

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

KONINKLIJKE KPN N.V.,

Plaintiff,

vs.

TELEFONAKTIEBOLAGET LM
ERICSSON and ERICSSON INC.,

Defendants.

Case No. 2:22-cv-282

JURY TRIAL DEMANDED

DEFENDANTS' FIRST SET OF INTERROGATORIES TO PLAINTIFF (NOS. 1-10)

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendants Telefonaktiebolaget LM Ericsson and Ericsson, Inc. ("Ericsson") request that Plaintiff Koninklijke KPN N.V. ("KPN") respond under oath to the following First Set of Interrogatories within thirty (30) days of service and afterward supplement such responses as may become necessary and as required by the Federal Rules of Civil Procedure.

DEFINITIONS

1. "3GPP" means the 3rd Generation Partnership Project.
2. "Accused Products" means any and all products, activities, services, processes, systems, apparatuses, or things that have been accused of infringing any Patent-in-Suit in KPN's Infringement Contentions.
3. "Agreement" shall mean, without limitation, a contract, arrangement, or understanding, formal or informal, oral or written, between two or more Persons. This includes assignments, express licenses, alleged licenses, covenants not to sue or non-assertion agreements, standstill agreements, releases, security interests, and/or settlements.

4. “Asserted Claims” means each and every claim of a Patent-in-Suit that KPN contends that any Defendant infringes, as identified in KPN’s Infringement Contentions.

5. “Asserted Patents” or “Patents-in-Suit” refers collectively to U.S. Patent Nos. 7,092,705 B2 (“the ’705 Patent”); 8,660,560 B2 (“the ’560 Patent”); 8,886,772 B2 (“the ’772 Patent”); 9,372,098 B2 (“the ’098 Patent”); and 10,924,500 B2 (“the ’500 Patent”).

6. “Document” is defined broadly to be given the full scope of that term as contemplated in Rules 26 and 34 of the Federal Rules of Civil Procedure and includes any tangible thing or object, any written or graphic matter, and any medium of any type or description upon which intelligence or information is recorded or from which intelligence or information can be perceived, that is or has been in Your actual or constructive possession, custody, or control, or of which You have knowledge, regardless of the medium on which it is produced, reproduced, or stored (including without limitation computer programs and files containing any requested information), and any recording or writing, as these terms are defined in Rule 1001 of the Federal Rules of Evidence. This definition encompasses all tangible things including prototypes, models, and physical specimens, all originals (or, if originals are not available, identical copies thereof), all non-identical copies of a Document, all drafts of final Documents, all written, printed, or recorded matter of any kind, and all other data compilations from which information can be obtained and translated if necessary, that are or have been in Your actual or constructive possession or control, regardless of the medium on which they are produced, reproduced, or stored (including without limitation computer programs and files containing any requested information together with instructions or programs necessary to search such data and hard copies where available), any recording or writing, and/or any other documentary material of any nature.

7. “Ericsson” means Telefonaktiebolaget LM Ericsson and Ericsson Inc.

8. “Essential” has the meaning ascribed to it in Clause 15.6 of the ETSI IPR Policy.
9. “ETSI” means the European Telecommunications Standards Institute.
10. “FRAND” means and includes fair, reasonable, and non-discriminatory, as used in the ETSI IPR Policy at Annex 6 to the ETSI Rules of Procedure.
11. “Infringe” and “infringement” means direct infringement, contributory infringement, induced infringement, literal infringement, and/or infringement under the doctrine of equivalents.
12. “Infringement Contentions” means KPN’s Disclosure of Asserted Claims and Infringement Contentions Pursuant to Local Patent Rules 3-1 and 3-2 and any subsequent supplements or amendments that may be served on Defendants.
13. “KPN” means Plaintiff Koninklijke KPN N.V. (“KPN”), and any persons operating under its control or on its behalf including officers, directors, employees, representatives, consultants, agents, servants, attorneys, accountants, or any Person who served in any such roles at any time, as well as corporate subsidiaries, affiliates, divisions, predecessor companies or proprietorships, or any joint venture to which KPN, or one of its corporate parents, subsidiaries, affiliates, divisions, predecessor companies or proprietorships, is a party.
14. “Licensee” or “License” includes each and every license, covenant not to sue, non-assertion agreement, settlement agreement, sublicense, or sublicensee to the Patents-in-Suit.
15. “Person” shall include, without limitation, natural persons, corporations, partnerships, business trusts, associates, and business or other entities, and any officer, director, employee, partner, corporate parent, subsidiary, affiliate, agent, representative, attorney, or principal thereof.

16. “Relate to,” “Relating to,” “Related to,” and “Concerning,” when referring to any given subject matter, means concerning, regarding, describing, comprising, referring to, related to, supporting, favoring, opposing, bolstering, detracting from, located in, considered in connection with, bearing on, evidencing, indicating, reporting on, recording, alluding to, responding to, connected with, commenting on, in respect of, about, in relation to, discussing, showing, describing, reflecting, analyzing, constituting, or being.

17. “Standard(s)” refers to any technical standard created, authorized, controlled, and/or developed privately or unilaterally by a corporation, consortium, regulatory body, government, or standards setting organization, including but not limited to ETSI or 3GPP. For the avoidance of doubt, “standard(s)” includes the 2G (GPRS, GSM, and/or EDGE), 3G (UMTS and/or WCDMA), 4G (LTE, LTE-Advanced, and LTE Pro), and 5G (New Radio) standards as these standards are defined and established by ETSI.

18. “TNO,” “You,” and “Your” refer to Nederlandse Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek as well as all of its parent and subsidiary corporations, divisions, affiliates, and related entities.

19. “You,” “Your,” and “Yours” refers collectively to KPN.

20. Any pronoun shall be construed to refer to the masculine, feminine, or neuter gender, as is most appropriate in each case.

21. The singular form of each word shall be interpreted in the plural as well.

22. The word including and every variant thereof shall be construed to mean “including without limitation.”

23. The words “and,” “or,” and “and/or” shall be construed conjunctively or disjunctively, whichever maximizes the scope of each discovery request, definition, or in which they are used.

24. The words “any” and “all” shall be construed to mean “any and all.” The words “each” and “every” shall be construed to mean “each and every.”

INSTRUCTIONS

1. Answer each Interrogatory separately and fully. To the extent that any of Your responses to those Interrogatories are based on Documents, identify that Document.

2. There shall be a continuing duty for KPN to supplement its responses to these Interrogatories in accordance with Rule 26(e) of the Federal Rules of Civil Procedure. Any additional information relating in any way to these Interrogatories that You require, or that becomes known to You, up and including at the time of trial, shall be furnished to Defendants promptly after such information is acquired by You or becomes known to You.

3. If You object to an Interrogatory, in whole or in part, state the reasons for any such objection and answer that part of the Interrogatory to which an objection is not made. If any requested information is not provided on the grounds that the requested information is privileged or constitutes an attorney’s work product, in lieu of each such response, please provide a written statement that describes the factual basis of the purported privilege or claim of work product in sufficient detail so as to permit the Court to adjudicate the validity of the claim.

4. You are to verify the answers to all Interrogatories under oath, and the objections, if any, are to be signed by the attorney making them.

INTERROGATORIES

INTERROGATORY NO. 1:

For each Patent-in-Suit, state the complete factual and legal bases for any KPN claim for injunctive relief, enhanced damages, monetary damages, or any other relief against Ericsson, including, without limitation: (a) an identification of each damages theory that You contend should be used in the damages calculation (e.g., reasonable royalty, lost profits, etc.); (b) the specific inputs that You contend should be used under each such theory in the damages calculation (e.g., for each Accused Product, the royalty rate on net sales, and the alleged royalty base, including whether You contend that the entire market value rule applies); (c) the incremental value You contend each Patent-in-Suit contributes to each Accused Product; (d) the date(s) on which You contend damages should begin and the factual bases supporting such dates; (e) the amount of damages attributable to each Accused Product; and (f) an identification of all Documents and things on which such calculations are based.

INTERROGATORY NO. 2:

For each Patent-in-Suit, identify all efforts by or on behalf of KPN and any prior owners of each Patent-in-Suit to satisfy the marking requirements of 35 U.S.C. § 287, including, but not limited to, identifying all products by name, model number, and any other identifying indicia that have been marked and when the marking occurred, and identify each person with knowledge of the foregoing and all documents relating to the foregoing.

INTERROGATORY NO. 3:

State the date and provide a detailed description of all facts and circumstances relating to how You contend Ericsson first became aware of each Patent-in-Suit and was provided with notice of the alleged infringement. If You contend that You provided actual or constructive notice to Ericsson before filing the Complaint(s) in this Action, Your answer should include an identification of all Documents and things evidencing and Persons knowledgeable about such alleged actual or constructive notice.

INTERROGATORY NO. 4:

For each Patent-in-Suit, identify and describe in detail (1) any entity with a past or current financial interest in the Patent-in-Suit and/or the litigation; (2) what the financial interest is; (3) any payments that KPN has identified as being made to the entity to-date pursuant to the financial interest, apportioned by Patent-in-Suit; and (4) if the entity still retains a financial interest in the Patent-in-Suit, and, if not, the date the financial interest ended.

Your answer should be provided in a format similar to the table below, and You should also identify the 3 people most knowledgeable from KPN on this subject and an identification of any supporting documents.

Patent-in-Suit	Entity with Financial Interest	Financial Interest	Payments Received to-date	Active Financial Interest?
'705 Patent				
'560 Patent				
'772 Patent				
'098 Patent				
'500 Patent				

INTERROGATORY NO. 5:

For each Asserted Claim, identify the priority date to which You contend the Asserted Claim is entitled and the foundation therefor, including a detailed description of the facts and circumstances relating to conception and reduction to practice of each Asserted Claim, including the specific date of such conception, the specific date of actual or constructive reduction to practice, and any Persons with knowledge of the conception and reduction to practice. For clarity, the description should include (on a claim-by-claim basis) an identification of all Documents and things evidencing and Persons knowledgeable about conception, reduction to practice, and diligence.

INTERROGATORY NO. 6:

For each Asserted Claim, state when, where, by whom, to whom, and under what terms the alleged invention, in whole or in part, was first publicly disclosed, demonstrated, used, sold, given away, or offered for sale by an inventor or any other Person. For clarity, this includes (on a claim-by-claim basis) an identification of all Documents and things evidencing and Persons knowledgeable about each such demonstration, use, disclosure, sale, gift, or offer for sale.

INTERROGATORY NO. 7:

For each Asserted Claim, describe any secondary considerations (also known as objective indicia) relating to the alleged non-obviousness of the claimed subject matter, including without limitation any alleged long felt but unfulfilled need, failure of others, commercial success, commercial acquiescence, licensing, professional approval, lack of contemporaneous invention, copying, or laudatory statements by others. For clarity, this includes (on a claim-by-claim basis) an identification of all Documents and things evidencing and Persons knowledgeable about any such secondary considerations.

INTERROGATORY NO. 8:

For each Asserted Claim and each Accused Product, state the complete factual and legal basis for any contention that Defendants indirectly infringe under 35 U.S.C. §§ 271(b)-(c) by knowingly and intentionally inducing or contributing to direct infringement. For clarity, this includes an identification of each activity You contend supports indirect infringement and the identity of the Person performing each such activity; an identification of all Persons with knowledge of and Documents relating to such activity; and an identification and detailed description of all

Documents and things evidencing and Persons knowledgeable about why the Accused Product is not a staple article or commodity of commerce suitable for substantial noninfringing use.

INTERROGATORY NO. 9:

For each Patent-in-Suit, identify any validity or invalidity analysis(-es), any enforceability or unenforceability analysis(-es), any infringement or non-infringement analysis(-es), any Essentiality or non-Essentiality analysis(-es), and any analysis(-es) or statement(s) related to patent value (or lack thereof) that You are aware of. For clarity, this includes any such analysis(-es), Document(s), or statement(s) brought to Your attention by a third party, and a description of the circumstances under which You acquired this knowledge.

INTERROGATORY NO. 10:

Separately for each of the Patents-in-Suit, identify and describe in detail all Agreements or offers to make an Agreement between KPN and/or any third party (including Ericsson) regarding any Patent-in-Suit, and for each Agreement or offer to make an Agreement, identify all related facts and circumstances, including but not limited to: dates on which negotiations began and ended; all Persons involved with negotiations or the decision to negotiate; all Documents exchanged during negotiations; all proposed financial terms, whether accepted or not; all final financial terms; any terms or bases on which such proposed or final terms were calculated; any other consideration or value to be paid or given in the Agreement; any payments made or received; any royalty or royalty rate offered, and the terms or basis on which such proposed royalty or royalty rate was calculated; and any supporting or associated Documentation or agreement(s).

Dated: February 3, 2023

Theodore Stevenson, III (Lead Attorney)
Texas State Bar No. 19196650
ted.stevenson@alston.com
ALSTON & BIRD
2200 Ross Avenue, Suite 2300
Dallas, TX 75201
Telephone: (214) 922-3507
Facsimile: (214) 922-3899

/s/ Nicholas Mathews
Nicholas Mathews
Texas State Bar No. 24085457
nmathews@McKoolSmith.com
Jonathan Powers
Texas State Bar No. 24098277
jpowers@mckoolsmith.com
Alexander J. Chern
Texas State Bar No. 24109718
achern@McKoolSmith.com
Carson D. Young
Texas State Bar No. 24106613
cyoung@McKoolSmith.com
McKool Smith, P.C.
300 Crescent Court Suite 1500
Dallas, TX 75201
Telephone: (214) 978-4000
Telecopier: (214) 978-4044

Matthew T. Cameron
Texas State Bar No. 24097451
mcameron@McKoolSmith.com
McKool Smith, P.C.
303 Colorado Street, Suite 2100
Austin, TX 78701
Telephone: (512) 692-8752
Telecopier: (512) 692-8744

John Holley
Texas State Bar No. 24078678
jholley@mckoolsmith.com
McKool Smith, P.C.
1900 K Street, Suite 600
Washington, DC 20006
Telephone: (202) 370-8300
Telecopier: (202) 370-8344

Samuel F. Baxter
Texas State Bar No. 01938000
sbaxter@mckoolsmith.com
Jennifer L. Truelove
Texas State Bar No. 24012906
jtruelove@mckoolsmith.com
McKool Smith, P.C.

104 E. Houston Street, Suite 300
Marshall, Texas 75670
Telephone: (903) 923-9000
Telecopier: (903) 923-9099

**ATTORNEYS FOR
TELEFONAKTIEBOLAGET
LMERICSSON AND ERICSSON INC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing filing has been served on all counsel of record via electronic mail on February 3, 2023.

/s/ Nicholas Mathews
Nicholas Mathews