

Filed on behalf of: Cellco Partnership d/b/a Verizon Wireless

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS
Petitioner

v.

GENERAL ACCESS SOLUTIONS, LTD.
Patent Owner

IPR2023-00978
U.S. Patent No. 7,230,931

**PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY**

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I. INTRODUCTION

The discovery requested by Patent Owner (“GAS”) in its motion (Paper 11, “Mot.”) cannot yield any useful information establishing a time bar or *General Plastic* discretionary denial and smacks of an impermissible fishing expedition.

Using mere speculation, GAS attempts to intertwine this IPR with a previous IPR (IPR2017-01889), filed by another party (Sprint) against the subject patent (“’931 patent”). Notably, GAS neglects to mention that its litigation against Sprint concluded more than 11 months before GAS sued Petitioner (“Verizon”). *General Access Solutions, Ltd. v. Sprint Corp.*, 2:16-cv-00465, D.I. 53 (E.D. Tex. Jan. 10, 2020) (’931 patent severed into a new action, assigned 2:20-cv-07); *General Access Solutions, Ltd. v. Virgin Mobile USA, L.P.* (“Sprint litigation”), 2:20-cv-07, D.I. 385 (E.D. Tex. Nov. 2, 2021); *General Access Solutions, Ltd. v. Cellco Partnership d/b/a Verizon Wireless* (“Verizon litigation”), 2:22-cv-00394, D.I. 1 (E.D. Tex. Oct. 10, 2022). Also, despite arguing that Ericsson and/or Samsung may be RPIs in both IPRs, GAS fails to mention that neither entity was served with an infringement complaint (and thus no time bar applies). Finally, GAS downplays the critical fact that its theories require GAS to establish as a threshold matter that Ericsson or Samsung was an RPI in the Sprint IPR, for which it has no proof.

II. REPRESENTATIONS

For clarity, Verizon represents that neither Ericsson nor Samsung have (i)

had any input into the decision to file, prior art relied upon in, or arguments presented in this IPR, or (ii) funded (or will fund) this IPR. Also, in the spirit of cooperation and to avoid any appearance of impropriety, Verizon will produce to GAS the pertinent agreements between it and Ericsson and (should Samsung provide authorization) Samsung, subject to agreement on a suitable protective order. This production renders moot, at least, Requests for Production Nos. 1 and 2 and Deposition Topic No. 1. *See* Mot. at Appendix A (“Appendix A”).

III. GAS’S 35 U.S.C. § 315(B) ARGUMENT FAILS

GAS hypothesizes that Ericsson and Samsung might be Verizon’s RPIs in this IPR (Mot. at 1) and argues that its requested discovery may be “relevant to ... whether [Verizon’s] Petition is time-barred under 35 U.S.C. § 315(b).” Mot. at 3. GAS’s argument is misplaced because a prerequisite to a time bar under § 315(b)—service of an infringement complaint on the RPI—is not satisfied here.

A time bar requires that the petitioner or purported RPI be “served with a complaint alleging infringement” more than one year prior to the IPR petition filing. But neither Ericsson nor Samsung have ever been served with a complaint alleging infringement of the ’931 patent, nor does GAS allege otherwise.

Therefore, no potential time bar circumstance exists.

Moreover, even if Ericsson and/or Samsung were Verizon’s RPIs (they are not), they are not time-barred since their deadline for filing an IPR (as counted

from GAS's service of its district court complaint on Verizon on Oct. 11, 2022) has not yet lapsed. *See* Verizon litigation, D.I. 11 (Oct. 13, 2022) (return of summons). Therefore, neither Ericsson nor Samsung can be "time-barred real parties in interest in this IPR" as alleged by GAS. Mot. at 1. Nor has GAS suggested (nor can it legitimately suggest) that Sprint is an RPI of Verizon. Therefore, GAS's time bar argument for discovery fails.

IV. GAS'S 35 U.S.C. § 325(E) ARGUMENT FAILS

GAS next argues that Verizon may be "barred" under "35 U.S.C. § 325(e)," based on the Sprint IPR. Mot. at 1, 3. This argument likewise fails. To start, § 325(e) estoppel applies to PGRs, not IPRs. To the extent GAS intended to cite § 315(e), its argument is still unavailing. To make such argument, GAS must establish that (i) Ericsson and/or Samsung were unnamed RPIs of Sprint in the Sprint IPR, *and* (ii) Ericsson and/or Samsung are also unnamed RPIs of Verizon in this IPR. GAS possesses nothing beyond pure speculation for either position. Critically, for GAS to have any basis to allege that useful information might be discoverable for its stated purposes in this motion, it would need, as a prerequisite, conclusive evidence that Ericsson and/or Samsung were unnamed RPIs in the Sprint IPR. Absent such evidence, neither party could be estopped in this IPR.

Regarding Ericsson and Samsung's relationship with Sprint, GAS points to "ongoing collaborations" and "partnerships" between these parties on technologies.

Mot. at 7. At most, the cited documents establish standard supplier-customer relationships, which is not enough to constitute an RPI. *See WesternGeco LLC v. ION Geophysical Corp.*, 889 F.3d 1308, 1321 (Fed. Cir. 2018); *Wi-Fi One, LLC v. Broadcom Corp.*, 887 F.3d 1329, 1341 (Fed. Cir. 2018).

Importantly, GAS provides no reason why *Verizon*—a competitor of Sprint—would possess relevant information concerning Ericsson’s or Samsung’s relationship with Sprint. Likely recognizing this fundamental problem with its argument for discovery, GAS offers that it “intends to seek leave from the Board to issue a subpoena to T-Mobile [previously Sprint].” Mot. at 8. That statement acknowledges the absence of evidence supporting the prerequisite showing for its motion. Specifically, absent proof that either Ericsson or Samsung was an RPI in the Sprint IPR, discovery on whether they are RPIs here (they are not) is irrelevant. *SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734, Paper 11 at 16-20 (PTAB Oct. 6, 2020) (precedential) (finding that the RPI question is not relevant where no time bar or estoppel exists).

As to GAS’s suggestion of issuing a subpoena to T-Mobile, GAS has not even established a sufficient basis to believe that it will uncover any relevant documents. Nor has GAS established that it is entitled to seek discovery from T-Mobile on the issue where, under 37 C.F.R. § 42.73(a), any issue that reasonably could have been raised in the Sprint IPR has been disposed of.

Furthermore, GAS's allegation of collusion between Verizon and Sprint defies logic, given that GAS's litigation with Sprint ended almost a year before GAS sued Verizon. While GAS argues that "Sprint and Verizon share the same suppliers—Ericsson and Samsung" (Mot. at 1), the use of common suppliers does not support a claim collusion. GAS also argues that "Sprint and Verizon also share the same lawyers at Gibson Dunn." Mot. at 1-2. However, "common representation adds [no]thing beyond speculation that something useful will be uncovered regarding additional real parties in interest There are reasons apart from control by one party for different parties to retain the same counsel. One significant reason for common representation is familiarity with the subject matter." *AMX, LLC v. Chrimar Sys.*, IPR2016-00569, Paper 16 at 6 (PTAB May 19, 2016).

Therefore, § 315(e)/325(e) do not justify discovery.

V. GAS'S *GENERAL PLASTIC* ARGUMENT FAILS

GAS's *General Plastic* argument fails for the reasons discussed above with respect to its § 315(e)/325(e) argument. Specifically, GAS predicates its *General Plastic* argument on its flawed theory that Ericsson and/or Samsung should have been named as RPIs in the Sprint IPR. Mot. at 3. As discussed above, GAS's theory is based on mere speculation and, regardless, GAS cannot show that additional discovery from *Verizon* will uncover information concerning the relationship between Sprint and Ericsson/Samsung. Also, Verizon had no

alignment with Sprint—indeed, the Sprint litigation ended well before the Verizon litigation began, and Sprint and Verizon were competitors. Thus, these are simply *not* serial IPR challenges by the same entity, which is the premise of discretionary denial under *General Plastic*.

VI. THE *GARMIN* FACTORS SUPPORT DENYING GAS’S REQUEST

The factors in *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 26 at 6-7 (PTAB Mar. 5, 2013) (precedential) all favor denying GAS’s motion for additional discovery.

A. Factor 1 – More Than a Mere Possibility and Mere Allegation

GAS possesses no evidence tending to show beyond speculation that something useful will be uncovered. As discussed above, for GAS’s theories in this IPR to even be viable, GAS must first establish that Ericsson and/or Samsung were unnamed RPIs in the Sprint IPR. But GAS cannot plausibly expect that *Verizon* possesses information between third parties. While GAS’s motion purports to seek production from Verizon of “communications between Ericsson, Samsung, Sprint, and Verizon concerning ... the prior Sprint IPR” (Mot. at 2), its proposed discovery requests (Appendix A) appear to acknowledge this problem and do not actually seek any discovery concerning the Sprint IPR (instead seeking discovery only relating to “this IPR” and/or “the Related District Court Litigation”). *See* Appendix A (Req. for Production Nos. 3-4; Deposition Topic Nos. 3-4). Therefore,

GAS's discovery requests (in Appendix A) will not uncover any of the prerequisite information (if any) from the Sprint IPR.

Even if one interpreted GAS's discovery requests to encompass information regarding the Sprint IPR, it is illogical to believe that *Verizon* would possess communications between a competitor and third-party suppliers concerning an IPR not involving Verizon. Nor has GAS offered anything other than speculation that there would exist communications between Sprint and Verizon, where there was no overlap in their respective litigations. *See* Appendix A (Req. for Production No. 4; Deposition Topic No. 4).

The speculative nature of GAS's theories is exposed by the equivocal language within GAS's motion itself. Mot. at 2 ("At a *minimum*, the requested discovery *will help* the Board determine the nature of" the relationships (emphasis added)), 5-6 ("with the discovery sought here, the Board could consider *whether* the indemnification agreements *indicated a fairly standard customer-manufacturer relationship*" that does not implicate RPI concerns (emphasis added, internal quotations omitted)). Such speculative language weighs against GAS. *AMX*, IPR2016-00569, Paper 16 at 6-7 (considering under *Garmin* Factor 1 that "[t]he ["qualified wording"] language of Patent Owner's Motion evinces speculation rather than demonstrating Patent Owner has evidence in its possession tending to show that something useful will be uncovered.").

Therefore, *Garmin* Factor 1 weighs against granting additional discovery.

B. Factor 2 – Seeking Litigation Positions

GAS’s requests are egregious in broadly requesting “communications between Ericsson, Samsung, Sprint, and Verizon concerning this IPR, the prior Sprint IPR, *or the related district court litigation.*” Mot. at 2 (emphasis added).

GAS also broadly requests all communications *in the litigation* that relate to “invalidity contentions,” “litigation costs,” and “prior art.” Appendix A (Req. for Production No. 4 and Deposition Topic Nos. 3-4).

While neither Ericsson nor Samsung were (or will be) involved in this IPR, Ericsson has intervened in the Verizon litigation (with its own counsel) and is part of a joint defense group. GAS’s requests seeking the joint defense group agreement (Req. for Production No. 3) and all “communications” concerning invalidity contentions and prior art (Req. for Production No. 3; Deposition Topic No. 3) can only serve to uncover litigation positions and are not relevant to GAS’s theories in its motion. That GAS even attempts to seek this material reveals the true nature of its motion as an attempt at gamesmanship. For this reason alone, GAS’s motion should be denied.

Therefore, *Garmin* Factor 2 weighs against granting additional discovery.

C. Factor 3 – Ability to Generate Equivalent Information

GAS purports to seek discovery on not only communications involving

Verizon, but also communications among third parties on an IPR in which Verizon was not involved. Specifically, GAS purports to request all communications “between” Ericsson, Samsung, and Sprint “concerning the prior Sprint IPR.” Mot. at 2. GAS also alleges that it intends to subpoena Sprint (now T-Mobile) for such information. Mot. at 8. As such, GAS concedes it can obtain this information by means other than additional IPR discovery from Verizon.

Thus, GAS’s requests are improper under *Garmin* Factor 3.

D. Factor 4 – Easily Understandable Instructions

GAS purports to seek all “communications between Ericsson, Samsung, Sprint, and Verizon concerning this IPR, the prior Sprint IPR, or the related district court litigation.” Mot. at 2. In addition to being wildly overreaching, this request as defined in GAS’s motion is not easily understandable and is inconsistent with requests in Appendix A. Thus, it is unclear whether GAS seeking communications that actually involve all four parties (*i.e.*, correspondence for which all four entities are recipients) or whether it seeks communications between any two of the listed entities (in which case the request is undoubtedly overbroad). Also, because GAS seeks a deposition, it is not clear whether GAS intends to seek information of the scope stated in its motion.

Finally, it is not clear how GAS could seek all communications in the litigation between, *e.g.*, Ericsson and Verizon concerning prior art and invalidity

without seeking privileged material or underlying litigation positions.

Therefore, *Garmin* Factor 4 weighs against granting additional discovery.

E. Factor 5 – Requests Not Overly Burdensome to Answer

GAS's requests are overly burdensome for the reasons discussed above with respect to Factors 2-4. Additionally, GAS's requests are overly burdensome by virtue of seeking discovery in order to present arguments that, *a priori*, are not relevant without first establishing that Ericsson and/or Samsung were RPIs in the Sprint IPR. GAS has made no credible argument or offer of proof on that point.

Thus, absent first establishing that Ericsson and/or Samsung were Sprint's RPIs in the Sprint IPRs, *any* effort by Verizon to respond to discovery requests would be overly burdensome relative to the probative value of such information.

Finally, requesting a witness for deposition who would testify on all *communications within the context of the litigation* that involve prior art and invalidity (Deposition Topic No. 3) is clearly overly burdensome and provides no reasonable limits to avoid privileged information. Indeed, GAS's deposition topic does not even limit its scope to bases of invalidity eligible under IPR, and on its face encompasses other bases of invalidity including, *e.g.*, §§ 101 and 112.

Therefore, *Garmin* Factor 5 weighs against granting additional discovery.

VII. CONCLUSION

GAS's motion should be denied for at least the above reasons.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petitioner's Opposition to Patent Owner's Motion for Additional Discovery was served on this date via email to the following addresses:

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