

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

**ERICSSON INC. AND
TELEFONAKTIEBOLAGET LM ERICSSON,**

Plaintiffs,

v.

**SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.,
AND SAMSUNG RESEARCH AMERICA,**

Defendants.

Civil Action No. 2:20-cv-380

ORIGINAL COMPLAINT

Plaintiffs Ericsson Inc. and Telefonaktiebolaget LM Ericsson (“Ericsson” is used herein to collectively refer to Telefonaktiebolaget LM Ericsson and/or Ericsson Inc.) file this Complaint against Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Research America (“Samsung” is used herein to collectively refer to Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and/or Samsung Research America) and hereby allege as follows:

NATURE OF ACTION

1. For more than four decades, Ericsson has pioneered the development of the modern cellular network. Ericsson develops infrastructure equipment that makes up the backbone of modern networks; that is, the base stations and cell tower equipment that mobile phones communicate with. Major mobile network operators all over the world buy solutions and/or services from Ericsson, and Ericsson manages networks that serve more than one billion

subscribers globally. Ericsson's equipment is found in more than one hundred and eighty countries.

2. Ericsson is widely viewed as one of the leading innovators in the field of cellular communications. Due to the work of more than twenty-five thousand Ericsson research and development (R&D) employees, Ericsson's inventions are a valuable part of the fundamental technology that connects phones, smartphones, and other mobile devices seamlessly using cellular networks worldwide and provides increased performance and new features for the benefit of consumers. As a result of its extensive research and development efforts, Ericsson has been awarded more than fifty-four thousand patents worldwide. Many of Ericsson's patents are essential to the 2G (GSM, GPRS, and EDGE), 3G (UMTS/WCDMA and HSPA), 4G (LTE, LTE-Advanced, and LTE-Advanced Pro) and/or 5G (NR, New Radio) telecommunications standards, which are used by Samsung's products. Ericsson's infrastructure products likewise utilize these standards.

3. Ericsson has voluntarily and publicly committed that it is prepared to grant licenses under its portfolio of patents that are essential to practice the 2G, 3G, 4G, and/or 5G standards (Essential Patents) on fair, reasonable, and non-discriminatory (FRAND) terms. Ericsson's FRAND commitment is set forth in its intellectual property right (IPR) licensing declarations to the European Telecommunications Standards Institute (ETSI) in accordance with ETSI's IPR Policy. Ericsson's commitment is subject to reciprocity—Ericsson can, and does, insist on a reciprocal license to a potential licensee's Essential Patents to cover Ericsson's cellular equipment. Consistent with its FRAND commitment, Ericsson has widely licensed its portfolio of Essential Patents in over one hundred agreements with members of the telecommunications industry who have agreed to pay royalties to Ericsson for a global portfolio

license. Ericsson reinvests much of the licensing revenue it receives under these global agreements into inventing future generations of standardized telecommunication technologies, spending nearly five billion dollars annually on research and development.

4. The popularity and proliferation of cellular smartphones, tablets, watches, and other connected devices is based on the development of the 2G, 3G, and especially the 4G, and now 5G, communication standards. Without 4G and 5G technology and Ericsson's inventions incorporated therein, smartphones and other mobile devices would not be able to provide the constant on-the-go access to video, streaming media, and gaming that consumers expect today. Furthermore, the widespread adoption of large screen smartphones, tablets, and corresponding applications are dependent on the performance that 4G and 5G technology—and Ericsson's inventions—provide.

5. Samsung is the largest smartphone manufacturer in the world, and also manufactures cellular network infrastructure equipment. Samsung is also involved in standardization, and through its own research and development efforts, has a portfolio of patents that it contends are essential to the 2G, 3G, 4G, and 5G communications standards. Samsung, like Ericsson, has committed that it is prepared to grant licenses under its Essential Patents on FRAND terms. Samsung's FRAND commitment is set forth in its IPR licensing declarations to ETSI in accordance with ETSI's IPR Policy.

6. Samsung and Ericsson have in the past executed global cross-licenses, covering both parties' patents related to the 2G, 3G, and/or 4G cellular standards. Most recently, Samsung and Ericsson executed a multi-year agreement in January 2014. In February 2019, in advance of the expiration of the existing cross-license, Ericsson took steps to initiate negotiations with Samsung towards a new license.

7. To renew the existing license upon expiration, Ericsson proposed a global cross-license, with Samsung taking a license to Ericsson's Essential Patents and with Ericsson taking a license to Samsung's Essential Patents. Both Samsung and Ericsson understood that Samsung would owe Ericsson a substantial balancing payment as part of the cross-license. Ericsson made a cross-license offer under which Samsung would make a balancing payment consistent with the value of Ericsson's Essential Patents as compared to Samsung's. All of the terms of Ericsson's offer, including the balancing payment component, were consistent with Ericsson's FRAND obligation. Samsung did not accept Ericsson's offer, and provided a counteroffer that evidenced Samsung was not negotiating in good faith towards a cross-license on FRAND terms. Instead, Samsung insisted it would only be willing to a cross-license if Ericsson agreed to accept a royalty for Ericsson's Essential Patents significantly below FRAND rates. By insisting Ericsson accept a balancing payment in a global cross-license substantially less than the value of Ericsson's Essential Patents, and less than FRAND, Samsung violated its FRAND commitment by effectively depriving Ericsson of its right to a reciprocal license to Samsung's Essential Patents on FRAND terms. At this point, it is clear that Samsung is not willing or committed to negotiating a global cross-license on FRAND terms and conditions.

8. Samsung's FRAND commitment is a contract between Samsung and ETSI, and Ericsson has the right to enforce it as a third-party beneficiary. In addition, when Samsung commenced negotiations with Ericsson, it was obligated under French law, which governs the FRAND commitment, to negotiate in good faith with Ericsson, yet Samsung has failed to do so. Ericsson has filed this suit against Samsung to remedy these breaches. Ericsson also seeks a declaration that it has complied with its FRAND commitment, and that Samsung has not.

PARTIES

9. Ericsson Inc. is a Delaware corporation with its principal place of business at 6300 Legacy Drive, Plano, Texas 75024.

10. Plaintiff Telefonaktiebolaget LM Ericsson (“LME”) is a corporation organized under the laws of the Kingdom of Sweden with its principal place of business at Torshamnsgatan 21, Kista, 164 83, Stockholm, Sweden.

11. Defendant Samsung Electronics Co., Ltd. (“SEC”) is a Korean company with its principal place of business in Suwon, South Korea. SEC has an “Information Technology & Mobile Communications” division that is responsible for the design, manufacture, and sale of mobile devices, such as smartphones that operate on cellular networks around the world and in the United States.

12. Defendant Samsung Electronics America, Inc. (“SEA”) is a New York corporation with its principal place of business in Ridgefield Park, New Jersey, and it is a wholly-owned subsidiary of SEC. SEA imports into the United States and sells in the United States, including in this District, smartphones that operate on cellular networks in the United States. SEA imports into the United States and sells in the United States, including in this District, cellular network infrastructure equipment that operates on cellular networks in the United States. SEA is also responsible for research and development related to the cellular standards, smartphones, cellular network infrastructure equipment, and other mobile devices, and has many employees involved in standardization.

13. Defendant Samsung Research America (“SRA”) is a California corporation with its principal place of business in Mountain View, California, and is a wholly-owned subsidiary of SEA. SRA is also responsible for research and development related to the cellular standards,

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