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

PEGASUS WIRELESS INNOVATION LLC *Plaintiff,* v. CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS *et al.,* *Defendants,* ERICSSON INC., *Intervenor.*	§ § § § § § § § § § § § § §	CASE NO. 2:23-cv-00640-JRG (Lead Case)
CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS *et al.,* *Counterclaim-Plaintiff,* ERICSSON INC., *Intervenor,* v. PEGASUS WIRELESS INNOVATION LLC and KT CORPORATION, *Counterclaim-Defendants.*	§ § § § § § § § § § § § § §	CASE NO. 2:23-cv-00640-JRG (Lead Case)
PEGASUS WIRELESS INNOVATION LLC *Plaintiff,* v. AT&T CORP. *et al.,* *Defendants,* ERICSSON INC., *Intervenor.*	§ § § § § § § § § § § § § §	CASE NO. 2:23-cv-00638-JRG (Member Case)

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

COUNTERCLAIM-DEFENDANT KT CORPORATION'S MOTION FOR PROTECTIVE ORDER FROM NON-JURISDICTIONAL DISCOVERY

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Rules

FED. R. CIV. P. 26(c)(1) 2

Counterclaim Defendant KT Corporation ("KT") moves for a protective order seeking relief from non-jurisdictional discovery under FED. R. CIV. P. 26(b)(1), Local Rule CV-26(d), and this Court's Discovery Order (Dkt. 58). Alternatively, KT moves to stay non-jurisdictional discovery until KT's motions to dismiss are resolved. *See* Dkts. 130-134.

I. BACKGROUND

KT is a South Korean corporation headquartered in Seongnam-si, Gyeonggi-do, Korea. KT was not part of this lawsuit until Defendants 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 Intervenors Ericsson Inc. ("Ericsson") and Nokia of America Corp. ("Nokia") (collectively, "Defendants") pled counterclaims against KT. Dkt. 36, 39, 42, 101, 117. KT was served with the counterclaims on July 9, 2024. Dkt. 113. KT filed timely motions to dismiss each of the Defendants and Intervenors counterclaims under FED. R. CIV. P. 12(b)(2) and 12(b)(6). Dkts. 130-134. Those motions are currently pending.

Defendants have not yet responded to KT's motions to dismiss. After KT filed its motions, Defendants reached out to KT and requested that KT provide certain limited discovery related to KT's personal jurisdiction motion. KT agreed to provide limited discovery related to jurisdictional issues. Dkt. 146. Under the parties' agreement, KT's jurisdictional discovery responses are due October 11, 2024. Dkt. 148. The parties' agreement and the Court's order clarify that jurisdictional discovery "shall not include issues related to only the FRAND counterclaims." *Id*. at 1.

In the interim, the Defendants also served non-jurisdictional interrogatories on KT and sent KT a 12-page letter with document requests. Ex. A (Defendants' First Set of Common Interrogatories to KT Corporation (Nos. 1-5)); Ex. B (Defendants' Discovery Letter to KT Corporation). KT's responses are due October 4. These non-jurisdictional discovery requests seek a much broader swath of information, most of which has little to do with jurisdiction.

On October 3, 2024, KT and Defendants met and conferred to discuss their respective positions. KT explained its position as stated herein: that KT is merely a counterclaim-defendant and is actively participating in jurisdictional discovery. KT explained that its jurisdictional discovery productions are responsive to some of Defendants' non-jurisdictional requests, and that many of the remaining non-jurisdictional requests seemed to be drafted for a typical patent plaintiff, which KT is not.

KT requests that the Court enter a protective order relieving it from its burden to respond to Defendants' non-jurisdictional discovery requests under FED. R. CIV. P. 26(b)(1), Local Rule CV-26(d), and this Court's Discovery Order (Dkt. 58). Alternatively, KT seeks an order staying non-jurisdictional until KT's motions to dismiss are decided. Such relief is warranted because such a sizable discovery burden should not be placed on KT while there are significant questions regarding personal jurisdiction.

II. LEGAL STANDARDS

A. Motion for Protective Order

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).

B. Motion for Stay

Courts have the inherent power to control their dockets, including the power to stay proceedings. *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058, 2015 U.S. Dist. LEXIS 29573, at *4 (E.D. Tex. Mar. 11, 2015) (Bryson, J.) (citing *Clinton v. Jones*, 520 U.S. 681, 706 (1997)). Three factors generally govern whether a stay should be granted: "(1) whether the stay would unduly prejudice or present a clear tactical disadvantage to the nonmoving party; (2) whether a stay will simplify the issues in question and trial of the case; (3) whether discovery is complete and a trial date has been set." *Norman IP Holdings, LLC v. TP-Link Techs. Co.*, No. 13-cv-384, 2014 U.S. Dist. LEXIS 143426, at *7 (E.D. Tex. Oct. 8, 2014). The Court may also consider a fourth factor in deciding a stay: (4) "whether a stay will reduce the burden of litigation on the parties and on the court." *See, e.g.*, *NFC Tech.*, 2015 U.S. Dist. LEXIS 29573 at *6 (collecting cases). Management of a court's docket "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936).

III. ARGUMENT

A. Good Cause Exists to Grant KT's Motion for a Protective Order

Good cause exists to grant KT's Motion for a Protective Order to relieve KT from the burden of complying with full, non-jurisdictional discovery at this stage and posture of the case. KT's role in the instant case is limited; KT is a Counterclaim-Defendant on one narrow issue

related to FRAND negotiations. There is no reason to obligate KT to respond to all of Defendants' wide-ranging discovery requests.

The non-jurisdictional discovery requests served by Defendants and Intervenors extend far beyond jurisdictional discovery and even beyond "FRAND only" requests. For example, Interrogatory No. 1 of Defendants First Set of Common Interrogatories to KT asks for KT to identify "on a claim-by-claim basis" any secondary considerations "relating to the alleged non-obviousness of the claimed subject matter." Ex. A at 11. Similarly, Defendants sent KT a letter requesting production of documents covering the same material and much more. Ex. B at 11; *see generally id.* at 3-12 (proposing a "non-exhaustive" list of documents extending far beyond the scope of jurisdictional discovery or even FRAND issues). KT is not a Plaintiff in this litigation and is only in this case based on Defendants' allegations regarding FRAND obligations (i.e., the subject of KT's Rule 12(b)(6) motion). It would be extremely burdensome for KT to be obligated to answer substantive discovery requests, beyond the FRAND allegations raised by Defendants and well beyond the ordered jurisdictional discovery. These requests are well outside the scope of even Defendants counterclaims. *See*, *e.g.*, *id*. at 8 ("All non-privileged documents mentioning, concerning, or relating to the Patents-in-Suit"). Put differently, even if KT's motion to dismiss for lack of personal jurisdiction is denied, the Court should grant KT's motion for a protective order over the non-FRAND related discovery requests.

Without revisiting the details of KT's motions to dismiss, substantial questions exist as to whether personal jurisdiction over KT is proper in the Eastern District of Texas. Dkts. 130-134. Were the Court to grant KT's motion to dismiss, KT's discovery obligations under the Local Rules and this Court's Docket Management Order would be moot. Similarly, it would make little practical sense to permit only limited jurisdictional discovery against KT but still require KT to

respond substantively to requests outside the scope of jurisdictional discovery at the same time. Therefore, good cause exists to grant KT's motion for a protective order relieving it from non-jurisdictional discovery, especially when KT has already agreed to provide jurisdictional discovery. Dkt. 146.

B. Alternatively, This Court Should Stay Non-Jurisdictional Discovery as to KT

Should the Court not grant KT's motion for a protective order, the Court should grant KT's motion to stay non-jurisdictional discovery until its motions to dismiss are resolved. The first and third factors do not weigh against a stay, and second and fourth factors favor a stay.

First, a stay of non-jurisdictional discovery would not unduly prejudice or present a tactical disadvantage to the non-moving parties. Although there is no personal jurisdiction over KT, KT is already working with Defendants and Intervenors to produce certain documents. Through jurisdictional discovery, Defendants and Intervenors will already receive highly relevant documents, e.g., copies of its license agreements and information about its relationship with Pegasus. These documents are also responsive to several of Defendants' non-jurisdictional requests. *See*, *e.g.*, Ex. B at 3-4 ("Licenses and agreements between KT Corp. and Pegasus" and "Documents . . . concerning any attempts to . . . license . . . any of the Patents-in-Suit . . . including but not limited to documents . . . regarding Samsung Electronics Co., Ltd., Apple Inc., Avanci, LLC . . ..").

Many of Defendants' other requests are simply not relevant to KT. For example, KT is not a Plaintiff in this case, it has no contentions regarding categories of production such as "products alleged by You to Embody any of the Patents-in-Suit" or "secondary considerations of non-obviousness." *Id.* at 11; *see also* Ex. A at 11-13 (Interrogatories 1 and 5). Additionally, many of the documents sought by Defendants have been or will be produced by the plaintiff Pegasus. As

such, the mooted or delayed (depending on the resolution of KT's motions to dismiss) KT responses will not unduly burden or disadvantage the non-moving parties.

Second, a stay is likely to simplify the issues in question and the trial in the case. KT's involvement in this case is not necessary; it is not a Plaintiff and is only a Counterclaim-Defendant on one narrow issue. A stay will offer a chance to simplify the proceedings. Defendants will still be able to maintain their counterclaims against Pegasus and can receive all the required discovery from Pegasus or via other discovery means. In fact, in jurisdictional discovery, KT will produce many of the documents sought by Defendants and Intervenors anyway. If a stay is not granted, the case will only be further complicated by disagreements over the scope of KT's involvement in the case and KT's attempts to comply with burdensome discovery on issues on which it has no position.

Third, discovery is not complete; fact discovery does not close until April 14, 2025. Dkt. 57 at 5. In fact, KT only recently received Nokia and Ericsson's initial disclosures, and KT has not received initial disclosures from AT&T, Verizon, or T-Mobile.

Fourth, a stay is likely to reduce the burden of the litigation on the parties and the Court. The fourth factor is centrally important in the instant case. As explained above regarding KT's motion for a protective order, non-jurisdictional discovery casts a heavy burden on KT. *See supra* III.A. KT is complying with jurisdictional discovery, but obligating it to comply with full, non-jurisdictional discovery will exponentially increase its burden. That burden is out of proportion for KT, since it is not a Plaintiff in this case, and should not need to comply with the wide range of default discovery contemplated by the Local Rules and this Court's Discovery Order (Dkt. 58). If KT's motions to dismiss are granted, then the case will undoubtedly be simplified for Defendants,

Intervenors, and the Court. If KT's motions are not granted, the stay can be lifted, and non-jurisdictional discovery can proceed with little additional burden.

Because two factors favor and none disfavor a stay, this Court should grant KT's motion and stay non-jurisdictional discovery as to KT until KT's motions to dismiss are decided.

IV. CONCLUSION

For the forgoing reasons, KT respectfully requests that the Court grant KT's motion for a protective order, or, alternatively, grant KT's motion to stay non-jurisdictional discovery as to KT.

Dated: October 4, 2024

Respectfully submitted,

/s/ Blaine Larson

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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 CM/ECF on October 4, 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, Alden Harris, and Kyle Ruvolo participated for KT. Ross Barton, Ravi Fernando, McKellar Kerr, Thomas Ritchie, and Shannon Dacus participated for Defendants. 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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