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

UNILOC 2017 LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
VERIZON COMMUNICATIONS INC., CELLCO PARTNERSHIP INC., VERIZON BUSINESS NETWORK SERVICES, INC., VERIZON DIGITAL MEDIA SERVICES, INC.,	§	**CIVIL ACTION NO. 2:18-CV-00513-JRG**
	§	
	§	
	§	
	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Ericsson, Inc.'s ("Ericsson") Motion to Intervene as a Defendant (the "Motion"). (Dkt. No. 17.) Having considered the Motion, briefing, and relevant authorities, the Court is of the opinion that the Motion should be and hereby is **GRANTED** for the reasons set forth herein.

I. BACKGROUND

On November 17, 2018, Plaintiff Uniloc 2017 LLC ("Uniloc") sued Defendants Verizon Communications, Inc., Cellco Partnership Inc. d/b/a Verizon Wireless, Verizon Business Network Services, Inc., and Verizon Digital Media Services, Inc. (collectively "Verizon") for patent infringement. (Dkt. No. 1.) Verizon filed its Answer on January 18, 2019, (Dkt. No. 12), and the Court held a scheduling conference on March 18, 2019. (Dkt. No. 16.)

According to the complaint, Uniloc accuses Verizon's "network, base stations, and network controllers (collectively, the 'Accused Infringing Devices') that provide shared network access to LTE-LAA and Wi-Fi capable devices over at least one common frequency band" of

infringing at least one claim of U.S. Patent No. 7,017,676 (the "'676 patent"). (Dkt. No. 1 ¶ 97.) Ericsson filed a motion to intervene as a defendant on March 8, 2019, on the basis that it "sells base stations to Verizon that implement the accused LTE-LAA feature." (Dkt. No. 17 at 1.) Ericsson moves to intervene as a matter of right, Fed. R. Civ. P. 24(a), or alternatively, requests permission to intervene pursuant to the Court's discretion. Fed. R. Civ. P. 24(b). Verizon does not oppose intervention, but Uniloc does. (Dkt. No. 17 at 3; Dkt. No. 19.)

II. LEGAL STANDARD

A. Mandatory Intervention

Federal Rule of Civil Procedure 24(a)(2) provides that "[o]n timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Thus, a prospective intervenor is entitled to intervention if each of the following elements is satisfied:

> (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

Texas v. United States, 805 F.3d 653, 657 (5th Cir. 2017) (citing *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984) (en banc)). "Failure to satisfy one requirement precludes intervention of right." *Haspel & Davis Milling & Planting Co. v. Bd. Of Levee Comm'rs of the Orleans Levee Dist.*, 493 F.3d 570, 578 (5th Cir. 2007). However, "[t]he rule 'is to be liberally construed,' with 'doubts resolved in favor of the proposed intervenor.'" *Entergy Gulf States Louisiana, L.L.C. v. U.S. E.P.A.*, 817 F.3d 198, 203 (5th Cir. 2016) (quoting

In re Lease Oil Antitrust Lit., 570 F.3d 244, 248 (5th Cir. 2009)). Intervention in patent cases is reviewed under regional circuit law. As such, Fifth Circuit law controls. *Stauffer v. Brooks Brothers, Inc.*, 619 F.3d 1321, 1328 (Fed. Cir. 2010) ("We review the district court's denial of intervention under Rule 24 under regional circuit law. . . ").

B. Permissive Intervention

Even if intervention is not mandated as a matter of right, a court may nonetheless permit intervention if the party "[o]n timely motion . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). A court has full discretion to deny permissive intervention even where there is a common question of law or fact. *New Orleans Pub. Serv., Inc.*, 732 F.3d at 471.

III. DISCUSSION

A. Mandatory Intervention

Ericsson argues that it meets each of the four requirements to intervene as a matter of right. (Dkt. No. 17 at 5–11.) The Court addresses each requirement in turn.

i. Timeliness

A party may intervene as a matter of right if the motion is timely. Fed. R. Civ. P. 24(a). When evaluating timeliness, courts consider four factors: (1) "[t]he length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene;" (2) "[t]he extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the

case;" (3) "[t]he extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied;" and (4) "[t]he existence of unusual circumstances militating either for or against a determination that the application is timely." *Edwards v. City of Houston*, 78 F.3d 983, 1000 (5th Cir. 1996) (citing *Stallworth v. Monsanto, Co.*, 558 F.2d 257, 264 (5th Cir. 1977)). "[T]hese factors merely comprise a framework for the analysis of this threshold inquiry." *Id.* Timeliness is assessed from the totality of the circumstances, in which no one factor is dispositive or exhaustive. *Id.*

Ericsson argues that its Motion is timely because (1) it seeks intervention in the early stages of the case: after Verizon answered Uniloc's complaint and before the scheduling conference or start of discovery; (2) intervention will streamline discovery because Ericsson designs and sells the accused products to Verizon; (3) denying intervention will prejudice Ericsson, as it possesses the most knowledge to defend its products against Uniloc's infringement claims; and (4) there are no unusual circumstances militating against such a finding. (Dkt. No. 17 at 5–7.)

Given that Ericsson filed its Motion before the start of discovery, intervention would not materially prejudice any of the existing parties. *See Edwards*, 78 F.3d at 1001 ("[M]ost of our case law rejecting petitions for intervention as untimely concern motions filed after judgment was entered in the litigation."); *Team Worldwide Corp. v. Wal-Mart Stores, Inc.*, No. 2:17-cv-00235-JRG, 2017 WL 6059303, at *4 (E.D. Tex. Dec. 7, 2017) (finding motion filed after the scheduling conference, but before claim construction and trial as timely because intervenors moved as soon as possible after learning of their interest in the case). Moreover, Uniloc does not dispute that Ericsson's Motion is timely, (Dkt. No. 19 at 6), and the Court is not aware of any unusual circumstances that would suggest otherwise. Accordingly, the Court finds that the timeliness requirements of Rule 24 have been met.

ii. Interest in the Case

Mandatory intervention also requires the intervenor to have "an interest relating to the property or transaction that is the subject of the action." Fed. R. Civ. P. 24(a)(2). The interest must be "direct, substantial, [and] legally protectable," *Texas*, 805 F.3d at 657, and "go[] beyond a generalized preference that the case come out a certain way." *Sierra Club v. Espy*, 18 F.3d 1202, 1207 (5th Cir. 1994).

Ericsson argues that it has a significant interest in this lawsuit because it is "the designer and manufacturer of the Accused Ericsson Base Stations" and Uniloc's allegations against its products "could negatively affect future sales." (Dkt. No. 17 at 7.) In addition, Uniloc has brought a similar lawsuit against AT&T, alleging that Ericsson's base stations infringe the same patent. *See Uniloc 2017 LLC v. AT&T Services, Inc., et al.*, No. 2:18-cv-00514-JRG (E.D. Tex. Nov. 29, 2018). Ericsson has sought intervention in both cases to reduce the likelihood of inconsistent judgments against its products. (Dkt. No. 23 at 4.) While Uniloc has not provided its infringement contentions to Ericsson, Ericsson claims that it has no reason to believe that the two suits would accuse different products and Uniloc has not admitted as much. (*Id.*) Finally, Ericsson is obligated to indemnify Verizon for any damages resulting from a finding that Ericsson's base stations infringe the '676 patent. (*Id.* at 3; Dkt. No. 23–2.)

Uniloc argues that Ericsson is not entitled to intervention because it only provides *some* of the base stations in Verizon's network and those stations comprise only part of the network accused of infringement. (Dkt. No. 19 at 3–4.) Uniloc also points out that Ericsson represents that it "*likely* possesses documents related to the design and function of the Accused Ericsson Base Stations," which contradicts Ericsson's assertion that it has an interest as the manufacturer of the accused base stations. (*Id.* at 54 (emphasis in original); *see also* Dkt. No. 28 at 1.)

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