

NEW CINGULAR WIRELESS PCS, LLC,	§	
	§	
<i>Counterclaim-Plaintiff,</i>	§	
	§	CASE NO. 2:23-cv-00638-JRG
ERICSSON INC.,	§	(Member Case)
	§	
<i>Intervenor,</i>	§	
v.	§	
	§	
PEGASUS WIRELESS INNOVATION LLC and KT CORPORATION,	§	
	§	
<i>Counterclaim-Defendants.</i>	§	
PEGASUS WIRELESS INNOVATION LLC	§	
	§	
<i>Plaintiff,</i>	§	
	§	CASE NO. 2:23-cv-00639-JRG
v.	§	(Member Case)
	§	
T-MOBILE USA, INC. <i>et al.</i> ,	§	
	§	
<i>Defendants,</i>	§	
	§	
ERICSSON INC.,	§	
	§	
<i>Intervenor.</i>	§	
T-MOBILE USA, INC.,	§	
	§	
<i>Counterclaim-Plaintiff,</i>	§	
	§	CASE NO. 2:23-cv-00639-JRG
ERICSSON INC.,	§	(Member Case)
	§	
<i>Intervenor,</i>	§	
v.	§	
	§	
PEGASUS WIRELESS INNOVATION LLC and KT CORPORATION,	§	
	§	
<i>Counterclaim-Defendants.</i>	§	

**COUNTERCLAIM-DEFENDANT KT CORPORATION’S MOTION FOR
PROTECTIVE ORDER FROM QUESTIONING BEYOND THE SCOPE OF
JURISDICTIONAL DISCOVERY**



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Counterclaim-Defendant KT Corporation (“KT”) moves for a protective order seeking relief from non-jurisdictional discovery under FED. R. CIV. P. 26(c)(1), Local Rule CV-26(d), and this Court’s Jurisdictional Discovery Order (Dkt. 148). KT seeks to preclude Defendants¹ from using the jurisdictional discovery 30(b)(6) deposition of KT to pursue substantive discovery, such as soliciting testimony solely related to damages or Defendants’ FRAND counterclaims. KT raised this issue with Defendants and proposed reasonably limiting questioning to topics that impact personal jurisdiction. Because the parties have a fundamental disagreement over what constitutes appropriate jurisdictional discovery, KT brings this motion for a protective order.

I. BACKGROUND

KT is a Korean corporation headquartered in Seongnam-si, Gyeonggi-do, Korea. Defendants face patent infringement claims from not KT, but Plaintiff Pegasus Wireless Innovation LLC (“Pegasus”), a separate entity from KT. Defendants have filed a series of counterclaims, including alleged FRAND violations against Pegasus and KT.

Both Pegasus and KT have moved to dismiss these FRAND counterclaims pursuant to Rule 12(b)(6). Dkts. 59 (Pegasus), 130-134 (KT). KT has also moved to dismiss Defendants’ counterclaims pursuant to Rule 12(b)(2) for lack of personal jurisdiction. Dkts. 130-134. After KT filed its motions, KT agreed to provide limited discovery related to jurisdictional issues. Dkt. 146. The parties’ agreement and the Court’s order clarify that jurisdictional discovery “shall not include issues related to only the FRAND counterclaims.” Dkt. 148 ¶ 1.

¹ “Defendants” refers to Cellco Partnership d/b/a Verizon Wireless, Verizon Business Network Services LLC, Verizon Corporate Services Group Inc., and TracFone Wireless, Inc (“Verizon”), AT&T Corp., AT&T Services, Inc., AT&T Mobility LLC, AT&T Mobility II LLC, New Cingular Wireless PCS, LLC, and Cricket Wireless LLC (“AT&T”), and T-Mobile USA, Inc., Sprint Solutions LLC, and Sprint Spectrum LLC (“T-Mobile”), and Intervenor Ericsson Inc. (“Ericsson”) and Nokia of America Corp. (“Nokia”).

As part of the jurisdictional discovery process, KT produced several previous license agreements regarding certain KT patents asserted in this case. Pursuant to the jurisdictional discovery order, Defendants served a 30(b)(6) notice with five jurisdictional topics. Topic 1, which is representative of the other topics, is shown below:

TOPIC NO. 1

The negotiation, execution, performance, and details of all licenses, sales, assignments, transfers, enforcement agreements, or agreements that grant rights of any kind (such as covenants-not-to-sue, forbearances, defensive terminations, standstills, or agency rights), that are related to any of the Patents-in-Suit, the KT Patents, Related Patents, and/or any patent that KT claims to have any rights, title, or interest in, and that involve entities located in the United States or that have significant activities or product sales in the United States that would be granted any of the

KT objected to Topic 1 (as well as Topics 2-4) to the extent it called for information not relevant to jurisdictional discovery:

KT objects to this topic to the extent it seeks irrelevant information. This topic is not relevant to determining whether the Court has personal jurisdiction over KT in the Eastern District of Texas. KT's witness will be prepared to discuss this topic solely as it relates to personal jurisdiction. KT will not present a witness on questions relating to the "details of all licenses" that go beyond personal jurisdiction. As an example, questions about any license as it relates to damages issues go beyond the scope of jurisdictional discovery.

After KT served its responses, KT reached out to Defendants to confirm that Defendants intended to limit the jurisdictional deposition to jurisdictional-related topics:

KT intends to limit the scope of the deposition to personal jurisdiction. As indicated in its objections to the deposition topics, KT objects to the topics that seek information outside the scope of personal jurisdiction and will present a witness to discuss a topic “solely as it relates to personal jurisdiction.” As just some examples, questions about where an agreement was negotiated and the parties to the agreement may be relevant to jurisdiction. Questions about the details of the license and scope of what is covered by the license, for example, are not relevant to jurisdiction and go beyond the scope of this deposition.

Rather than engaging in a substantive discussion about the scope of the deposition, Defendants responded, “Agreements that touch the US with companies covering the patents Pegasus is asserting are absolutely relevant to personal jurisdiction.” Thus, Defendants plainly intend to question KT regarding the previous license agreements but have failed to provide any delineation as to the subject matter they intend to cover.

Further, Defendants’ ongoing document requests suggest Defendants intend to question KT’s jurisdictional witness about other FRAND-specific topics. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The parties met and conferred on November 12 but could not reach agreement on the proper scope of the deposition. In particular, the parties disagree over the scope of the following statement in the Court’s Order granting jurisdictional discovery: “Discovery shall be limited to issues raised in KT’s motion to dismiss for lack of personal jurisdiction and shall not include issues related to only the FRAND counterclaims.” Dkt. 148 ¶ 1. Because the parties have reached impasse over the proper scope of the jurisdictional deposition, and to avoid a dispute during an overnight deposition of a witness in Korea, KT moves for a protective order seeking to preclude Defendants from asking substantive damages questions that are unrelated to personal jurisdiction.

II. LEGAL STANDARDS

Under Rule 26(c), the Court “may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” FED. R. CIV. P. 26(c)(1). A protective order is warranted in those instances in which the party seeking it demonstrates good cause and a specific need for protection. *See Laundry v. Air Line Pilots Ass’n*, 901 F.2d 404, 435 (5th Cir. 1990). The burden is upon the party seeking the protective order “to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements.” *In re Terra Int’l*, 134 F.3d 302, 306 (5th Cir. 1998) (internal quotation marks and citation omitted).

III. ARGUMENT

KT is willing and prepared to present a 30(b)(6) witness on topics related to jurisdictional discovery. However, good cause exists to grant KT’s motion to relieve KT from the burden of preparing a corporate representative to address questions *beyond* the scope of jurisdictional discovery. Dkt. 148 ¶ 1.

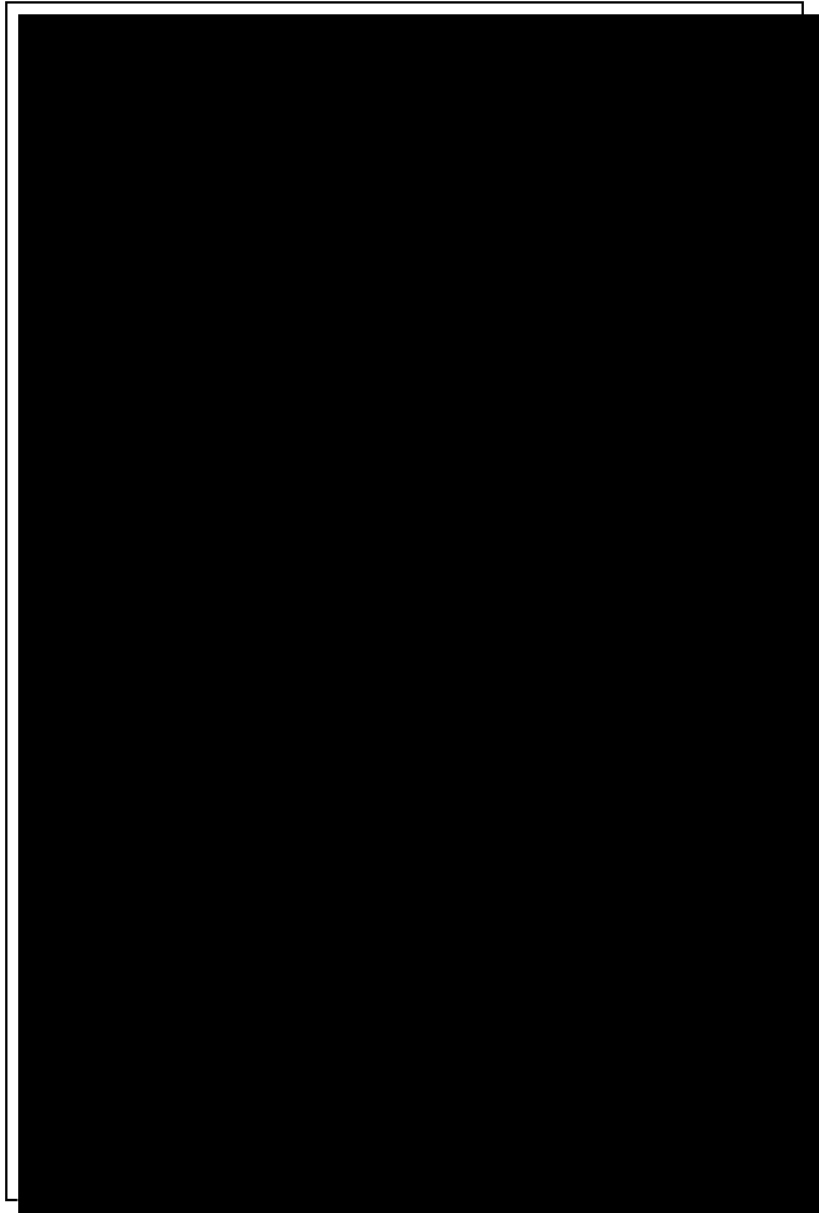
Although Defendants agreed to limited jurisdictional discovery during the pendency of KT’s motion to dismiss for lack of personal jurisdiction, Defendants have continued to press non-jurisdictional discovery—forcing KT to move for a separate protective order (Dkt. 150)—*and* to serve overbroad jurisdictional discovery requests. Defendants’ jurisdictional requests for production, interrogatories, and deposition topics extend beyond the scope of jurisdictional discovery. For example, as noted above, Defendants seek a witness to testify as to the “details of *all* licenses.” The fact that KT has entered into license agreements with certain companies may be relevant to personal jurisdiction based on their locations, but any line of questioning could easily spiral beyond the narrow scope of the deposition. Defendants have provided no assurances that they will refrain from delving into the details of each of the license agreements. Specific details, such as the number of patents, the dollar amounts, and specific terms of the agreements have no

[REDACTED]

relevance to jurisdiction. Instead, those questions relate solely to damage and FRAND issues, including whether any offer from Pegasus and/or KT is fair, reasonable, and non-discriminatory.

For example, Defendants' Jurisdictional Interrogatory No. 2 asked KT to "Describe in detail all facts relating to the negotiation, execution, and performance of the [license agreements]."

KT responded by disclosing a number of meetings, including the dates, participants, and locations:



[REDACTED]

Not satisfied, Defendants demanded even more details about meetings that occurred [REDACTED] — meetings that have nothing to do with KT’s connections to the Eastern District of Texas:

deficiencies Defendants and Intervenors previously identified. For example, while identifying dates and participation in meetings, KT fails to describe the contents of those meetings, the purpose, or the results. Please further supplement KT’s responses to include more detailed information by Nov. 8, 2024.

The only relevance to meetings of these meetings is related to Defendants’ FRAND counterclaims.

[REDACTED]

[REDACTED]

[REDACTED]

This is purely FRAND-related discovery, not jurisdictional discovery. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This distinction is the root of the impasse between KT and Defendants: Defendants have pushed the boundary of “jurisdictional” discovery so far that they have reached the FRAND-only type of discovery this Court refused to allow. As reproduced above, Defendants have done so with their broad interpretations of their jurisdictional interrogatories, with their jurisdictional requests for production, and now with their topics for their jurisdictional topics for examination. They have continued to do so despite this Court’s explicit order that jurisdictional discovery “shall not include issues related to only the FRAND counterclaims.” Dkt. 148 ¶ 1. Defendants have not given KT any indication that their approach to the jurisdictional 30(b)(6) Deposition of KT would be any

[REDACTED]

different: in fact, Defendants refused to agree to KT's requests to limit questioning to topics that impact jurisdiction.

As such, the parties have a dispute over the proper scope of jurisdictional discovery. KT seeks a protective order (prior to the deposition) to prevent Defendants from deviating from this Court's Order and soliciting testimony relevant only to damages or Defendants' FRAND counterclaims. The need is especially acute concerning an overnight deposition of a witness in Korea. For example, KT does not believe that questions about [REDACTED]

[REDACTED] Defendants disagree. Because the parties have a meaningful dispute over the proper scope of the deposition under the Court's Order (Dkt. 148), KT seeks a protective order. Such an order would allow KT to avoid the significant undue burden of preparing a witness on issues clearly outside the scope of jurisdictional discovery.

IV. CONCLUSION

For the forgoing reasons, KT respectfully requests that the Court grant KT's motion for a protective order.

Dated: November 13, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that certify that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via email on November 13, 2024.

/s/ Blaine Larson
Blaine Larson

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(h), prior to filing this motion, the parties conducted a lead and local meet and confer. Blaine Larson and Kyle Ruvolo participated for KT. Ross Barton, Ravi Fernando, Ted Stevenson, Elliott Riches, and Edwin Garcia participated for Defendants. Jordan Rux participated for Pegasus. The parties discussed their substantive positions but could not reach resolution, leaving this motion ripe for judicial review.

/s/ Blaine Larson
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