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

ELBIT SYSTEMS LAND AND C4I LTD. and ELBIT SYSTEMS OF AMERICA, LLC, Plaintiffs, v. HUGHES NETWORK SYSTEMS, LLC, BLACK ELK ENERGY OFFSHORE OPERATIONS, LLC, BLUETIDE COMMUNICATIONS, INC., and COUNTRY HOME INVESTMENTS, INC., Defendants.	)	C.A. No. 2:15-cv-00037-RWS-RSP **JURY TRIAL DEMANDED**

PLAINTIFFS' SUR-REPLY TO DEFENDANT BLUETIDE COMMUNICATIONS, INC.'S RENEWED MOTION TO DISMISS FOR IMPROPER VENUE

Defendant BlueTide Communications, Inc. ("BlueTide") does not dispute that it has installed allegedly infringing satellite equipment on platforms attached to the continental shelf off the coast of this District. Nor does it explain why it selectively annotated a Gulf map to show distances from Freeport, in the Southern District of Texas, rather than from the more proximate Port Arthur, in this District. Instead, in asking the Court to dismiss, BlueTide continues to press two unavailing arguments. First, it argues against a position that Elbit has never taken, *i.e.*, that federal jurisdiction broadly extends "up to two-hundred miles over any patent issue." Dkt. 77 at 2. But Elbit has not made such an argument; rather, Elbit has maintained that activities occurring on platforms *anchored on the outer continental shelf*, which extends up to 200 miles offshore, are subject to federal jurisdiction *through the OCSLA*. BlueTide then falls back to a second incorrect argument—that the OCSLA only confers jurisdiction where the actions that gave rise to the suit relate to oil and gas exploration. BlueTide has still not cited a single case standing for that proposition. Glaringly, in arguing that "the grant of jurisdiction under the OCSLA does not extend to patent law," Dkt. 67 at 9, BlueTide flouts this Court's contrary holding that "[t]he Patent Act is a law of the United States extended through the OCSLA." *L.C. Eldridge Sales Co. v. Azen Mf'g Pte., Ltd.*, No. 6:11-cv-599, 2013 U.S. Dist. LEXIS 186151, *4 (E.D. Tex. Nov. 14, 2013). Because BlueTide has installed infringing equipment on platforms off the coast of this District that are anchored to the continental shelf, and the OCSLA extends U.S. patent law to such platforms, venue is proper in this Court. BlueTide's motion should be denied.

A. Elbit Does Not Argue That the United States Has Unfettered Sovereign Rights Within 200 Miles Of American Coastline.

In its opening brief, BlueTide made the sweeping argument that "to the extent that the Eastern District of Texas has any jurisdiction in the Gulf of Mexico, it would be along that portion of the Gulf from Galveston to Port Arthur that extends to the territorial boundaries which

terminates twelve miles off-shore." Dkt. 67 at 7. To rebut this incorrect premise, Elbit showed that the Outer Continental Shelf ("OCS") extends from 3 to 200 miles off the U.S. coast, and that under the OCSLA, the federal government has jurisdiction and control over the OCS. *See, e.g.*, *Amber Res. Co. v. United States*, 538 F.3d 1358, 1362 (Fed. Cir. 2008). Now, in its reply brief, BlueTide revisits the academic question of whether the United States "enjoy[s] full sovereign rights up to two hundred miles offshore," Dkt. 77 at 1—a question this Court need not decide. Rather, the more limited issue raised here is whether personal jurisdiction (and therefore venue) is proper under the OCSLA where Defendants operate infringing communications equipment on oil and gas platforms affixed to the continental shelf off the coast of this District.

B. BlueTide Incorrectly Attempts to Limit the OCSLA to "Activities Concerning Exploring, Producing, or Developing Natural Resources."

BlueTide argues that the OCSLA does not confer jurisdiction because Plaintiffs' infringement allegations are not specifically related to natural resource exploration.

First, BlueTide's stringent jurisdictional interpretation is legally incorrect. BlueTide argue that in *WesternGeco LLC v. Ion Geophysical Corp.*, the Court made a determination of the OCSLA's applicability by "consider[ing] whether the accused infringing activity related to the exploration and production of natural resources." Dkt. 77 at 3. But the Court in *WesternGeco* declined to find jurisdiction for patent infringement under the OCSLA because of the *location* of the activity in question ("vessels traversing the seas *above* the OCS") not because of the *type* of activity. 776 F. Supp. 2d 342, 371 (S.D. Tex. 2011) (emphasis added). In this case, there is no dispute that Defendants engage in allegedly infringing activity on installations *attached* to the Outer Continental Shelf.

BlueTide also overlooks this Court's recent *L.C. Eldridge* case in arguing that *WesternGeco* was the "lone case in which a Court analyzed the application of the OCSLA to a

patent infringement action." Dkt. 77 at 3. In *Eldridge*, "[t]he parties dispute[d] whether the [oil] rigs at issue in this case (the Accused Rigs), which operate in the Gulf of Mexico, are subject to the Patent Act." 2013 U.S. Dist. LEXIS 186151, at *4. The plaintiffs, who argued that the Patent Act applies to activities on these rigs under the OCSLA, moved for partial summary judgment, which this Court granted. *Id.* In doing so, the Court first noted that the OCSLA "extends the laws of the United States to the seabed of the outer Continental Shelf and 'devices or vessels permanently or temporarily attached to the seabed' for the purpose of developing natural resources." *Id.* The Court then noted that the "Patent Act is a law of the United States extended through the OCSLA." *Id.* Because there was "no[]dispute that the Accused Rigs operate on the outer Continental Shelf," and that "the Accused Rigs attach to the sea bed of the outer Continental Shelf in order to drill," the Court concluded that the OCSLA properly provided jurisdiction over plaintiffs' patent claims. *Id.* at *4–*5. The *L.C. Eldridge* Court engaged in no analysis of whether the *infringing activity* related to natural resources exploration. It was the *location* of the infringing activity that was the critical inquiry in the jurisdictional analysis, not the nexus between the infringing activity and natural resource extraction.

BlueTide also argues that *Youman v. Newfield Exploration Co.*, 977 F. Supp. 809 (E.D. Tex. 1997), is "on point." Dkt. 77 at 4. But there, the platform in question was located off the coast of *Louisiana*, not Texas. 977 F. Supp. at 810. The plaintiff therefore urged this Court to look to the defendant's other business activities (unrelated to the personal injury incident) in platforms off the coast of Texas, but this Court declined because those platforms were too far off the coast to fall inside Texas's territorial waters. *Id.* at 812.

Notably, the Court in *Hartfield v. Offshore Oil Services, Inc.* rejected a defendant's argument based on *Youman* very similar to BlueTide's argument here. C.A. No. G-06-275, 2006

U.S. Dist. LEXIS 69469, at *10 (S.D. Tex. Sept. 14, 2006). In *Hartfield*, the plaintiff sustained a personal injury on an exploration platform "120 miles off the coast of Texas." *Id.* at *2. The defendant, like BlueTide here, cited to *Youman* to argue that "because the platform is not within three leagues of the Texas coast, the tort cannot be deemed to have occurred in Texas," such that jurisdiction would be improper. *Id.* at *7. In rejecting this argument, the Court first noted that "unlike the case at hand, the plaintiff in the *Youman* case was injured in the coastal waters off of the coast of *Lousiana*." *Id.* at *10–11 (emphasis in original). The Court went on to note that "[t]he *Youman* plaintiff tried to establish that the defendant's operations on platforms off the coast of Texas constituted the necessary minimum contacts to establish that the defendant was 'doing business' in Texas--not that the cause of action arose from the defendant's contacts." *Id.* at *11. Therefore, the *Hartfield* court found that "the legal questions involved in *Youman* and the case at hand are quite different." *Id.* Here, as in *Hartfield*, BlueTide has admitted that alleged infringing activity occurs in platforms attached to the continental shelf off the coast of this district in Texas. To the extent an incident occurring 120 miles off the coast of Texas was sufficient for OCSLA jurisdiction in *Hartfield*, the acts of alleged infringement less than 100 miles from the Texas coast here are easily sufficient for jurisdiction in this district.

BlueTide's continued argument that the OCSLA should be narrowly construed such that the alleged acts must relate to natural resource exploration is further undermined by the Fifth Circuit's broad interpretation of the OCSLA's jurisdictional grant. *See, e.g., Texaco Exploration & Prod. v. AmClyde Engineered Prods.*, 448 F.3d 760, 768 (5th Cir. 2006) ("We have recognized that OCSLA's jurisdictional grant is broad . . ., and the Act covers a wide range of activity occurring beyond the territorial waters of the states on the outer continental shelf of the United States.") (internal quotations marks omitted); *Tenn. Gas Pipeline v. Houston Cas. Ins.*

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