

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**ERICSSON INC. and
TELEFONAKTIEBOLAGET LM
ERICSSON,**

Plaintiffs,

v.

**LG ELECTRONICS, INC. and LG
ELECTRONICS MOBILECOMM U.S.A.,
INC.,**

Defendants.

CIVIL ACTION NO. 4:18-cv-186

JURY TRIAL DEMANDED

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs Ericsson Inc. and Telefonaktiebolaget LM Ericsson (together, "Ericsson") file this Original Complaint against LG Electronics, Inc. ("LGE") and LG Electronics MobileComm U.S.A., Inc. ("LGEM") (together, "LG") and allege as follows:

NATURE OF THE ACTION

1. For more than three decades, Ericsson has pioneered the development of the modern cellular network. Every major mobile network operator in the world buys solutions and/or services from Ericsson, and Ericsson manages networks that serve more than one billion subscribers globally. Forty percent of all mobile calls are made through Ericsson systems, and Ericsson's equipment is found in more than one hundred and eighty countries.

2. Ericsson is widely viewed as one of the leading innovators in the field of cellular communications. Due to the work of more than 24,000 Ericsson research and development ("R&D") employees, Ericsson's inventions laid the foundation for the fundamental technology that connects phones, smartphones, and other mobile devices, enables seamless use of cellular

networks worldwide, and provides increased performance and new features for the benefit of consumers. Ericsson's extensive R&D efforts resulted in countries around the world awarding Ericsson more than 45,000 patents.

3. Ericsson has a long history of innovative technical contributions, including the inventions underlying Ericsson's essential patents. In addition, some of Ericsson's other accomplishments include:

- in 1878, Ericsson sold its first telephone;
- in 1977, Ericsson introduced the world's first digital telephone exchange;
- in 1981, Ericsson introduced its first mobile telephone system, NMT;
- in 1991, Ericsson launched 2G phones on the world's first 2G network;
- in 1994, Ericsson invented Bluetooth;
- in 2001, Ericsson made the world's first 3G call for Vodafone in the UK; and
- in 2009, Ericsson started the world's first 4G network and made the first 4G call.

4. Ericsson's innovation continues today and into the future. Ericsson envisions a connected future, in which there will be more than three billion users and more than fifty billion connected devices, all of which will require improved networks and greater capacity. Ericsson's efforts have resulted in technological advances enabling faster data speeds, improved voice quality, and better network performance. In particular, Ericsson's major contributions to the current 4G LTE standard ensure that the 4G standard delivers more value to smartphones than 2G or 3G standards, by facilitating better performance and new features, which result in new and richer applications for LG's customers. Ericsson's technological advances do not come cheaply or easily, as Ericsson invests approximately 15% of its revenue in R&D costs annually.

5. Many of Ericsson's patents are essential to the 2G (GSM, GPRS, and EDGE), 3G (UMTS/WCDMA and HSPA), and 4G (LTE) telecommunication standards, all of which are used by LG's cellular-standard compliant products.

6. Ericsson has repeatedly committed that it is prepared to grant licenses to its portfolio of patents that are essential to practice the 2G, 3G, and/or 4G standards on terms that are fair, reasonable, and non-discriminatory (“FRAND”), subject to reciprocity. Ericsson’s FRAND commitment is set forth in its intellectual property right (“IPR”) licensing declarations to the European Telecommunications Standards Institute (“ETSI”) in accordance with ETSI’s IPR Policy. Consistent with its FRAND commitment, Ericsson has widely licensed its portfolio of essential patents on a global basis in over one hundred agreements with members of the telecommunications industry that have agreed to pay royalties for a global portfolio license on FRAND terms. Negotiations with members of the telecommunications industry for new or renewed licenses to Ericsson’s portfolio of essential patents are continually ongoing.

7. Ericsson reinvests much of the licensing revenue it receives under these global agreements into inventing future generations of standardized telecommunication technologies, spending billions of dollars annually on total R&D.

8. The development of the 2G, 3G, and especially 4G LTE telecommunication standards allowed the use of smartphones to proliferate and accelerated consumer adoption. Without LTE technology and the use of Ericsson’s inventions, smartphones and other mobile devices would not be able to provide the constant on-the-go access to video, streaming media, and gaming consumers are accustomed to today. Furthermore, the widespread adoption of large screen smartphones and corresponding applications depend upon the performance provided by LTE technology and Ericsson’s inventions. Additionally, the newest 5G telecommunication development also relies upon Ericsson’s technology and portfolio of essential patents.

9. LG claims that it owns a portfolio of essential patents related to the 2G, 3G and 4G standards, which it has repeatedly committed to license on FRAND terms. LG’s FRAND

commitment is set forth in its IPR licensing declarations to ETSI in accordance with ETSI's IPR Policy.

10. ETSI's IPR Policy states that its members' FRAND undertaking may be made subject to the condition that those who seek licenses agree to reciprocate.

11. Previously, LG globally licensed Ericsson's essential patents under three separate reciprocal licenses entered into in 2003, 2008, and 2014. All licenses, including the most recent, have now expired.

12. Ericsson has been attempting to negotiate with LG to renew the parties' reciprocal license for nearly a year. Recently, Ericsson offered to renew its global portfolio license with LG on FRAND terms. These negotiations have been unsuccessful because LG refuses to negotiate in good faith, refuses to pay a FRAND royalty for a license to Ericsson's essential patents, and refuses to license its essential patents on FRAND terms. LG's refusal to pay a FRAND rate, while continuing its unlicensed use of Ericsson's essential patents, gives it an unfair competitive advantage over its competitors that have licensed Ericsson's essential patents on FRAND terms.

13. During the course of the companies' negotiations for a renewal agreement, LG has refused to negotiate in good faith for a license to Ericsson's essential patents on terms that are FRAND and has refused to license its essential patents on FRAND terms. LG engaged in insincere negotiations and made a counteroffer for a cross-license covering Ericsson and LG's entire portfolios of essential patents on terms that are significantly outside the range that many other participants in the mobile telecommunications industry have accepted for a FRAND license to Ericsson's portfolio of essential patents. LG's offer is either in bad faith, as it significantly undervalues the contemplated license to Ericsson's essential patents, or it runs afoul of LG's

obligation to offer a FRAND license for its essential patents by significantly overvaluing its portfolio of essential patents.

14. Ericsson has, therefore, filed this suit against LG to obtain a declaration that Ericsson has complied with its FRAND commitments, as set forth in its IPR licensing declarations to ETSI, by being prepared to grant to LG a global portfolio license under Ericsson's essential patents on FRAND terms and condition, subject to reciprocity, and a judgment that LG has breached its own FRAND obligations.

15. Finally, this is also an action for patent infringement under the patent laws of the United States, Title 35, United States Code, seeking monetary damages, injunctive relief, and other relief against LGE due to its infringement of U.S. Patent No. 6,633,550 ("the Asserted Patent" or "the '550 Patent").

THE PARTIES

16. Plaintiff Ericsson Inc. is a Delaware corporation with its principal place of business at 6300 Legacy Drive, Plano, Texas 75024. Ericsson Inc. has maintained its principal place of business in North Texas for approximately three decades.

17. Plaintiff Telefonaktiebolaget LM Ericsson is a corporation organized under the laws of the Kingdom of Sweden with its principal place of business at Torshamnsgatan 21, Kista, 164 83, Stockholm, Sweden.

18. Defendant LGE is a Korean corporation with a principal place of business at LG Twin Towers, 128 Yeoui-daero, Yeongdungpo-gu, Seoul, 07366, South Korea.

19. Defendant LGEM is a California corporation with a principal place of business in Englewood Cliffs, NJ 07632.

20. LG designs, manufactures, uses, imports into the United States, sells, and/or offers

for sale in the United States smartphones, tablets, and other mobile computing devices that operate over various cellular standards, including 2G, 3G, and 4G. LG's devices are marketed, offered for sale, and/or sold throughout the United States, including within this District.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over Ericsson's claims for declaratory judgment, breach of contract, and patent infringement under 28 U.S.C. § 1331, 1332, 1338(a) and/or § 1367.

22. To the extent necessary, the amount in controversy exceeds \$75,000.

23. Venue is proper in this judicial district under 28 U.S.C. § 1391 and/or 1400(b).

24. This Court has personal jurisdiction over LG. LG has directed communications in connection with its negotiations with Ericsson into Texas, and specifically into the Eastern District of Texas. Additionally, LG has contacts with the State of Texas arising from its negotiations and course of dealing with Ericsson. This course of dealing has included three previous license agreements (discussed below), correspondence with Ericsson employees based in Plano, Texas, and a meeting with Ericsson officials in the State of Texas. Further, this course of dealing and negotiation history between LG and Ericsson—including LG's breach of its FRAND obligations and refusal to negotiate in good faith—forms the basis of the present suit.

25. LG has continuous and systematic business contacts with the State of Texas. LG, directly or through subsidiaries or intermediaries (including distributors, retailers, and others), conducts its business extensively throughout Texas, by importing, shipping, distributing, offering for sale, selling, advertising (including the provision of an interactive web page), and servicing its products in the State of Texas and the Eastern District of Texas. LG, directly and through subsidiaries or intermediaries (including distributors, retailers, and others), has purposefully and

voluntarily placed one or more of its products and/or services compliant with the 2G, 3G, and/or 4G cellular standards into the stream of commerce with the intention and expectation that they will be purchased and used by consumers in the Eastern District of Texas. These products and/or services have been and continue to be purchased and used by consumers in the Eastern District of Texas. Since January 1, 2018, LG's products sold, offered, for sale, advertised, serviced, and/or imported in and into the State of Texas and the Eastern District of Texas have used Ericsson's valuable technology without payment of a FRAND royalty for such use.

26. In addition to the foregoing, LGE has continuous and systematic business contacts with the State of Texas. LGE, through subsidiaries or intermediaries (including distributors, retailers, and others), conducts its business extensively throughout Texas, by importing, shipping, distributing, offering for sale, selling, advertising (including the provision of an interactive web page), and servicing products in the State of Texas and the Eastern District of Texas that infringe the Asserted Patent. LGE, through subsidiaries or intermediaries, maintains a physical place of business within the State, including in the Eastern District of Texas at 2151-2155 Eagle Parkway, Fort Worth, Texas 76177. LGE directly and/or through subsidiaries or intermediaries (including distributors, retailers, and others), has committed and continues to commit acts of infringement in this District by, among other things, actively inducing others to infringe the Asserted Patent.

BACKGROUND

A. ETSI, Standard essential patents, and the FRAND Commitment.

27. In the telecommunications industry, global standards are fundamental to ubiquitous connectivity and enable any company to enter the market and sell smartphones.

28. The 2G, 3G, and 4G cellular standards comprise a lengthy set of documents that specify complete "blueprints" for cellular networks and phones. Developing these standards

requires much more than merely adopting existing technology to specify how different products will communicate. Instead, the standardization process more closely resembles a competition among industry players to find novel solutions to the technical challenges underlying the new standards, such as increased data rates, reduced latency, reliability, and security.

29. The 2G, 3G, and 4G cellular standards hugely benefit consumers and the competitive economic conditions in the United States. Consumers enjoy increased market choices because the standards are available for anyone to implement, even companies outside of the standard body's membership. Therefore, new industry players may easily enter the market and launch competitive products without taking on the risky investment in the multi-year process necessary to develop the enabling standards. Similar benefits are expected with the release and adoption of the 5G cellular standard.

30. These benefits have created remarkable growth in the cellular industry over the last two decades, providing affordable communication to billions of people worldwide. The U.S. government agrees: "Voluntary consensus standards serve the public interest in a variety of ways, from helping protect public health and safety to promoting efficient resource allocation and production by facilitating interoperability among complementary products."¹

31. ETSI is an independent, non-profit standard-development organization ("SDO") that produces globally accepted standards for the telecommunication industry. ETSI currently has more than 830 members from over sixty countries across five continents, including Ericsson and five separate LG entities ("LG ETSI Members"), all of which are affiliates of LG.² In addition to

¹ U.S. Department of Justice and U.S. Patent & Trademark Office, POLICY STATEMENT ON REMEDIES FOR STANDARD-ESSENTIAL PATENTS SUBJECT TO VOLUNTARY F/RAND COMMITMENTS at 2-3.

² The LG members of ETSI include LG Electronics Deutschland, LG Electronics Finland, LG Electronics France, LG Electronics Polska, and LG Electronics UK. Current members, <http://www.etsi.org/membership/current-members> (last visited March 13, 2018).

its own activities, ETSI is also one of six SDOs that are organizational partners of the Third Generation Partnership Project (“3GPP”) the organization that maintains and develops globally applicable technical specifications for the 2G, 3G, 4G, and 5G mobile systems. 3GPP has developed open standards that ensure worldwide state-of-the-art performance and interoperability between network equipment and user equipment for a number of services and applications.

32. Many SDO members, including Ericsson, own IPRs related to technologies standardized by SDOs. ETSI has developed and promulgated an IPR Policy. The ETSI IPR Policy endeavors to strike a balance between the needs of standardization for public use on the one hand, and ensuring that an IPR owner is “adequately and fairly rewarded for the use of [its] IPRs in the implementation of [the] standards and technical specifications”³ on the other hand. ETSI requires its members to disclose patents that are “essential to practice” its standards or technical specifications. The ETSI Guide on IPRs states, “the ETSI IPR Policy seeks a balance between the needs of standardization for public use in the field of telecommunications and the rights of the owners of IPRs.”⁴

33. Clause 15.6 of the ETSI IPR Policy defines the term “ESSENTIAL” to mean that “it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization, to make, sell, lease, otherwise dispose of, repair, use or operate EQUIPMENT or METHODS which comply with a STANDARD without infringing that IPR.” The ETSI Guide on IPR further states, “an ‘essential IPR’ is an IPR which has been included within a standard and where it would be

³ ETSI Rules of Procedure, Annex 6: ETSI IPR Policy, 29 November 2017, <http://www.etsi.org/images/files/IPR/etsi-ipr-policy.pdf> (last visited March 13, 2018).

⁴ ETSI Guide on IPR, 19 September 2013, Version adopted by Board #94, <http://www.etsi.org/images/files/IPR/etsi-guide-on-ipr.pdf> (last visited March 13, 2018).

impossible to implement the standard without making use of this IPR. The only way to avoid the violation of this IPR in respect of the implementation of the standard is therefore to request a license from the owner.”⁵

34. The ETSI IPR Policy and ETSI’s IPR Licensing Declaration forms are governed by French law.⁶

35. Patent licensing incentivizes technology innovators, like Ericsson, to undertake the risk and expense of directing R&D resources to developing, and subsequently contributing, innovations for incorporation into standards. Receiving a return on this investment is a prerequisite for the underlying business models of standard-setting participants like Ericsson. FRAND licensing has been recognized by the United States Patent and Trademark Office and Department of Justice as a necessary incentive for standardization:

[P]atent holders that focus on licensing their inventions benefit from an expanded source of revenues. These incentives encourage patent holders to contribute their best technology to the standardization process. [. . . and] the United States continues to encourage systems that support voluntary F/RAND licensing—both domestically and abroad—rather than the imposition of one-size-fits-all mandates for royalty-free or below-market licensing, which would undermine the effectiveness of the standardization process and incentives for innovation.⁷

36. As a pioneer in wireless telecommunications, Ericsson has contributed its essential patented technology to 3GPP and ETSI based on the representations by ETSI and its members (such as LG) that Ericsson would be fairly and adequately rewarded for Ericsson’s essential

⁵ *Id.*

⁶ ETSI Rules of Procedure, Annex 6: ETSI IPR Policy, 29 November 2017, <http://www.etsi.org/images/files/IPR/etsi-ipr-policy.pdf> (last visited March 13, 2018).

⁷ U.S. Department of Justice and U.S. Patent & Trademark Office, POLICY STATEMENT ON REMEDIES FOR STANDARD-ESSENTIAL PATENTS SUBJECT TO VOLUNTARY F/RAND COMMITMENTS at 5-6.

patented technology. Such royalties incentivize Ericsson to continue to commit its cutting-edge R&D to open standards on FRAND terms.

37. Whenever ETSI members such as LG use standard-essential patented technology and fail to compensate the patent owner, the innovators who developed and implemented these standards are placed at an unfair competitive disadvantage.

B. The Current Licensing Dispute.

38. Ericsson is uniquely positioned as a leader in the development of standards for all major mobile communication systems. Its active participation and leadership in global standardization organizations, and its commitment to open and innovative technology standards, enable Ericsson to play a key role in shaping standards for future technologies.

39. As a result, Ericsson owns patents that are, and remain, essential to practice the 2G, 3G, and/or 4G standards. Ericsson has declared to ETSI that it is prepared to grant licenses to its essential patents on FRAND terms and conditions, subject to reciprocity, as set forth in its IPR licensing declarations to ETSI.

40. LG claims that it owns patents that are, and remain, essential to practice the 2G, 3G, and/or 4G standards. LG has declared to ETSI that it is prepared to grant licenses to its essential patents on FRAND terms and conditions consistent with LG's FRAND commitment, as set forth in its IPR licensing declarations to ETSI.

41. In approximately 2003, LG and Ericsson entered into a reciprocal license agreement to the parties' respective essential patents ("the 2003 License Agreement"). At or around the expiration of the 2003 License Agreement, LG and Ericsson engaged in negotiations to renew the parties' reciprocal license. The fruit of these negotiations was a second license agreement to the parties' respective essential patents, which the parties entered into in 2008 ("the

2008 License Agreement”).

42. At or around the expiration of the 2008 License Agreement, LG and Ericsson again engaged in negotiations to reach a new reciprocal agreement to the parties’ respective essential patents. In 2014, those negotiations resulted in a third reciprocal license agreement (“the 2014 License Agreement”) between the parties. These negotiations involved Ericsson Inc. employees, including its Global Head of Licensing and its Chief IP Officer, who were based in Ericsson Inc.’s Plano, Texas office.

43. In March 2017, months before the 2014 License Agreement expired, Ericsson contacted LG to begin negotiations to renew the parties’ reciprocal license to the parties’ 2G, 3G, and 4G essential patents. Over the course of many months, Ericsson representatives based in Ericsson Inc.’s Plano, Texas office and LG representatives corresponded and met on numerous occasions to discuss licensing terms.

44. The first in-person meeting took place in June 2017. The meeting was originally scheduled to be in Seoul, Korea, but LG belatedly proposed that the meeting take place in Dallas, Texas. The parties continued negotiations for the remainder of 2017 and the first two months of 2018, including the exchange of detailed charts regarding the parties’ respective essential patents, the exchange of arguments regarding the alleged validity and essentiality of the parties’ respective essential patents, and at least six full days of technical discussions regarding the parties’ respective essential patents involving dozens of employees from the parties.

45. Ericsson recently offered LG a global and reciprocal license related to the parties’ essential patent portfolios on FRAND terms.

46. Ericsson’s offer accounted for the parties’ detailed technical exchanges and discussions, including the relative value of the parties’ essential patents and forecasted sales

volumes.

47. LG refused Ericsson's FRAND offer and through its conduct has taken the position that Ericsson's offer was not on FRAND terms.

48. In the months preceding the expiration of the 2014 License Agreement, and since it has expired, LG has continually and repeatedly refused to negotiate to a new reciprocal FRAND license in good faith with Ericsson. In the meantime, LG has continued to reap the benefits of Ericsson's technology by selling products that comply with the cellular standards without being willing to pay for the right to do so.

49. After refusing Ericsson's FRAND offer, LG made an ostensible counteroffer. Upon information and belief, LG's offer grossly undervalued Ericsson's entire portfolio (including but not limited to Ericsson's essential patents and the '550 Patent). Plainly, LG's "offer" was nothing more than an insincere, premeditated, and transparent effort to erect a defense to this inevitable lawsuit, which LG's conduct has forced Ericsson to bring. Indeed, LG's offer was not an effort to *comply* with its FRAND obligations, it was an effort to *avoid* them.

50. Ericsson's offer, on the other hand, contemplates a global, reciprocal license to both parties' essential patents on FRAND terms. This is consistent with Ericsson's extensive licensing experience as well as standard industry practice and the parties' previous license agreements. Licensing portfolios of standard-essential patents on a worldwide basis, rather than individual patents on a country-by-country basis, is the most efficient accommodation for licensing large and dynamic portfolios of standard-essential patents, such as those owned by Ericsson, and it fulfills the FRAND commitment made by the IPR owner.

51. The parties' licensing negotiations have been unsuccessful because LG refuses to pay a FRAND royalty for Ericsson's essential patents and refuses to offer a FRAND royalty for

its essential patents. LG fails to honor its own FRAND obligation and fails to honor the fact that FRAND licensing is a two-way street, requiring that both parties negotiate in good faith.

52. By refusing to negotiate in good faith for a license to Ericsson's essential patents on terms that are FRAND, LG gains an unfair advantage over the rest of the telecommunications market. LG's competitors, and many of the other participants in the mobile telecommunications industry, have licensed Ericsson's portfolio of essential patents on global FRAND licensing terms. By refusing to negotiate in good faith, LG enjoys the benefit of Ericsson's technology without paying a fair and reasonable royalty—a clear advantage over its licensed competitors.

C. The '550 Patent.

53. The '550 Patent, entitled "Radio Transceiver on a Chip," was duly and legally issued by the United States Patent and Trademark Office on October 14, 2003. Telefonaktiebolaget LM Ericsson is the owner by assignment of the '550 Patent and owns all right, title, and interest in the '550 Patent, including the right to enforce the '550 Patent against and recover damages for past infringement by LGE. A true and correct copy of the '550 Patent is included as Exhibit A.

54. By way of example, claim 1 of the '550 Patent claims a radio on a single IC chip, comprising: an antenna section for transmitting and receiving a plurality of high frequency signals, said radio including means for transmitting and receiving said plurality of high frequency signals in a time division duplex mode, a single heterodyne down-conversion section coupled to said antenna section, for down-converting directly from a first high frequency signal of said plurality of high frequency signals to a low intermediate frequency signal; a bandpass filter coupled to said down-conversion section; a discriminator coupled to said bandpass filter for detecting a received data signal from said low intermediate frequency signal; an up-conversion

section coupled to said antenna section, for up-converting an information signal to a second high frequency signal of said plurality of high frequency signals, said up-conversion section comprising a portion of said down-conversion section; a shaping filter coupled to an input of said up-conversion section; and said down-conversion section, bandpass filter, discriminator, up-conversion section and shaping filter integrated into said single IC chip, wherein bandpass filtering operations are performed by components integrated into said single IC chip.

55. The '550 Patent is valid and enforceable.

56. Upon information and belief, LGE knew of or should have known of the '550 Patent at least as of 2008 and/or 2014 when LGE entered into license agreements (discussed above) with Ericsson under which LGE was licensed to the '550 Patent. All licenses, including the most recent, have now expired. In the alternative, upon information and belief, LGE knew of or should have known of the '550 Patent at least as 2015 before the expiration of the most recent license.

57. Upon information and belief, since the expiration of its license to Ericsson's patents, LGE knew and intended its continued actions would actively induce and/or encourage its subsidiaries and its customers to infringe at least claims 1, 3-4, 6-10, 12, 14, and 16-17 of the '550 Patent by making, using, selling, offering for sale, and/or importing products that practice or implement the claimed invention, including cellphones and other electronics with Bluetooth capability.

COUNT I
DECLARATORY JUDGMENT THAT ERICSSON
HAS NOT BREACHED ITS FRAND COMMITMENT TO LG

58. Ericsson repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

59. Ericsson owns patents essential to the 3GPP 2G, 3G, and 4G standards. LG infringes Ericsson's essential patents and does not have a license to practice such patents.

60. Ericsson, as the owner of patents essential to ETSI standards, has voluntarily declared that it is prepared to grant licenses to companies, including LG, on terms that are fair, reasonable, and non-discriminatory, in compliance with the ETSI IPR Policy, subject to reciprocity. This declaration forms a contract under French law to which LG claims to be a third-party beneficiary.

61. Ericsson has fully complied with its FRAND obligations by, among other things, attempting to negotiate in good faith with LG since the spring of 2017 and offering a license to its essential patents on FRAND terms.

62. A dispute exists between Ericsson and LG concerning whether Ericsson's offer to LG for a global, reciprocal license to the parties' essential patents complied with Ericsson's commitment to license its essential patents on terms and conditions consistent with Ericsson's IPR licensing declarations to ETSI and ETSI's IPR Policy. LG believes that Ericsson has failed to offer a license under Ericsson's essential patents to LG on terms that are FRAND and rejected that Ericsson's offer. There is a case or controversy of sufficient immediacy, reality, and ripeness to warrant the issuance of a declaratory judgment.

63. Ericsson requests a declaratory judgment that Ericsson's global, reciprocal license offered during the negotiations with LG complied with Ericsson's FRAND commitment, as set forth in its IPR licensing declarations to ETSI, as well as ETSI's IPR Policy and any applicable laws.

COUNT II
LG BREACHED ITS CONTRACTUAL OBLIGATION TO ETSI

64. Ericsson repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

65. LG, as the owner of patents that it claims are essential to the ETSI standards, has voluntarily declared it will grant licenses to companies, including Ericsson, on terms that are fair, reasonable, and non-discriminatory, in compliance with the ETSI IPR Policy.

66. Ericsson is an intended third-party beneficiary of LG's contract with ETSI.

67. LG was and is contractually obligated to offer a license to Ericsson for its essential patents consistent with its contract with ETSI, including on FRAND terms.

68. Upon information and belief, LG's counteroffer to Ericsson for a global, reciprocal license constitutes a breach of its contractual obligations to ETSI.

69. This breach has caused harm to Ericsson. LG's refusal to take and offer a license on FRAND terms has deprived Ericsson of FRAND royalties and resulted in substantial commercial benefit to LG, including the sale of products that use Ericsson's valuable technology within the State of Texas without paying a royalty for such use. In addition, LG's refusal to take and offer a license has wasted the time of dozens of Ericsson employees that diligently analyzed the parties' respective portfolios of essential patents and negotiated in good faith with LG at considerable expense to Ericsson.

70. As a result of LG's breach, and because Ericsson hired counsel to prosecute this suit, Ericsson is entitled to recover its attorneys' fees.

COUNT III
LG BREACHED ITS OBLIGATION TO NEGOTIATE IN GOOD FAITH

71. Ericsson repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

72. Since March 2017, representatives from Ericsson and LG have been engaged in negotiations regarding renewal of the parties' global, reciprocal license to their respective essential patents.

73. Upon information and belief, LG has failed to negotiate in good faith with Ericsson. For example, rather than engage in good faith negotiations, LG made a disingenuous, demonstrably unreasonable, and non-FRAND counteroffer.

74. LG's failure to negotiate in good faith constitutes a breach of its obligations to Ericsson at least under French law.

75. There is a dispute between Ericsson and LG concerning whether LG has complied with its obligation to negotiate in good faith, and this controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

76. Ericsson is entitled to judgment that LG has not complied with its obligation to act in good faith during its negotiations with Ericsson regarding FRAND terms for a cross-license to the parties' essential patents.

77. As a result of LG's breach of its duty to negotiate in good faith, Ericsson has been injured in its business or property. LG's refusal to negotiate in good faith deprived Ericsson of FRAND royalties and resulted in substantial commercial benefit to LG, including the sale of products that use Ericsson's valuable technology within the State of Texas without paying a royalty for such use. In addition, LG's refusal to negotiate in good faith has wasted the time of dozens of Ericsson employees that diligently analyzed the parties' respective portfolios of

essential patents and negotiated in good faith with LG at considerable expense to Ericsson.

COUNT IV
PROMISSORY ESTOPPEL

78. Ericsson repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

79. During the past year of negotiations for a renewal agreement between the parties, Ericsson offered to renew the parties' global, reciprocal license with LG on FRAND terms. LG made a promise to Ericsson that it was willing to enter into a license to Ericsson's essential patents on FRAND terms, and willing to license its own essential patents on FRAND terms.

80. Upon information and belief, LG intended for this promise to induce Ericsson's reliance so that Ericsson would continue negotiating with LG and not take—or delay in taking—other action to protect Ericsson's valuable intellectual property rights.

81. LG knew or should have reasonably been expected to know that Ericsson would rely on LG's promise, and that Ericsson continued negotiating with LG in substantial reliance on LG's promises to Ericsson's detriment.

82. Ericsson has been harmed as a result of its reasonable reliance on LG's promise, including but not limited to harm resulting from the delay in instituting litigation, Ericsson's cost and expense in pursuing futile negotiations with LG, and lost business opportunities in an amount to be determined at trial.

COUNT V
DECLARATORY JUDGMENT THAT LG HAS REJECTED AND/OR REPUDIATED
ANY RIGHTS ASSOCIATED WITH ERICSSON'S FRAND DECLARATIONS AND IS
AN UNWILLING LICENSEE

83. Ericsson repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

84. Ericsson has declared that it will offer licenses to its essential patents on FRAND terms in compliance with the ETSI IPR Policy.

85. Ericsson has fully complied with its FRAND obligations by, among other things, attempting to negotiate in good faith with LG since the spring of 2017 and offering a license to its essential patents on FRAND terms.

86. Upon information and belief, LG has repudiated and/or rejected any rights associated with Ericsson's declarations to ETSI by refusing to undertake good-faith negotiations for nearly a year, rejecting Ericsson's FRAND offer, and making a disingenuous, demonstrably unreasonable, and non-FRAND counteroffer.

87. Ericsson seeks a declaration that by claiming the benefit of Ericsson's declarations to ETSI and its technological developments while refusing to adhere to its own FRAND obligations, LG is an unwilling licensee that has repudiated and/or rejected any rights associated with Ericsson's FRAND declarations.

COUNT VI
BREACH OF IMPLIED CONTRACT AND UNJUST ENRICHMENT

88. Ericsson re-alleges and incorporates by reference, as if fully set forth herein, the allegations set forth in the paragraphs above.

89. Ericsson owns patents essential to the 2G, 3G, and 4G standards. Without a license, LG has infringed and will continue to infringe Ericsson's patents.

90. LG sells products practicing Ericsson's essential patents within the State of Texas, and thereby has directly and unjustly benefited from its use of Ericsson's technology within the State of Texas.

91. By nature of the fact that LG has used and continues to use Ericsson's valuable technology without agreeing to a FRAND license, it has wrongfully secured or passively received a benefit from Ericsson that would be unconscionable to retain. LG obtained and received a benefit from Ericsson by taking of an undue advantage.

92. Accordingly, LG is under a legally enforceable duty to repay such benefits it has obtained from Ericsson. Such duty is implied by the law for reasons of justice, even without any expression of assent on LG's behalf.

93. Because it would be unconscionable to allow LG to retain the benefits it has obtained from Ericsson, LG should be required to make restitution of the benefits it received under the circumstances.

COUNT VII
PATENT INFRINGEMENT

94. Ericsson re-alleges and incorporates by reference, as if fully set forth herein, the allegations set forth in the paragraphs above.

95. Telefonaktiebolaget LM Ericsson owns all right, title, and interest in the '550 Patent, including the right to enforce the '550 Patent against and recover damages for past infringement by LGE.

96. Upon information and belief, LGE's active inducement of its subsidiaries and customers to make, sell, offer to sell, use, and/or import cellphones and other electronics with Bluetooth capability has indirectly infringed at least claims 1, 3-4, 6-10, 12, 14, and 16-17 of the '550 Patent. These products, as provided by LGE to its subsidiaries and customers and used as

intended and instructed, infringe the '550 patent, and LGE has known of this infringement since at least January 1, 2018. LGE has actively encouraged its subsidiaries to make, sell, offer to sell, use, and/or import the infringing products in the United States in a manner that LGE knows to be infringing, and has actively encouraged its customers to use the infringing products in the United States in a manner that LGE knows to be infringing.

97. LGE's indirect infringement of the claims of the '550 Patent has injured Ericsson, has caused financial damage to Ericsson, and will continue to injure and cause financial damage to Ericsson.

98. LGE's acts constitute willful and deliberate infringement, entitling Ericsson to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Ericsson hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Ericsson respectfully requests that this Court enter judgment in its favor and grant the following relief:

A. Adjudge and declare that Ericsson has complied with its FRAND obligations, as set forth in its IPR licensing declarations to ETSI, as well as ETSI's IPR Policy and any applicable laws, including by negotiating in good faith with LG and by being prepared to grant a license to LG on fair, reasonable, and non-discriminatory terms and conditions, subject to reciprocity, which appropriately values Ericsson's essential patents and LG's essential patents;

B. Adjudge and decree that LG breached its contractual obligations to ETSI, as set forth in its IPR licensing declarations to ETSI, as well as ETSI's IPR Policy and any applicable

laws, in its negotiations with Ericsson in regard to a global license to LG's essential patents;

C. Adjudge and decree that LG breached its obligations to negotiate in good faith with Ericsson regarding a global license to LG's essential patents;

D. Adjudge and decree that LG is liable under promissory estoppel;

E. Adjudge and declare that LG has repudiated and/or rejected any rights to a FRAND license and thus is an unwilling licensee of Ericsson's essential patents;

F. Adjudge and decree that LG is under a legally enforceable duty to repay benefits wrongfully secured or passively received from Ericsson;

G. Adjudge and decree that LGE has induced, and is inducing, infringement of the Asserted Patent in violation of 35 U.S.C. § 271;

H. Enter judgment against LG for the amount of damages that Ericsson proves at trial;

I. Enter judgment against LGE for enhanced damages pursuant to 35 U.S.C. § 284 of up to three times the amount of damages proven;

J. Enter judgment against LG that because of its bad faith in negotiations and failure to reciprocate with a FRAND offer, LG forfeits its rights to rely on third-party beneficiary status under ETSI's IPR policy;

K. Enter judgment awarding Ericsson its expenses, costs, and attorneys' fees in accordance with relevant French law, Rule 54(d) of the Federal Rules of Civil Procedure, 35 U.S.C. § 285, and/or Chapter 38 of the Texas Civil Practice and Remedies Code;

L. Enter judgment awarding pre- and post-judgment interest on any of the foregoing amounts; and

M. Award such other relief as the Court may deem appropriate and just under the circumstances.

DATED: March 19, 2017

Respectfully submitted,

/s/ Thomas M. Melsheimer

Thomas M. Melsheimer

Texas Bar No. 13922550

tmelsheimer@winston.com

M. Brett Johnson

Texas Bar No. 00790975

mbjohnson@winston.com

Michael A. Bittner

Texas Bar No. 24064905

mbittner@winston.com

WINSTON & STRAWN LLP

2501 N. Harwood, 17th Floor

Dallas, TX 75201

Telephone: (214) 453-6500

Telecopy: (214) 453-6400

Clyde M. Siebman

Texas Bar No. 18341600

clydesiebman@siebman.com

Elizabeth S. Forrest

Texas Bar No. 24086207

elizabethforrest@siebman.com

**SIEBMAN, BURG, PHILLIPS & SMITH,
LLP**

Federal Courthouse Square

300 N. Travis Street

Sherman, Texas 75090

Telephone: (903) 870-0070

Telecopy: (903) 870-0066

ATTORNEYS FOR PLAINTIFFS