

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

DALI WIRELESS, INC.,

Plaintiff,

V.

AT&T CORP., AT&T COMMUNICATIONS
LLC, AT&T MOBILITY LLC, AT&T
MOBILITY II LLC, AT&T SERVICES INC.,
ERICSSON INC.,
TELEFONAKTIEBOLAGET LM
ERICSSON, COMMScope HOLDING
COMPANY, INC., COMMScope INC., and
COMMScope TECHNOLOGIES LLC,

Defendants.

Case No. 2:22-cv-0012-RWS-RSP

JURY TRIAL DEMANDED

**PLAINTIFF DALI WIRELESS, INC.’S OPPOSITION IN PART TO
DEFENDANTS’ MOTION TO SEVER AND STAY
PENDING FINAL RESOLUTION OF SUPPLIER LAWSUITS**

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I. INTRODUCTION

Plaintiff Dali Wireless, Inc. opposes in part the Motion to Sever and Stay Pending Final Resolution of Supplier Lawsuits (Dkt. No. 77, hereafter “Motion to Stay”) filed by Defendants AT&T Corp., AT&T Communications LLC, AT&T Mobility LLC, AT&T Mobility II LLC, and AT&T Services Inc. (“AT&T”); Ericsson Inc. and Telefonaktiebolaget LM Ericsson (“Ericsson”); and CommScope Holding Company, Inc., CommScope Inc., and CommScope Technologies LLC (“CommScope”). Although Dali does not concede that CommScope and Ericsson are misjoined, Dali does not oppose severing the case into two separate actions pursuant to the agreements represented in the Joint Stipulation: (1) AT&T and CommScope; and (2) AT&T and Ericsson. *See* Joint Stipulation, Dkt. No. 79.¹ However, Dali does oppose Defendants’ request to sever and stay the claims against AT&T under the customer-suit exception.

Defendants’ request to stay further proceedings as to AT&T dramatically oversimplifies the relevant legal tests. Notwithstanding that Ericsson and CommScope each supply components of AT&T’s infringing systems, Defendants’ Motion to Stay should be denied because AT&T does not meet the strict requirements of the customer-suit exception. In addition, each of the traditional stay factors—prejudice, simplification of the issues, and stage of the lawsuit—weighs against a stay in this case.

Defendants’ argument based on the customer-suit exception fails for several reasons. First, Defendants’ request to stay the cases against AT&T does not fall under the classic “consumer-suit

¹ Defendants’ motion as filed includes a request to sever the single action filed against AT&T, CommScope and Ericsson “into two actions: (1) AT&T and CommScope; and (2) AT&T and Ericsson.” Motion to Stay at 1. The parties have stipulated to Defendants’ request to sever, in light of Defendants’ agreement to consolidate the severed cases for all pretrial purposes, and to forgo motions to transfer, which steps in aggregate preserve all efficiencies that would be otherwise be achieved by proceeding under a single case caption. *See* Dkt. No. 79. Consequently, Dali’s opposition addresses only Defendants’ request to stay the cases against AT&T.

exception” because there is no “second-filed” case against AT&T pending in a forum different than the venue hosting the cases against the component manufacturers (CommScope and Ericsson). Instead, Dali has elected to file its claims against AT&T alongside its claims against each component manufacturer. Thus, the two cases—one against AT&T and CommScope and another against AT&T and Ericsson—are pending in the same forum, and proceedings as to AT&T and each component manufacturer will proceed in lockstep, consolidated fashion with respect to all pretrial matters. Second, AT&T is not a “mere reseller.” The “accused products” are AT&T’s “LTE and 5G networks which include equipment relating to small cell wireless solutions,” such as CommScope’s OneCell and ION®-E/ERA products and Ericsson’s Radio Dot System. *See, e.g.*, Dkt. No. 1 ¶¶ 56, 84, 112. Far from being a “mere reseller,” AT&T is the entity that unlawfully deploys, operates, maintains, and uses its own networks across the United States in violation of Dali’s patent rights. Finally, Dali’s claims against the component manufacturers and AT&T are not identical. At minimum, Dali has asserted that CommScope and Ericsson indirectly infringe the asserted patents by, for example, inducing AT&T’s infringement and committing contributory infringement by providing the hardware and software necessary for AT&T to infringe; conversely, only AT&T is an alleged direct infringer as to Dali’s asserted method claims. Indeed, Defendants’ brief implicitly acknowledges this distinction via its reference to AT&T’s infringement via “*the operation of . . . the accused CommScope or Ericsson products.*” Motion to Stay at 10 (emphasis added). Because there is a lack of identity of infringement allegations the customer-suit exception is inapplicable. On balance, the factors that courts routinely consider when analyzing the customer-suit exception” weigh against staying the actions against AT&T.

The traditional stay factors also weigh decidedly against a litigation stay for AT&T. First, staying the cases against AT&T will unduly prejudice Dali. Second, staying the cases against

AT&T will not simplify the issues. Rather, this Court has declined to impose stays under the general stay factors where a component manufacturer is accused of indirect infringement and the alleged customer is accused of direct infringement. *See, e.g., Rembrandt Wireless Techs., LP v. Apple Inc.*, No. 2:19-CV-00025-JRG, 2019 U.S. Dist. LEXIS 205698, at *12 (E.D. Tex. Nov. 27, 2019). That is the case here. Finally, the stage of the litigation does not favor a stay. Consolidating the two cases—one against AT&T and CommScope and the other against AT&T and Ericsson—for pretrial matters furthers convenience and economy in administration of these cases and advances judicial efficiency. As a result, Defendants’ Motion to Sever and Stay should be denied.

II. LEGAL STANDARD

The Court has the inherent power to control its own docket, including the power to stay proceedings. *See NFC Tech., LLC v. HTC Am.*, No. 2:13-CV-01058-JRG, 2014 U.S. Dist. LEXIS 107040, at *4 (E.D. Tex. Aug. 5, 2014) (citing *Soverain Software LLC v. Amazon.com, Inc.*, 356 F. Supp. 2d 660, 662 (E.D. Tex. 2005)). As the party seeking the stay, it is Defendants’ burden to show that a stay is appropriate. *Cellular Commc’ns Equip., LLC v. Samsung Elecs. Co.*, No. 6:14-CV-759, 2015 U.S. Dist. LEXIS 179517, at *8 (E.D. Tex. Dec. 16, 2015).

In evaluating whether the customer-suit exception applies, the Court considers three factors: “(1) whether the consumers in the first-filed action are mere resellers of products manufactured by the party in the second-filed action; (2) whether the customers in the first-filed action have agreed to be bound by any decision in the second-filed action, and; (3) whether the manufacturers in the second-filed action are the only source of the allegedly infringing activity or product.” *Rembrandt*, 2019 U.S. Dist. LEXIS 205698 at *4 (citation omitted). “[T]he ‘guiding principles in the customer suit exception cases are efficiency and judicial economy.’” *Id.* (quoting *Spread Spectrum Screening LLC v. Eastman Kodak Co.*, 657 F.3d 1349, 1357 (Fed. Cir. 2011)).

In determining whether to stay litigation, courts within this district consider three factors: (1) “whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party”; (2) “whether a stay will simplify the issues in question and the trial of the case”; and (3) “whether discovery is complete and whether a trial date has been set.” *Rembrandt*, 2019 U.S. Dist. LEXIS 205698 at *4.

III. ARGUMENT

a) The Customer-Suit Exception Does Not Apply

Defendants first argue that “the case(s) against AT&T should be stayed pursuant to the customer-suit doctrine.”² This argument fails for the reasons below.

i) The Customer-Suit Exception Does Not Apply Because CommScope and Ericsson Are Party to the Same Case Against AT&T.

As an initial matter, the customer-suit exception does not apply because there is no first-filed action against the alleged customer (AT&T) pending in a separate forum from the actions against the component manufacturers. Instead, AT&T is a co-defendant in each of the actions against the component manufacturers (CommScope and Ericsson) pending in this Court.³ “The [customer-suit] exception does not apply to a *single* suit that encompasses both manufacturers and their customers.” *RPost Holdings, Inc. v. DocuSign, Inc.*, No. 2:12-CV-00683-JRG, 2019 U.S. Dist. LEXIS 75457, at *5 (E.D. Tex. May 3, 2019) (emphasis in original); *see also P&G Co. v.*

² The parties’ stipulation obviates Defendants’ argument for a stay based on Rule 21. *See* Dkt. No. 79 ¶ 5 (“No Defendant will rely on the fact of severance . . . as it relates to Defendants’ request to stay the AT&T Defendants.”).

³ The Court has not yet acted on the parties’ Joint Stipulation to sever the pending case into two separate cases—one including CommScope and AT&T, and the other including Ericsson and AT&T. However, Dali anticipates that the Court will do so based on the Joint Stipulation. *See* Dkt. No. 79. Accordingly, Dali treats this case in that posture.

Team Techs., Inc., No. 1:12-cv-552, 2012 U.S. Dist. LEXIS 167208, at *7 (S.D. Ohio Nov. 26, 2012) (When “an action includes both the customer and the manufacturer as parties to the suit, the customer suit exception does not apply.”).

Similarly, in *Vantage Point Technology, Inc. v. Amazon.com, Inc.*, this Court rejected a stay sought under the customer-suit exception where “both the consumer and manufacturer [had] pending cases in the same forum, and those cases ha[d] been consolidated for all pretrial matters.” No. 2:13-cv-909-JRG, 2015 U.S. Dist. LEXIS 675, at *8 (E.D. Tex. Jan. 6, 2015). The Court held a stay inappropriate because “the act of consolidation advances the very same goals that the consumer-suit exception seeks to advance: judicial efficiency.” *Id* at *9.⁴ The same logic applies here with even greater force. Dali’s case against Defendants CommScope and Ericsson—whether joined in one action or severed into two separate actions—also includes the alleged customer AT&T, and there is no risk of separate proceedings with respect to any pretrial matters. *See* Dkt. No. 79.

The Federal Circuit agrees. Nothing “sets forth the proposition that a district court must stay proceedings against a customer in the very same litigation that will, regardless of the requested stay, go forward against the supplier.” *In re Dell Inc.*, 600 F. App’x 728, 730 (Fed. Cir. 2015). Indeed, *Dell* distinguished Defendants’ cited authorities *Nintendo* and *Katz* on this exact basis, and reasoned that a single suit against both a customer and a component manufacturer promotes judicial economy. *Id*. So too here. The alleged customer, AT&T, is in the very same litigations

⁴ To be fair, “the customer suit exception has [also] been applied in multi-defendant actions where both the manufacturer and retailer are defendants in the same case . . . as a tool to facilitate transfer of the manufacturer defendant to a venue where suit against the retailer defendants could not have been originally brought.” *Secure Axxess, LLC v. Nintendo of Am., Inc.*, No. 2:13-cv-32-JRG, 2014 U.S. Dist. LEXIS 30115, at *11 (E.D. Tex. Mar. 7, 2014), *vacated sub nom. In re Nintendo of Am., Inc.*, 756 F.3d 1363 (Fed. Cir. 2014). That circumstance does not apply here, as no defendant has sought transfer out of this venue.

with its suppliers CommScope and Ericsson, and the customer-suit exception does not apply as a matter of law. No stay is warranted for this threshold reason alone, but Dali further addresses the customer-suit exception factors below.

ii) AT&T Is Not a “Mere Reseller”

Defendants’ customer-suit argument also fails because AT&T is not a “mere reseller,” as required under the first of the three factors that courts use to evaluate application of the customer-suit exception. Defendants appear to concede this point as they do not argue that AT&T is a “mere reseller,” but rather that AT&T is a “mere end-user” of the CommScope and Ericsson products. Motion to Stay at 9-10. In fact, AT&T does not *sell* CommScope’s or Ericsson’s systems at all, but rather incorporates those systems into its own network to provide infringing services to its customers like, for example, private wireless networks for enterprises.⁵

Similarly, the claims of some of the Asserted Patents recite devices “configured to” perform certain functions. *See, e.g.*, ’499 Patent, Claim 1; ’343 Patent, Claim 1. Thus, AT&T’s potential involvement in the configuration of such functionalities may bear on infringement. *See Rembrandt*, 2019 U.S. Dist. LEXIS 205698 at *10. Though AT&T’s declarant states that “AT&T does not have the ability to modify the circuits or the source code” (Dkt. No. 77-6, ¶ 7) of CommScope’s and Ericsson’s products, the declaration is silent as to whether AT&T configures or requests configuration when those products are deployed in AT&T’s networks. Such information may bear on infringement. Thus, AT&T is not a mere reseller of CommScope and Ericsson’s products. Instead, AT&T incorporates components made by CommScope and Ericsson into AT&T’s own systems that it deploys and operates across the country, and the actions against

⁵ *See e.g.*, Dkt. No. 1 ¶ 84 n.16 (explaining that AT&T and Ericsson have partnered to created private wireless networks for enterprises).

Ericsson and CommScope may not fully resolve issues of infringement or damages against AT&T. *See NFC Tech.*, 2014 U.S. Dist. LEXIS 107040 at *6 (customer-suit exception did not apply because defendants were not “mere resellers” where manufacturer’s chip was incorporated into larger environment of mobile device components).

CommScope and Ericsson extend an unspecified offer to “intermediate any discovery Dali seeks to serve on AT&T to avoid burdening AT&T with information the Supplier Defendants can provide instead,” based on a suspiciously non-detailed offer by AT&T to “cooperate in providing *limited* discovery . . . should such discovery be relevant and non-cumulative.” Motion to Stay at 11 (emphasis added). But Defendants’ offer does not rescue this factor. Rather, Defendants’ vague proposal would, instead of promoting efficiency, undermine it and create an extra layer of complexity. This “offer” highlights the problems and inefficiencies inherent in severing and staying Dali’s infringement claims against AT&T. Dali should not be required to go through CommScope and Ericsson to obtain relevant information from AT&T. Nor should AT&T be allowed to narrow its own discovery obligations in this case by only agreeing to produce “limited discovery” in contravention of this Court’s Discovery Order and the Eastern District’s local rules. AT&T is accused of direct infringement of Dali’s patents, and Dali is entitled to obtain all relevant discovery from AT&T regarding AT&T’s infringement and damages resulting from that infringement.

Defendants’ proposal ignores that, under the case Discovery Order, no document discovery requests are served, and rather every party—including AT&T as matters presently stand—bears an affirmative duty to “produce or permit the inspection of all documents . . . that are relevant to the pleaded claims or defenses involved in this action.” Dkt. No. 59 ¶ 3(b). Defendants’ proposal

would effectively relieve AT&T of its obligation and shift the burden to Dali.⁶ Moreover, Defendants do not explain what “limited discovery” they would allow Dali to pursue without objection, or what procedure they would use to “intermediate” Dali’s discovery requests. Defendants’ vague proposal is thus poised to create unnecessary discovery disputes that would not be present if AT&T simply remains an active defendant in the current cases.

iii) The Infringement Allegations Against AT&T Differ from Those Against Ericsson and CommScope

Skipping ahead to the third customer-suit factor—i.e., “whether the manufacturers . . . are the only source of the allegedly infringing activity”—“customer suit exceptions are limited to those situations . . . such that the disposition of the manufacturer suit *would be determinative of the issues in the customer suit.*” *NFC Tech.*, 2014 U.S. Dist. LEXIS 107040 at *5-6 (emphasis added) (citing *Kahn v. General Motors Corp.*, 889 F.2d 1078 (Fed. Cir. 1989)). But “the customer-suit exception does not apply when the claims against the manufacturer and non-manufacturer defendants are not identical, such as when—as here—the manufacturer and non-manufacturer defendants are respectively accused of indirect and direct infringement.” *SAS Inst., Inc. v. World Programming Ltd.*, No. 2:18-CV-00295-JRG, 2019 U.S. Dist. LEXIS 229850, at *8 (E.D. Tex. Apr. 4, 2019) (citing *Erfindergemeinschaft Uropep GbR v. Eli Lilly & Co.* (“*Uropep*”), No. 2:15-cv-1202-WCB, 2016 U.S. Dist. LEXIS 55205 (E.D. Tex. Apr. 26, 2016) (Bryson, J.) (collecting cases)); *see also Rembrandt*, 2019 U.S. Dist. LEXIS 205698 at *12.

Here, Dali has asserted, *inter alia*, that CommScope and Ericsson indirectly infringe the asserted patents by, for example, inducing AT&T’s infringement and committing contributory

⁶ If CommScope and Ericsson currently have possession of relevant materials that are duplicative of those in AT&T’s possession, Dali will not require duplicative production by AT&T, so long as Defendants stipulate that knowledge of those materials produced by only CommScope and Ericsson may be imputed to AT&T.

infringement by providing the hardware and software necessary for AT&T to infringe. *See, e.g.*, Dkt. No. 1 ¶¶ 75, 103, 126, 149, 181, 213. On the other hand, Dali has asserted only direct infringement against AT&T. *See id.* ¶¶ 56, 84, 112, 135, 158, 190. CommScope and Ericsson’s “liability as [] indirect infringer[s] is not a predicate to recovery from [AT&T] for direct infringement.” *See SAS Inst.*, 2019 U.S. Dist. LEXIS 229850 at *10 (quoting *In re Nintendo of Am., Inc.*, 756 F.3d 1363, 1366 (Fed. Cir. 2014)). Because there is a lack of identity of infringement allegations and the determination regarding the infringement allegations against CommScope and Ericsson does not conclusively resolve AT&T’s liability, the customer-suit exception is inapplicable. *See Intertrust Techs. Corp. v. Cinemark Holdings, Inc.*, No. 2:19-CV-00266-JRG, 2020 U.S. Dist. LEXIS 208572, at *27 (E.D. Tex. Sep. 30, 2020) (“The [non-manufacturer] Defendants’ alleged infringement does not completely coincide with that of [the manufacturer] and the resolution of the [Manufacturer] Action will not moot the issues presented here.”); *Uropep*, 2016 U.S. Dist. LEXIS 55205 at *12 (customer-suit exception did not apply where manufacturer was accused of direct and indirect infringement and customer was accused of direct infringement only).

iv) AT&T’s Agreement to Be Bound by the Court’s Findings in This Case Is Only Partial, and Does Not Overcome the Weight of the Other Factors

And circling back as to the second customer-suit factor, AT&T’s agreement to be bound by “any infringement determination through final judgment (and all appeals)” and “any invalidity determination through final judgment (and all appeals) as to any grounds actually adjudicated on the merits” (Motion to Stay at 11) is but one factor in the customer-suit suit exception and is not dispositive here. *See Rembrandt*, 2019 U.S. Dist. LEXIS 205698 at *10-11 (notwithstanding customer defendant’s “agree[ment] to be bound by any decision in the California Suits balancing these factors the Court finds that they weigh against a stay”).

Moreover, AT&T’s proposed agreement to be bound as to the specific topics referenced above does not encompass every determination that this Court might make on “all essential issues” as this case progresses—another consideration weighing against entry of a stay. *See GeoTag, Inc. v. Giorgio Armani SpA*, No. 2:10-cv-569, 2012 U.S. Dist. LEXIS 191706, at *318-20 (E.D. Tex. Aug. 27, 2012) (“Defendants . . . are willing to be bound by a final determination of invalidity in the declaratory judgment action. However, Defendants have not agreed to be bound by other rulings from the Delaware court. . . . Without a firm commitment binding Defendants to the Delaware court’s rulings on all essential issues, the request for a stay merely appears to be a litigation tactic to delay the judicial process.”).

Finally, Defendants make no mention of any agreement to be bound as to PTAB proceedings, which leaves open the possibility that Dali would be forced to defend additional requests for *inter partes* review initiated by AT&T in the future.

Consequently, AT&T’s proposed agreement to be bound by decisions of this Court does not, alone, support a stay.

b) The Traditional Factors Weigh Against a Stay

In addition to their customer-suit-exception argument, Defendants allege that “the traditional factors . . . also weigh in favor of a stay.” Motion to Stay at 12. This argument also fails.

i) Staying the Present Case Against AT&T Will Unduly Prejudice Dali

Defendants argue without basis that staying further proceedings as to AT&T will not prejudice Dali because “Dali claims AT&T will be mostly, if not fully, resolved by resolution of the same claims against CommScope and Ericsson.” Motion to Stay at 13. As addressed above, Dali’s infringement claims against AT&T have a different scope than its claims against CommScope and Ericsson. Staying further proceedings as to AT&T would cabin Dali’s avenues

of recovery for AT&T's direct infringement—and in so doing would self-evidently prejudice Dali's ability to recover. *See e.g., Kahn*, 889 F.2d at 1081-82 (noting that calculating damages against customer and component manufacturer necessarily involve different parameters).

To start from the basic consideration of AT&T's role in Dali's ability to prove up its infringement allegations, AT&T will have to play a key role in fact discovery regardless of whether the case against it is stayed. For its own part, AT&T will not face any prejudice beyond the ordinary burdens faced by any litigant. For example, AT&T's declarant, Mr. Turner, states only that "AT&T does not have the ability to modify the circuits or the source code of the accused products" (Dkt. No. 77-6 ¶ 7) but does not address whether AT&T dictates or is involved in the configuration of the infringing systems in its network. For example, whether AT&T requests certain functionality from CommScope or Ericsson or whether AT&T enables or inhibits certain accused features in the CommScope and Ericsson equipment may be relevant to AT&T's own infringement, but may not be resolved by a standalone case against CommScope or Ericsson. Staying the case against AT&T prejudices Dali because even though CommScope and Ericsson may be found to infringe, AT&T may attempt to avoid liability by claiming not to use the infringing features.

What is more, CommScope and Ericsson's unspecified offer to "intermediate" discovery from AT&T further aggravates this prejudice to Dali. As discussed above, Defendants' proposal ignores that AT&T currently bears an affirmative duty to "produce or permit the inspection of all documents . . . that are relevant to the pleaded claims or defenses involved in this action." Dkt. No. 59 ¶ 3(b). Defendants' proposal would effectively relieve AT&T of its obligation and shift the burden to Dali. On top of that, Defendants fail to explain what "limited discovery" they would allow Dali to pursue without objection, or how the scope of that "limited discovery" differs from what AT&T would be obligated to provide under the Discovery Order.

Defendants otherwise skip the issue of infringement and go straight to damages in arguing that Dali will not be prejudiced because “Dali . . . cannot seek to recover twice” and “any recovery Dali may obtain from CommScope and Ericsson will exhaust the claims as to the downstream customer such as AT&T.” Motion to Stay at 13. But even on its own terms, this argument improperly presumes facts not in evidence. Specifically, Defendants’ argument is premised on a classic straw-man argument that Dali will pursue an impermissible damages theory that violates principles of exhaustion by seeking duplicative recovery from AT&T and CommScope/Ericsson (as applicable). Here Defendants again ignore the Discovery Order, which expressly permits Dali to “defer[]” its “disclosure of the computation of damages . . . until the time for Expert Disclosures if a party will rely on a damages expert” (which Dali will do). Dkt. No. 59 ¶ 3(c).

But even looking ahead, the Patent Act expressly provides that Dali is entitled to recover “in no event less than a reasonable royalty for the use of [Dali’s] invention[s]” in the asserted patents—including use made of those inventions *by AT&T*. 35 U.S.C. § 284. These considerations are similarly spotlighted in *Georgia-Pacific* Factors Nos. 10 and 11, which focus on, *inter alia*, “the benefits to those who have used the invention” as well as “[t]he extent to which the infringer has made use of the invention; and any evidence probative of the value of that use.” *Georgia-Pacific v. U.S. Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970).

To this end, Dali will necessarily need to take discovery from AT&T to determine the reasonable royalty based on AT&T’s infringing use of Dali’s patented technologies and any benefits AT&T realizes via that use (e.g., cost savings). *See, e.g., TracBeam L.L.C. v. AT&T Inc.*, No. 6:11-CV-96, 2013 U.S. Dist. LEXIS 166940, at *13 (E.D. Tex. Nov. 25, 2013) (“The parties agree an appropriate royalty rate is based on AT&T’s cost savings from using the patented technology . . .”). Fact discovery as to all Defendants will proceed much more efficiently with

AT&T being an active defendant in the case, subject to all affirmative obligations of the case Discovery Order (as discussed above), rather than if its case were stayed. Dali, on the other hand, would suffer significant prejudice and tactical disadvantage in enforcing its patent rights if Dali were forced to engage in fact discovery of AT&T only indirectly through Ericsson and CommScope, and were forced to unduly delay development of its damages case against AT&T.

ii) Staying the Present Cases Against AT&T Will Not Simplify the Issues

A stay of the AT&T cases would not simplify the issues in question and the trial of the case. Rather, severing AT&T will make discovery more costly, more time consuming, and less efficient without simplifying the legal and factual issues that must be decided by the Court and the jury. This factor weighs against a stay in the present case for several reasons. As discussed above, the infringement allegations against AT&T are not identical to those against CommScope and Ericsson. *See supra* at 8-9. Because Dali's infringement and damages claims against CommScope and Ericsson do not completely coincide with those against AT&T, the resolution of the CommScope and Ericsson cases will not resolve or moot all issues in question for AT&T. *See Intertrust*, 2020 U.S. Dist. LEXIS 208572 at *27; *see also Rembrandt*, 2019 U.S. Dist. LEXIS 205698, at *11-12 (holding that the simplification of issues factor weighed against a stay where the manufacturer is accused of indirect infringement and the customer is accused of direct infringement) (citing *Uropep*, 2016 U.S. Dist. LEXIS 55205 at *9).

iii) Staying the Present Cases Against AT&T Is Not Helpful in View of the Stage of these Consolidated Cases

The parties have already agreed to consolidate these cases for all pretrial purposes. *See* Dkt. No. 79 ¶ 2. This is thus a single set of cases which "furthers convenience and economy in administration." *Vantage Point Tech.*, 2015 U.S. Dist. LEXIS 675, at *8-9 (citing Fed. R. Civ. P. 42(a); *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479 (1933)). "Therefore the act of consolidation

advances the very same goals that the consumer-suit exception seeks to advance: judicial efficiency.” *Vantage Point Tech.*, 2015 U.S. Dist. LEXIS 675, at *8-9 (citing *Tegi Commc’ns Corp. v. Bd. of Regents of Univ. of Tex. Sys.*, 458 F.3d 1335, 1343 (Fed. Cir. 2006)).

Defendants’ contention that “[n]o discovery has yet been taken of AT&T” further demonstrates why a stay is not helpful in view of the stage of proceedings. Motion to Stay at 15. Discovery commenced on August 26, 2022, and AT&T has been under an affirmative duty to “produce or permit the inspection of all documents . . . that are relevant to the pleaded claims or defenses involved in this action” since that time. Dkt. No. 59 ¶ 3(b). Defendants’ choice to overlook this fact demonstrates the challenges that Dali will face in getting discovery from AT&T and indicates that Dali will need all of the time permitted by the Docket Control Order to obtain the discovery needed to prove its case. Granting Defendants’ Motion to Stay will only serve to waste judicial resources by, for example, requiring Dali to jump through Defendants’ proposed discovery intermediation for requests to AT&T. This factor thus also weighs against entering a stay for AT&T in this case.

IV. CONCLUSION

AT&T is an integral component of Dali’s infringement and damages allegations. Dali does not maintain a separate case against CommScope and Ericsson in another forum. Dali’s case against AT&T is not identical to Dali’s case against CommScope and Ericsson. And AT&T’s assurances of agreeing to be bound and providing intermediated discovery via CommScope and Ericsson is a poor substitute for the much simpler status quo, in which Dali can freely pursue relief against AT&T in the pending action, without the risks of prejudice that Defendants’ half-formed alternative proposals might entail. For these reasons and as detailed above, Defendants’ Motion to Stay should be denied.

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Respectfully submitted,

Of Counsel:

Andrea L. Fair
Texas Bar No. 24078488
Claire Abernathy Henry
Texas Bar No. 24053063
WARD, SMITH & HILL, PLLC
1507 Bill Owens Pkwy.
Longview, TX 75604
Tel: (903) 757-6400
Fax: (903) 757-2323
Email: andrea@wsfirm.com
Email: claire@wsfirm.com

/s/ Steven Skelley

Cristofer I. Leffler, WA Bar No. 35020

LEAD COUNSEL

David Schumann, CA Bar No. 223936

Michael Saunders, CA Bar No. 270414

Cliff Win, Jr., CA Bar No. 270517

Steven Skelley, WA Bar No. 53017

Stefan Szpajda, WA Bar No. 50106

Folio Law Group PLLC

1200 Westlake Ave. N., Suite 809

Seattle, WA 98109

Tel: (206) 880-1802

Email: cris.leffler@foliolaw.com

david.schumann@foliolaw.com

mike.saunders@foliolaw.com

cliff.win@foliolaw.com

steve.skelley@foliolaw.com

stefan@foliolaw.com

Joseph M. Abraham, TX Bar No. 24088879

13492 Research Blvd., Suite 120, No. 177

Austin, TX 78750

Tel: (737) 234-0201

Email: joseph.abraham@foliolaw.com

Attorneys for Dali Wireless, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October 2022, I electronically filed the foregoing with the clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

By: /s/ Steven Skelley
Steven Skelley