

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

PANTECH CORPORATION and
PANTECH WIRELESS, LLC,

Plaintiffs

v.

LG ELECTRONICS INC. and
LG ELECTRONICS U.S.A., INC.,

Defendants.

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CIVIL ACTION NO. 5:22-CV-00113-RWS-JBB



ORDER

Before the Court are the LGE Defendants’ Rule 72 Objections to the Magistrate Judge’s Order Denying LGE’s Motion for Disqualification (Docket. No. 102) and the Pantech Plaintiffs’ Rule 72 Objections to the Magistrate Judge’s Order Denying LGE’s Motion for Disqualification (Docket. No. 103). The objections have been fully briefed (Docket Nos. 111, 113), and the Court heard oral argument regarding them (Docket No. 147).

At first glance, the facts highlighted by LGE here suggest that Mayer Brown’s actions would amount to obvious conflicts of interest—but that analysis is turned on its head when considering that LGE specifically *waived* most of the conflicts of interest it now accuses Mayer Brown of undertaking.¹ On a closer inspection, Mayer Brown made a calculated decision to accept work adverse to LGE, its former client, based on the conflict waiver that Mayer Brown and LGE

¹ It bears noting upfront that LGE did not merely agree to a boilerplate conflict waiver. After negotiating the language, LGE specifically waived most of the conflicts of interest at issue here (at least partly) in exchange for third-party [REDACTED] Mayer Brown’s legal representation of LGE in a previous case. *See* Docket No. 15-28 at 2–3.

negotiated and executed. Thus, the question before the Court is whether that calculated decision was correct.

The Court agrees with the Magistrate Judge's Order that the conflict waiver applies to most, but not all, of Mayer Brown's previous work for LGE that would support the alleged conflicts of interest. The Magistrate Judge's Order correctly found that only a single conflict of interest exists after applying the conflict waiver, and the Order is correct to weigh the societal interest factors against disqualification for that single conflict of interest. In light of the objections, however, the Court does not believe the societal interest factors outweigh the single conflict of interest that survives the conflict waiver only as to U.S. Patent No. 7,283,839 ("the '839 Patent") in the instant case, at least when viewing the '839 Patent in isolation. The Court thus sustains-in-part LGE's objections in so far as LGE wishes to prevent Mayer Brown from representing Pantech against LGE with respect to the '839 Patent, overrules Pantech's objections, and orders an appropriate remedy as set out below.

BACKGROUND

In the Magistrate Judge's Order Denying LGE's Motion to Disqualify Mayer Brown LLP (Docket No. 93) [hereinafter "Order"], after setting forth the background facts and legal standards, the Order considered and rejected Pantech's first waiver argument, finding LGE had not waived its right to object to Mayer Brown's representation of Pantech based on dilatory or affirmative conduct. Order at 16–19. Neither party objects to that finding. *See* Docket Nos. 102, 103. The Order then considered Pantech's second waiver argument, namely that LGE contractually waived its right to seek disqualification via the advance waiver provisions in the parties' Engagement Contract from *Jenam Tech, L.L.C. v. LG Electronics, Inc.*, No. 4:19-cv-00249 (E.D. Tex.) [hereinafter "*Jenam*"], focusing on the specific conflict waiver negotiated by the parties rather than

the generic standard advance waiver in Mayer Brown's International Terms for clients, which LGE also agreed to. *Id.* at 19–26. The specific conflict waiver provision provides, in pertinent part, as follows:

Certain other clients of the Firm may, in the future, seek the Firm's advice and representation regarding possible matters that are adverse to the Clients other than [REDACTED], including in matters that may result in litigation, arbitration, or other contentious matters against the Clients other than [REDACTED]. By signing below, each Client other than [REDACTED] confirms that with full knowledge of the foregoing, and having been informed of and had an opportunity to question and consider the risks of permitting the conflicting representation or representations, it, on behalf of itself and its affiliates, ***consents to the Firm's representation of other clients adverse to the Clients other than [REDACTED], in future matters substantially unrelated to the technology involved in*** (1) the [Jenam] Matter and (2) other matters where the Firm represented LGE in the ***past five (5) years***, including in litigation, arbitration, or other adverse proceedings adverse to the Clients other than [REDACTED], ***and waives any conflict of interest arising from such matters*** for the Firm's other clients. This waiver is in addition to the provisions of paragraph A.9.5 of the International Terms.

Docket No. 15-28 at 2–3 (emphasis added) [hereinafter “conflict waiver”].

According to the Magistrate Judge, the two disputes before him were (1) whether the “past five (5) years” refers to the date of the execution of the *Jenam* Engagement Letter or if it refers to the point when the conflict arose; and (2) whether the Pantech matter is substantially unrelated to the technology involved in *Jenam* or any other matter where Mayer Brown represented LGE that falls within the five-year window. Order at 27. The Order noted the parties agreed that the Magistrate Judge was required to determine the relatedness of at least *Jenam*; however, because the parties disputed when the five-year window started, they disputed whether the Magistrate Judge should also determine the relatedness of four additional matters allegedly involving smartphones or cellular technology where current Pantech counsel previously represented LGE: (1) *Cellular Comm's. Equip. v. LG Electronics, Inc.*, Nos. 6:13-cv-00508, 6:14-cv-00982, 6:16-cv-00365 (E.D. Tex.) [hereinafter “CCE”]; (2) *Mobile Tele. Tech. v. LG Electronics, Inc.*, No.

2:13-cv-00947 (E.D. Tex.) [hereinafter “*MTT*”]; (3) *Core Wireless Licensing v. LG Electronics, Inc.*, No. 2:14-cv-00911 (E.D. Tex.) [hereinafter “*Core Wireless*”]; and/or (4) confidential arbitration between [REDACTED] and LG Electronics Inc. [REDACTED] [hereinafter [REDACTED]]. Docket No. 93 at 27; *see also id.* at 4–5.

The Order first interpreted the start of the five-year window and concluded it encompasses *CCE*, *MTT*, *Core Wireless*, and [REDACTED]. *Id.* at 28–33. While the timing of the five-year window was disputed in the original briefing and at the hearing before the Magistrate Judge (because the timing dictated how many matters the Magistrate Judge needed to analyze), neither party objects to the Order’s interpretation (*see* Docket No. 102, 103).

The Order then addressed whether the instant *Pantech* matter is sufficiently related to the technology involved in *Jenam*, *CCE*, *MTT*, *Core Wireless*, or [REDACTED] so as to fall outside the scope of the specific waiver. Order at 33–51. To make the necessary comparisons, the Order first had to define the “substantial relationship” test that would be applied at the waiver step of the analysis. *Id.* at 33–37. After reviewing numerous cases that discuss this test in a patent dispute, the Order explained that the “substantial relationship” test in patent cases requires “more than just showing the at-issue matters involve the same generic technical areas or concepts,” and involves a “painstaking analysis” of comparing the patents and products in the current and prior representations. *Id.* at 37. Importantly, neither party objects to (1) the description of the substantial relationship test used in the Order, or (2) the finding that the specific conflict waiver incorporates the substantial relationship test from case law, at least with regard to the “technology involved.” *See* Docket Nos. 102, 103.

The Order then spent more than 12 pages applying the test to the five prior representations. Order at 38–51. After a “painstaking analysis of the facts and precise application of precedent,” the Order concluded that LGE had contractually waived its right to request disqualification based on Mayer Brown’s prior representations of LGE in *Jenam*, *CCE*, and [REDACTED]; however, LGE had not contractually waived its right to raise disqualification based on Mayer Brown’s prior representations of LGE in *Core Wireless* and *MTT*, which the Order then considered under a conflict-of-interest analysis. *See id.* at 52.

While neither party objects to the Order’s description of the substantial relationship test in patent cases, both parties object to how the Order applies the test when comparing the five prior matters to the instant case. *See* Docket Nos. 102, 103. As noted above, the Order found LGE waived its right to assert a conflict with respect to *Jenam*, *CCE*, and [REDACTED], but not *Core Wireless* or *MTT*. Pantech now asserts the Order should have found all five matters *were* waived (*i.e.*, that *Core Wireless* and *MTT* were not substantially related to the instant case), while LGE now asserts the Order should have found [REDACTED] and *Core Wireless* were *not* waived (*i.e.*, that they were substantially related to the instant case).

The Order also found that disqualification was not warranted because no conflict of interest exists as to *Core Wireless* and the single conflict of interest that does exist as to *MTT*² was outweighed by societal interest factors. Order at 56, 60. LGE further objects and now asserts that a conflict of interest exists as to *Core Wireless* and that societal interest factors cannot override the conflict of interest as to *MTT*. LGE continues to request that Mayer Brown be disqualified from the instant case.

² Mayer Brown does not dispute LGE’s assertion that because Mayer Brown did not screen the attorneys involved in *MTT*, any conflict attached to them would be imputed to the entire firm. *See* Docket No. 15 at 15.

LEGAL STANDARD

I. Standard of Review

Federal Rule of Civil Procedure 72(a) provides that “[t]he district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.” FED. R. CIV. P. 72(a).³

II. Motions to Disqualify

“As disqualification is a procedural matter not unique to patent law, regional circuit law applies.” *Adaptix, Inc. v. Dell, Inc.*, Case No. 6:13-cv-437, 2014 WL 11730482, at *4 (E.D. Tex. Feb. 12, 2014) (citing *Picker Int’l, Inc. v. Varian Assocs., Inc.*, 869 F.2d 578, 580–81 (Fed. Cir. 1989)). In the Fifth Circuit, a motion to disqualify is a substantive motion “affecting the rights of the parties” and is thus “determined by applying standards developed under *federal law*.” *In re Am. Airlines, Inc.*, 972 F.2d 605, 610 (5th Cir. 1992) [hereinafter *American Airlines*] (emphasis in original) (quoting *In re Dresser Industries*, 972 F.2d 540, 543 (5th Cir. 1992)). While the Fifth Circuit is “sensitive to preventing conflicts of interest,” it has warned that disqualification should not be applied “mechanically” or “cavalierly.” *In re ProEducation Int’l, Inc.*, 587 F.3d 296, 299–300 (5th Cir. 2009) (citing *American Airlines*, 972 F.2d at 610; *FDIC v. U.S. Fire Ins. Co.*, 50 F.3d 1304, 1312 (5th Cir. 1995)).

Rather, the Fifth Circuit has directed courts to carefully “consider ‘[a]ll the facts particular to [the] case . . . in the context of the relevant ethical criteria and with meticulous deference to the litigant’s rights.’” *Id.* at 300 (quoting *U.S. Fire*, 50 F.3d at 1314); *Woods v. Covington Cty. Bank*,

³ Although Pantech references Rule 72(b) in its objections (Docket No. 103), LGE’s motion for disqualification of Pantech’s counsel addresses a non-dispositive matter; therefore, the Magistrate Judge’s conclusions are subject to review under Rule 72(a). *See* Docket No. 154:13–12.

537 F.2d 804, 810 (5th Cir. 1976) (“A court should be conscious of its responsibility to preserve a reasonable balance between the need to ensure ethical conduct on the part of lawyers appearing before it and other social interests, which include the litigant’s right to freely chosen counsel.”). To that end, courts are to consider a motion to disqualify “in light of the litigant’s rights and the public interest, considering ‘whether a conflict has (1) the appearance of impropriety in general, or (2) a possibility that a specific impropriety will occur, and (3) the likelihood of public suspicion from the impropriety outweighs any social interests which will be served by the lawyer’s continued participation in the case.’” *Horaist v. Doctor’s Hosp. of Opelousas*, 255 F.3d 261, 266 (5th Cir. 2001) (citing *Dresser*, 972 F.2d at 543).

When deciding a motion to disqualify, a court first looks to that court’s specific local rules. *U.S. Fire*, 50 F.3d at 1312. In the Eastern District of Texas, “[t]he standards of professional conduct adopted as part of the Rules Governing the State Bar of Texas shall serve as a guide governing the obligations and responsibilities of all attorneys appearing in this court.” L.R. AT-2(a). District courts, however, are not limited to their local rules in deciding a motion to disqualify. *American Airlines*, 972 F.2d at 610. In fact, in reviewing motions to disqualify, courts must also “consider the ethical rules announced by the national profession in light of the public interest and the litigants’ rights.” *Id.* To this aim, the Fifth Circuit has acknowledged that the American Bar Association (“ABA”) Model Rules of Professional Conduct (the “Model Rules”) are the “national standards to consider in reviewing motions to disqualify.” *ProEducation*, 587 F.3d at 299. Therefore, the Court considers both the Texas Rules and the Model Rules.

“Finally, the party seeking disqualification bears the burden of proving that the present and prior representations are substantially related.” *American Airlines*, 972 F.2d at 614.

III. Relevant Ethical Rules

“Rule 1.09(a) of the Texas Rules and Rule 1.9 of the Model Rules govern conflicts of interest with former clients.” *Hillman Grp., Inc. v. KeyMe, L.L.C.*, 439 F. Supp. 3d 845, 852 (E.D. Tex. 2020). ABA Model Rule 1.9 is identical to Texas Rule 1.09 “in all important aspects.” *Id.*; *American Airlines*, 972 F.2d at 615, n. 2. ABA Model Rule 1.9 provides:

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
- (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
 - (1) whose interests are materially adverse to that person; and
 - (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.
- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
 - (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
 - (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

MODEL RULES PROF. CONDUCT R. 1.9 (AM. BAR ASS’N 2019).

Texas Disciplinary Rule of Professional Conduct 1.09(a)–(b) provides:

- (a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:
 - (1) in which such other person questions the validity of the lawyer’s services or work product for the former client;
 - (2) if the representation in reasonable probability will involve a violation of Rule 1.05; or
 - (3) if it is the same or a substantially related matter.

- (b) Except to the extent authorized by Rule 1.10, when lawyers are or have become members of or associated with a firm, none of them shall knowingly represent a client if any one of them practicing alone would be prohibited from doing so by paragraph (a).

TEX. DISCIPLINARY RULES. PROF. CONDUCT R. 1.09(a) (2022). “Rule 1.09(a)(2) incorporates Rule 1.05, which prohibits a lawyer’s use of confidential information obtained from a former client to that former client’s disadvantage.” *American Airlines*, 972 F.2d at 615. “Rule 1.09 thus on its face forbids a lawyer to appear against a former client if the current representation in reasonable probability will involve the use of confidential information or if the current matter is substantially related to the matters in which the lawyer has represented the former client.” *Id.*

IV. Advance Waiver

In attorney-client situations, “general rules of professional legal conduct recognize that in certain circumstances it is not only proper but beneficial for parties to contractually consent to a waiver of future conflicts of interest.” *In re Shared Memory Graphics L.L.C.*, 659 F.3d 1336, 1341 (Fed. Cir. 2011) (citing Restatement (Third) of the Law Governing Lawyers, § 122 cmt. D (2000) (“[T]he gains to both lawyer and client from a system of advance consent to defined future conflicts might be substantial.”)). In 2005, the ABA concluded that the 2002 amendments to its Model Rule 1.7 had broadened the circumstances in which an advance waiver of conflicts by a current client would be upheld, compared to those in 1993 when it had last opined on that topic. *See* ABA Standing Comm. on Ethics and Prof. Resp., Formal Op. 93-373 (1993) (setting out criteria for properly obtaining an advance waiver of conflicts of interest from a current client); ABA Standing Comm. On Ethics and Prof. Resp., Formal Op. 05-436 (2005) (setting out more liberal standards for upholding such waivers under the amended Model Rules and withdrawing ABA Formal Op. 93-373 (1993)).

DISCUSSION

I. LGE's Objections to the Magistrate Judge's Order Denying LGE's Motion for Disqualification

A. *LGE waived conflicts of interest as to CCE and [REDACTED] and the Order did not expand the scope of the parties' conflict waiver*

First, LGE argues that the Order erroneously expands the scope of the parties' conflict waiver in *Jenam* "by rewriting its express terms to cover all matters 'substantially unrelated to the **[claimed]** technology involved in' MB's prior representations of LGE rather than only those matters that are 'substantially unrelated to the technology involved in' the prior representations as recited by the agreement." Docket No. 102 at 1 (citing Order at 35–52). In other words, LGE argues the Order essentially inserts the word "claimed" into the parties' agreed-to language, which expands the waiver by improperly focusing the test for determining what has been waived on the claimed technology. Pantech responds, arguing that LGE mischaracterizes the Order. Docket No. 111 at 1. Pantech argues that the Order properly considered the confidential documents, source code, and cited standards relied on by LGE, and that it properly found that no substantial relationship exists as to the technology involved in the instant case and technology involved in either *CCE* or [REDACTED]. *Id.* at 1, 3–5.

The Order does not narrow the conflict waiver's test only to the claimed invention to determine whether potential conflicts related to a matter have been waived. The Order properly applies the language of the parties' contractually-created conflict waiver to the "technology involved" and thus does not improperly expand the scope of the waiver. *See* Docket No. 15, LGE Ex. 24 at 2–3. To be clear, the parties' "technology involved" test that the Order applied is broader than just the claimed invention. For example, regarding *CCE*, the Order finds the technology involved in *CCE* that "concerns carrier aggregation for aggregating two or more serving cells to

support wider transmission bandwidths” is not substantially related to the technology involved in the instant case that “concerns transmitting, receiving, and evaluating uplink timing group information.” Order at 44. While those descriptions of the technologies involved do track claim language from asserted patents in the cases (and one borrows generalized language from an asserted patent’s “Field” section), those descriptions do not use language from all of a claim’s limitations or otherwise restrict the technology involved only to the claimed invention.

Any characterization by LGE that the Order ignores the sharing of confidential information (including confidential source code, confidential technical documents, and sensitive licensing practices and strategies) in [REDACTED] and *CCE* with Mayer Brown is incorrect. The Order considers the fact that confidential information was shared in [REDACTED] and *CCE* and properly declines to apply that fact under the test set out by the language in the parties’ contractually-created conflict waiver that LGE negotiated, modified to add the words “technology involved,” and ultimately executed. Sharing of confidential information certainly would be considered—and is considered by this Order (*See infra* Discussion Section I.C)—in a conflict of interest analysis under *American Airlines*’s substantial relationship test and the applicable case law (*see* 972 F.2d at 614). But, importantly, the parties expressly negotiated and agreed that the substantial relationship test under their contractually-created conflict waiver was limited to the “***technology involved***” (Docket No. 15-28 at 2–3), and not counsel’s broader “***representations***” under *American Airlines* and the applicable case law (*see* 972 F.2d at 614 (describing the case law’s substantial relationship test as one compared “between past and current representations”)).

In other words, LGE cannot skip a step and proceed to the conflict-of-interest analysis without first addressing the scope and applicability of the parties’ conflict waiver. The conflict-of-interest analysis under a disqualification challenge is not applicable here precisely because LGE

waived its right to raise such a challenge under the language of its conflict waiver that it affirmatively negotiated and executed. And LGE cannot now rewrite its conflict waiver in litigation. Indeed, as admitted by the parties during oral argument, the parties could have easily carved out an exception for confidential information from their conflict waiver, but they did not do so. Docket No. 154 at 24:12–23, 26:1–7. The Court declines to now incorporate any such exception to the parties’ conflict waiver that the parties could have but did not incorporate themselves.

Second, LGE argues that “[c]ourts look to the overlap in accused products and the likely confidential information that was shared as part of that representation in evaluating whether a ‘substantial relationship’ is present.” Docket No. 102 at 2. Pantech, on the other hand, argues that the Order correctly finds that “[s]imply showing product overlap is not sufficient to show both cases involve substantially related technology” nor would it be “sufficient to allege that some aspects of the confidential information . . . relate to the patents asserted by Pantech.” Docket No. 111 at 1 (quoting Order at 42).

Here, product overlap, on its own, cannot show that the technology involved is substantially related under the conflict waiver’s test. The Order correctly explained that an overlap in products is insufficient because a product may contain many different technologies (*e.g.*, Order at 37, 40, 42, 50). For example, a patent case about display technology could be unrelated to a patent case about Bluetooth technology, even though the cases may involve the same products. LGE merely cites cases that discuss product overlap without ever determining that product overlap is sufficient by itself to create a conflict. *See* Docket No. 102 at 2–4. Moreover, LGE fails to show that any of these cases address a specific substantial relationship test, crafted by the parties in a conflict waiver, like the test at issue. *See id.* For example, LGE attempts to show that the substantial

relationship test under its conflict waiver can be met because asserted patents in *CCE* and the instant case both involve (1) “component carriers” (“or serving cells”) and (2) “user equipment.” Docket No. 65 at 1–2. But accepting LGE’s argument would mean “many, if not most, patent cases involving cellular devices” would be substantially related merely because they involve such broadly stated cellular device names. Order at 44.

LGE’s arguments regarding overlaps in confidential information as to *CCE* and [REDACTED] once again fail here where LGE has failed to show the “technology involved” in the matters is substantially related under its conflict waiver. As discussed above, LGE waived conflicts of interest for *CCE* and [REDACTED] because the “technology involved” in those cases was not substantially related to the instant case and the conflict waiver failed to carve out any exception for confidential information. Therefore, LGE waived conflicts of interest resulting from any oversharing of confidential information in *CCE* and [REDACTED], because the technology involved in those cases are not substantially related to the “technology involved” here. LGE also alleges that “[w]hile the Order cites several cases (at 34–36), none addresses a conflict based on a prior representation concerning the same products, standards, technical documentation or source code.” Docket No. 102 at 3. That may be true that another case with such analogous facts does not exist. But LGE also fails to cite a case involving a conflict waiver with language like the one it negotiated and agreed to here.

Third, LGE argues that the Order improperly shifts the burden to LGE to show prior matters involve substantially related technology, rather than properly shifting the burden to Mayer Brown to show that the parties’ conflict waiver applies. Docket No. 102 at 3. Pantech responds, arguing that the Order first properly interprets the waiver agreement and then places the burden on movant LGE to show disqualification by showing there is a substantial relationship between the prior and

current matters. Docket No. 111 at 3–4. Pantech argues that LGE “conflates the applicability of LGE’s consent to adverse representations with the separate question of disqualification.” *Id.* at 3.

Here, LGE conflates the burden Mayer Brown would bear if informed consent was at issue⁴ with the ultimate burden that LGE bears to justify disqualification. LGE’s materials presented at oral argument show that the cases it cites address Mayer Brown’s “burden to that show [LGE, its former client] gave informed consent” regarding the parties’ conflict waiver because Mayer Brown has raised the conflict waiver as a defense. Docket No. 149-1 at 10 (quoting *Galderma Lab’s, L.P. v. Actavis Mid Atl. LLC*, 927 F. Supp. 2d 390, 398 (N.D. Tex. 2013); citing *In re Fisker Auto. Holdings, Inc. S’holder Litig.*, No. CV 13-2100, 2018 WL 3991470, at *3 n.5 (D. Del. Aug. 20, 2018)); *see also* Docket No. 102 at 3 (citing same)). But, as the Order correctly finds, “[n]owhere in its briefing does LGE argue the specific waiver is ineffective for lack of informed consent.” Order at 26. And “[e]ven if it had, the Court would find Pantech has met its burden of showing LGE gave informed consent for Mayer Brown to represent other clients in future matters adverse to LGE, subject to the limitations specifically negotiated between independent counsel for LGE, a sophisticated party, and [Mr.] Beaber.” *Id.* The only burden the Order imposes on LGE is LGE’s ultimate burden to disqualify Mayer Brown. *See* Order at 1, 11, 41, 50, 63.

And LGE’s citation to a District of New Jersey case interpreting the New Jersey Rules of Professional Conduct does not shift the burden here because it addresses a situation where a court

⁴ “The provisions of [Rule 1.9] are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing[.]” ABA MODEL RULES PROF. CONDUCT R. 1.9(b)(2), cmt. 9. A prospective or advance waiver will more likely be effective if it comprehensively explains the types of conflicts that might arise and any adverse consequences of giving consent. ABA Formal Op. 05-436. Generally, in the ABA’s opinion, an open-ended general consent is ineffective, but is more likely to be effective if (1) the client is an experienced user of legal services; (2) is independently represented by other counsel; (3) is reasonably informed of the risk of a conflict; and (4) consent is limited only to unrelated future conflicts. *Id.*

had already found the former counsel violated ethical rules that merited disqualification. *See* Docket No. 102 at 3 (citing *Celgene Corp. v. KV Pharms. Co.*, Case No. 07-4819, 2008 WL 2937415, at *6–7 (D.N.J. July 29, 2008)). But here, regarding *CCE* and [REDACTED], the Court has not proceeded to the conflicts of interest analysis because it must first determine the scope and applicability of the parties’ conflict waiver.

Fourth, LGE argues the Order did not properly consider the overlap in cellular standards and that Mayer Brown analyzed confidential information to determine whether cellular standards were implemented by LGE. Docket No. 102 at 3–4. Pantech, on the other hand, argues that the Order considered cellular standards and correctly found that satisfying the substantial relationship test under the parties’ conflict waiver “requires more than showing both matters involve the same standard technical specifications.” Docket No. 111 at 2, 5.

Here, the Order correctly explains why an overlap in broad cellular standards is not sufficient to satisfy the parties’ substantial relationship test under their conflict waiver. *See* Order at 42–43, 50. Standards are large, comprehensive documents that cover a myriad of products from different manufacturers. *See id.* The record does not show the technology involved in analyzing LGE confidential information, related to the broad standards at issue in [REDACTED], is substantially related to the technology involved in the instant case. *See id.* The record before the Magistrate Judge shows that Mayer Brown worked to map patents to cellular standards. But LGE fails to show that, under the parties’ conflict waiver, the “technology involved” in any of its work mapping patents to cellular standards was ever related to the “technology involved” in the instant case.

Fifth, LGE argues the Order is internally inconsistent. Docket No. 102 at 4. Specifically, LGE argues that, like *MTT* and *Core Wireless*, *CCE* should also fall outside the conflict waiver because Mayer Brown gained access to the entirety of the source code for LGE’s

messaging app and user interface, which LGE alleges are accused of infringement in the instant case. *Id.* Pantech responds by arguing that, like LGE’s product overlap arguments, LGE’s confidential information overlap arguments fail because the fact that Mayer Brown received confidential information in *CCE* is not sufficient to show that both cases involve substantially related technology under the parties’ conflict waiver. Docket No. 111 at 1, 5.

Here, LGE’s arguments related to confidential information once again fail under its conflict waiver. LGE’s alleged inconsistency fails because *CCE* is subject to the parties’ conflict waiver but *MTT* is not. What’s more, relevant confidential information can—and does⁵—make a major difference based on Mayer Brown’s prior representation in a conflict-of-interest analysis under the case law once having determined that the parties’ conflict waiver does not apply. But under the parties’ conflict waiver, the fact that LGE shared the entirety of the source code for the LG messaging app and user interface in *CCE* with Mayer Brown cannot make the “technology involved” in *CCE* related to the instant case. Rather, it means LGE overshad confidential information with Mayer Brown in *CCE* despite waiving conflicts of interest related to *CCE*.⁶

In sum, the Magistrate Judge’s Order correctly (1) conducts a painstaking analysis comparing and contrasting the “technology involved” in *CCE*, [REDACTED], and the instant case; and (2) finds no substantial relationship between the technology involved in either *CCE* or [REDACTED] and the technology involved in the instant case under the parties’ conflict waiver. Accordingly, LGE’s

⁵ This order sustains-in-part LGE’s objections as to *MTT* because relevant confidential information, including the LG messaging app source code, is considered under a conflict-of-interest analysis. *See infra* Discussion Section III.C. *MTT* is not subject to the parties’ conflict waiver because the messaging technology involved in *MTT* is substantially related to the messaging technology involved in the instant case. Order at 45–46.

⁶ While LGE waived any conflict of interest as to confidential information with regard to *CCE*, the Order nevertheless makes clear that Mayer Brown cannot use any of LGE’s confidential information from prior matters against LGE. *See* Order at 61–62.

objections to the Magistrate Judge's Order (Docket No. 102) are **OVERRULED-IN-PART** as to *CCE* and [REDACTED].

B. No conflict of interest exists as to Core Wireless that would subject Mayer Brown to disqualification

LGE argues that disqualification is required here because the Order found *Core Wireless* is substantially related to the instant case. Docket No. 102 at 5. LGE asserts that because the Order found *Core Wireless* and the instant case are substantially related, an irrebuttable presumption “that relevant confidential information was disclosed during the former period of *representation*” applies. *Id.* (quoting *American Airlines*, 972 F.2d at 614) (emphasis added by LGE). LGE further asserts that Mayer Brown would have had relevant LGE confidential information served on it after entering an appearance on behalf of LGE in *Core Wireless*. Docket No. 102 at 6. LGE argues that a substantial relationship between *Core Wireless* and [REDACTED] exists and further evidences a substantial relationship between *Core Wireless* and the instant case. *Id.*

LGE also argues that the Order incorrectly finds that Mr. Beaber (now counsel at Mayer Brown) did not work on or advise LGE as to *Core Wireless*. *Id.* at 6–7. Finally, LGE contends that the Order erroneously relies on the fact that Mr. Beaber did not bill for his time as part of LGE's billing arrangement with Mayer Brown. *Id.* at 7.

Pantech, on the other hand, argues that the Order did not find that *Core Wireless* and the instant case are substantially related regarding its disqualification analysis. Pantech largely relies on a distinction between (1) the Order's finding that the technology in *Core Wireless* and the instant case are substantially related under the conflict waiver; and (2) the Order's finding that counsel's representations in *Core Wireless* and the instant case are not substantially related under the applicable case law. Docket No. 111 at 1–2; 5–7. Pantech argues that the Order correctly considered the limited scope of Mayer Brown's involvement in *Core Wireless* in finding it is not

substantially related to the instant case. *Id.* And Pantech argues that *Core Wireless* presents no threat of confidential information misuse in this case and LGE cannot rely on any irrebuttable presumption that Mayer Brown or Mr. Beaber received confidential information because it failed to show that Mayer Brown or Mr. Beaber gave advice to LGE in *Core Wireless* or that Mayer Brown’s or Mr. Beaber’s representations in *Core Wireless* are substantially related to the instant case. *Id.*

Here, Pantech correctly points out the key distinction—the Order only finds that the ***technology involved*** in *Core Wireless* and the instant case are substantially related under the parties’ contractually-created conflict waiver; but the Order finds that counsel’s ***representations*** in *Core Wireless* and the instant case are **not** substantially related under *American Airlines* and the applicable case law. Order at 54–56; *compare* Docket No. 15-28 at 3 (focusing its substantial relationship test on the “technology involved” in past and present cases) *with American Airlines*, 972 F.2d at 614 (focusing its substantial relationship test on “past and current representations”).

Indeed, as Pantech contends, the Court may consider “the nature and extent of the attorney’s involvement with the former representation” among other factors when comparing the past and current representations under *American Airlines*’s substantial relationship test. *Power Mosfet Techs, L.L.C. v. Siemens AG*, 2002 WL 32785219, at *2 (E.D. Tex. 2002); *see* MODEL RULES PROF. CONDUCT r. 1.9, cmt. 2 (AM. BAR ASS’N 2019) (“The lawyer’s involvement in a matter can also be a question of degree.”).

The Order correctly finds that, based on the record before the Court, Mayer Brown and Mr. Beaber did not work on or advise LGE as to *Core Wireless*. LGE’s arguments to the contrary fail. On objection, LGE alleges that Mr. Beaber “was lead attorney and primary point of contact” in *Core Wireless* despite not billing a single hour to the *Core Wireless* matter while another firm

represented LGE in *Core Wireless*.⁷ Docket No. 102 at 6–7. When addressing *Core Wireless* specifically, the same declaration on which LGE relies states that Mr. Beaber entered an appearance on behalf of LGE but that his substantive work on the matter ended “around the time that the [REDACTED] matter concluded.” Docket No. 15-2, ¶ 11. A later declaration from the same LGE declarant confirms that Mayer Brown’s “[sic] work on *Core Wireless* was included in the work done for LGE as part of the [REDACTED] matter.” Docket No. 54-1, ¶ 3. While the evidence related to billing may not indisputably confirm that Mr. Beaber and Mayer Brown did not work on the *Core Wireless* matter, it supports the Order’s finding that any role by Mayer Brown in *Core Wireless* was limited to monitoring filings so Mayer Brown “could consider [their] impact on the [REDACTED] arbitration.” Order at 54. Overall, the evidence shows that Mayer Brown and Mr. Beaber played no substantive role in *Core Wireless*, and LGE has not shown otherwise through its briefing, evidence, or oral argument. Thus, considering that Mayer Brown and Mr. Beaber did not work on or advise LGE as to *Core Wireless*, LGE fails to “delineate[] with specificity the subject matters, issues and causes of action common to prior and current representations.” *See American Airlines*, 972 F.2d at 614.

LGE’s only other evidence offered to show that Mayer Brown and Mr. Beaber worked on the *Core Wireless* matter consists of Mr. Beaber’s notice of appearance on the *Core Wireless* docket and the inclusion of Mayer Brown and Mr. Beaber in a signature block on a single joint filing amongst hundreds of docket entries. Docket No. 15-12; *Core Wireless* Docket No. 570 at 4. Therefore, based on the record before the Court, LGE as “the party seeking disqualification” fails to meet its “burden of proving that the present and prior *representations* [namely, the instant case

⁷ But a closer inspection of the declaration on which LGE relies shows that the statements about being “lead attorney and primary point of contact” that were made about Mr. Beaber seem to focus on other matters, including the [REDACTED] matter. Docket No. 15-2, ¶ 4.

and *Core Wireless*] are substantially related.” *See American Airlines*, 972 F.2d at 614 (emphasis added).

And LGE’s argument that a substantial relationship between *Core Wireless* and [REDACTED] exists is beside the point. Even assuming that there was some substantial relationship between *Core Wireless* and [REDACTED], that does not show there was any substantial relationship between *Core Wireless* and the instant case. If anything, LGE’s repeated attempts in its arguments to link *Core Wireless* to [REDACTED] serve merely as repackaged arguments to inject facts related to [REDACTED] into the conflicts of interest analysis—but the Court has already found that LGE waived conflicts of interest as to the facts related to [REDACTED]. *See supra* Discussion Section I.A.

At least because no substantial relationship between *Core Wireless* and the instant case exists under *American Airlines*, (1) LGE’s argument for disqualification based solely on the finding of a substantial relationship fails as to *Core Wireless* and (2) LGE does not enjoy the irrebuttable presumption that relevant confidential information was received by Mayer Brown or Mr. Beaber in *Core Wireless*. *Cf. Micrografx, L.L.C. v. Samsung Telecommunications Am., L.L.C.*, Case No. 3:13-CV-3599-N, 2014 WL 12586177, at *4 (N.D. Tex. Mar. 7, 2014) (finding that the irrebuttable presumption did apply because the substantial relationship test was met under *American Airlines*).

LGE’s remaining arguments related to confidential information allege that Mayer Brown could improperly use confidential information from *Core Wireless* in the instant case. First, LGE argues that sealed filings related to infringement and damages in *Core Wireless* would have been served on Mr. Beaber under the local rules. Docket No. 102 at 6. But LGE does not offer any evidence that any confidential information from *Core Wireless* was actually provided to Mr. Beaber or Mayer Brown or that such confidential information would be relevant to the instant case.

Mayer Brown has also stated it did not receive LGE confidential information related to *Core Wireless*. See Docket No. 60-1, ¶ 4. Second, LGE alleges that Mayer Brown’s work for LGE related to *Core Wireless* allowed it access to sensitive licensing strategies and practices. Docket No. 102 at 5–6. But LGE fails to show that Mayer Brown worked on the *Core Wireless* matter at all, let alone access sensitive licensing strategies and practices as part of any *Core Wireless* work. Therefore, there is no threat of misuse of *Core Wireless* confidential information by Mayer Brown in the instant case.⁸

In sum, no substantial relationship exists between the representations by Mayer Brown or Mr. Beaber in *Core Wireless* because the record before the Court shows that Mayer Brown and Mr. Beaber did not work on or advise LGE as to *Core Wireless*. And there is no threat of misuse of *Core Wireless* confidential information by Mayer Brown in the instant case. Thus, no conflict of interest exists as to *Core Wireless* that would subject Mayer Brown to disqualification. Accordingly, LGE’s objections to the Magistrate Judge’s Order (Docket No. 102) are **OVERRULED-IN-PART** as to *Core Wireless*.

C. *A single conflict of interest exists as to MTT that potentially subjects Mayer Brown to disqualification only as to MTT*

LGE argues that the Order erred by finding that societal interest factors override disqualification based on the substantially related *MTT* matter. First, LGE argues that disqualification is categorically required once *American Airlines*’s substantial relationship test is

⁸ Moreover, *American Airlines* states that “a single inquiry into whether past and present representations are substantially related provides the best means to protect” both the duty of loyalty and the duty of confidentiality owed to a former client. *In re Am. Airlines, Inc.*, 972 F.2d 605, 619 (5th Cir. 1992). Therefore, *American Airlines* suggests that an additional inquiry here regarding confidential information is not even necessary once the Court has determined that no substantial relationship exists under *American Airlines*.

satisfied. Docket No. 102 at 7. Second, LGE argues that the Order’s weighing of the societal interest factors is also mistaken. *Id.* at 8. Pantech, on the other hand, argues that societal interest factors can and should override disqualification here (assuming *arguendo* that any substantial relationship test is met). Docket No. 111 at 7–8. Pantech also argues the Order correctly applied the societal interest factors considering Mayer Brown’s work in *MTT* was eight years ago and only substantially related to one of the seven patents asserted here. *Id.*

First, Pantech convincingly shows that societal interest factors should be considered and weighed against the *MTT* conflict of interest. *American Airlines* states that its “test is categorical in requiring disqualification upon the establishment of a substantial relationship between past and current representations.” *American Airlines*, 972 F.2d at 614. But in the next sentence, *American Airlines* explains the Fifth Circuit has “never applied the test in a mechanical way that might ‘prevent[] an attorney from ever representing an interest adverse to that of a former client.’” *Id.* And *American Airlines* cites *Dresser*, which contemplated that societal interest factors might “outweigh” a conflict of interest. *American Airlines*, 972 F.2d at 609–10; *Dresser* 972 F.2d at 545. More recently, the Fifth Circuit has explained that “[s]uch inflexible application of a professional rule is inappropriate because frequently it would abrogate important societal rights, such as the right of a party to his counsel of choice and an attorney’s right to freely practice her profession.” *U.S. Fire*, 50 F.3d at 1314. “A court must take into account not only the various ethical precepts adopted by the profession but also the social interests at stake.” *Id.* Moreover, in the context of a patent case and applying regional circuit law, the Federal Circuit determined that “the Fifth Circuit has on multiple occasions conducted a similar balancing analysis after reaching the conclusion that the substantial relationship test had been met.” *In re DataTreasury Corp.*, No. 2010-M928, 2010

WL 3074395, at *2 (Fed. Cir. Aug. 5, 2010). Accordingly, the Order does not err by merely considering the societal interest factors.

Second, however, the Order only considered the *MTT* conflict related to the '839 Patent as part of Pantech's much larger case involving seven patents. The Order suggested the outcome would be different if the request was limited to disqualifying Mayer Brown from representing Pantech as to the '839 Patent. Docket No. 93 at 60. Undertaking that analysis shows that disqualification would be warranted with respect to the '839 Patent.

"Among the factors [the Fifth Circuit has] considered in the past are "whether a conflict has (1) the appearance of impropriety in general, or (2) a possibility that a specific impropriety will occur, and (3) the likelihood of public suspicion from the impropriety outweighs any social interests which will be served by the lawyer's continued participation in the case." *F.D.I.C. v. U.S. Fire Ins. Co.*, 50 F.3d 1304, 1314 (5th Cir. 1995).

Some appearance of impropriety, though small, remains. The Order correctly stated that only three Mayer Brown attorneys billed ■■■ hours total regarding *MTT* over eight years ago. Order at 59. And *MTT* only relates to one of the asserted patents in the instant case (namely, the '839 Patent). However, as LGE effectively argues, the passage of time here and Pantech's decision to assert additional patents does not cure the existing conflict. For its part, Mayer Brown does not persuasively argue that information has become too stale to warrant disqualification.

Critically, a possibility that specific impropriety will occur exists because of the confidential LG messaging app source code shared with Mayer Brown. LGE "considered and bargained away" any hypothetical risk of misuse of its confidential information under the parties' conflict waiver. Order at 61. Despite waiving the risk of misusing confidential LG information learned in other matters, LGE did not bargain away that risk as to the confidential LG messaging

app source code that it shared with Mayer Brown in *MTT* because *MTT* is not subject to the parties' conflict waiver.⁹

For the avoidance of doubt, the Court does not find that any improper use of confidential information or prejudice has occurred. And LGE has not shown that any such impropriety or prejudice has occurred. Instead, the Court finds that the societal interest factors do not outweigh the conflict of interest related to Mayer Brown's representation of LGE in *MTT* when considered separately from Pantech's larger case against LGE.

Regarding the likelihood of public suspicion, the Order bases its reasoning (at least partly) on such likelihood being diminished in view of the parties' conflict waiver applying to more substantial matters. Order at 60. Viewing the outcome is necessarily different if one views the '839 Patent in isolation, and the likelihood of public suspicion cannot be sufficiently diminished in that situation.

Viewing the '839 Patent in isolation, the societal interest factors do not outweigh the conflict of interest because of the confidential LG messaging app source code shared with Mayer Brown during its representation of LGE in *MTT*. Accordingly, LGE's objections to the Magistrate Judge's Order (Docket No. 102) are **SUSTAINED-IN-PART** as to *MTT*, in so far as LGE wishes to prevent Mayer Brown from representing Pantech against LGE with respect to the '839 Patent.

⁹ LGE did bargain away hypothetical risk of misuse as to other confidential information, including technical documents and sensitive licensing practices and strategies, because the evidence shows that other confidential information was received by Mayer Brown or Mr. Beaver in *CCE* or [REDACTED], both of which are subject to the parties' conflict waiver. *See supra* Discussion Section I.A. Therefore, the Court's conflict-of-interest analysis does not consider that other confidential information here.

II. Pantech's Rule 72 Objections to the Magistrate Judge's Order Denying LGE's Motion for Disqualification

First, Pantech argues that LGE's comparison evidence used to show a substantial relationship as to *MTT* and *Core Wireless* is insufficient. Docket No. 103 at 2. Pantech contends that, instead of relying on any expert analysis regarding the patent's technologies, LGE improperly relies on a comparison of the claim language. *Id.* at 2–4. Pantech further contends that LGE has not established the same LG messaging app previously involved in *MTT* is now involved in the instant case. Docket No. 103 at 4. LGE responds and argues, among other things¹⁰, that the Order correctly finds the substantial relationship test is met for both *MTT* and *Core Wireless* and that Pantech has not denied that the same LG messaging app previously involved in *MTT* is the same messaging app involved in the instant case.

Here, Pantech's efforts to impose an additional evidentiary burden on LGE fail. LGE must still meet its ultimate burden as the movant here to justify disqualification. *American Airlines*, 972 F.2d at 614. However, Pantech's arguments suggest that finding a substantial relationship would require expert analysis and claim construction. This is incorrect. That a court found expert analysis was sufficient to show a substantial relationship (*see* Docket No. 103 at 3 (discussing *Micrografx, LLC v. Samsung Telecommunications Am. LLC*, No. 3:13-CV-3599-N, 2014 WL 12586177 (N.D. Tex. Mar. 7, 2014)) does not mean it is necessary here.

And LGE has sufficiently shown that the same LG messaging app that was involved in a previous case is involved in the instant case. When questioned at oral argument whether the same LG messaging app was involved previously and in the instant case, Mayer Brown did not deny the same app was at issue.

¹⁰ LGE also argues regarding product overlap and burden, but those arguments have been rejected. *See supra* Discussion Section I.A.

Second, Pantech argues the technologies involved in *MTT* and *Core Wireless* are not substantially related to the technologies involved in the instant case. *See* Docket No. 103 at 5–8. LGE, on the other hand, argues that its technical comparison provided to the Magistrate Judge was further evidence that the substantial relationship test was satisfied as to *MTT* and *Core Wireless*. *See* Docket No. 113 at 1–2.

Here, Pantech attempts to split hairs. The Order correctly explains that the technology involved that is analyzed for the substantial relationship test under the parties’ conflict waiver, and the case law, is necessarily broader than the claim language at issue. Order at 33–38, 44–49. The fine distinctions Pantech draws based on claim language do not make the broader technologies involved in the inventions unrelated. *See* Docket No. 103 at 5–8; *see also Micrografx, LLC v. Samsung Telecomms. Am., LLC*, No. 3:13-CV-3599, 2014 WL 12586177, at *3 (N.D. Tex. Mar. 7, 2014). Pantech fails to persuade the Court that its overly fine distinctions are appropriate. Accordingly, Pantech’s objections to the Magistrate Judge’s Order (Docket No. 103) are **OVERRULED**.

CONCLUSION

The Order correctly reasons that LGE’s all-or-nothing request for complete disqualification is not justified here. After a close examination of the facts and circumstances of the prior matters and the instant case, along with the equitable considerations regarding the societal interest factors, complete disqualification would be too severe a remedy imposed on Pantech and Mayer Brown. In exchange for Mayer Brown’s representation of LGE in *Jenam*, LGE executed a specific conflict waiver, consenting to Mayer Brown’s representation of other clients in certain future matters adverse to LGE. Through that specific conflict waiver, LGE has waived the vast majority of its concerns which could have justified complete disqualification under the relevant ethical rules.

Although LGE waived its right to object to Mayer Brown's representations of Pantech based on all but two prior representations of LGE (only one of which creates a conflict of interest that is insufficient alone to warrant complete disqualification), concerns remain regarding the *MTT* conflict of interest related to the '839 Patent.

To address the *MTT* conflict of interest related to the '839 Patent that survives the conflict waiver, the Court orders an appropriate remedy below. This remedy balances Pantech's right to its choice of counsel related to the other asserted patents in view of the parties' conflict waiver and the societal interest factors. *See TQ Delta, LLC v. 2WIRE, Inc.*, Case No. CV 13-1835-RGA, 2016 WL 5402180, at *7 (D. Del. Sept. 26, 2016) (ordering an appropriate remedy after considering the entire record and the need to balance "the sacrosanct privacy of the attorney-client relationship (and the professional integrity implicated by that relationship) and the prerogative of a party to proceed with counsel of its choice.") The Court, however, also recognizes that LGE may want to avoid severance. Accordingly, for the reasons set forth above, it is

ORDERED that LGE's objections to the Magistrate Judge's Order (Docket No. 102) are **OVERRULED-IN-PART** as to *CCE*, [REDACTED], and *Core Wireless*. It is further

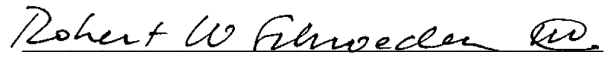
ORDERED that LGE's objections to the Magistrate Judge's Order (Docket No. 102) are **SUSTAINED-IN-PART** as to *MTT*, in so far as LGE wishes to prevent Mayer Brown from representing Pantech against LGE with respect to the '839 Patent. It is further

ORDERED that Pantech's objections to the Magistrate Judge's Order (Docket No. 103) are **OVERRULED**. It is further

ORDERED that the parties shall meet and confer regarding whether LGE will grant consent for Mayer Brown to continue to represent Pantech with respect to the '839 Patent. On or before **Thursday, August 31, 2023**, the parties shall file a joint status report containing the parties'

positions following their conference. In the event LGE does not consent to Mayer Brown's representation of Pantech as to the '839 Patent, the Court will sever Pantech's cause of action as to the '839 Patent into a separate proceeding,¹¹ disqualify Mayer Brown as to the '839 Patent only in that severed proceeding, and stay the severed proceeding to allow Pantech to retain new counsel in the severed proceeding. Unless and until any consent from LGE is obtained, Mayer Brown's involvement with the '839 Patent is limited to filing or responding to any objections to the Magistrate Judge's Report and Recommendation addressing LGE's motion to dismiss that patent based on § 101 grounds (Docket No. 153), which the Court has already explained does not raise conflict of interest concerns (*see* Docket No. 91). Mayer Brown may continue to represent Pantech regarding the other causes of action related to other asserted patents in the instant case.

So ORDERED and SIGNED this 28th day of August, 2023.


 ROBERT W. SCHROEDER III
 UNITED STATES DISTRICT JUDGE

¹¹ “The trial court has broad discretion to sever issues to be tried before it.” *Brunet v. United Gas Pipeline Co.*, 15 F.3d 500, 505 (5th Cir. 1994) (citing FED. R. CIV. P. 21). “District [c]ourts have the authority under Rule 21 to sever claims *sua sponte*.” *Loco Brands, LLC v. Butler Am., LLC*, Case No. 6:18-CV-69-JDK-KNM, 2020 WL 6803254, at *1 (E.D. Tex. July 15, 2020).