

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SAMSUNG ELECTRONICS CO., LTD.	)	
& SAMSUNG ELECTRONICS	)	
AMERICA, INC.,	)	
	)	
Plaintiffs,	)	
	)	C.A. No. 24-1433 (CFC)
v.	)	
	)	
KONINKLIJKE KPN N.V.	)	
	)	REDACTED - PUBLIC VERSION
Defendant.	)	

**PLAINTIFFS' ANSWERING BRIEF IN OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS FOR LACK OF PERSONAL AND
SUBJECT-MATTER JURISDICTION**

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INTRODUCTION

KPN's motion does not withstand scrutiny and should be denied. Faced with KPN's claim that Samsung is infringing its patents and owes KPN hundreds of millions of dollars as a result, Samsung filed this action seeking a declaration of rights. KPN claims there is no case or controversy—yet, in a separate action against Samsung for unjust enrichment and breach of the parties' prior license agreement, KPN predicated its theories of unjust enrichment and damages on the premise that Samsung has infringed certain KPN patents that were subject to a covenant not to sue until December 31, 2024. The resulting award is not at issue, but KPN cannot disclaim its prior assertions. Following the expiration of KPN's covenant not to sue, Samsung is entitled to have the premise of infringement adjudicated to determine whether, going forward, KPN sits atop an ever-growing sum of royalties.

Here is what happened. KPN filed a complaint alleging state-law claims based on the assertion that Samsung breached a 2016 settlement and license agreement between the parties. Later, KPN's damages expert submitted a report based on the assumption that Samsung was infringing certain of KPN's patents. By the time of trial in early 2024, there was no doubt about KPN's position. The premise of its damages case was that Samsung was “squatting” on its intellectual property by using its patents without a license, for which Samsung should pay

royalties—*i.e.*, patent infringement. Based on that premise, KPN persuaded a jury to award it over a quarter-billion dollars.

In the same settlement agreement, KPN had covenanted not to sue Samsung for infringement of the subject patents. That covenant expired on December 31, 2024, thereby exposing Samsung to the threat of infringement made plain in KPN’s lawsuit. To protect itself, Samsung filed this action to settle the question posed by KPN’s case-in-chief—whether Samsung is infringing certain patents now at issue.

Placed in this context, KPN’s jurisdictional challenge fails. KPN claims that subject-matter jurisdiction is lacking because this case is speculative. That flies in the face of the allegations and common sense. KPN branded Samsung an infringer and is now free of its covenant not to sue. KPN cannot have it both ways—characterizing Samsung as an intellectual property “squatter” to secure damages in one case while claiming there is no attendant controversy warranting declaratory judgment in another. So KPN resorts to unsupported accusations that Samsung’s defensive mobilization—including petitions for *inter partes* review—amounts to “sharp practice.” But Samsung is operating well within its legal and ethical boundaries to defend its newly threatened interests.

Personal jurisdiction also is secure. The irony of KPN’s position is unmistakable: after launching an extensive campaign to enforce its portfolio of

allegedly standard essential patents in this District, it now claims Delaware has no interest in adjudicating this dispute. In fact, Delaware’s long-arm statute amply confers jurisdiction where, as here, the patents-in-suit sufficiently relate to the defendant’s prior enforcement activities in the forum. Delaware is KPN’s forum of choice for enforcing its portfolio of patents that have been declared essential to standards for wireless communications. Because the patents-in-suit are a subset of that portfolio—including two patents that KPN specifically has enforced here—KPN cannot properly object to the Court exercising personal jurisdiction over it.

Samsung respectfully requests that KPN’s motion be denied.

BACKGROUND

Between 2014 and 2016, KPN filed multiple lawsuits against Samsung in the United States, Germany, and China alleging infringement of various patents directed to wireless telecommunications technology. D.I. 23 ¶ 11. The parties settled the lawsuits in a Settlement, License, and Non-Assertion Agreement (“2016 License”), in which KPN covenanted, *inter alia*, not to sue Samsung for infringement of virtually all KPN patents not explicitly licensed (“KPN Non-Asserted Patents”) until December 31, 2024, [REDACTED]

[REDACTED] D.I. 23-1. KPN’s covenant not to sue has not been renewed or extended.

Despite its covenant not to sue, KPN has sent Samsung tailored lists of KPN's patents that KPN deemed "relevant for [Samsung's] business" since 2019. D.I. 23-2 & 23-3. These lists include KPN patents declared essential to industry standard ("SEPs") and cover all but one patent at issue here.¹ KPN represented to Samsung that it solely owns these SEPs and that, because they are essential to 3G, 4G (LTE), and 5G standards, Samsung's products complying with each standard must practice KPN's patents. *Id.*

In 2024, KPN turbocharged these allegations in a state-court action in which its counsel, witnesses, and experts argued to the jury that Samsung's 3G-, 4G-, and 5G-compliant smartphones practice KPN's patents found in a certain patent pool—the "MCP Pool"—because those patents are allegedly essential to 3G and 4G standards. D.I. 23 ¶¶ 20-24. Though focused on the MCP Pool, KPN's claims swept beyond it and implicated all KPN's 3G and 4G SEPs. The jury found Samsung liable for breach of contract to the tune of \$287 million in damages. KPN's expert based that figure on a calculation of accrued royalty payments from 2010 to 2024 derived from Samsung's worldwide sales of 3G-, 4G-, and 5G-compliant smartphones multiplied by a per-unit royalty rate.

KPN has an extensive history of enforcing its SEP portfolio in Delaware. Based on publicly available information, KPN has pursued at least 18

¹ The '338 Patent did not issue until 2022.

offensive patent enforcement actions in the District of Delaware against over 20 telecommunication companies. This makes Delaware far and away the most frequented jurisdiction for such actions by KPN, more than all other U.S. jurisdictions combined. In each of these actions, KPN asserted at least one patent from its SEP portfolio. *Id.* at ¶¶ 25-26. Moreover, in each of these actions, KPN asserted at least one patent included in both the MCP Pool and the 2016 License (specifically, U.S. Patent No. 6,212,662).

ARGUMENT

I. PERSONAL JURISDICTION IS SECURE

Personal jurisdiction involves two inquiries: “whether a forum state’s long-arm statute permits the assertion of jurisdiction and whether assertion of personal jurisdiction violates federal due process.” *Graphic Controls Corp. v. Utah Med. Prods., Inc.*, 149 F.3d 1382, 1385 (Fed. Cir. 1998). Samsung passes both tests here.

A. Delaware’s Long-Arm Statute Confers Jurisdiction

Delaware’s long-arm statute covers any “cause of action . . . arising from any acts enumerated in this section,” including “transact[ing] any business” in Delaware. 10 Del. C. § 3104(c)(1). The parties agree that patent enforcement constitutes “transact[ing] . . . business.” Thus, the question is whether the instant suit “arises from” KPN’s prior patent enforcement in this forum. Under Delaware law, it does.

The Delaware Supreme Court “has made clear that trial courts must give a broad reading to the terms of the long-arm statute, in order to effectuate the statute’s intent to ensure that this state’s court may exercise jurisdiction to the full limits permissible under the Due Process Clause.” *Sample v. Morgan*, 935 A.2d 1046, 1056 (Del. Ch. 2007) (citing *Hercules Inc. v. Leu Trust and Banking (Bahamas) Ltd.*, 611 A.2d 476, 480-81 (1992)). Accordingly, Delaware courts creatively construe the statute to ensure its broad sweep. For example, “a stream of commerce theory of jurisdiction may satisfy Delaware’s long-arm statute” even though “the stream of commerce theory does not fit comfortably within any particular provision of Delaware’s statute.” *Power Integrations, Inc. v. BCD Semiconductor Corp.*, 547 F. Supp. 2d 365, 371 (D. Del. 2008).

Accordingly, the term “arising from” receives a broad construction. As the Court of Chancery explains, “arising from” requires not factual sameness or causation, but rather a “sufficient nexus,” which can be established in context-dependent ways. *Harris v. Harris*, 289 A.3d 277, 302, 305-06 (Del. Ch. 2023). In the patent context, § 3104(c)(1) imposes a “relatedness” requirement that “does not demand that once a plaintiff has identified sufficient [business] activity . . . it may only assert claims against the specific products that it alleges were directly sold by the defendant in the forum state.” *Intel Corp. v. Broadcom Corp.*, 167 F. Supp. 2d 692, 704 (D. Del. 2001). “[T]he scope of § 3104(c)(1) is limited to claims that are

related to the conduct used to assert jurisdiction,” but this “relatedness” requirement is a reasonable one, not a straight-jacket. *Id.*

KPN’s cases confirm the above points. In *Power Integrations, Inc. v. BCD Semiconductor Corp.*, the Court stated that “Delaware courts do view the [long-arm] statute as reaching the full limits of the Due Process Clause.” 547 F. Supp. 2d at 370 n.3. Thus, as KPN tacitly concedes, “federal decisions can be illuminating” of Delaware law. *Funai Elec. Co. v. Personalized Media Commc’ns, LLC*, 2016 WL 370708, at *4 (D. Del. Jan. 29, 2016). And decisions of the United States Supreme Court hold that personal jurisdiction does not require causation or identical nuclei of common fact. *See Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 362 (2021).

Recent federal decisions support Samsung with on-point holdings. *Ebates Performance Marketing, Inc. v. MyMail, Ltd.* shows that personal jurisdiction flows from the prior enforcement of a subset of the patents-in-suit. 2021 WL 121130 (N.D. Cal. Jan. 13, 2021). The court found that the defendant had previously enforced just “two of the patents at issue in this case.” *Id.* at *10. But it held that this sufficed for plaintiff’s declaratory-judgment claim. *Id.* at *11 (citing *Avocent Huntsville Corp. v. Aten Int’l Co.*, 552 F.3d 1324, 1330 (Fed. Cir. 2008)); *see also ActiveVideo Networks, Inc. v. Trans Video Elecs., Ltd.*, 975 F. Supp. 2d 1083, 1098 (N.D. Cal. 2013).

Personal jurisdiction also flows from the prior enforcement of a patent portfolio directed to the same technology as the patents-in-suit. *Apple Inc. v. VoIP-Pal.com, Inc.*, 506 F. Supp. 3d 947, 962-65 (N.D. Cal. 2020). In *Apple Inc.*, the court found that the defendant had “a portfolio of patents relating to Internet Protocol based communication.” *Id.* at 953. The defendant previously had enforced six of those patents in the forum and the plaintiff sought declaratory relief regarding a different patent in the portfolio. *Id.* at 954. The court held that personal jurisdiction existed because the action related to “enforcement activities” of “patents from the same family” and concerned “similar technology.” *Id.* at 963-964 (citing *Avocent*, 552 F.3d at 1330); *see also Twitter, Inc. v. VoIP-Pal.com, Inc.*, 2022 WL 2905065 (N.D. Cal. July 22, 2022).

The basis for personal jurisdiction here is thus straightforward. KPN has a practice of using this forum to enforce its patents that have been declared standard-essential to wireless telecommunications, a subset of which is at issue here. D.I. 23 ¶¶ 25-28. It makes perfect sense to adjudicate Samsung’s rights relative to KPN in the forum where KPN most frequently enforces these sorts of patents. KPN has even asserted the ’669 and ’330 Patents in Delaware before. *Id.* at n.4. It is not as though KPN once enforced a patent on luggage and is now being hailed into court to litigate a patent on medicine. That would stretch the link between claim and forum too far. But here, the nexus between the patents-in-suit and those previously

enforced flows from their common character as allegedly essential to 3G, 4G, and 5G technology. *Id.* at ¶ 27. This reasonable connection confers personal jurisdiction. *See Apple Inc.*, 506 F. Supp. 3d at 964.

KPN's counter does not persuade. KPN asserts (D.I. 30 at 10) that personal jurisdiction requires a "complete overlap" between the patents-in-suit and the patents previously enforced. As shown above, that is too narrow an interpretation of the long-arm statute. Not even KPN's principal authority, *Funai Electric Company*, applies such a rule. *See Funai Elec. Co. v. Personalized Media Commc'ns, LLC*, 2016 WL 370708, at *4 (D. Del. Jan. 29, 2016). Moreover, *Funai* is distinguishable. There, the defendant had sued in Delaware only twice. *Id.* at *3. KPN has sued here **18 times**. D.I. 23 ¶¶ 25-26. In addition, the patents-in-suit were not part of an SEP portfolio that the defendant had a history of enforcing. Rather, their connection to prior enforcement rested on such weaker grounds as having the "same title, assignees, and inventors." *Funai*, 2016 WL 370708 at *3. In this case, the patents-in-suit are part of the portfolio that KPN regularly enforces here, and KPN has enforced two of the patents-in-suit here before. Notably, *Funai*'s example of a court declining to exercise personal jurisdiction based on "other patents" was reversed by the Federal Circuit. *See Xilinx, Inc. v. Papst Licensing GmbH & Co. KG*, 848 F.3d 1346, 1358 (Fed. Cir. 2017). *Funai* lacked the benefit of that later decision.

Finally, KPN points to *MG Freesites Ltd. v. DISH Techs. L.L.C.*, but that case is even farther afield because it involved only one prior enforcement action—not 18 cases involving the same SEP portfolio—and no allegation that the prior enforcement related to the patents-in-suit. 712 F. Supp. 3d 1318, 1330 (N.D. Cal. 2024). By contrast, personal jurisdiction flows naturally from facts Samsung alleges.

B. Exercising Jurisdiction Is Consistent With Due Process

Personal jurisdiction turns on the defendant’s “minimum contacts.” If the defendant’s contacts with the forum are systematic, there is general jurisdiction and the defendant may be sued for any claim. *See Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 582 U.S. 255, 262 (2017). If the defendant’s contacts are limited but sufficiently relate to a specific claim, the defendant is subject to specific jurisdiction regarding that claim. *Id.* The test is whether the defendant has purposefully availed itself of the forum and the claim arises out of or relates to that availment. *See Trimble Inc. v. PerDiemCo LLC*, 997 F.3d 1147, 1153 (Fed. Cir. 2021). If these criteria are met, the defendant can defeat jurisdiction only by showing that it would not “comport with fair play and substantial justice.” *Id.*

Here, the test for specific jurisdiction is satisfied by the same allegations that satisfy Delaware’s long-arm statute. KPN has purposefully availed itself of Delaware by repeatedly enforcing its SEP portfolio here, and the instant

action arises out of those contacts because it concerns a subset of that portfolio. KPN's cases do not show otherwise. They all stand for the irrelevant proposition that commercialization efforts do not count as enforcement efforts. *See Radio Sys. Corp. v. Accession, Inc.*, 638 F.3d 785, 790 (Fed. Cir. 2011); *Autogenomics, Inc. v. Oxford Gene Tech. Ltd.*, 566 F.3d 1012, 1021 (Fed. Cir. 2009); *Liqui-Box Corp. v. Scholle Corp.*, 2013 WL 3070872, at *4 (D. Del. June 17, 2013). Thus, to thwart personal jurisdiction, KPN must show that its exercise would be unreasonable and unfair. *Id.*

KPN fails to make such a showing. KPN claims (D.I. 30 at 11) that Delaware has no interest in the suit because it “does not involve a single Delaware entity or resident.” But Delaware does have an interest because KPN is a repeat player here. D.I. 23 ¶ 25. KPN also claims (D.I. 30 at 11-12) that another forum is available, namely, the Eastern District of Texas. But the parties are not Texas entities either. D.I. 23 ¶¶ 2-4. Moreover, “the primary concern is assessing the burden on the defendant.” *Trimble*, 997 F.3d at 1157 (citations omitted). Yet KPN fails to claim *any* burden from litigating in the forum it usually prefers. The predicates for exercising personal jurisdiction are thus satisfied.

II. SUBJECT-MATTER JURISDICTION IS SECURE

The Court's jurisdiction to issue declaratory judgment turns on whether “the suit meets the case or controversy requirement of Article III.” *Prasco, LLC v.*

Medicis Pharm. Corp., 537 F.3d 1329, 1335 (Fed. Cir. 2008). The Court must ask whether, under the “totality of the circumstances,” declaring the parties’ rights would amount to an advisory opinion or address a real controversy. *Id.* at 1336-38 (citing in *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007)). Although the Court has discretion to dismiss a jurisdictionally proper action, it must have “well-founded reasons.” *Commc’ns Test Design, Inc. v. Contec, LLC*, 952 F.3d 1356, 1361 (Fed. Cir. 2020). “[I]n the usual circumstance the declaratory action is not subject to dismissal.” *Id.* Samsung clears these hurdles.

A. The Totality Of The Circumstances Show A Real Controversy

Samsung’s allegations show that “[t]his case is of larger substance than merely a would-be competitor seeking to test the waters by way of an advisory judicial opinion on an adverse patent.” *Revolution Eyewear, Inc. v. Aspex Eyewear, Inc.*, 556 F.3d 1294, 1299 (Fed. Cir. 2009). The Court may consider many factors, from “the strength of any threatening language in communications” to “the extent of the patent holder’s familiarity with the product prior to suit.” *ActiveVideo Networks, Inc. v. Trans Video Elecs., Ltd.*, 975 F. Supp. 2d 1083, 1087-88 (N.D. Cal. 2013). “Prior litigious conduct is one circumstance to be considered in assessing whether the totality of circumstances creates an actual controversy.” *Prasco, LLC v. Medicis Pharm. Corp.*, 537 F.3d 1329, 1341 (Fed. Cir. 2008); *cf. Samsung Elecs. Co. v. Netlist, Inc.*, 2025 WL 691386, at *1 (D. Del. Mar. 4, 2025). Another is whether the

defendant has made a forceful “implied assertion of [patent] rights.” *Hewlett-Packard Co. v. Acceleron LLC*, 587 F.3d 1358, 1364 (Fed. Cir. 2009). If, for example, “a patentee asserts rights under a patent based on certain identified ongoing or planned activity of another party . . . an Article III case or controversy will arise.” *SanDisk Corp. v. STMicroelectronics, Inc.*, 480 F.3d 1372, 1381 (Fed. Cir. 2007).

Here, KPN created a justiciable controversy not just by writing to Samsung to claim that the asserted patents are relevant to its business (which it did more than once), but by expressly asserting the relevant patent rights against Samsung before a jury. D.I. 23 ¶¶ 20-24. KPN repeatedly indicated that Samsung was infringing KPN’s standard-essential patents. *Id.* On KPN’s view, “Samsung was squatting on its property for the last eight years,” *id.* at ¶ 21, because (*inter alia*) “***if Samsung was to comply with the 4G standard, they would have to use our patents,***” *id.* at ¶ 22 (emphasis added). As Samsung alleges, *id.* at ¶ 23, KPN’s statements alleged patent infringement, and KPN’s damages calculations were infringement royalties. KPN’s theory of damages presupposed infringement, *id.* at ¶ 23 (***Samsung “ha[s] to be using those patents”*** (emphasis added)), relied on patent law’s statute of limitations, *id.* (“Yes, that’s true”), and generated a per-unit royalty based on patent licensing agreements, *id.* KPN even averred that its unjust-enrichment claim was about Samsung “not paying KPN for the use of their patents.” *Id.* Thereby, KPN sent up a red flag concerning those patents, including the patents-

in-suit. Consequently, the moment that KPN's covenant not to sue expired, the controversy that KPN articulated in open court ripened into one fit for declaratory relief. KPN gives away the game when it claims (D.I. 30 at 11) that the only disputes are the ones KPN has filed. The point of declaratory judgment is to give parties like Samsung an alternative to waiting around to be sued. *See MedImmune*, 549 U.S. at 129.

KPN offers two responses, but neither persuades. First, KPN contends (D.I. 30 at 14) that jurisdiction is lacking so long as KPN avoided singling out the patents-in-suit. Not so. KPN's own case shows that "whether the patent holder has identified a specific patent and specific infringing products" is just one factor in the vast sea of potential factors. *In re Qualcomm Litig.*, 2017 WL 5985598, at *15 (S.D. Cal. Nov. 8, 2017). KPN is attempting to elevate this "specification" factor to the status of a necessary condition. That is wrong and barred by the Federal Circuit's admonition that "a declaratory judgment action cannot be defeated simply by the stratagem" of avoiding "magic words such as 'litigation' or 'infringement.'" *Hewlett-Packard Co.*, 587 F.3d at 1362. A "competent lawyer" will never "identify specific claims, present claim charts, and explicitly allege infringement." *Id.* Moreover, KPN *did* identify the patents-in-suit via its periodic communications to Samsung. D.I. 23 ¶ 19. That KPN did not "threaten[] patent litigation" or "conduct[]

infringement analysis” in those communications has little weight in the context of sophisticated parties. *Hewlett-Packard Co.*, 587 F.3d at 1362.

Second, KPN erroneously takes Samsung’s allegations piecemeal (D.I. 30 at 13-20) and argues that they do not add up to a controversy. But the totality of the circumstances must be considered as a whole. KPN cannot properly fragment its continuous course of conduct. Moreover, KPN’s specific critiques lack merit. KPN flags (D.I. 30 at 15) that its prior communications acknowledged KPN’s then-extant covenant not to sue. But that is the point: Samsung brought the current action because the covenant expired. KPN also claims (D.I. 30 at 17) that Samsung’s prior conduct shows it never felt “threaten[ed]” by KPN. But again, Samsung sued when the covenant expired. D.I. 23 ¶ 14. KPN implies that Samsung should have sued beforehand. Had Samsung done so, however, KPN would have claimed (correctly) that the suit was premature. *See Caraco Pharm. Lab’ys, Ltd. v. Forest Lab’ys, Inc.*, 527 F.3d 1278, 1296 (Fed. Cir. 2008). Finally, KPN questions (D.I. 30 at 17-18) the relevance of its prior enforcement actions. Here, the Court need only adopt the reasoning of KPN’s case and note that “[KPN’s] overall recent history of litigation weighs—albeit minimally—in [Samsung’s] favor.” *In re Qualcomm Litig.*, 2017 WL 5985598, at *17.

KPN’s authorities are not to the contrary. This case contrasts sharply with *AIDS Healthcare Foundation, Inc. v. Gilead Sciences, Inc.*, in which Gilead’s

mere refusal to grant a covenant not to sue did not create jurisdiction. 890 F.3d 986, 994 (Fed. Cir. 2018). Here, KPN has done multiple “affirmative acts” to create an objective controversy. *Id.* This case also is a far cry from *Globe Cotyarn Pvt. Ltd. v. AAVN, Inc.*, in which the plaintiff made “entirely conclusory” allegations that the defendant had enforced its patents five years prior. 2023 WL 2665596, at *4 (M.D.N.C. Mar. 28, 2023). Here, Samsung has the receipts showing that KPN consistently enforces its patents. D.I. 23 ¶ 26.

KPN’s principal case, *In re Qualcomm Litigation*, underscores why declaratory relief is appropriate here. 2017 WL 5985598 (S.D. Cal. Nov. 8, 2017). There, the fact that Qualcomm did not specify the patents-in-suit was decisive, but the circumstances were vastly different. In particular, the portfolio at issue was massive, comprising over three thousand patents, and Qualcomm did not believe Apple was infringing each one. *Id.* at *18-19. As a result, the court could not infer a controversy as to the subset of Qualcomm’s patents that Apple cared about. *Id.* But this case diverges in exactly this respect. KPN claims that the patents-in-suit are essential to the standards practiced by Samsung. D.I. 23 ¶¶ 18-23. And KPN’s prior lawsuit puts at issue KPN’s SEPs, including the patents-in-suit. Nothing now prevents Samsung from focusing on the patents it believes most relevant and thereby seeking narrower relief than it otherwise might. KPN’s lawsuit provides the sort of jurisdictional link that was missing in *In re Qualcomm*.

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[REDACTED]

[REDACTED]

B. Dismissal Would Be An Abuse Of Discretion

KPN’s alternative request for discretionary dismissal is a red herring. KPN asserts (D.I. 30 at 20-21) that Samsung is suing in bad faith to pressure KPN to “abandon” its state-court judgment. But KPN provides no support for this accusation. KPN points (*id.* at 2-3) to Samsung’s petitions for *inter partes* review and an old case between other parties in which KPN’s counsel lost a motion for sanctions. Neither supports an inference of bad faith.

First, Samsung's petitions for *inter partes* review are irrelevant. The fact that a party has filed petitions for *inter partes* review does not show bad faith. *See Sony Elecs., Inc. v. Guardian Media Techs., Ltd.*, 2007 WL 3333113, at *2 (S.D. Cal. Nov. 6, 2007). Accordingly, KPN suggests (D.I. 30 at 2 n.2) that Samsung's petitions are special because the act of filing them purportedly breached the 2016 License. As an initial matter, KPN has waived this argument by making it via footnote. Further, Samsung has not breached the 2016 License. Samsung's obligation to abstain from *inter partes* review ended when KPN prematurely enforced its patents against Samsung or, at the latest, upon expiration of KPN's covenant not to sue. *See* D.I. 23-1 (2016 License §§ 2.3, 4.1). Moreover, this contractual dispute is being aired elsewhere (*see* D.I. 30 at 2 n.2). KPN cannot evade jurisdiction by prejudging the outcome. Its proper course is to raise this argument later, on the ground that the jurisdictional landscape has changed. *See Peace Church Risk Retention Grp. v. Johnson Controls Fire Prot. LP*, 49 F.4th 866, 869 (3d Cir. 2022); *see also Royal Canin U. S. A., Inc. v. Wulfschleger*, 604 U.S. 22, 44 (2025).

Second, KPN's assertion of "sharp practice" is smoke and mirrors. KPN relies on *Vasudevan Software, Inc. v. Microstrategy, Inc.*, 2013 WL 12174179 (N.D. Cal. Mar. 11, 2013), but that case has no connection to this case or to these parties. Indeed, *Vasudevan* involved allegations that Microstrategy was improperly pressuring Vasudevan's counsel by attacking patents held by its clients, which had

no relation to Vasudevan. *Id.* at *2. KPN suggests (D.I. 30 at 3 & n.3) that Samsung was initially doing the same by suing TNO. But, in part based on KPN's representations, Samsung has dismissed TNO. Moreover, the Complaint refutes KPN's theory. Samsung provisionally included TNO because TNO appeared to co-own some of the patents-in-suit. D.I. 1 ¶ 6 & n.4. This hardly suggests bad faith.

Because "a nefarious motive" cannot "be so easily inferred" here, dismissal would constitute an abuse of discretion. *Sony Elecs., Inc. v. Guardian Media Techs., Ltd.*, 497 F.3d 1271, 1289 (Fed. Cir. 2007). Whether the instant suit may have "the effect of placing [Samsung] in a more favorable negotiating position," such an effect "is not a sufficient reason to decline to hear the suit." *Id.*

III. KPN'S PRECLUSION ARGUMENT FAILS

KPN improperly hints (D.I. 30 at 13-14) at collateral estoppel. Specifically, KPN refers (*id.* at 13) to a federal remand order that purportedly rejected Samsung's allegations that "KPN's claims and damages model were premised on Samsung's infringement." That argument fails for several independent reasons.

First, the analysis in the cited order has nothing to do with legal standards that govern here. *See Koninklijke KPN N.V. v. Samsung Elecs. Co.*, 2024 WL 2019739, at *1-3 (E.D. Tex. Apr. 4, 2024). The court relied on KPN's complaint to assess whether KPN's only conceivable path to victory depended on patent law.

Id. Because the court addressed a different issue and did so in an unreviewable order, its decision cannot be preclusive. *See Delaware River Port Auth. v. Fraternal Ord. of Police*, 290 F.3d 567, 572 (3d Cir. 2002). Moreover, the issue of estoppel is not presented because it is a merits argument that must be advanced by Rule 12(b)(6) motion, which KPN has not filed. *See M & M Stone Co. v. Pennsylvania*, 388 F. App'x 156, 162 (3d Cir. 2010).

Second, KPN mistates the content of the decision. KPN claims (D.I. 30 at 14) that the court found Samsung's instant allegations "no[t] credible." The court found no such thing. It did not address the instant allegations at all because it analyzed KPN's complaint, not KPN's case-in-chief at trial, where it expressly and repeatedly asserted that Samsung owed KPN damages due to Samsung's use of KPN's patents. *See Koninklijke KPN N.V.*, 2024 WL 2019739, at *1-3.

Third, KPN acknowledges (D.I. 30 at 5 n.4, 16) that Samsung's allegations control at this stage, *see O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 316 (3d Cir. 2007); *In re Horizon Healthcare Servs. Inc. Data Breach Litig.*, 846 F.3d 625, 633 (3d Cir. 2017). By interposing distractions such as this, KPN telegraphs the weakness of its jurisdictional arguments.

IV. ANY DISMISSAL SHOULD BE WITHOUT PREJUDICE

Leave to amend is liberally granted, including to cure jurisdictional defects. *See Berkshire Fashions, Inc. v. M.V. Hakusan II*, 954 F.2d 874, 886 (3d

Cir. 1992). Yet KPN seeks dismissal with prejudice (D.I. 30 at 21) on the ground that further amendment would be futile. It claims that because Samsung amended as-of-right solely to dismiss TNO, additional allegations must not exist. This argument is unsound. Samsung's decision to streamline proceedings says nothing about the world of available allegations. Moreover, Samsung believes that its allegations are sufficient and need not add more pending the Court's decision.

So KPN pretends that Samsung has amended with leave of the Court already, such that the Court would be giving Samsung "yet another chance" (D.I. 30 at 21). But Samsung has only amended as-of-right. Accordingly, if the Court finds dismissal appropriate, it should dismiss without prejudice to afford Samsung an opportunity to supplement.

CONCLUSION

Samsung respectfully requests that the Court deny KPN's motion or, in the alternative, afford Samsung leave to amend.

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CERTIFICATE OF WORD COUNT

Under this Court's November 10, 2022 Standing Order Regarding Briefing in All Cases, counsel for Plaintiffs certify as follows:

The text of this brief is 14-point in size and Times New Roman typeface. There are 4,927 words appearing in this brief from the Introduction to the Conclusion, as reported by the word count tool in Microsoft Word. Words in the caption, table of contents, table of authorities, the signature, and this certification were not included in the count.

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CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on April 21, 2025, upon the following in the manner indicated:

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