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

UNILOC 2017 LLC, Plaintiff, v. AT&T MOBILITY LLC, and AT&T SERVICES, INC., Defendants.	§	Case No. 2:18-cv-00514-JRG Jury Trial Demanded

PLAINTIFF'S OPPOSITION TO ERICSSON INC.'S MOTION TO INTERVENE AS A DEFENDANT

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I. INTRODUCTION

Ericsson Inc.'s ("Ericsson") reason for intervening is that it provides *some* of the base stations in AT&T's infringing cellular network. This is not a sufficient reason to intervene as of right, nor a justification for permissive intervention. Intervention is particularly inappropriate where, as here:

(1) Ericsson provides only a portion of the equipment recited in the claim (base stations) and not even all of the relevant base stations;

(2) Ericsson is not indemnifying AT&T; and

(3) Ericsson cannot even say whether it has documents relevant to the issues in this case (*see*, *e.g.*, Dkt. No. 20 at 10: "Ericsson also *likely* possesses documents related to the design and function of the Accused Ericsson Base Stations" (emphasis added)).

Ericsson asks to intervene based on two Internet printouts—that say nothing more than Ericsson provides some LAA enabled base stations to AT&T—and conclusory attorney argument. Ericsson cannot wedge its way into a lawsuit concerning AT&T's infringing network without proving it has the right to do so or should be allowed to do so.

The Court should deny Ericsson's motion because Ericsson: (1) has not averred that it has relevant documents or witnesses, (2) has not demonstrated an obligation to an active litigant (such as indemnification), and (3) has not proven that AT&T cannot defend (or does not understand) the functionality of its own network.

II. BACKGROUND

In the Complaint, Plaintiff details AT&T's infringement of U.S. Patent No. 7,016,676 (the "'676 patent"). Dkt. No. 1, ¶¶ 58-79. The operation of AT&T's network that provides "shared network access to LTE-LAA and Wi-Fi capable devices over at least one common frequency band" is accused of infringing the method of claim 1 of the '676 patent. *Id.* at ¶¶ 58-

60 ("AT&T's Network, base stations, and network controllers perform an interface control method that provides for alternate use of the 5 GHz frequency band, which is used by a first (Wi-Fi) and second (LTE-LAA) interface standard.").

Ericsson does not assert that it provides all of the equipment recited in claim 1. Moreover, while Ericsson repeatedly claims that AT&T is somehow ignorant of its own use of the infringing LAA functionality (and thus AT&T's own network), this is empty attorney rhetoric and is belied by the evidence in the Complaint demonstrating that AT&T is well versed in the functioning of all of the relevant infringing equipment, as exemplified as follows:

AT&T Reaches Wireless Speeds of More than 750 Mbps with LTE Licensed Assisted Access (LTE-LAA) Field Trials

Initial LTE-LAA Rollout Planned by End of Year

AT&T and Ericsson conduct one of the first-ever live LTE-LAA field trials, reaching initial wireless speeds of more than 750 megabits per second (Mbps) in downtown San Francisco.

LTE-LAA technology is expected to play a key role as we aim to reach theoretical peak speeds of up to 1 gigabit per second (Gbps) at some small cell sites by the end of the year. It's also one of the technologies we're using to enhance the network and boost speeds in our 5G Evolution markets.

While 5G standards are still being finalized, we're laying the foundation for tomorrow's faster wireless speeds today with 5G Evolution and also with technologies like LTE-LAA. This is a major step on our journey to deliver state-of-the-art 5G speeds as early as late 2018.

LTE-LAA combines unlicensed spectrum with licensed spectrum through carrier aggregation to increase network capacity— providing faster speeds and a better customer experience. It is designed to exist in harmony with other unlicensed spectrum technologies such as Wi-Fi. This is done through a feature called "listen before talk", which ensures fair coexistence between LTE-LAA and Wi-Fi.

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