IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ASUS TECHNOLOGY LICENSING INC. AND CELERITY IP, LLC,

Plaintiffs,

vs.

AT&T CORP., AT&T MOBILITY LLC, AT&T MOBILITY II LLC, AT&T SERVICES INC., T-MOBILE USA, INC., AND CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS,

Defendants.

AT&T CORP., AT&T MOBILITY LLC, AT&T MOBILITY II LLC, AT&T SERVICES INC., T-MOBILE USA, INC., AND CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS,

Counterclaim Plaintiffs,

vs.

ASUSTEK COMPUTER INC., ASUS TECHNOLOGY LICENSING INC., AND CELERITY IP, LLC,

Counterclaim Defendants.

ERICSSON INC.,

Intervenor.

NOKIA OF AMERICA CORPORATION,
Intervenor.

Civil Action No. 2:23-cv-00486

(Lead Case)

Civil Action No. 2:23-cv-00487

(Member Case)

Civil Action No. 2:23-cv-00488

(Member Case)

JURY TRIAL DEMANDED

INNOVATIVE SONIC LIMITED AND CELERITY IP, LLC,

Plaintiffs,

vs.

AT&T CORP., AT&T MOBILITY LLC, AT&T MOBILITY II LLC, AT&T SERVICES INC., T-MOBILE USA, INC., AND CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS,

Defendants.

ERICSSON INC.,

Intervenor.

NOKIA OF AMERICA CORPORATION,
Intervenor.

AT&T CORP., AT&T MOBILITY LLC, AT&T MOBILITY II LLC, AT&T SERVICES INC., T-MOBILE USA, INC., AND CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS,

Counterclaim Plaintiffs,

vs.

ASUSTEK COMPUTER INC., INNOVATIVE SONIC LIMITED, AND CELERITY IP, LLC,

Counterclaim Defendants.

Civil Action No. 2:23-CV-490

(Lead Case)

Civil Action No. 2:23-CV-489

(Member Case)

Civil Action No. 2:23-CV-491

(Member Case)

JURY TRIAL DEMANDED

DEFENDANTS' AND INTERVENORS' OPPOSITION TO MOTION TO EXPEDITE BRIEFING ON PLAINTIFFS' MOTION TO LIFT STAY

Defendants AT&T Corp., AT&T Mobility LLC, AT&T Mobility II LLC, AT&T Services, Inc., T-Mobile USA, Inc., and Cellco Partnership d/b/a Verizon Wireless and Intervenors Ericsson Inc. and Nokia of America Corporation oppose Plaintiffs' Motion for expedited Briefing on the Motion to Lift the Stay (Dkt. No. 330).

I. Background

On December 6, 2024, after multiple rounds of briefing and two in-person hearings, the Court stayed the above-captioned action pending resolution of claims in *Celerity IP LLC v. AT&T Corp*, 2:24-cv-00721-JRG-RSP ("Antitrust Case"). Dkt. No. 328. In that Order, the Court explained that "Defendants should not be forced to litigate under a cloud of collateral litigation implicating Defendants' licensing discussions about the patents-in-suit in the Infringement Case," and that Plaintiffs had "more than adequate opportunity" to address the Court's concerns prior to the issuance of the stay. *Id*. at 5.

Within hours of the stay issuing, Plaintiffs scrambled to file yet another motion for leave to amend their pleadings in the Antitrust Case and attached a Proposed Second Amended Complaint, which adds a new claim for declaratory relief regarding each parties' compliance or breach of the ETSI IPR Policy. *See* Antitrust Case, Dkt. No. 84. Over the weekend, Plaintiffs (without conferring under L.R. C-V 7(h)) moved to lift the stay. Dkt. No. 329. Plaintiffs maintain that the new declaratory judgment claim is based on "Defendants' negotiating behavior," but note that "if the Court believes the declaratory judgment of breach of SSO obligations is too chilling, it can simply decline to allow the amendment." *Id*. at 1.

Plaintiffs simultaneously moved to expedite briefing, requesting four rounds of briefs by the combined eight parties conclude within less than a week. Dkt. No. 330. This proposal is unworkable given the number of parties involved and trial conflicts described herein.

II. The Court Should Not Expedite Briefing on Plaintiffs' Request to Lift the Stay

There is no need to expedite briefing on Plaintiffs' knee-jerk motion to lift the stay. To start, counsel for Defendants and Intervenors needs time to evaluate the motions and consult with all five Defendants and Intervenors that are parties to these actions. Counsel was not able to consult with these clients over the weekend. Furthermore, lead counsel for AT&T, Verizon, and Ericsson, Nicholas Mathews, is serving as lead counsel at an ITC hearing this week in an investigation styled *In the Matter of Certain Cellular Base Station Communication Equipment, Components Thereof, and Products Containing Same*, Investigation No. 337-TA-1397.

More importantly, Plaintiffs identify no pressing emergency that would warrant an expedited briefing schedule, much less one as short as they propose. Issues of whether the stay should be lifted, whether the pleadings in the Antitrust Case may be amended, and whether Plaintiffs have addressed the cloud of prejudice caused by their tactical attack on the joint-defense group are all issues that can and should be addressed on the District's standard briefing schedule. Plaintiffs had ample opportunity to address the Court's and Defendants' concerns about the cloud of parallel litigation *before* the entry of the stay and repeatedly failed to do so. Instead, they decided to skirt the representations they made to the Court at the most-recent hearing and are bound by the consequences of their tactical decisions. The burden of expedited briefing a procedural dispute of Plaintiffs' own making should not fall on Defendants.

Defendants further note that there remains significant factual overlap between the claims in this Action and Plaintiffs' proposed Second Amended Complaint in the Antitrust Case, including overlapping requests for declaratory relief, overlapping claims regarding compliance and breach of the same ETSI IPR Policy, overlapping factual issues regarding the essentiality of Plaintiffs' patents and Defendants' negotiation behavior. There are also open case-management

and scheduling questions of how the four counterclaim patents in the Antitrust Case will proceed (or whether they should be consolidated with this Action on a new schedule), if and when the stay is lifted. Defendants will address these issues in due course in the responses to the Motion for Leave to Amend in the Antitrust Case and the Motion to Lift the Stay in this Action. These issues warrant careful consideration that is not possible under the unfairly accelerated briefing schedule requested by Plaintiffs.

Finally, Plaintiffs' gripes about Defendants declining to proceed with depositions even after the Court stayed this Action are misplaced. The case is stayed. And Plaintiffs cite no authority for a proposition that parties must proceed with discovery during the pendency of stay. To the contrary, if a stay means anything, it means that the parties' discovery obligations are deferred until the stay is lifted.

III. Conclusion

For the foregoing reasons, Defendants and Intervenors request that the Court deny Plaintiffs Motion to Expedite (Dkt. No. 330) and permit the parties to submit briefs in accordance with the default briefing schedule under the District's Local Rules.

Dated: December 9, 2024.

MCKOOL SMITH, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on December 9, 2024.

/s/ *Erik B. Fountain*
Erik B. Fountain