**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MINNESOTA**

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| REGENTS OF THE UNIVERSITY OF MINNESOTA<br><br>Plaintiff.<br><br>v.<br><br>SPRINT SPECTRUM L.P., et al.<br><br>Defendant,<br><br>ERICSSON, INC.,<br><br>Movant-Intervenor. | Civil Action No. 14-cv-4669-JRT-TNL<br><br>**JURY TRIAL DEMANDED** |

**MOVANT-INTERVENOR ERICSSON INC.'S REPLY IN SUPPORT OF ERICSSON INC.'S MOTION TO INTERVENE**

## I. INTRODUCTION

Plaintiff's Opposition is premised on fundamental misunderstandings of Ericsson's relationship with Sprint and Ericsson's LTE base station technology. First, Plaintiff's argument that Ericsson lacks Constitutional standing relies on the erroneous assertion that Ericsson has no obligation to indemnify Sprint. Ericsson's supply contract with Sprint contains detailed indemnification provisions, which specifically require Ericsson to indemnify Sprint from patent infringement claims arising out of Sprint's use of Ericsson's LTE base stations. Declaration of Karen McDaniel, Ex. A. Sprint has made an indemnity demand upon Ericsson pursuant to the supply contract. Ericsson has acknowledged its obligation to indemnify Sprint in this matter. McDaniel Decl., Ex. B.

Second, Plaintiff's contention that Ericsson lacks "a recognized interest that would be impaired by this litigation" is baseless and demonstrates a misunderstanding of Sprints's 4G LTE Network and Ericsson's LTE base stations. *See* Opp. at 6. Plaintiff fails to recognize that the technology specifically referred to in its infringement allegations ("Sprints's 4G LTE Network and the radio access portion of Sprint's LTE wireless communication systems") is the very technology implemented by Ericsson's LTE base stations. Amd. Compl. ¶¶ 28-30, ECF No. 28. Consequently, the determination of whether Sprint's 4G LTE network infringes the patents-in-suit necessarily implicates Ericsson's products. Ericsson, as a manufacturer and supplier, has a legally-protected interest in defending its products from claims of patent infringement. Moreover, because Ericsson has an acknowledged obligation to indemnify Sprint, its interests are not "too attenuated" or based on multiple contingencies. *See* Opp. at 9-10.

Finally, Ericsson has easily satisfied its "minimal burden" by demonstrating that Sprint's representation of Ericsson's interest "*is or may be* inadequate." *Kansas Pub. Emp. Ret. Sys. v. Reimer & Kroger Assoc., Inc.*, 60 F.3d 1304, 1308 (8th Cir. 1995). The fact that Sprint is a large corporation with experienced counsel does nothing to diminish Ericsson's incomparable technical expertise in the operation of its own complex products. Moreover, contrary to Plaintiff's unsupported assertion, there is no guarantee that each manufacturer's proprietary base station technology operates "largely in the same way." Opp. at 11. Ericsson should be permitted to intervene and pursue those theories and defenses that most effectively demonstrate that its technology does not infringe the asserted patents—without reference to its competitor's products.

## II. ARGUMENT

### A. Ericsson's Obligation to Indemnify Sprint Conclusively Establishes Article III Standing

Plaintiff concedes that an actual agreement to indemnify is sufficient to establish Constitutional standing in this case. Ericsson agrees. The Master Purchase Agreement between Ericsson and Sprint provides the basis for Ericsson's obligation to indemnify. The Agreement specifically provides that Ericsson will defend and indemnify Sprint from all claims for patent infringement arising out Sprint's use of Ericsson's products or services. McDaniel Decl., Ex. A. Pursuant to this Agreement, Sprint has made an indemnity upon Ericsson for the claims brought by Plaintiff against Sprint in this case. In fact, Ericsson has acknowledged its contractual obligations and agreed to indemnify Sprint for claims made by Plaintiff against Ericsson base stations.[1] McDaniel Decl., Ex. B. In light of this indemnification agreement, there can be no serious dispute about whether Ericsson faces an "actual or imminent" injury in this case. *See Curry v. Regents of Univ. of Minnesota*, 167 F.3d 420, 422 98th Cir. 1999). Accordingly, Ericsson has conclusively demonstrated Article III standing.[2]

Plaintiff has not cited a single case (from any jurisdiction) holding that a manufacturer or supplier that has agreed to indemnify its customer lacks Constitutional standing to intervene. And the two Federal Circuit cases cited by Plaintiff are

[1] After Plaintiff filed its Opposition, Ericsson, to remove all doubts concerning standing to intervene, expressly agreed to indemnify Sprint for infringement claims made by Plaintiff against Ericsson base stations in this lawsuit.

[2] Plaintiff's Opposition contains no additional arguments challenging the causation or redressability elements of Article III standing.

inapplicable here. In *Microsoft Corp. v. DataTern, Inc.*, the proposed intervenor told the patentee that it "had no obligation to defend or indemnify its customers," and conceded to the court that its customers' indemnification requests "are not valid." 755 F.3d 899, 902-04 (Fed. Cir. 2014). In contrast, Ericsson has never represented to Plaintiff or the Court that Sprint's indemnification requests "are not valid" or denied its obligation to defend or indemnify Sprint. In fact, Ericsson has acknowledged its obligation to indemnify Sprint. McDaniel Decl., Ex. B. Far from supporting Plaintiff's position, *Microsoft* actually establishes that Ericsson has standing to intervene by holding that if a supplier—such as Ericsson—"had an obligation to indemnify their customers, they would have standing to bring suit." *Id.* at 903-04. Likewise, Plaintiff's reliance on *MicroChip Tech. Inc. v. Chamberlain Group, Inc.* is similarly misplaced. Unlike Ericsson, the manufacturer in *MicroChip* failed to establish "a legal relationship between it and a customer that had a legal interest adverse to [the patentee], *such as the existence of an indemnity agreement* between [the manufacturer] and its customer." 441 F.3d 936, 943 (Fed. Cir. 2006) (emphasis added). Ericsson's indemnity agreement conclusively establishes the type of concrete, particularized harm sufficient to confer Article III standing for intervention.

**B. Ericsson's LTE Base Stations Implement the Accused Technology and Establish a Protectable Interest That May Be Impaired by This Lawsuit**

Ericsson has a substantial legal interest in protecting its products from claims of patent infringement, and, for purposes of intervention, has satisfied the "minimal" burden of demonstrating this interest. *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001). In its Opposition, Plaintiff demonstrates its lack of understanding of the

accused technology by suggesting it "has not accused Ericsson of infringement or singled out its base stations." Opp. at 7. Though Plaintiff has not "singled out" Ericsson's base stations by name, its infringement allegations "refer specifically to Sprint's 4G LTE Network and the radio access portion of Sprint's LTE wireless communication systems." *Id.*; Amd. Compl. ¶¶ 28-30, ECF No. 28. Plaintiff fails to appreciate that even this generic description of Sprint's network is sufficient to identify the precise technology implemented on Sprints's networks by Ericsson's base stations. The Federal Circuit has unequivocally established that "[w]hen the holder of a patent with system claims accuses a customer of direct infringement based on the customer's making, using, or selling of an allegedly infringing system in which a supplier's product functions as a material component, there may be an implicit assertion that the supplier has indirectly infringed the patent. *Arris Group, Inc. v. British Telecomms. PLC*, 639 F.3d 1368, 1375-76 (Fed. Cir. 2011). Regardless of whether Plaintiff's preliminary infringement allegations expressly identify Ericsson's base stations, there can be no serious dispute whether Ericsson's products are necessarily and substantially implicated in this lawsuit—they are.

While Plaintiff may not have singled out Ericsson, Sprint's discovery responses have specifically identified Ericsson's base stations as a key component of the accused technology.[3] And the fact that the accused technology is complex and includes "other hardware and software" is irrelevant to the determination of the sufficiency of Ericsson's

[3] Even the generic statements about Sprint's network included in Plaintiff's infringement allegations were sufficient to identify the portion of Sprint's network that incorporates Ericsson base stations.

interests. Opp. at 8. Plaintiff cites no authority for the proposition that Ericsson's rights are diminished merely because it supplies complex components to complex systems.

Moreover, Ericsson's agreement to indemnify Sprint in this case belies Plaintiff's arguments that Ericsson's interests are too attenuated or impermissibly contingent. Opp. at 9-10. Impairment of Ericsson's substantial interests turns on a single, permissible contingency: an adverse finding of liability for infringement. This is the precise contingency that every defendant faces in a patent infringement case. An adverse finding in this case would result in Ericsson's liability for damages and, as a practical matter, may require Ericsson to either license the Plaintiff's patents or modify its products to avoid future infringement. *See Kansas Pub. Emp. Ret. Sys.*, 60 F.3d at 1308. Accordingly, Ericsson has satisfied its minimal burden of demonstrating that its interests may be impaired by the disposition of this case and the Court should grant Ericsson leave to intervene.

**C. Sprint Does Not Fully Represent Ericsson's Interests**

In its Opposition, Plaintiff takes the untenable position that because Ericsson and Sprint have both "alleged invalidity and noninfringement as a counterclaim and/or affirmative defenses" in this case, their interests "are identical." Opp. at 10. It is unremarkable that the parties have alleged these general defenses. It is standard practice for defendants in patent infringement lawsuits to allege invalidity and noninfringement. Under the umbrella of these broad defenses are numerous legal theories and strategies that may be employed to defend against Plaintiff's claims. This is particularly true when, as here, Plaintiff has identified approximately 130 claims of the patents-in-suit allegedly

infringed by Sprint. For each claim there is likely to be multiple prior art references and non-infringement theories. The breadth and complexity of these claims will inevitably necessitate prioritization of legal theories and strategies, as not every defense can be equally developed and argued. Ericsson's interests should not be beholden to Sprint's divergent priorities and litigation strategies.

While Sprint is tasked with mounting a defense for all of its products, Ericsson will focus on those claims that most directly implicate its base stations. Further, Plaintiff's statement that "all of Sprint's base stations should operate largely in the same way" is without support. Opp. at 11. To the contrary, Ericsson's base stations incorporate proprietary technology that differentiates them from competing products.[4] Accordingly, not all claims will read on each manufacturer's base stations "in the same way," and not all non-infringement theories will apply "in the same way." Ericsson should be permitted to intervene and prioritize the theories and strategies most narrowly tailored to its products.

The fact that Sprint is a large corporation with experienced counsel does nothing to diminish Ericsson's incomparable technical expertise in the operation of its own complex products. In fact, Plaintiff's complaints that Sprint was unable to supply a "substantive response" with respect to the identification and operation of the network components (including Ericsson's base stations) that implement the accused technology highlights Ericsson's need to intervene in this case so it can adequately defend Ericsson's

[4] Ericsson's base stations implement millions of lines of proprietary code that is not shared with its customers (such as Sprint) or its competitors.

products against Plaintiff's claims of infringement. Opp. at 4. In light of the minimal standard for inadequacy of representation and the scope of competing defense theories, the Court should resolve any doubt regarding the adequacy of representation in favor of Ericsson and permit intervention.

**D. Intervention Will Not Result in Undue Delay or Prejudice**

Given Ericsson's expeditious filing of its motion, Plaintiff fails to make any argument concerning the timeliness of Ericsson's intervention.[5] Rather, Plaintiff strains to conjure up vague claims of delay and prejudice. Ericsson is committed to abiding by the case schedule and is capable of meeting the deadlines stipulated therein. While this is a complex case, Ericsson is confident that Plaintiff, a sophisticated institution represented by experienced counsel, will be able to navigate the complexities of its own patents and allegations and prepare for trial in May 2018 without prejudice. The only real prejudice would come if Ericsson is relegated to the position of a sideline-observer while its commercial and economic interests are adjudicated by other parties.

Finally, and unfortunately, Plaintiff has used its Opposition as a platform to assign underhanded motives to Sprint and to air unrelated (and unsupported) grievances about Sprint's conduct in this lawsuit. Such complaints are irrelevant to the Court's determination of whether Ericsson should be permitted to intervene and defend its interests.

[5] Although this lawsuit was filed more than a year ago, as set forth in Ericsson's memorandum of law (ECF No. 77), Plaintiff only first implicated Ericsson base stations when it filed its infringement allegations on December 18, 2015.

## III. CONCLUSION

For the foregoing reasons, and for those reasons set forth in Ericsson's opening memorandum of law (ECF No. 77), Ericsson respectfully requests that the Court enter an order granting Ericsson leave to intervene, either as a matter of right under Fed. R. Civ. P. 24(a), or permissively under Fed. R. Civ. P. 24(b).

Dated: February 8, 2016.

Respectfully submitted,

/s/ *Karen McDaniel*
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