamline the case; and
- (iii) whether a stay will unduly prejudice or tactically disadvantage the non-moving party.

Id. A stay is appropriate so long as there is not a fair possibility that the stay would damage someone else. *Pfizer Inc. v. Apotex Inc.*, 640 F. Supp. 2d 1006, 1007 (N.D. Ill. 2009) (citing *Landis*, 299 U.S. at 255).

Here, a brief stay is appropriate. The Local Patent Rules of this Court place heavy, immediate and fast-paced disclosure obligations on parties in patent cases. *See, e.g.*, LPR 2.1 (requiring, *inter alia*, parties opposing claims of patent infringement to produce within 14 days of filing an answer or other response (1) documents sufficient to show the operation and construction of all aspects or elements of each accused apparatus, product, device, component, process, method or other instrumentality identified with specificity in the pleading of the party asserting patent infringement; and (2) a copy of each item of prior art of which the party is aware that allegedly anticipates each asserted patent and its related claims or renders them obvious or, if a copy is unavailable, a description sufficient to identify the prior art and its relevant details).

(6) share files using, e.g., (a) WiFi, (b) Bluetooth, (c) Near Field Communications, or (d) a wired connection; (7) share the device's screen with another device; (8) become a mobile hotspot; (9) place phone calls; (10) operate with third party peripherals (such as, for instance, a credit card reader); (11) send signals to (and control via those signals) another device; (12) compose and edit text files; (13) store and access files on removable storage media; (14) communicate over various wired or wireless interfaces; and, generally, (15) perform any functions that a general purpose computer with networking capabilities may perform.

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