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

NEXTGEN INNOVATION, LLC,

Plaintiff,

v.

AT&T SERVICES, INC., AT&T MOBILITY
LLC, AND AT&T CORP.,

Defendants,

NOKIA OF AMERICA CORPORATION,

Movant-Intervenors.

Case No. 2:23-cv-00263

JURY TRIAL DEMANDED

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**MOVANT-INTERVENOR NOKIA'S
UNOPPOSED MOTION FOR LEAVE TO INTERVENE**



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Pursuant to Federal Rule of Civil Procedure 24, Movant-Intervenor Nokia of America Corporation (“Nokia”) respectfully moves for leave to intervene as a defendant in the above-titled case. As detailed more fully below, Nokia has demonstrated constitutional standing to intervene and satisfies the requirement for intervention as a matter of law under Federal Rule of Civil Procedure 24(a), and, alternatively, permissive intervention under Rule 24(b).

Furthermore, Plaintiff NextGen Innovations, LLC (“NextGen”) does not oppose Nokia’s intervention. AT&T also does not oppose Nokia’s intervention. Thus, Nokia respectfully requests that the Court grant it leave to intervene and file a responsive pleading in intervention within two business days of its motion being granted.¹

I. INTRODUCTION

Plaintiff NextGen sued Nokia-customer AT&T on June 1, 2023, asserting U.S. Patent No. 8,238,754 (“’754 Patent”). Dkt. 1. Nokia seeks to intervene so that the dispute between Nokia and NextGen may be efficiently disposed of in the pending proceeding.

This case presents a justiciable controversy as to Nokia. Nokia provides AT&T with certain types of PON pluggable devices (the “Accused Products”) that AT&T uses in its network and NextGen has accused that use of infringement in its complaint and infringement contentions, such as GPON and XGS-PON pluggables. *Id.* at ¶¶29-30; AT&T Inf. Cont. at 6-7.² Nokia, as a supplier of certain of the Accused Products, has a substantial interest in the litigation and is in the best position to defend infringement claims directed to those products. “It is a simple fact of life that a manufacturer must protect its customers, either as a matter of contract, or good business, or in

¹ In accordance with Federal Rules of Civil Procedure 24(c), a copy of Nokia’s proposed Answer in Intervention and Counterclaims is attached as Exhibit 1.

² A copy of NextGen’s Infringement Contentions Exhibit 1 (“AT&T’s Pluggable ONT/ONU PON Device”) is attached as Exhibit 2.

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order to avoid the damaging impact of an adverse ruling against its products.” *Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1464 (Fed. Cir. 1990); *see also Chandler & Price Co. v. Brandtjen & Kluge, Inc.*, 296 U.S. 53, 55 (1935) (noting a manufacturer’s intervention in infringement action against a customer is “necessary for the protection of its interest”). The Federal Circuit has even gone so far as to say customer suits, such as this one, should yield to suits raising the same claims against the product manufacturer. *See, e.g., Katz*, 909 F.2d at 1464 (upholding stay of patent infringement suit against customers, stating “in reality, the manufacturer is the true defendant in the customer suit”); *Kahn v. Gen. Motors Corp.*, 889 F.2d 1078, 1081 (Fed. Cir. 1989) (explaining the “customer suit exception” exists because a manufacturer has a “presumed greater interest in defending its actions against charges of patent infringement”).

As the supplier of some of the Accused Products, Nokia has a substantial interest in the litigation and is in the best position to defend against NextGen’s claims regarding that equipment. Nokia’s motion is timely, and no existing party will suffer prejudice if Nokia intervenes. Moreover, Nokia’s intervention will not result in the case being delayed. Thus, Nokia respectfully requests the Court’s permission to intervene as a matter of right under Federal Rule of Civil Procedure 24(a) or, alternatively, that the Court allow intervention under Rule 24(b).

II. STATEMENT OF FACTS

Plaintiff Appears to Accuse AT&T’s Use of Nokia Equipment.³ NextGen accuses AT&T of infringing the ’754 Patent because of AT&T’s use of allegedly infringing PON pluggable modules. Dkt. 1 at ¶¶29-30; AT&T Inf. Cont. Nokia supplies, among other things, such PON pluggable modules to AT&T. Dkt. 1 at ¶¶29-30; AT&T Inf. Cont. at 6-7. Nokia’s entry into the

³ The scope of NextGen’s infringement allegations also includes certain PON pluggable modules that AT&T may purchase from other suppliers, although Nokia lacks information about those other suppliers’ equipment.

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case will facilitate discovery related to this equipment. For example, Nokia's entry into the case will facilitate direct discovery of documents and other tangible evidence related to those Accused Products that reside with Nokia. Nokia has a substantial interest in protecting its equipment and technology and Nokia's entry into the case will streamline and simplify this litigation regarding the Nokia-supplied Accused Products.

This Case is at an Early Stage in the Litigation. Currently no activity has occurred in this case weighing against intervention. NextGen filed its Complaint on June 1, 2023. Dkt. 1. AT&T answered on June 25, 2023. Dkt. 12. NextGen served its infringement contentions on September 13, 2023, the scheduling conference took place September 28, 2023, and AT&T only recently filed its invalidity contentions on November 9, 2023. Dkt. 23. Trial is not scheduled until February 2025 and the *Markman* hearing is still nearly nine months away. *Id.*

III. ARGUMENT

NextGen has accused Nokia's customer AT&T of infringing the '754 Patent based at least in part on Nokia equipment allegedly deployed in its network. Dkt. 1 at ¶¶29-30; AT&T Inf. Cont. at 6-7. This case thus presents a justiciable controversy as to Nokia. Nokia, as the supplier of the Nokia Accused Products, is in the best position to defend infringement claims against its equipment and technology. "[I]t is a simple fact of life that a manufacturer must protect its customers, either as a matter of contract, or 'good business, or in order to avoid the damaging impact of an adverse ruling against its product.'" *Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1464 (Fed. Cir. 1990) (quoting *Codex Corp. v. Milgo Elec. Corp.*, 553 F.2d 735, 737-38 (1st Cir. 1977)).

Nokia is entitled to intervene as a matter of right under Federal Rule of Civil Procedure 24(a) and permissively under Rule 24(b). Nokia requests that the Court grant its motion and permit

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intervention in this matter. Intervention will allow Nokia to protect its equipment and technology from a charge of infringement.

A. Mandatory Intervention

Federal Rule of Civil Procedure 24(a)(2) provides that:

On timely motion, the court must permit anyone on 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.

A proposed intervenor is entitled to mandatory intervention if all of the following elements are 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. 2015) (*New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984) (en banc)).

Nokia satisfies each element required for intervention as a matter of right. First, Nokia's motion is timely, as it has been only six months since NextGen filed its Complaint, and NextGen only recently served its infringement contentions accusing Nokia instrumentalities of allegedly infringing the '754 Patent. *See e.g., Edwards v. City of Houston*, 78 F.3d 983, 1000-01 (5th Cir. 1996) (en banc) (citing Fifth Circuit intervention cases finding that delays as long as five months or more are not unreasonable); *Team Worldwide Corp. v. Wal-Mart Stores, Inc.*, No. 2:17-CV-00235-JRG, 2017 U.S. Dist. LEXIS 201769, at *9 (E.D. Tex. 2017) (finding that a period of four months did not constitute impermissible delay); *Ericsson Inc. v. D-Link Sys., Inc.*, No. 6:10-cv-

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473 (E.D. Tex. May 4, 2012), Dkt. 205 (granting Intel’s partially opposed motion to intervene filed five months after the scheduling conference took place and nearly one year into the case). Furthermore, as NextGen is not opposing this motion, there is no allegation that NextGen is prejudiced by the timing of Nokia’s motion. Even if there were such an allegation, however, there is no basis for finding prejudice as no meaningful discovery activities have begun. *See Wal-Mart Stores, Inc. v. Tex. Alcoholic Bev. Comm’n*, 834 F.3d 562, 565 (5th Cir. 2016) (“Because the Association sought intervention before discovery progressed and because it did not seek to delay or reconsider phases of the litigation that had already concluded, the Association’s motion was timely”).

Second, Nokia has a substantial interest in defending its equipment and technology. Based on the allegations in NextGen’s Complaint, NextGen is accusing equipment allegedly provided to AT&T by Nokia of infringing the ’754 Patent. Dkt. 1 at ¶¶29-30; AT&T Inf. Cont. at 6-7. Courts routinely recognize that developers, manufacturers, and distributors of accused equipment and technology, such as Nokia, have a considerable interest in patent litigation against their customers. *See, e.g., U.S. Ethernet Innovations, LLC v. Acer, Inc.*, No. 6:09-cv-448-JDL, 2010 U.S. Dist. LEXIS 150649, at *13 (E.D. Tex. May 10, 2010) (Love, J.) (“[A] manufacturer such as Intel faces the loss of its customer base and reputation as a result of patent infringement allegations” (citation omitted)).

Third, Nokia’s interest may be impaired because (1) adverse rulings could impact Nokia’s relationships with its customers and (2) an adverse judgment could create precedent that could be used against Nokia and its customers in other proceedings related to Nokia equipment, software, and technology. *See, e.g., Heaton v. Monogram Credit Card Bank*, 297 F.3d 416, 424 (5th Cir. 2002) (The potential “stare decisis effect of an adverse judgment constitutes a sufficient

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impairment to compel intervention” (citation omitted)); *Katz*, 909 F.2d at 1464 (“[I]t is a simple fact of life that a manufacturer must protect its customers, either as a matter of contract, or good business, or in order to avoid the damaging impact of an adverse ruling against its products” (citation omitted)); *Team Worldwide Corp.*, 2017 U.S. Dist. LEXIS 201769, at *13 (“[T]he ongoing sale and distribution of [the intervenor’s] products is put at risk by [the plaintiff’s] allegations of infringement.”).

Finally, the existing parties are not situated to adequately represent Nokia’s interests. As the supplier of equipment and technology at issue in this litigation, Nokia is uniquely situated to defend its own products. Indeed, as the product supplier and keeper of relevant technical documents, Nokia is an important source of information about its equipment and technology. Thus, Nokia is capable of presenting a defense in support of its interests that could not be presented by AT&T alone. *See Sw. Bell Tel., L.P. v. Arthur Collins, Inc.*, No. 3:04-cv-00669 (N.D. Tex. Jan. 28, 2005), Dkt. 50 at 5 (finding under the inadequate representation inquiry that “the customer would not be the best source for providing the detailed information about the [intervenor-manufacturer’s] products.”). Accordingly, Nokia has met its burden of demonstrating its need to independently defend its own equipment and technology.

B. Permissive Intervention

A second, independent basis for granting Nokia’s motion is permissive intervention. Federal Rule of Civil procedure 24(b) requires only that the prospective intervenor have “a claim or defense that shares with the main action a common question of law or fact,” and that the motion for intervention be timely filed. The claims and defenses that Nokia intends to plead share an abundance of common questions of law and fact with the main action regarding Nokia Accused Products. For instance, Nokia will raise defenses of noninfringement and invalidity against the

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'754 Patent. The determination of validity necessarily involves the resolution of legal and factual issues within the scope of at least 35 U.S.C. §§ 102, 103, and/or 112. Any validity defense raised by AT&T will involve similar legal and factual issues. These overlapping factual issues are sufficient to warrant permissive intervention. *See Team Worldwide Corp.*, 2017 U.S. Dist. LEXIS 201769, at *19-20.

Moreover, as discussed in detail above, Nokia's motion is timely and will not unduly delay the proceedings or unduly prejudice the original parties, as evidenced by the fact that neither AT&T nor NextGen oppose this motion. Furthermore, intervention in this case promotes both fairness and judicial economy given that Nokia's equipment and technology is directly at issue in this litigation. As permissive intervention is "wholly discretionary," the lack of prejudice or delay and the promotion of fairness and judicial economy further support granting Nokia's motion. *New Orleans Pub. Serv.*, 732 F.2d at 470-71.

IV. CONCLUSION

For the foregoing reasons, Nokia respectfully requests that the Court enter an order granting Nokia leave to intervene, either as a matter of right under Federal Rule of Civil Procedure 24(a) or permissively under Rule 24(b). Nokia further requests that it be granted leave to file a responsive pleading in intervention within two business days of its motion being granted.

DATED: January 9, 2024

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that pursuant to Local Rules CV-7(h) and (i), counsel for Movant-Intervenor Nokia of America Corporation met and conferred with counsel for both Plaintiff NextGen and Defendant AT&T via email. Both NextGen and AT&T indicated that they do not oppose the relief sought herein.

/s/ M. Scott Stevens

M. Scott Stevens

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was filed electronically in compliance with Local Rule CV-5(a) and served on attorneys of record by email on January 9, 2024.

/s/ M. Scott Stevens

M. Scott Stevens