

**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. and NOKIA OF
AMERICA CORP.,

Intervenors,

Case No. 2:23-cv-00640-JRG
(Lead Case)

CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS,

Counterclaim-Plaintiff,

ERICSSON INC. and NOKIA OF
AMERICA CORP.,

Intervenors,

V.

PEGASUS WIRELESS INNOVATION
LLC and KT CORPORATION,

Counterclaim-Defendant and Third-Party Defendant.

Case No. 2:23-cv-00640-JRG
(Lead Case)

PEGASUS WIRELESS INNOVATION
LLC,

Plaintiff,

V.

AT&T CORP. *et al.*,

Defendants,

ERICSSON INC. and NOKIA OF
AMERICA CORP.,

Intervenors.

Case No. 2:23-cv-00638-JRG
(Member Case)

NEW CINGULAR WIRELESS PCS, LLC, <i>Counterclaim-Plaintiff,</i>	§ § §	
ERICSSON INC. and NOKIA OF AMERICA CORP., <i>Intervenors,</i>	§ § § § § §	Case No. 2:23-cv-00638-JRG (Member Case)
v.	§	
PEGASUS WIRELESS INNOVATION LLC and KT CORPORATION, <i>Counterclaim-Defendant and Third- Party Defendant.</i>	§ § § § § §	
PEGASUS WIRELESS INNOVATION LLC, <i>Plaintiff,</i>	§ § § § § §	
v.	§	
T-MOBILE USA, INC. <i>et al.</i> , <i>Defendants,</i>	§ § § § § § § § § §	Case No. 2:23-cv-00639-JRG (Member Case)
ERICSSON INC. and NOKIA OF AMERICA CORP., <i>Intervenors,</i>	§ § § § § § § § § §	
T-MOBILE USA, INC., <i>Counterclaim-Plaintiff,</i>	§ § § § § § § § § §	
ERICSSON INC. and NOKIA OF AMERICA CORP., <i>Intervenors,</i>	§ § § § § § § § § §	Case No. 2:23-cv-00639-JRG (Member Case)
v.	§	
PEGASUS WIRELESS INNOVATION LLC and KT CORPORATION, <i>Counterclaim-Defendant and Third- Party Defendant.</i>	§ § § § § § § § § §	

**DEFENDANTS AND INTERVENORS' MOTION FOR
LEAVE TO AMEND INVALIDITY CONTENTIONS**

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Exhibit No.¹	Description
A	Excerpt of January 15, 2025 Letter from Ross R. Barton to Max L. Tribble
B	Amended Claim Chart Exhibits B-1, B-2, B-3, B-4, B-6, B-8, B-9, G-3, and H-3 to Defendants and Intervenor's Invalidity Contentions, dated November 1, 2024
C	Amended Claim Chart Appendices A, E, F, G, H, I, J, and K to Defendants and Intervenor's Invalidity Contentions, dated November 1, 2024
D	New Claim Chart Exhibits A-15, D-9, E-8, E-10, E-11, F-13, G-15, G-16, H-15, H-16, I-7, and J-8 to Defendants and Intervenor's Invalidity Contentions, dated November 1, 2024
E	Defendants and Intervenor's Amended Invalidity Contentions, dated November 1, 2024
F	Email from Erin Beaton, dated November 1, 2024
G	Amended Claim Chart Appendices D, E, and K to Defendants and Intervenor's Invalidity Contentions, dated December 23, 2024
H	New Claim Chart Exhibit E-12 to Defendants and Intervenor's Invalidity Contentions, dated December 23, 2024
I	Defendants' and Intervenor's Amended Invalidity Contentions, dated December 23, 2024
J	Email from Erin Beaton, dated December 23, 2024
K	Email from Jordan Rux, dated January 16, 2025
L	Excerpt of the Declaration of Dr. Martin J. Feuerstein, dated December 20, 2024

¹ Exhibits to this Motion are in bold below in order to distinguish between exhibits to the Motion and Exhibits to Defendants and Intervenor's Invalidity Contentions.

I. INTRODUCTION

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”) (Verizon, AT&T, and T-Mobile collectively, “Defendants”) and Intervenor Ericsson Inc. (“Ericsson”) and Nokia of America Corp. (“Nokia”) (Ericsson and Nokia collectively, “Intervenor”) respectfully seek leave, pursuant to Local Patent Rule 3-6(b), to amend their Invalidity Contentions for good cause. Because Defendants and Intervenor served the proposed amendments far in advance of claim construction briefing, there is no prejudice to Plaintiff Pegasus Wireless Innovation LLC (“Pegasus”). Leave to amend should be granted.

II. FACTUAL BACKGROUND

On December 29, 2023, Pegasus filed three complaints against the Defendants, asserting eleven patents from ten different patent families. The Court consolidated the three cases on February 13, 2024. Dkt. 16. Pegasus served initial infringement contentions on March 18, 2024, amended contentions on March 21, 2024, and an amended cover pleading on March 29, 2024. In total, Pegasus asserted 113 claims across the eleven asserted patents. Pegasus indicated that it does not intend to narrow the case until after the Court issues a *Markman* order in this litigation. *See Ex. A.* Beyond that, Pegasus has not provided any proposal for the timing or magnitude of claim narrowing.

On May 17, 2024, Defendants served Invalidity Contentions (“Initial Invalidity Contentions”). Defendants diligently searched for prior art prior to the invalidity contention deadline, ultimately identifying and charting ninety-one primary references across the ten asserted

patent families. For each of the eleven patents, Defendants provided a claim chart exhibit for each primary reference and a single claim chart appendix for secondary references. Ericsson and Nokia intervened on July 18, 2024, and July 29, 2024, respectively. Given the large number of asserted claims, following the invalidity contention deadline, Defendants and Intervenorors diligently continued to review Pegasus’s infringement contentions, search for prior art, and prepare their invalidity defenses.

The November Amendment. On November 1, 2024—five days before the P.R. 4-1 exchange of proposed claim terms—Defendants and Intervenorors provided notice of their “Amended Invalidity Contentions” to Pegasus and KT. The Amended Invalidity Contentions included:

- i. nine amended claim chart exhibits with citations to priority documents (Exhibits B-1, B-2, B-3, B-4, B-6, B-8, B-9, G-3, and H-3, collectively attached as **Ex. B**);
- ii. eight amended claim chart appendices charting nine additional secondary references (Appendices A, E, F, G, H, I, J, and K, collectively attached as **Ex. C**); and
- iii. thirteen new claim chart exhibits charting eleven new primary prior art references (Exhibits A-15, D-9, E-8, E-10, E-11, F-13, G-15, G-16, H-15, H-16, I-7, and J-8, collectively attached as **Ex. D**); and
- iv. an amended cover pleading that identifies newly identified references, motivations to combine for those new references, and two new grounds of invalidity under 35 U.S.C. § 112 (excerpt of cover pleading attached as **Ex. E**) (**Exs. B, C, D, E**, collectively “November Amendment”).

All told, the November Amendment identifies only twenty additional prior art references across nine asserted patent families. The prior art references include foreign and U.S. patents and patent application publications along with printed publications from 3GPP.

Defendants and Intervenorors also provided Pegasus and KT with access information for a file transfer portal with the amended claim chart exhibits, amended appendices, new claim chart

exhibits, the amended cover pleading, and redlines. *See Ex. F.* Defendants and Intervenor also requested Pegasus's and KT's positions on this Motion. *Id.* Pegasus and KT indicated that they generally oppose this Motion.²

The December Amendment. On December 23, 2024, Defendants and Intervenor provided notice of a supplementation to the Amended Invalidity Contentions, including:

- i. three amended claim chart appendices charting five additional secondary references (Appendices D, E,³ and K, collectively attached as **Ex. G**);
- ii. one new claim chart exhibit charting one new primary prior art reference (Exhibit E-12, attached as **Ex. H**); and
- iii. an amended cover pleading that identifies the newly identified references and motivations to combine for those new references (excerpt of cover pleading attached as **Ex. I**) (**Exs. G, H, I**, collectively the "December Amendment").

The December Amendment identifies only six new prior art references across three of the asserted patent families. The prior art references include foreign and U.S. patent application publications and printed publications from 3GPP and IEEE. Again, Defendants and Intervenor provided Pegasus and KT with access information for a file transfer portal with all documents and redlines comprising both the November Amendment and the December Amendment. *See Ex. J.* Defendants and Intervenor again requested Pegasus's and KT's positions on this Motion. *Id.*

² Initially, Pegasus and KT did not respond. Defendants and Intervenor followed up on November 13, again requesting Pegasus's and KT's positions on this Motion. Pegasus and KT indicated that they opposed the Motion, and the parties met and conferred on November 15, 2024. Pegasus and KT indicated that they would further consider their positions on the amended claim charts in **Ex. B** and that they would provide an update in writing. Defendants and Intervenor did not hear back, so they reached out to Pegasus and KT on November 22, 2024, and again on December 2, 2024, to seek their updated positions. Pegasus and KT did not respond. *See generally, Ex. J.*

³ This Appendix E also includes information that was in the Initial Invalidity Contentions and unintentionally excluded in the November Amendment.

After a series of e-mail exchanges and a telephonic conference, Pegasus and KT indicated that they oppose the Motion because the “additional references and citations were all available before the invalidity contention deadline.” *See Ex. K* at 1. Defendants and Intervenor now seek leave to amend the invalidity contentions, approximately one week after Pegasus and KT opposed.

III. LEGAL STANDARD

Under the Local Patent Rules, leave to amend or supplement invalidity contentions may be made “by order of the Court, which shall be entered only upon a showing of good cause.” P.R. 3-6(b). The Federal Circuit has stated that “‘good cause’ requires a showing of diligence.” *O2 Micro Int’l Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1366 (Fed. Cir. 2006).

IV. ARGUMENT

Courts in this district routinely apply a four-factor test to determine whether good cause has been shown. *See Alt v. Medtronic, Inc.*, No. 2:04-cv-370, 2006 U.S. Dist. LEXIS 4435, at *5–6 (E.D. Tex. Feb. 1, 2006). “Those four factors are: (1) the explanation for the failure to meet the deadline; (2) potential prejudice in allowing the thing that would be excluded; (3) the importance of the thing that would be excluded; and (4) the availability of a continuance to cure such prejudice.” *Uniloc 2017 LLC v. Google LLC*, No. 2:18-cv-00503-JRG-RSP, 2020 U.S. Dist. LEXIS 23965, at *4 (E.D. Tex. Feb. 10, 2020). The first factor requires the amending party to show it was “diligent both in discovering *and* in disclosing the prior art references.” *Uniloc 2017 LLC v. Google LLC*, No. 2:18-cv-00550-JRG, 2020 U.S. Dist. LEXIS 25675, at *5–6 (E.D. Tex. Jan. 17, 2020) (emphasis in original) (collecting cases). For the reasons explained below, the four factors weigh in favor of finding good cause. As such, Defendants and Intervenor should be granted leave to amend their invalidity contentions pursuant to the November and December Amendments.

A. Explanation for Delay

A party must “explain why, with reasonable diligence, [it] could not have discovered” the relevant prior art references “prior to the deadline for filing Invalidity Contentions.” *Innovative Display Techs. LLC v. Acer Inc.*, No. 2:13-cv-00522-JRG, 2014 U.S. Dist. LEXIS 83196, at *5 (E.D. Tex. June 19, 2014). Here, prior to the invalidity contention deadline, Defendants discovered and charted 91 primary references in the claim chart exhibits and even more secondary references in the claim chart appendices. But Pegasus asserted over 100 claims spanning 11 patents and 10 patent families. Given the large scope of the initial prior art search based on the number of asserted claims, Defendants exercised reasonable diligence in their initial search. *See, e.g., Regents of the Univ. of Cal. v. Affymetrix, Inc.*, No. 17-cv-01394-H-NLS, 2018 U.S. Dist. LEXIS 144627, at *7-8 (S.D. Cal. Aug. 24, 2018) (“In addition, Defendants’ diligence in preparing their prior invalidity contentions is underscored by the number of patents and claims at issue in this case. In the present action, Plaintiffs allege infringement of over a hundred patent claims. Courts ‘have found good cause to amend invalidity contentions due to the large scope of the initial prior art search’ based on the number of claims being asserted in the action.”) (citations omitted).

Defendants and Intervenors were also diligent in searching for additional prior art references after the deadline for filing Invalidity Contentions, providing Pegasus and KT with notice of the November Amendment and December Amendment, and moving for leave to amend the Initial Invalidity Contentions.

1. November Amendment

First, Defendants and Intervenors were reasonably diligent in searching for new prior art references and providing notice of the new and amended claim charts. Following the invalidity contention deadline, Defendants and Intervenors continued to search for additional prior art references and investigate the validity of the asserted patents and their 113 asserted claims.

Defendants and Intervenor's continued searching is reasonable in view of Pegasus's assertion of over 100 patent claims across ten patent families. *See Tech. Pharmacy Serv. v. Alixa Rx LLC*, No. 4:15-cv-766, 2017 WL 2833460, at *4 (E.D. Tex. Jan. 19, 2017) ("The Court . . . appreciates the difficulty of discovering all relevant prior art and supplemental materials."). This reasonable search resulted in thirteen additional primary references and nine additional secondary references. Upon finding the new references, Defendants and Intervenor's diligently charted the thirteen primary references (**Ex. D**) and nine secondary references (**Ex. C**) and disclosed them to Pegasus and KT. **Ex. F**.

For completeness, Defendants and Intervenor's also provided an amended cover pleading that identifies the new references and motivations to combine those references. *See generally Ex. E*. Defendants and Intervenor's could not have amended these sections of the cover pleading before finding and charting the new references. The delay was reasonable, and this factor weighs in favor of granting the Motion with respect to the charts in **Ex. D** and **Ex. C** and relevant sections of **Ex. E**.

Second, Defendants and Intervenor's were also reasonably diligent in providing notice of two new grounds of invalidity under 35 U.S.C. § 112 (**Ex. E** at 368 (highlighted)). While preparing for the exchange of claim terms (*see* Dkt. 68, P.R. 4-1), Defendants and Intervenor's identified two new claim terms as potentially indefinite under § 112(b). *See Ex. E*. Defendants and Intervenor's identified these new terms in the Amended Invalidity Contentions to provide notice five days before exchanging claim terms in accordance with the schedule. Thus, this factor weighs in favor of granting the Motion with respect to the new grounds of invalidity in **Ex. E**.

Third, Defendants and Intervenor's were reasonably diligent in providing notice of the nine amended claim chart exhibits that include citations to priority documents (**Ex. B**). Defendants and

Intervenors amended their initial existing claim chart exhibits to include citations to references in the chain of priority for previously identified prior art references. *See* **Ex. B**. These citations do not provide new theories of invalidity and are merely provided to Pegasus and KT for clarity on Defendants and Intervenors' theories of invalidity concerning relevant priority documents. Although Defendants could have provided these citations before the invalidity contention deadline, this factor is at least neutral with respect to the new citations in **Ex. B** because Pegasus and KT were already on notice of Defendants and Intervenors' theories of invalidity.

Thus, Defendants and Intervenors were reasonably diligent both in discovering *and* in disclosing the amendments and prior art references in the November Amendment, and this factor overall weighs in favor of granting the Motion as to the November Amendment.

2. December Amendment

After serving the November Amendment, Defendants and Intervenors continued searching for prior art given the large number of claims asserted. This reasonable search resulted in one new prior art reference and five new secondary references. Again, given the large scope of the initial search, it is reasonable for Defendants and Intervenors to have not found these references before the initial invalidity contention deadline, and Defendants and Intervenors' continued search is reasonable. *See Tech. Pharmacy*, 2017 WL 2833460, at *4. Defendants and Intervenors promptly charted the references (**Ex. G**; **Ex. H**) and disclosed them to Pegasus and KT. **Ex. J**. Defendants and Intervenors also provided the amended cover pleading that identifies the new references and new motivations to combine those references. *See generally* **Ex. I**.

Thus, Defendants and Intervenors were reasonably diligent both in discovering *and* in disclosing the prior art references in the December Amendment, and this factor overall weighs in favor of granting the Motion as to the December Amendment.

B. Importance of the Amendment

Defendants and Intervenor's Amended Invalidity Contentions disclose and clarify contested invalidity theories. Pegasus and KT oppose this Motion because they believe such theories should have been included in Defendants' Initial Invalidity Contentions. But "[t]he mere fact that Defendants should have included such theories in their original invalidity contentions does not minimize their importance." *Ax Wireless LLC v. Lenovo Group Ltd.*, No. 2:22-cv-0280-RWS-RSP, 2023 U.S. Dist. LEXIS 219904, at *11 (E.D. Tex. Dec. 11, 2023). Defendants and Intervenor intend to rely on the newly identified prior art references in **Ex. D**, **Ex. C**, **Ex. H**, and **Ex. G** to develop their invalidity defenses as well as the motivations to combine identified in **Ex. E** and **Ex. I**. Defendants and Intervenor intend to rely on the new citations in **Ex. B** to support claims of priority. Additionally, Defendants and Intervenor have proposed the newly identified claim terms in **Ex. E** as indefinite in the parties' exchange of claim terms and claim term constructions. Dkt. 191-1 at Page 9 (proposing "separated from" in U.S. Patent No. 10,181,931 (the "'931 patent") is indefinite). Defendants and Intervenor intend to rely on the indefiniteness of "separated from" in invalidating claims of the '931 patent.

Thus, this factor weighs in favor of granting the Motion with respect to both the November Amendment and the December Amendment. To the extent Pegasus and KT argue that the amendments are not important, this underscores the lack of prejudice. *See infra* § IV.C.

C. Lack of Prejudice and Availability of a Continuance to Cure Alleged Prejudice

Defendants and Intervenor served the November Amendment on Pegasus and KT before the initial P.R. 4-1 exchange of proposed terms for construction on November 5, 2024. Defendants and Intervenor then supplemented the November Amendment with the December Amendment, long before claim construction briefing began and significantly before the close of fact discovery on April 14, 2025. *See* Dkt. 68. Trial is presently scheduled for September 8, 2025. The potential

for prejudice is mitigated by the significantly early stage of this case. *See, e.g., Wellcomemat, LLC v. Aylo Holdings S.à.r.l.*, No. 2:23-cv-00483-JRG-RSP, 2024 U.S. Dist. LEXIS 133957, at *6 (E.D. Tex. July 29, 2024) (finding that potential prejudice was mitigated by an amendment before claim construction briefing began); *see also Maxell Ltd. v. Apple Inc.*, No. 5:19-cv-00036-RWS, 2020 U.S. Dist. LEXIS 257203, at *11-12 (E.D. Tex. Feb. 24, 2020) (finding no unfair prejudice even after claim construction deadlines). The facts here are similar to those in *Wellcomemat* where the Court found that an amendment before claim construction briefing began mitigated any potential prejudice. *Wellcomemat, LLC*, 2024 U.S. Dist. LEXIS 133957, at *6.

Here, claim construction briefing does not start until January 28, 2025. *See* Dkt. 68. Moreover, Pegasus has sufficient time during fact discovery to respond to newly presented grounds of invalidity in **Ex. D** and **Ex. C**, including the newly identified motivations to combine in **Ex. E**, **Ex. I**, **Ex. H**, and **Ex. G**. Additionally, Defendants and Intervenor's supplementation of existing claim charts with citations to priority documents in **Ex. B** does not unfairly or otherwise prejudice Pegasus and KT because Defendants and Intervenor's do not seek to introduce new invalidity theories. *See Gesture Tech. Partners, LLC v. Huawei Device Co.*, No. 2:21-cv-00040-JRG, Dkt. 207 at 4 (E.D. Tex. January 24, 2022).

As to Defendants and Intervenor's new theories under § 112 in **Ex. E**, claim construction is ongoing, and Pegasus and KT have sufficient time to prepare a response to the indefiniteness challenge. This is evident by the fact that Pegasus sought and timely obtained the opinion of an expert regarding the new grounds of indefiniteness. **Ex. L** at 44–48. In addition, the parties have previously moved the Court to amend the claim construction schedule at Pegasus's request when more time was needed (*see* Dkt. 173). Pegasus and KT have not provided any indication that more time is needed to respond to Defendants and Intervenor's newly identified indefiniteness challenge

under § 112(b), nor has Pegasus or KT objected to the inclusion of the identified terms on Defendants and Intervenor's exchange of claim terms and constructions pursuant to P.R. 4-1 and 4-2. *See Ex. E.*

Because there is little to no prejudice to Pegasus or KT, a continuance is not warranted. Defendants and Intervenor's, however, will not oppose a continuance should Pegasus or KT identify a compelling reason to do so. *See Alt v. Medtronic, Inc.*, 2006 U.S. Dist. LEXIS 4435, at *15-16 (finding any prejudice in connection to ongoing discovery can be cured by an extension to the relevant discovery deadlines if needed).

V. CONCLUSION

For the reasons set forth herein and for any others that may appear to the Court, the relevant factors weigh in favor of finding good cause. Defendants and Intervenor's respectfully request that the Court grant this Motion for Leave to Amend their Invalidity Contentions pursuant to the November and December Amendments.

DATED: January 24, 2025

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby 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 January 24, 2025.

/s/ Ross R. Barton

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Counsel for Defendants Cellco Partnership d/b/a Verizon Wireless, Verizon Business Network Services LLC, Verizon Corporate Services Group Inc., TracFone Wireless, Inc., AT&T Corp., AT&T Services, Inc., AT&T Mobility LLC, AT&T Mobility II LLC, New Cingular Wireless PCS, LLC, Cricket Wireless LLC, T-Mobile USA, Inc., Sprint Solutions LLC, and Sprint Spectrum LLC; and Intervenors Ericsson Inc. and Nokia of America Corp.

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(h), I hereby certify that counsel for Defendants and Intervenors conferred with counsel for Plaintiff and Counter-Defendant. Plaintiff and Counter-Defendant oppose this motion.

/s/ Ross R. Barton

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