
No. 2021-1565

**United States Court of Appeals
for the Federal Circuit**

ERICSSON INC. AND TELEFONAKTIEBOLAGET LM ERICSSON,
Plaintiffs-Appellees,

v.

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA,
INC., AND SAMSUNG RESEARCH AMERICA,
Defendants-Appellants.

Appeal from the U.S. District Court, Eastern District of
Texas, No. 2:20-CV-380, Judge J. Rodney Gilstrap

APPELLANTS' OPENING BRIEF

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February 22, 2021

CERTIFICATE OF INTEREST

Counsel for appellants certify the following:

1. The full name of all entities represented by us are: Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Research America.

2. The full names of all real parties in interest not identified in response to Question 3: None.

3. Parent corporations and publicly held companies that own 10% or more of the stock in the parties represented by us:

Samsung Electronics Co., Ltd. is a publicly held corporation organized under the laws of Korea. It has no parent companies, and no other publicly held company owns 10% or more of its stock.

Samsung Electronics America, Inc. is a wholly owned subsidiary of Samsung Electronics Co., Ltd. No other publicly held company owns 10% or more of its stock.

Samsung Research America is a wholly owned subsidiary of Samsung Electronics America, Inc., which in turn is a wholly owned subsidiary of Samsung Electronics Co., Ltd. No other publicly held company owns 10% or more of its stock.

4. The names of all law firms and attorneys who appeared for the parties now represented by us in the trial court or are expected to appear in this Court (and who have not or will not enter an appearance in this case) are:

Kirkland & Ellis LLP: Edward C. Donovan; David Rokach; Karthik Ravishankar

Quinn Emanuel Urquhart & Sullivan, LLP: Kevin Hardy (withdrawn), Thomas D. Pease (withdrawn)

Axinn, Veltrop & Harkrider, LLP: Paul Zeineddin

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly

affect or be directly affected by this court's decision in the pending appeal:

The Court's decision in this case may directly affect *Samsung Electronics Co., Ltd. v. Telefonaktiebolaget LM Ericsson*, (2020) E 01 Zhi Min Chu No. 743, currently pending in the People's Republic of China Wuhan Intermediate People's Court, Hubei Province.

6. Any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees).

N/A.

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Note: All quoted emphasis is added unless otherwise indicated.

STATEMENT OF RELATED CASES

The Court's decision in this case may directly affect or be directly affected by *Samsung Electronics Co., Ltd. et al. v. Telefonaktiebolaget LM Ericsson*, (2020) E 01 Zhi Min Chu No. 743, currently pending in the People's Republic of China Wuhan Intermediate People's Court, Hubei Province. This is an appeal from the district court's anti-antisuit injunction (Appx1-16), which responds to and nullifies or prevents enforcement of portions of the Chinese court's antisuit injunction (Appx563-576).

JURISDICTIONAL STATEMENT

The district court’s jurisdiction and this Court’s appellate jurisdiction are proper based on the First Amended Complaint, filed January 1, 2021. Appx422-481; Appx5 n.6 (After “Ericsson’s Amended Complaint, this is now a case for both breach of contract and patent infringement.”). The district court had subject-matter jurisdiction over the patent-infringement claims (Counts VI-XII) under 28 U.S.C. §§1331 (federal question), 1338(a) (Patent Act). Supplemental jurisdiction over the contract claims (Counts I-V) is (to the extent permissible) discretionary under §1367(c). This Court has jurisdiction under §1292(a)(1), (c)(1). *Chamberlain Grp., Inc. v. Skylink Techs., Inc.*, 381 F.3d 1178, 1189 (Fed. Cir. 2004) (“Federal Circuit jurisdiction depends on whether the plaintiff’s complaint as amended raises patent law issues.”).

The district court entered a preliminary injunction on January 11, 2021. Appx15. Appellants timely appealed on January 15, 2021. *See* 28 U.S.C. §2107; Fed. R. App. P. 4(a)(1)(A).

As explained herein, pp. 14-17, 62-63 *infra*, Appellees could not sue for patent infringement before January 1, 2021. Their December 11, 2020, Original Complaint’s diversity jurisdiction allegations are dubious

and appear designed to secure a forum in the Eastern District of Texas prematurely.

INTRODUCTION

This case concerns a global dispute between two multinational companies—Korea-based Samsung Electronics Co., Ltd. (“Samsung”) and Sweden-based Telefonaktiebolaget LM Ericsson (“Ericsson”)—over contractual obligations governed by French law. Samsung and Ericsson each committed to license their worldwide portfolios of 4G and 5G standard-essential patents (“SEPs”) on fair, reasonable, and non-discriminatory (“FRAND”) terms. When they could not agree on a new cross-license to replace their then-soon-expiring previous license, both initiated litigation. In the first-filed action between the parties, Samsung asked a court in China to determine a FRAND royalty for Ericsson’s portfolio. That court agreed to do so, and issued an *antisuit* injunction prohibiting Ericsson from filing two specific types of claims elsewhere that would interfere with that court’s rate-setting proceedings.

In violation of that order, Ericsson sought and obtained the *anti-antisuit* injunction from the Eastern District of Texas now on appeal. That injunction is extraordinary by any measure. Under the guise of “protect[ing] its jurisdiction,” the district court enjoined Samsung from enforcing the foreign court’s antisuit injunction anywhere in the United

States. And if Ericsson is sanctioned or fined for violating the foreign court's order—*sua sponte* or otherwise—Samsung must indemnify Ericsson.

This appeal presents the question whether a district court can countermand a proper order of a legitimate foreign court having jurisdiction over the first-filed action, by prohibiting enforcement and imposing liability for any subsequent actions the foreign court takes to enforce the original order. The answer is plainly no. The district court's injunction should be vacated, or at least narrowed to what is necessary to its jurisdiction over the matters currently before it—nothing more.

The first-filed action is Samsung's lawsuit in China. The Chinese court had jurisdiction to determine the FRAND royalty rate for a license under Ericsson's 4G and 5G SEPs (including Chinese patents). China is one of two jurisdictions (the other is the United Kingdom) that will determine worldwide FRAND rates without requiring bilateral consent. Ericsson championed that same global rate-setting approach in the United Kingdom's landmark *Unwired Planet* case.

After accepting Samsung's lawsuit, the Chinese court issued a temporary injunction, tailored to protect its rate-setting proceeding

against interference from follow-on claims in other courts seeking **(1)** competing rate-setting proceedings or **(2)** injunctions on Ericsson's FRAND-encumbered SEPs. American courts have entered similar orders, including the order the Ninth Circuit affirmed in *Microsoft v. Motorola*. Importantly, Ericsson has no argument that the Chinese courts are unfair. Ericsson provided no rebuttal to Samsung's evidence that they are fair, and does not dispute that Samsung followed applicable law and procedures in China.

But rather than litigate its FRAND obligations in the first-filed action in China, Ericsson used a second-filed action in the Eastern District of Texas to obtain a sweeping injunction from its preferred forum. Ericsson's injunction application disparaged the action in China as somehow "secret" or "hidden," and cast doubt on the Chinese court system's legitimacy—without a shred of evidence and while disclaiming any intention to dispute the fairness of Chinese courts. Ericsson obtained an injunction that treats the Chinese court's order as illegitimate, and positions the Eastern District of Texas as nationwide monitor over Samsung and the Chinese court. In addition to preventing Samsung from enforcing the Chinese court's injunction in the Eastern District of

Texas, Samsung is ordered to “take no action in the Chinese action” that would interfere with Ericsson’s patent litigation in *any tribunal in the country*, including the ITC. And if *Ericsson* incurs fines for violating the Chinese court’s order in the United States with respect to SEPs, *Samsung* must indemnify Ericsson. Ericsson is all but invited to flout the Chinese court’s order at Samsung’s expense.

The overreach and unnecessary affront to another judiciary’s legitimate order are enough to vacate or narrow the district court’s injunction. But no injunction should have issued at all. Under a rushed schedule prompted by Ericsson’s “emergency” motion, the district court relied on demonstrable legal and factual errors to conclude that an anti-antisuit injunction was appropriate. It misapprehended the scope of the Chinese action and injunction, misapprehended Ericsson’s recourse rights in China, and misapprehended the scope of a Samsung ITC filing based on its own outside research—incorrectly accusing Samsung of “hypocrisy” and “inequity.” And it relied on the legally erroneous view that federal courts have an “unflagging,” comity-overriding “obligation” to hear declaratory judgment claims. *But see Wilton v. Seven Falls Co.*,

515 U.S. 277, 284, 286-88 (1995) (there is no “unflagging obligation” to hear declaratory judgment claims).

The district court’s errors combined to produce a sweeping injunction that Ericsson has used to harass Samsung in China and elsewhere. This Court should vacate or narrow the injunction.

STATEMENT OF THE ISSUES

1. Whether the district court’s anti-antisuit injunction should be vacated because it relies on legal and factual errors to nullify a foreign court’s concededly legitimate proceedings and orders.

2. Whether, if the injunction is not reversed in full, it should be narrowed:

(a) by excising provisions 2 and 3, which apply nationwide and extend beyond any notion of protecting the district court’s own jurisdiction;

(b) by excising provision 3 for the further reason that it interferes directly and unnecessarily with the Chinese court’s ability to enforce its own lawful orders and unlawfully punishes Samsung; and

(c) by excising restrictions against Samsung’s ability to apply to enforce the Chinese court’s injunction against Ericsson’s pursuit of *injunctions* on SEPs—which interfere with FRAND rate setting by the Chinese court.

STATEMENT OF THE CASE

This appeal arises from the district court’s anti-antisuit injunction, Appx1-16, which prevents Samsung from applying to the Chinese court to enforce portions of the Chinese court’s antisuit injunction, Appx563-576, entered in an earlier-filed action against Ericsson. The district court first issued an *ex parte* TRO, Appx17-20, and later converted most of the TRO into a preliminary injunction. Appx1-16.

A. Samsung and Ericsson’s Efforts to Negotiate a New Worldwide Cross-License to 4G and 5G SEPs

This case is part of a larger dispute between Korea-based Samsung and Sweden-based Ericsson over their respective worldwide portfolios of SEPs for the 4G and 5G telecommunication standards. Samsung and Ericsson’s cross-license covering both companies’ cellular SEP portfolios, and other patents, expired December 31, 2020. When negotiations toward a new cross-license stalled, both parties resorted to litigation. Samsung filed first in China, which is one of two jurisdictions capable of

resolving their worldwide dispute. Ericsson filed later, in the Eastern District of Texas, the action underlying this appeal.

1. Samsung and Ericsson's Commitments to License 4G and 5G SEPs on FRAND Terms.

Samsung and Ericsson each own thousands of patents that each believes are essential to the 4G and 5G standards. Both have committed to license their 4G and 5G SEPs on FRAND terms. Such FRAND commitments are a common part of the process of developing technological standards. *E.g., TCL Commc'n Tech. Holdings v. Telefonaktiebolaget LM Ericsson*, 943 F.3d 1360, 1364 (Fed. Cir. 2019); *Ericsson, Inc. v. D-Link Sys.*, 773 F.3d 1201, 1208 (Fed. Cir. 2014).

Standards facilitate interoperability, which is critical for electronic devices. *Ericsson*, 773 F.3d at 1208. For example, consumers can purchase electrical devices throughout the United States knowing that they can plug into almost every wall outlet in the country, because industry has adopted a standard two- or three-prong, 120-Volt electrical outlet. *Id.* Similarly, Wi-Fi-compliant devices can connect to the internet at access points around the world because a critical mass of the relevant industry has adopted the Wi-Fi protocol. *Id.* at 1208-09.

FRAND commitments exist to alleviate the “patent holdup” risk from standard-setting. After a standard-setting organization locks itself into specific technological choices, every owner of a SEP gains enhanced leverage based on the value of the *entire standard*, which it can use to extract holdup royalties. Any company that produces standard-compliant products and refuses to pay holdup royalties will risk lawsuits and injunctions that could exclude it *from the entire market of standard-compliant products*. *Id.* at 1209; *TCL*, 943 F.3d at 1364; *Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 310-14 (3d Cir. 2007); Carl Shapiro & Mark A. Lemley, *The Role of Antitrust in Preventing Patent Holdup*, 168 U. PA. L. REV. 2019, 2043-46 (2020); Jorge L. Contreras, *A Brief History of FRAND: Analyzing Current Debates in Standard Setting and Antitrust Through a Historical Lens*, 80 ANTITRUST L.J. 39, 42 (2007). That holdup risk is especially acute in the electronics industry—both because modern standards like 4G and 5G inevitably incorporate technology claimed in thousands of patents, and also because “[d]evices of all sorts, from thermostats to railroad cars to refrigerators, are being given connectivity using standards.” Jason R. Bartlett & Jorge L. Contreras, *Rationalizing FRAND Royalties: Can Interpleader Save the*

Internet of Things?, 36 REV. LITIG. 285, 287-90 (2017); *Jaffe v. Samsung Elecs. Co.*, 737 F.3d 14, 18-19 (4th Cir. 2013) (describing “patent thicket”).

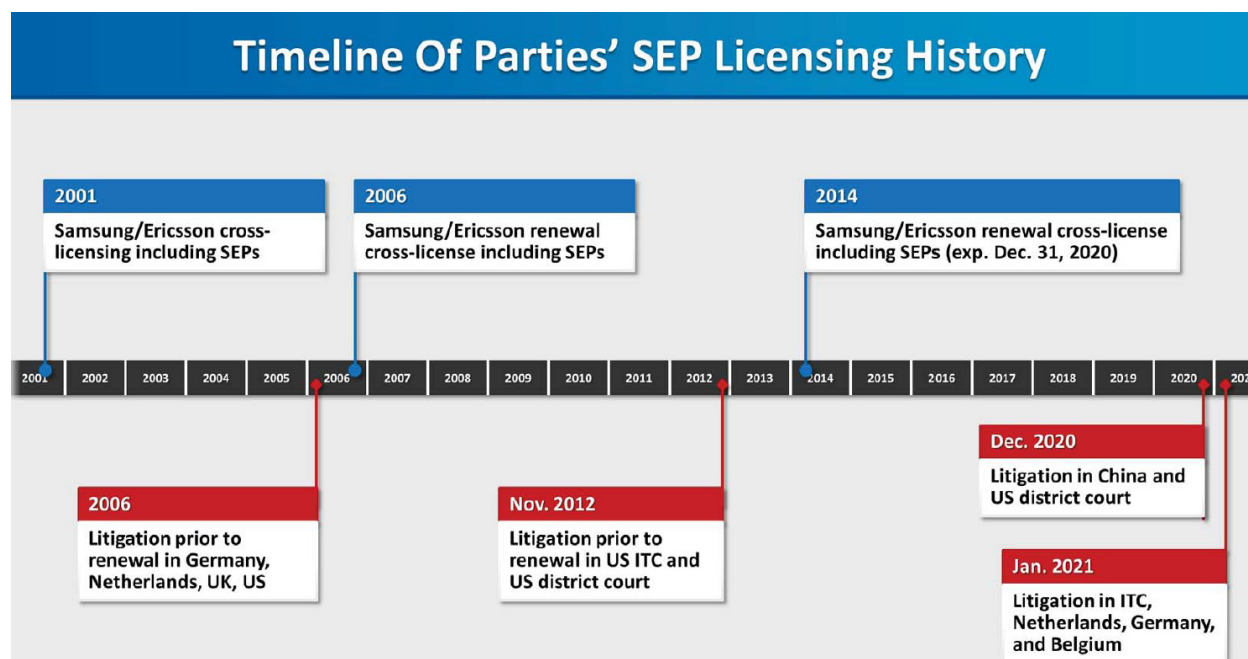
To alleviate the holdup risk, standard-setting organizations commonly require members to declare SEPs they own, and to make binding commitments to license SEPs on FRAND terms. *Ericsson*, 773 F.3d at 1209; *Broadcom*, 501 F.3d at 313-14; Contreras, 80 ANTITRUST L.J. at 42. Ericsson and Samsung participated in developing the 4G and 5G standards, as European Telecommunications Standards Institute (“ETSI”) members. Appx202-203(¶¶3, 5). Each declared patents they believed to be essential to those standards, and each committed under ETSI’s Intellectual Property Rights Policy to license on FRAND terms. Appx202-203; Appx209-211; Appx520-521; *see TCL*, 943 F.3d at 1364 (discussing ETSI policy).

The ETSI policy is governed by French law. Appx210(¶30). As is typical of standard-setting, the ETSI policy does not specify a forum to adjudicate claims for breach of the FRAND commitment. *Apple, Inc. v. Motorola Mobility, Inc.*, No. 11-CV-178, 2012 WL 5416941, at *4 (W.D. Wis. Oct. 29, 2012); *Unwired Planet Int’l Ltd. v. Huawei Techs. (UK) Co.*,

[2020] UKSC 37 ¶90 [<https://perma.cc/Z2Q7-G9X6>]; Bartlett & Contreras, 36 REV. LITIG. at 290-291.

2. Negotiations Reached an Impasse.

Samsung and Ericsson are sophisticated multinational companies with a lengthy history of licensing and litigating telecommunications-related patents, reflected in the timeline below.



Appx1346

In 2007, Samsung and Ericsson signed a worldwide cross-license including their global SEP portfolios for the 2G and 3G standards. Appx521. After that license expired in 2011, hard-fought litigation ensued, including district court and ITC actions seeking injunctive relief.

Appx495; Appx980; Appx521.¹ In 2014, Samsung and Ericsson signed a new worldwide cross-license covering tens of thousands of patents—including their global 2G, 3G, and 4G SEP portfolios. Appx521; Appx203(¶6). That license expired December 31, 2020. Appx1521; Appx1424.

Samsung and Ericsson negotiated, but were unable to reach agreement on a new cross-license before the old license expired. In July 2020, Ericsson proposed terms solely for its own portfolio. Appx522. In September 2020, Samsung proposed terms for both parties' portfolios. *Id.* Ericsson proposed binding arbitration, where the arbitrator would set a “maximum royalty” rather than a “reasonable royalty.” In November 2020, Samsung explained why Ericsson's proposal was one-sided and unacceptable, and Ericsson did not engage further. Appx522-523; *see also* Fed. Cir. 21-1565, ECF#10 (Feb. 8, 2021) (Attachments D-E).

¹ *See also* Dan Prochilo, *Samsung Reaches \$650M Deal With Ericsson to End IP Spat*, LAW360.COM (Jan. 27, 2014) [<https://www.law360.com/articles/504091>]; Ericsson, Press Release, *Ericsson and Samsung Reach Agreement on Licensing Terms* (Jan. 27, 2014), [<https://tinyurl.com/11xy93jk>].

B. Samsung Sued First, in China, to Enforce Ericsson's Global FRAND Commitment.

On December 7, 2020, Samsung (on behalf of itself and two Chinese affiliates) filed suit in China to enforce Ericsson's FRAND commitment. Appx516-525. Samsung's complaint contended that Ericsson breached its FRAND commitment by insisting on a non-FRAND global licensing offer to Samsung. Appx517-518; Appx521-524. As a remedy, Samsung asked the court to determine the FRAND royalty rate for Ericsson's 4G and 5G SEPs on a worldwide basis. Appx517-518.

To Samsung's knowledge, China and the United Kingdom are the only jurisdictions willing to determine worldwide FRAND rates without requiring all parties' consent.² The United Kingdom became the first such jurisdiction in *Unwired Planet Int'l Ltd. v. Huawei Tech. Co.*, [2017] EWHC (Pat) 711 (Eng.) [<https://perma.cc/CV39-ME7W>]. The UK Patent Court ruled that Huawei would be enjoined in the United Kingdom unless it accepted a *worldwide* license to Unwired Planet's SEPs, on

² Compare, e.g., *Apple, Inc. v. Motorola Mobility*, No. 11-CV-178, 2012 WL 5943791, at *2 (W.D. Wis. Nov. 28, 2012) (dismissing where Apple did not agree to be bound by global rate); *TCL Commc'n Tech. Holdings v. Telefonaktiebolaget LM Ericsson*, No. 8:14-CV-341, 2015 U.S. Dist. LEXIS 191512, at *18 (C.D. Cal. June 29, 2015) (Appx1090) (parties consented to "global resolution").

FRAND royalty terms the court set. *Id.* at ¶¶793, 807(18). The court rejected Huawei’s argument that it should only determine rates for UK patents, *id.* ¶¶524, 543. Ericsson intervened to urge the UK Supreme Court to affirm worldwide rate-setting, describing the country-by-country alternative as out of “line with industry practice,” “unworkable,” and “frustrat[ing]” to the ETSI policy. Appx1331(¶31). The Court of Appeal and the UK Supreme Court affirmed. [2018] EWCA (Civ) 2344, *aff’d* [2020] UKSC 37.

Chinese courts have followed suit, and will likewise determine global FRAND rates in appropriate cases under their jurisdiction, without requiring bilateral consent. Appx631-632(¶9) & n.8 (Kong Decl.); Bing Zhao, *Chinese Court to Set Global FRAND Rate in Oppo-Sharp Dispute*, IAM-MEDIA.COM (Dec. 4, 2020) [<http://tinyurl.com/lipxsytj>].

Consistent with Ericsson’s views in *Unwired Planet*, Samsung sought a worldwide FRAND rate determination in China. China is a major economy where both Samsung and Ericsson have substantial operations, Appx991; Appx554, and is home to most of the world’s smartphone manufacturers. Appx542-548. China has recently become a world center for intellectual property dispute resolution, and developed

specialized intellectual property trial and appellate courts. Appx656-658.

The Chinese court accepted Samsung's lawsuit on December 7, and assigned it to a panel of five judges on December 11. Appx597. In China, as in the United States, there is no requirement that filing a complaint with the court and serving the defendant be simultaneous. Appx633-634(¶13); *compare* Fed. R. Civ. P. 4(m) (presumptive 90-day limit to serve domestic defendants). In China, the court serves the complaint, often by mail. Appx633-634 & n.11 (¶13). The Chinese court's service notice is dated December 11, 2020. Appx596. An officer of Ericsson's American subsidiary has stated he believes Ericsson first learned of Samsung's complaint on December 17, when Samsung sent Ericsson a courtesy e-mail notification. Appx394(¶6).

C. Ericsson Sued Later, in the Eastern District of Texas, Joining Subsidiaries to Manufacture Diversity Jurisdiction, and Asserting Declaratory Judgment Claims Concerning Ericsson's FRAND Commitment.

On December 11, 2020, Ericsson and its American subsidiary (Ericsson, Inc.) filed a complaint against Samsung and two American subsidiaries in the Eastern District of Texas. Appx201-224.

Counts I, II, IV, and V concerned *Samsung's* FRAND commitment: Counts I and II allege that Samsung breached the ETSI policy and obligation to negotiate in good faith. Appx214-217. Counts IV and V are declaratory judgment claims to the same effect. Appx218-219.

Count III of Ericsson's Original Complaint, however, seeks a declaratory judgment that *Ericsson* did not breach *its* FRAND commitment, Appx217, specifically that Ericsson's offer to Samsung complies with Ericsson's FRAND commitment. Appx217(¶68). As discussed above, Samsung's claims in China make the mirror-image opposite claim—that Ericsson's licensing offer is *not* FRAND—and that the Chinese court should therefore set a global FRAND rate. Appx517-518; Appx521-524. Count V is nominally directed to *Samsung's* FRAND commitment, but includes a request for a declaration that “Samsung has repudiated and forfeited its right” to enforce *Ericsson's* FRAND commitment. Appx219(¶77).

The Original Complaint's jurisdictional allegations appear designed to secure Ericsson's preferred forum prematurely. Ericsson could not assert patent infringement until after December 31, 2020, when Samsung's license expired. The counts in the Original Complaint all

sound in French contract law, Appx204(¶8); Appx210(¶30); Appx215(¶57); Appx216(¶60); Appx219(¶74), and thus do not arise under federal law under 28 U.S.C. §1331 or 1338. *See Gunn v. Minton*, 568 U.S. 251, 259 (2013); *Nokia Corp. v. Qualcomm, Inc.*, No. 06-CV-509, 2006 WL 2521328 (D. Del. Aug. 29, 2006) (remanding similar claims to state court).

Samsung is a Korean company, Ericsson is a Swedish company, and suits between foreign citizens are not subject to diversity jurisdiction. 13E WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE §3604 nn.8-12, 39-40. Apparently to address that problem, Ericsson joined its American subsidiary as a plaintiff, joined two American Samsung subsidiaries as defendants, and alleged diversity jurisdiction over the contract claims. *See* Appx205-207. Ericsson’s civil cover sheet alleges that the “principal parties” are the American parties:

III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i>					
<i>(For Diversity Cases Only)</i>					
	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

Appx223

Cite the U.S. Civil Statute under which you are filing (<i>Do not cite jurisdictional statutes unless diversity</i>): 28 U.S.C. Section § 1332
Brief description of cause: Breach of Contract/Declaratory Judgment

Appx223

By alleging diversity jurisdiction, Ericsson gained a toehold in the Eastern District of Texas from December 11 to December 31, 2020. During that time, although aware of the suit, Samsung had not been served or entered an appearance, and thus had no occasion to challenge Ericsson’s jurisdictional allegations. *See* Appx106-107 (docket sheet); *Navarro Savings Ass’n v. Lee*, 446 U.S. 458, 461 (1980) (“[A] federal court must disregard nominal or formal parties and rest jurisdiction only upon the citizenship of real parties to the controversy.”). Shortly after 12:00 am the morning of January 1, 2021, Ericsson amended its complaint to assert infringement of eight U.S. patents. *See* Appx426(¶9).

D. The Chinese Court Issued an Antisuit Injunction Barring Ericsson From Pursuing Injunctive Claims or Duplicative Rate-Setting Claims on 4G or 5G SEPs.

On December 14, 2020, Samsung applied to the Chinese court for an antisuit injunction preventing Ericsson from filing claims elsewhere that would interfere with the Chinese court’s rate-setting. Appx978-993.

1. Samsung's Application

Samsung's application to the Chinese court documented Ericsson's history of seeking injunctions around the world to pressure prospective licensees (including Samsung) to accept Ericsson's demands before any rate-setting litigation can run its course. Appx980-982. An injunction elsewhere based on Ericsson SEPs would interfere with rate-setting in China by forcing Samsung to accept Ericsson's non-FRAND demands, rendering the Chinese proceedings moot or meaningless. Appx980. Duplicative claims regarding Ericsson's FRAND commitment would similarly interfere by duplicating resources and threatening inconsistent judgments. Appx990.

Samsung also explained that because the Chinese action was the parties' first-filed action concerning Ericsson's FRAND commitment, enjoining Ericsson from pursuing interfering follow-on claims would not offend international comity. Appx989. Samsung emphasized it did *not* seek to prevent territorial patent claims by Ericsson, only to preclude two types of interference with the Chinese court's determination (and only to the extent Samsung agreed to accept a license with the rates determined by the Chinese court). *See* Appx991 ("Samsung does not request this

court to prohibit Ericsson from filing any kinds of lawsuits other than the aforesaid ones...”). Samsung also posted a substantial bond. Appx573.

As in the United States under Federal Rule 65(b)(1), Chinese courts may enter the functional equivalent of a TRO before providing an opportunity to be heard, to prevent preemptive retaliatory actions. Appx635-637. In seeking an antisuit injunction from the Chinese court, Samsung followed that procedure. Appx713-716. Samsung explained—with evidence including opinions of counsel from three countries and evidence of Ericsson’s past behavior—that if Ericsson received notice while Samsung’s application was pending, Ericsson would likely rush to another court to seek a preemptive anti-antisuit injunction. Appx714; Appx984-988; Appx721-722 (evidence list).

2. The Chinese Court’s Antisuit Injunction

On December 25, 2020 (a normal working day in China, Appx636), the Chinese court issued an antisuit injunction. Appx563-576. The court issued a detailed opinion, considering factors similar to those American courts consider, including balancing harms to the parties Appx570-572, irreparable harm, Appx571 (noting “irreversibl[e] ... irreparable damage to [Samsung’s] interests”), public interest, and comity. Appx572-573.

The court noted that Samsung’s case was the first-filed action between Samsung and Ericsson concerning Ericsson’s FRAND commitment, Appx569; Appx572, and could “resolve the parties’ disputes entirely.” Appx572. The court agreed that Ericsson would interfere with that action if—while the action was pending—Ericsson elsewhere sought injunctions based on its SEPs, or filed duplicative claims concerning Ericsson’s FRAND commitment. The antisuit injunction has five substantive provisions. Appx573-575.

Provisions 1-2 enjoin Ericsson and affiliates from requesting or enforcing “injunctive relief or administrative measures” elsewhere against Samsung concerning Ericsson’s 4G and 5G SEPs, and require withdrawal or suspension of any such pending claims by Ericsson. Appx573-574.

Provisions 3-4 enjoin Ericsson and affiliates from requesting other tribunals “to adjudicate the licensing terms (including the royalty rate) or royalty amount” or “initiating any legal proceedings requesting to determine whether [Ericsson] and its affiliates have fulfilled their FRAND obligations” to Samsung, and require withdrawal or suspension of any such pending claims by Ericsson. Appx574.

Provisions 1-4 are limited to “the duration of this Case and until the judgment of this Case becomes effective,” and to “the 4G and 5G SEPs involved in this Case.” Appx573-575. Ericsson is not, for example, enjoined from making claims to enforce *Samsung’s* FRAND commitment, seeking damages for infringement of SEPs, nor enforcing *non*-SEPs in any way. The Chinese court’s injunction is similar to injunctions American courts commonly issue in similar circumstances to protect against similar outside interference. *See Argument §I.A.1, infra.*

Provision 5 enjoins Ericsson and its affiliates from undoing the first four provisions. Ericsson may not ask another court to order Samsung to withdraw its antisuit injunction application, or prevent Samsung from applying to the Chinese court to enforce the antisuit injunction. Provision 5 requires withdrawal or suspension of any such pending claims by Ericsson. Appx574-575.

The order notes that Samsung posted RMB 50,000,000 yuan security (approximately \$7.8 million USD) and committed to increase the deposit over time while the injunction remains in place. Appx573; Appx575. Finally, the order notes that either party “may apply for reconsideration once within five days upon receipt of this ruling.”

Appx575; see Appx636-637(¶20). The Chinese court served the injunction on Ericsson by e-mail the day it issued. Appx395(¶8); Appx249-250(¶¶7-8). Ericsson filed for reconsideration, and as of this writing that reconsideration request is pending.

E. The Texas District Court Issued a Nationwide TRO and Anti-Antisuit Injunction Against the Chinese Court’s Antisuit Injunction.

1. Ericsson Obtained an *Ex Parte* TRO Against Samsung, Without Notice.

Three days after the Chinese court’s injunction issued, Ericsson filed an “emergency” *ex parte* TRO application in the Eastern District of Texas,³ which the district court immediately granted without notice to Samsung. Appx17-20. Ericsson sought a TRO and preliminary injunction, aimed at nullifying the Chinese court’s injunction in the United States. Appx229-244 (application); Appx418-421 (proposed order). That filing violated at least the fifth provision of the Chinese court’s injunction, Appx574-575.

³ Only Ericsson, Inc. filed the application, Appx229; Appx507; Appx703-704; Appx1318, though its Swedish parent company is also a plaintiff. When the court inquired about that omission, Ericsson’s counsel offered no explanation, Appx1397-1401(5:19-6:12, 7:4-9:12), and ultimately requested to “go forward then on behalf of both parties,” which the court granted. Appx1401(9:3-12); Appx7 (citing *id.*).

Ericsson has never disputed that Samsung complied with all applicable law and procedures in China. Although Samsung's complaint was not sealed, Ericsson characterized it as "secret" or "hidden," ostensibly because Ericsson did not receive same-day service. Appx236 ("Samsung hid the very existence of the Wuhan suit from Ericsson for ten days."); see Appx229; Appx232. As noted, neither China nor the United States requires immediate service. Appx633-634(¶13).

Ericsson also did not dispute the Chinese courts' fairness or their jurisdiction over Samsung's lawsuit. Nonetheless, Ericsson's briefs quoted statements from prior Samsung briefs noting differences between American and Chinese courts, and recast those quotes as wholesale indictments of the Chinese judicial system. For example, Ericsson thrice quoted Samsung's prior statement that the Chinese court system is "inquisitorial." Appx230; Appx239. As Samsung would later explain, "inquisitorial" means "a system of proof-taking used in civil law, whereby the judge conducts the trial, determines what questions to ask, and defines the scope and the extent of the inquiry." Appx502-503 (quoting *Black's Law Dictionary*) "This system prevails in most of Continental Europe, in Japan, and in Central and South America." *Id.*

Based on accusations of “secrecy” aimed at Samsung and aspersions cast on the Chinese courts, Ericsson argued that the Chinese injunction threatened to “divest [the district] court’s jurisdiction,” and Samsung’s filings in China were “egregious conduct ... tak[ing] direct aim at the heart of both Article III and the United States patent system.” Appx236. Ericsson sought a TRO and preliminary injunction prohibiting Samsung from applying for or enforcing antisuit injunctions from any foreign court that would potentially affect the district court case or Ericsson’s ability to litigate its U.S. patent rights in any forum. Appx419(¶¶A-B) (proposed order). Further, Ericsson demanded that Samsung indemnify Ericsson for any fines imposed by the Chinese court. Appx419-420.

The *ex parte* procedure Ericsson followed in Texas mirrored the procedure Samsung had followed in China for delayed service of its injunction application. See Appx247 (no notice to Samsung); Appx19. But whereas the Chinese court took eleven days to issue a reasoned decision on Samsung’s application, the Eastern District of Texas granted Ericsson’s TRO immediately—10:00 the same morning. Appx20. The TRO copied Ericsson’s proposed order almost verbatim, compare Appx17-

20, *with* Appx418-421, and set an expedited briefing schedule with Samsung's response due at 5:00 pm New Year's Day. Appx19-20.

2. Ericsson Amended its Complaint to Allege Infringement of SEPs and Filed Additional Lawsuits Asserting Non-SEPs.

On January 1, 2021—the day Samsung's opposition was due, and the day after the parties' global cross-license expired—Ericsson amended its complaint to add claims that Samsung infringed eight United States patents, which Ericsson contended were 4G and/or 5G SEPs. Appx422-483.

Ericsson also began filing additional lawsuits against Samsung asserting infringement of *non*-SEPs, but relating to 4G and 5G products. Although non-SEPs are not subject to Ericsson's FRAND obligation, these worldwide actions are a proxy in the parties' broader dispute. On January 1, Ericsson filed a non-SEP action in the Eastern District of Texas. On January 4, Ericsson filed an ITC complaint, and eight actions in Germany, the Netherlands, and Belgium—all asserting non-SEPs. On January 7, Samsung filed an ITC action against Ericsson, also on non-SEPs. Both parties have since filed additional claims and domestic and

foreign lawsuits. As of this writing, all such actions either assert non-SEPs, or assert SEPs but without seeking injunctive relief.

3. The District Court Issued an Anti-Antisuit Injunction.

Samsung responded to Ericsson's arguments for an anti-antisuit injunction and showed, with supporting declarations from Prof. Kong Xianjun (former Chief Judge of the Intellectual Property Tribunal of the Supreme People's Court in China) and Randall Rader (former Chief Judge of this Court), that the Chinese courts provide a fair, competent forum for Samsung and Ericsson's global licensing dispute, and that Samsung's prosecution of that lawsuit in China was fully consistent with applicable law and practice. Appx628-637; Appx653-658. Ericsson did not dispute those points and replied that "the fairness of Chinese courts is not at issue." Appx697. In addition to arguing that no injunction should issue, Samsung contended that Ericsson's request was overbroad. Appx493-495; Appx504-507.

The district court granted Ericsson's motion for an anti-antisuit injunction. Appx1-15. The legal standard requires courts to balance "the need to prevent vexatious or oppressive litigation and to protect the court's jurisdiction against the need to defer to principles of international

comity.” Appx6 (citing *MWK Recruiting Inc. v. Jowers*, 833 F. App’x 560, 562 (5th Cir. 2020)). The district court applied the Fifth Circuit’s “*Unterweser* factors,”⁴ where an antisuit injunction may be appropriate if foreign litigation would: “(1) frustrate a policy of the forum issuing the injunction; (2) be vexatious or oppressive; (3) threaten the issuing court’s *in rem* or *quasi in rem* jurisdiction; or (4) cause prejudice or offend other equitable principles.” Appx6. The district court found that the third factor was inapplicable but the other three favored Ericsson’s requested injunction. The following six points are salient to this appeal:

First, at every step, the district court reasoned that because Ericsson has claims that can proceed before American federal courts, any order affecting Ericsson’s pursuit of those claims—*i.e.*, any antisuit injunction—would be unfair to Ericsson and against public policy. Appx8 (factor 1: Chinese injunction “would frustrate this Court’s compelling interest in ensuring that litigation within its legitimate jurisdiction proceed in this forum”); Appx9 (factor 2: would “unfairly deprive Ericsson of the right to bring claims it is entitled to bring under United States law”); Appx10-11 & n.8 (similar); Appx13 (factor 4: prospect of fines

⁴ *In re Unterweser Reederei GmbH*, 428 F.2d 888, 890 (5th Cir. 1970).

“create[s] an inequitable disparity between the parties which prejudices Ericsson’s right to assert lawful causes of action”).

Second, the court relied heavily on a purported need to “balance” Ericsson’s global negotiating leverage against Samsung, but without explaining its view of (or basis for determining) “fair” and “unfair” sources of “leverage.” *E.g.*, Appx10 (factor 2: Chinese injunction “would unfairly but necessarily put Ericsson in a weaker negotiating position”); Appx13 (factor 4: “inequitable disparity between the parties,” “unfair economic leverage gained through litigious gamesmanship,” and need for “counterbalance” to Chinese injunction); Appx14 (factor 4: “the Court’s concern that Samsung may seek the imposition of substantial fines in the Chinese Action for the purpose of creating economic leverage against Ericsson...”). The court relied in part on its mistaken belief (apparently from independent research), that Samsung sought an exclusion order from the ITC on its own SEPs after obtaining an antisuit injunction preventing Ericsson from seeking the same relief—saying that was “the height of inequity (and hypocrisy).” Appx12-13. Samsung filed a notice the same day to correct the record. Appx1501-1502.

Third, the court weighed the *ex parte* nature of the Chinese antisuit injunction as favoring Ericsson’s requested anti-antisuit injunction. Appx9 (factor 2). As discussed, Ericsson was enjoined without notice, but with the right to seek reconsideration (which Ericsson exercised). *Statement of Case §D.2, supra*. Samsung provided uncontested evidence that—much like an American court’s preliminary injunction hearing following an *ex parte* TRO—the reconsideration procedure in China is a meaningful hearing that typically includes evidentiary submissions, and cross-examination. Appx636-637. Nonetheless, the district court derided that procedure as “completely shifting the burden to the responding party.” Appx9 (citing Appx575).

Fourth, the district court did not meaningfully examine the scope of the Chinese court’s injunction, nor did it mention that court’s reasoning, or disaggregate the claims in this case affected by the antisuit injunction. It described Samsung’s motion in China as “specifically ask[ing] for an injunction preventing this case from moving forward.” Appx11. Although the district court acknowledged that the Chinese injunction “may” not affect all of Ericsson’s claims, it dismissed that point, insisting that “the inability for this Court to hear one or many

causes of action *equally* offends the efficient adjudication of such issues.”

Appx11 n.8.

Fifth, the district court reasoned that the case before it was not “duplicative of the action in China” because, in its view, each involved “very separate legal questions”: “The Wuhan court is asked to provide a number. This Court is asked to evaluate conduct.” Appx11-12.

Finally, the district court reasoned that “international comity is not offended” or “in any way threaten[ed]” because Ericsson and Samsung are private parties and the court was not enjoining the action in China. Appx13.

The court rejected Samsung’s overbreadth challenges and further arguments against indemnity, and entered the following injunction:

[U]ntil the judgment of this Court is final, the Court hereby **ORDERS AND ENJOINS** Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Research America to:

(1) Take no action in the Chinese Action that would interfere with this Court’s jurisdiction to determine whether Ericsson or Samsung have met or breached their FRAND obligations as they relate to both Ericsson and Samsung’s 4G and 5G SEPs, or that would interfere with *any other cause of action before this Court*;

(2) Take no action in the Chinese Action that would deprive Ericsson or all of its corporate parents, subsidiaries, and affiliates of their rights to assert the full scope of their U.S. patent

rights *before any Article III Court, customs office, or administrative agency in the United States*; and

(3) Jointly and severally indemnify Ericsson from and against any and all fines or other penal assessments levied against and actually incurred by Ericsson pursuant to the enforcement of the ASI, either on the motion of Samsung, sua sponte by the Wuhan Court, or otherwise, as such pertains, and only as such pertains, to *actions Ericsson has taken or takes in the future in the United States* to lawfully litigate or adjudicate claims relating to the 4G and 5G SEPs identified or involved in this case.

Appx15.

This appeal follows.

SUMMARY OF ARGUMENT

I. The district court’s injunction should be vacated because it depends on legal and factual errors and interferes improperly with the first-filed action in a legitimate court with legitimate jurisdiction. Ericsson had the burden to show that the need to prevent “vexatious or oppressive” litigation and protect the issuing court’s jurisdiction sufficiently outweighed international comity that the extraordinary relief of an injunction was warranted.

A. The district court relied on three errors on the first side of the balance.

First the court misapprehended the scope of the Chinese action and injunction. It regarded the Chinese court’s injunction as an attempt to shut Ericsson’s entire case down, and as contrary to its purported “unflagging obligation” to hear all claims Ericsson filed. The Chinese court’s injunction is narrowly targeted, and would primarily affect Ericsson’s Count III, a declaratory judgment claim. There is no “unflagging obligation” to hear declaratory judgment claims. The court also erroneously reasoned that its case was not “duplicative” because “[t]he Wuhan Court is asked to provide a number. This Court is asked to evaluate conduct.” Ericsson’s “conduct” *is* the “number” Ericsson offered to Samsung. Adjudicating whether that number complies with Ericsson’s FRAND obligation runs a high risk of interfering with the Chinese court’s rate-setting based on that same Ericsson FRAND obligation.

Second, the district court misapprehended Chinese procedure. Samsung proved, without contradiction or rebuttal, that Ericsson has a meaningful opportunity to be heard regarding the Chinese antisuit injunction—which Ericsson is pursuing. The district court’s statement that

Chinese procedure “completely shift[s] the burden” to Ericsson” is contrary to the record, and misapprehends how inquisitorial courts in civil law countries operate.

Third, based on outside research, the district court incorrectly concluded that Samsung had filed an ITC complaint seeking an exclusion order on SEPs. That is false—Samsung’s ITC complaint concerns only *non*-SEPs, and was filed only in response to Ericsson’s ITC complaints. Those Ericsson ITC complaints likewise concern non-SEPs, and are not affected by the Chinese court’s injunction.

B. On the other side of the balance, the district court gave short shrift to international comity. The Chinese court has undisputed jurisdiction over the first-filed action to adjudicate Ericsson’s FRAND commitment on a worldwide basis. Ericsson’s follow-on declaratory judgment claims are later in time and can only interfere with the Chinese proceedings, but cannot resolve the global dispute. The Chinese court’s order is entitled to respect unless it is somehow defective or illegitimate. The district court reasoned only that federal courts’ “unflagging obligation” to exercise jurisdiction trumps comity. That is error both because there is no such *per se* policy of spurning foreign courts’ antisuit

injunctions and because Supreme Court precedent rejects any “unflagging obligation” to hear declaratory judgment claims. The court’s additional reasons—*e.g.*, that this is a private dispute and the injunction was “targeted”—cannot be squared with precedent or the injunction’s actual scope.

II. At a minimum, the injunction should be narrowed because it exceeds the district court’s authority and constitutes an abuse of discretion in three ways.

A. The second and third provisions apply nationwide and exceed any notion of protecting the jurisdiction of the Eastern District of Texas and cannot stand.

B. The third (indemnity) provision is an improper, unprecedented attack on a foreign court’s ability to enforce its own orders, and violates Samsung’s due process rights by making Samsung liable for Ericsson’s actions and for sanctions the Chinese court may impose *sua sponte*. It likewise cannot stand.

C. This Court should narrow all of the injunction’s provisions to the extent they nullify the Chinese court’s injunction against Ericsson seeking injunctive relief against Samsung on Ericsson’s SEPs while the

Chinese action is pending. That aspect of the district court's injunction is unnecessary because Ericsson is not presently seeking injunctive relief on SEPs. It is also an affront to comity because the bar on injunctive relief for SEPs was a reasonable action by the Chinese court to protect its jurisdiction.

ARGUMENT

Standard of Review

The district court's anti-antisuit injunction is reviewed under Fifth Circuit law. *Sanofi-Aventis Deutschland GmbH v. Genentech, Inc.*, 716 F.3d 586, 590-91 (Fed. Cir. 2013). The Fifth Circuit reviews the grant or denial of an injunction for an abuse of discretion. *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 364 (5th Cir. 2003) (reversing injunction). "A district court abuses its discretion if it: (1) relies on clearly erroneous factual findings; (2) relies on erroneous conclusions of law; or (3) misapplies the law to the facts." *In re Volkswagen of Am.*, 545 F.3d 304, 310 (5th Cir. 2008) (en banc). "[A] decision grounded in erroneous legal principles is reviewed de novo." *Karaha*, 335 F.3d at 363.

I. The District Court’s Injunction Should be Vacated in Full.

“An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 166 (2010) (reversing preliminary injunction); *Winter v. NRDC*, 555 U.S. 7, 24 (2008) (similar, reversing preliminary injunction); *Karaha*, 335 F.3d at 363, 364 (antisuit injunctions are “extraordinary remedy” and “the exception rather than the rule”). To obtain an antisuit (or anti-antisuit) injunction, the movant (Ericsson) must show that “the need to prevent vexatious or oppressive litigation and to protect the court’s jurisdiction” outweighs “the need to defer to principles of international comity,” such that the extraordinary remedy of an injunction should issue. *Karaha*, 335 F.3d at 366 (reversing injunction).

The district court should have denied Ericsson’s requested anti-antisuit injunction, and the question should not have been difficult. The Chinese court’s narrow injunction only prevents Ericsson temporarily from pursuing two specific types of follow-on claims that would plainly interfere with the global rate-setting action properly before the Chinese court. That order is similar to orders from American courts, and its effect

on the district court action is minimal and legitimate. Ericsson's FRAND commitment is central only to Ericsson's Count III, and to one specific request under count V. Both are declaratory judgment claims that federal courts have discretion not to hear. Ericsson is not currently seeking to enjoin Samsung in the United States based on Ericsson's SEPs.

The damage to comity from an anti-antisuit injunction, however, is considerable. The Chinese court's injunction should have been treated with respect rather than nullified. Samsung showed, without rebuttal, that its action in China followed applicable law, that the Chinese court has jurisdiction over Samsung's claim, and that the Chinese court provides a fair forum. Neutral principles such as the first-filed principle are critical to avoiding a downward spiral of dueling injunction orders.

Ericsson's arguments and rushed timeline appear to have led the district court into reversible errors on both sides of the balance.

A. The District Court Erroneously Treated the Chinese Action as “Vexatious or Oppressive” Litigation.

1. The District Court’s Analysis Relies on Demonstrably Incorrect Legal and Factual Assumptions.

Under the “vexatious or oppressive” litigation exception to the presumption against such injunctions, a district court may enter an antisuit (or anti-antisuit) injunction if it determines “that allowing simultaneous prosecution of the same action in a foreign forum thousands of miles away would result in an ‘inequitable hardship’ and ‘tend to frustrate and delay the speedy and efficient determination of the cause.’” *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 627 (5th Cir. 1996); *MWK*, 833 F. App’x at 562. The district court’s analysis (Appx8-12) relies on incorrect assumptions about: **(a)** the scope of the Chinese court’s injunction and action, **(b)** Ericsson’s procedural rights in China, and **(c)** Samsung and Ericsson’s broader dispute.

a. The District Court’s “Duplicative” Analysis Misapprehends the Scope of the Chinese Action and Injunction.

The district court erred in considering the purported “hardship” from the Chinese action and the extent to which Ericsson’s domestic claims were duplicative.

First, it regarded the Chinese court’s injunction as an attempt to shut down the entire district court case. The district court stated that Samsung “specifically asked for an injunction *preventing this case from moving forward*,” and that if the Chinese court’s injunction is “given its full effect, it would lay claim to causes of action properly raised in this Court and *not raised in the Chinese action*.” Appx11 (second emphasis in original). Both are incorrect. Neither document the district court cited, Appx713-716; Appx721-722, suggests “an injunction preventing this case from moving forward.” Samsung’s application to the Chinese court specifically limited its request to enjoining **(1)** duplicative claims to adjudicate Ericsson’s compliance with its FRAND commitment, and **(2)** claims for injunctive relief on 4G and 5G SEPs. Appx978-980; *Statement of Case §D.1, supra*. The Chinese court’s injunction was accordingly limited. Appx573-575.

The Chinese court appropriately concluded that such claims would interfere with its global FRAND rate determination for Ericsson’s 4G and 5G SEPs. Appx569-571. *Statement of Case §D.2, supra*. The Chinese action was the first-filed action on Ericsson’s FRAND commitment. Appx569; Appx572. Duplicative FRAND claims pose a risk of conflicting

obligations, and claims for injunctions threaten undue pressure on Samsung and could render the Chinese court's judgment moot or meaningless. Appx569-571. The antisuit injunction's reasoning and scope match American courts' orders in similar circumstances.

In *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872 (9th Cir. 2012), the Ninth Circuit affirmed Judge Robart's foreign antisuit injunction. There, as here, the first-filed litigation concerned FRAND royalty rates for a broad patent portfolio. Judge Robart enjoined follow-on claims for injunctive relief in Germany based on individual patents in the portfolio. *Id.* at 885 (“[T]he district court did not abuse its discretion in determining that Microsoft’s contract-based claims, including its claim that the RAND commitment precludes injunctive relief [could] determine the propriety of the enforcement by Motorola of the injunctive relief obtained in Germany.”).

In *Huawei Techs. v. Samsung Elecs. Co.*, No. 3:16-CV-2787, 2018 WL 1784065 (N.D. Cal. Apr. 13, 2018), Judge Orrick enjoined Huawei from enforcing foreign injunctions, pending his court's resolution of contractual FRAND obligations. *Id.* at *1. The American district court acquired jurisdiction first, *id.* at *12, and reasoned that follow-on

injunctions abroad would interfere with its proceedings. *Id.* at *10 (“The Chinese injunctions would likely force [Samsung] to accept Huawei’s licensing terms, before any court has an opportunity to adjudicate the parties’ breach of contract claims The integrity of this action, therefore, will be lessened without an anti-suit injunction.”).

In *TCL Commc’n Tech. Holdings v. Telefonaktiebolaget LM Ericsson*, Judge Selna enjoined Ericsson from asserting “any Ericsson patent that Ericsson contends is essential to the 2G, 3G, and/or 4G standards ... anywhere in the world outside of this Court” pending the California district court’s rate-setting decision. C.D. Cal. No. 14-CV-341 (July 10, 2015 (Dkt. 284); *see also* Appx1089-1090).

As Samsung explained, much of the district court action can proceed in parallel with the Chinese action, consistent with the Chinese court’s injunction. Ericsson’s claims to enforce *Samsung’s* FRAND commitment are not enjoined (Counts I, II, IV, and V—excepting Ericsson’s request in Count V for a declaration that *Ericsson* owes Samsung no FRAND obligations). Ericsson’s SEP-infringement claims are also not enjoined (amended Counts VI-XII). Samsung’s slide from the hearing illustrates the point:

China Action Permits Multiple Issues To Proceed Now In This Court

- 1. FRAND actions regarding Samsung SEPs (Counts I, II, IV, and V in original Complaint)**
- 2. Liability issues regarding infringement and validity for Ericsson SEPs**
- 3. Damages related to asserted patents**
- 4. Other patent remedies remain after rate setting, to the extent not resolved or moot**

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Appx1384

See also Appx1469-1472(77:12-80:16); Appx1384; Appx493-494; Appx501-502. The district court’s broader description of the Chinese court having granted a request to “prevent[] this case from moving forward,” was simply erroneous. Appx11.

The district court acknowledged in a footnote that it “may be true” that not all of Ericsson’s causes of action are enjoined, but contended that possibility was irrelevant because Ericsson had the “right to join ‘as many claims as it has’ in one action.” Appx11 n.8 (citing Fed. R. Civ. P. 18(a)). Ericsson correctly did not make that argument. Rule 18(a) only addresses which claims may be joined in the same action, as opposed to

separate actions. It says nothing about parallel proceedings in foreign courts, and certainly does not imply an affirmative right to anti-antisuit injunctions.

The district court's failure to consider the scope of the Chinese injunction also matters because Ericsson's Count III is a *declaratory judgment* claim. Appx217(¶¶65-68). The district court refers to the injunction "frustrat[ing] the 'virtually unflagging obligation of the federal courts to exercise the jurisdiction given them.'" Appx8 (quoting *Colorado River Water Conserv. Dist. v. United States*, 424 U.S. 800, 817 (1976)). But the Supreme Court held in *Wilton* that there is no "unflagging obligation" for declaratory judgment claims. 515 U.S. at 284, 286-88 (distinguishing *Colorado River*). That is because "the Declaratory Judgment Act provides that a court 'may declare the rights and other legal relations of any interested party,' 28 U.S.C. §2201(a), not that it *must* do so." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 136 (2007) (original emphasis).

Second, the district court erred in ruling that the "Chinese Action and this suit are not duplicative," because "[t]he Wuhan Court is asked to provide a number[; t]his Court is asked to evaluate conduct." Appx12.

That is not an argument Ericsson made, and it is wrong. Ericsson's Count III and part of Count V plainly threaten interference with the Chinese action.

Samsung's complaint in China and Ericsson's Count III take opposite views of whether the same Ericsson offer complied with the same ETSI policy controlled by the same French law. Samsung's complaint contended that Ericsson breached its FRAND commitment by insisting on a non-FRAND global licensing offer to Samsung, Appx517-518; Appx521-524, and asks the Chinese court to "[d]etermine the global licensing terms, including the royalty rates applicable." Appx517-518.

Ericsson's Count III seeks a declaration that Ericsson's offer to Samsung (*i.e.*, a *number*, and the same offer Samsung contends in China is "non-FRAND") "complied with Ericsson's FRAND commitment." Appx217(¶68). Ericsson's Count V includes a request for a declaration that Ericsson owes Samsung no FRAND obligation. Appx219(¶77).

Count III mirrors the worldwide rate determination pending in China with respect to Ericsson's SEP portfolio, and Count V aims to preempt it. The most salient "difference" between the two actions is one the district court overlooked: China is one of two forums capable of

resolving the parties’ worldwide rate dispute. Ericsson’s Counts III and V in Texas cannot resolve that dispute; they can only interfere with the Chinese court’s resolution. In a footnote, the district court notes Ericsson’s contention that it is entitled to condition any license to Samsung on a reciprocal cross-license from Samsung. Appx12 n.10. But the court neither explains how that affects the analysis, nor disputes that the same argument is available to Ericsson in China. *See* Appx1429-1431(37:6-15,38:16-39:15).

b. The District Court Relied on a Mistaken View of Ericsson’s Procedural Rights in China.

The district court characterized the Chinese court’s injunction as “impos[ing] an inequitable hardship on Ericsson” because it was entered “[w]ithout notice or an opportunity to be heard.” Appx9. Although the district court’s *ex parte* TRO against Samsung was likewise without notice or an opportunity to be heard, the district court emphasized that the TRO would expire automatically unless Ericsson could carry its burden to justify converting it to a preliminary injunction. Appx9-10. In China, on the other hand, Ericsson had to request reconsideration to disturb the injunction—which the district court viewed as “*completely*

shifting the burden to the responding party.” Appx9. That reasoning disregards Samsung’s evidence and misapprehends Chinese procedure.

Samsung provided uncontested evidence that the reconsideration procedure in China is a meaningful hearing that typically includes evidentiary submissions, live testimony and cross-examination, and proceeds expeditiously. Appx636-637(¶20). Ericsson’s opportunity to be heard in China is no less meaningful than Samsung’s opportunity in Texas. Ericsson has pursued that opportunity, and as of this writing the proceeding is pending.

More fundamentally, the district court’s “completely shifting the burden” criticism misapprehends how civil law courts operate. Burdens of proof and persuasion matter in the United States because American courts have an *adversarial* system and “follow the principle of party presentation.” *Greenlaw v. United States*, 554 U.S. 237, 243-44 (2008). The American system is “designed around the premise that the parties know what is best for them and are responsible for advancing the facts and arguments entitling them to relief.” *Id.* at 243. Thus, parties “bear the risk of failing to prove their claims,” *Schaffer v. Weast*, 546 U.S. 49, 56 (2005), and courts function as “passive instruments of government,”

“neutral arbiter[s] of matters the *parties* present.” *United States v. Sineneng-Smith*, 140 S.Ct. 1575, 1579 (2020) (citations omitted).

Inquisitorial systems in civil law countries like China are designed around a different premise—that truth-seeking and efficiency are better served when the *court* is primarily responsible for gathering facts and shaping lines of inquiry. See Sarah R. Wasserman Rajec, *Patents Absent Adversaries*, 81 BROOK. L. REV. 1073, 1073-74 (2016); John J. Capowski, *China’s Evidentiary and Procedural Reforms, the Federal Rules of Evidence, and the Harmonization of Civil and Common Law*, 47 TEX. INT’L L.J. 455, 470-71, 486-87 (2012). In inquisitorial systems, “[t]he very concepts of ‘plaintiff’s case’ and ‘defendant’s case’ are unknown.” John H. Langbein, *The German Advantage in Civil Procedure*, 52 CHI. L. REV. 823, 826-31 (1985). “Burdens of proof” still exist, but are less significant in light of the judge’s responsibility to gather evidence and seek “objective truth” actively rather than relying passively on the parties. Capowski, 47 TEX. INT’L L.J. at 470-71, 486-87. The district court’s characterization of “completely shifting the burden to the responding party,” Appx9 (citing Appx575), thus misapprehends Chinese procedure by importing American legal concepts.

Finally, it bears repeating that the inquisitorial system “prevails in most of Continental Europe, in Japan, and in Central and South America.” Appx503. The district court’s reasoning would support American courts casually issuing injunctions against civil law courts around the world, based on inconsequential variations in procedure. Precedent rejects that reasoning: the Supreme Court, the Fifth Circuit, and others regularly defer to Chinese courts in *forum non conveniens* cases. *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 435-36 (2007); *Innovation First Int’l v. Zuru, Inc.*, 513 F. App’x 386, 390 (5th Cir. 2013); *Compania Naviera Joanna SA v. Koninklijke Boskalis Westminster NV*, 569 F.3d 189, 199 (4th Cir. 2009); *cf. U.S.O. Corp. v. Mizuho Holding Co.*, 547 F.3d 749, 753-54 (7th Cir. 2008) (comparing Japanese and American systems’ procedural safeguards: “six of one, half-dozen of the other; for the investigatory powers of judges in a civil law system are great.”).

c. The District Court Relied on the Mistaken View that Samsung is Seeking Injunctions Against Ericsson on SEPs.

The district court reserved its strongest language for its belief that Samsung had filed an ITC Complaint “seeking injunctive relief *against*

Ericsson ... based on alleged infringement of *Samsung's* 4G and 5G SEPs—seeking the very type of injunctive relief the [Chinese injunction] bars Ericsson from seeking.” Appx12 (original emphasis). Thus, the court reasoned, it “would be the height of inequity (and hypocrisy)” if it did not intervene on Ericsson’s behalf. Appx13.

That was error. The referenced ITC complaint was filed the day of the hearing, and not discussed in the parties’ presentations. The district court appears to have conducted independent research and missed that Samsung’s ITC complaint explicitly states the asserted patents are *not* standard-essential. Appx1501-1502 (citing Appx1518(¶17)). Samsung’s complaint is no different from the *non*-SEP ITC complaint Ericsson had filed days earlier. *Id.* (citing Appx1539). The Chinese court’s injunction did not bar Ericsson’s *non*-SEP ITC action. It thus cannot have been “the height of inequity (and hypocrisy)” for Samsung to file a *non*-SEP ITC action. Samsung explained the court’s error in a subsequent notice, Appx1501-1502, and Ericsson did not dispute the error. Appx1544-1545.

2. The District Court’s Erroneous Assumptions Led to the Erroneous Conclusion that An Anti-Antisuit Injunction Was Necessary to “Balance” Ericsson’s Negotiating Leverage Against Samsung.

The district court’s errors—misapprehending the scope of the Chinese action and injunction, reconsideration procedures in China, and Samsung’s ITC complaint—led to the erroneous, oft-repeated conclusion that an anti-antisuit injunction was necessary to “balance” Ericsson’s global negotiating leverage against Samsung’s. *E.g.*, Appx10 (Chinese injunction “would unfairly but necessarily put Ericsson in a weaker negotiating position when it comes to cross licensing its 4G and 5G SEPs to both Samsung and others”); Appx13 (“inequitable disparity between the parties”; “unfair economic leverage gained through litigious gamesmanship”; need to “counterbalance” Chinese injunction); Appx14 (“the Court’s concern that Samsung may seek the imposition of substantial fines in the Chinese Action for the purpose of creating economic leverage against Ericsson...”).

There is no legal principle that all parties to a negotiation should have equal leverage, nor any authority for courts to “balance” negotiating positions based on their perception of relative leverage. No support remains for the anti-antisuit injunction once the district court’s errors

are stripped away. Every critical word the district court leveled at Samsung or the Chinese court stems from one or more demonstrable errors shown above. At bottom, the anti-antisuit injunction cannot stand absent evidence that the Chinese court's exercise of jurisdiction is improper or fundamentally unfair (to the point of being illegitimate), something both Ericsson and the district court rightly disclaimed, given the absence of any evidence to that effect.

B. The District Court Erroneously Discounted the Offense to Comity From Its Nullification of a Foreign Sovereign's Concededly Legitimate Court Order.

In addition to overstating the effect of the Chinese litigation and antisuit injunction, the district court understated the harm to comity from its anti-antisuit injunction. Comity is “the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.” *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895). That duty to recognize foreign governments' legitimate acts is less than an “absolute obligation” but more than “a mere courtesy and good will.” *Id.* “[C]omity promotes predictability and stability in legal

expectations, two critical components of successful international commercial enterprises.” *Gen. Elec. Co. v. Deutz*, 270 F.3d 144, 160 (3d Cir. 2001). Indeed, “[t]he Supreme Court has taken to task American courts that have demonstrated unduly narrow attitudes in this area.” *Id.* (citing *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 9 (1972)).

Whether or not one agrees with its decision, the Chinese court plainly considered comity in issuing its antisuit injunction. There cannot be more than one worldwide rate, a point Ericsson embraced when its interests were served in *Unwired Planet*. As the Chinese court noted, the burden on comity was minimal because the Chinese action was filed first and could resolve the parties’ global dispute, and because the injunction was targeted at two specific types of follow-on claims that threatened to interfere with its adjudication. Appx569-572. Ericsson has never disputed that Samsung complied with all applicable law, that the Chinese courts have jurisdiction, nor that the Chinese courts provide a fair and adequate forum.

Nonetheless, the district court’s broad injunction treats the Chinese court’s order as if it were illegitimate by nullifying it nationwide. Provision 1 of the Eastern District of Texas’s injunction counteracts the

Chinese court's injunction with respect to "any ... cause of action before" the district court. Appx15. Provision 2 prevents enforcement of the Chinese court's injunction with respect to Ericsson activity in *any* forum in the United States. *Id.* Provision 3 similarly forces Samsung to reverse any financial assessments the Chinese court makes against Ericsson for violations of its order anywhere in the United States. *Id.* The district court erred by issuing a sweeping anti-antisuit injunction without meaningful consideration of comity. Appx6; Appx13.

1. Comity Favors Recognizing a Foreign Court's Legitimate Order in the First-Filed Action

An important principle of comity is that the *first-filed* action in an international controversy receives preference. *See Karaha*, 335 F.3d at 371 ("[W]e have impliedly recognized the importance of comity when a case implicates public international issues *and when prior steps in resolving a dispute have taken place in international fora.*"); *Kaepa* 76 F.3d at 627 (affirming an antisuit injunction against Japan filed after the dispute was already "long and firmly ensconced" in the American courts); *Microsoft*, 696 F.3d at 887 ("The order in which the domestic and foreign suits were filed, although not dispositive, may be relevant..."); *The Salvore*, 36 F.2d 712, 714 (2d Cir. 1929) ("The court first securing

jurisdiction has the authority and power of enjoining the parties to the litigation from proceeding in another jurisdiction.”).

The first-filed principle makes obvious logical sense. A lawsuit is more likely to be “vexatious” or “duplicative” if there is a preexisting suit to vex or duplicate. *Cf. Applied Med. Distrib. Corp. v. Surgical Co. BV*, 587 F.3d 909, 921 (9th Cir. 2009) (“subsequent filing” abroad “raises the concern [of] attempting to evade the rightful authority of the district court”). More importantly, preference for the first-filed action is a necessary *neutral* principle to resolve conflicts. When courts of two sovereign nations have jurisdiction over the same controversy, neither necessarily has authority to compel the other to yield. Each court must act through the parties, based on its own view of which action should take priority.

In the absence of a forum selection clause or a suitable neutral principle, conflicts can escalate endlessly: anti-suit injunctions may beget anti-antisuit injunctions, which in turn beget anti-anti-antisuit injunctions. *See Peck v. Jenness*, 48 U.S. (7 How.) 612, 624-25 (1849) (“[I]f one may enjoin, the other may retort by injunction, and thus the parties be without remedy.”); *Laker Airways, Ltd. v. Sabena, Belgian World*

Airlines, 731 F.2d 909, 927 n.51 (D.C. Cir. 1984) (similar, citing *id.*). The result resembles the “perpetual game of jurisdictional ping-pong” the Supreme Court decried in *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800 (1988). *Christianson* established a similar first-filed principle for intercircuit transfers, recognizing that escalation stops only when one court defers: the “first [court] to decide the jurisdictional issue” should receive deference unless its analysis was not “plausible.” *Id.* at 817-19.

The first-filed principle is not identical to the “first-filed rule” concerning parallel domestic suits. *Compagnie des Bauxites de Guinea v. Ins. Co. of N. Am.*, 651 F.2d 877, 887 n.10 (3d Cir. 1981), *aff’d, other grounds*, 456 U.S. 694 (1982). But it applies similarly and flows from a similar comity principle that “courts of coordinate jurisdiction and equal rank [should] exercise care to avoid interference in each other’s affairs.” *W. Gulf Maritime Ass’n v. ILA Deep Sea Local 24*, 721 F.2d 721, 728-30 (5th Cir. 1985); *Merial Ltd. v. Cipla Ltd.*, 681 F.3d 1283, 1299 (Fed. Cir. 2012); *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d 287, 294 (Tex. 2016).

If there is a strong reason to disregard a foreign court’s order in the first-filed action—such as when the foreign court lacks jurisdiction, acts

illegitimately, or fundamentally contravenes domestic public policy—then comity must yield. *See Laker*, 731 F.2d at 939-40 (affirming anti-antisuit injunction the British government’s direct, deliberate interference with American litigation via legislation, executive action, and an antisuit injunction); *Chevron Corp. v. Donziger*, 974 F.Supp.2d 362, 608-17 (S.D.N.Y. 2014) (no comity owed to a judgment rendered without impartial tribunals or procedures compatible with due process). But where there is no such strong reason—as here—the first-filed court’s orders are entitled to respect.

2. The District Court’s Reasons for Nullifying the Chinese Court’s Injunction in the United States are Legally Erroneous.

The district court erred by failing to respect the Chinese court’s legitimate jurisdiction over the parties’ worldwide disagreement with respect to Ericsson’s FRAND commitment. As explained above, only China and the UK will resolve worldwide FRAND claims without requiring bilateral consent. The Chinese court can resolve that dispute here. Ericsson’s competing declaratory judgment claims in the United States (Count III and part of Count V) cannot; they can only interfere with the Chinese court’s adjudication. The Chinese action, moreover,

was undisputedly filed first. Samsung filed its complaint on December 7, 2020, and the Chinese court accepted it that same day. Appx597. The Chinese court confirmed, as of Samsung’s filing “between the parties there is no other patent license disputes case or patent infringement filed concerning the 4G and 5G SEPs involved in this Case.” Appx569; *see also* Appx572 (“this Court is the first court to accept the royalty dispute between the Applicants and the Respondent regarding the involved SEPs.”). The district court noted that “[t]he order in which the suits were filed is not dispositive.” Appx8. That is correct, so far as it goes, but none of the district court’s reasons for overcoming comity are sound.

First, the court noted that “the issues before this Court and the issues before the Wuhan court are different.” Appx8. The court added that the Chinese court’s injunction “would frustrate this Court’s *compelling interest in ensuring that litigation within its legitimate jurisdiction proceed in this forum*,” *id.*, and “frustrate the ‘*virtually unflagging obligation*’ of the federal courts to exercise the jurisdiction given them.” *Id.* (quoting *Colorado River*, 424 U.S. at 817). As explained above, the district court relied on erroneous views of the “differences” between the two actions, and the federal courts’ “obligations,” pp. 43-45,

supra. There is no “unflagging obligation” to hear Ericsson’s declaratory judgment claims—which is all the Chinese court’s injunction presently affects (Count III and a specific request under Count V). *Wilton*, 515 U.S. at 286-88; *MedImmune*, 549 U.S. at 136.

More fundamentally, if a federal court’s “compelling interest in ensuring litigation within its legitimate jurisdiction proceed,” Appx8, is sufficient to block a foreign court’s antisuit injunction, then no American court could *ever* tolerate a foreign court’s antisuit injunction. The district court effectively treats the United States as having a strong public policy against respecting foreign antisuit injunctions. That reasoning ran throughout the district court’s order,⁵ and it cannot be right. Under that view, the antisuit injunctions American courts issued in *Motorola*, *Huawei*, and *TCL* are both self-contradictory and uniquely offensive to comity because they demand recognition from foreign courts that American courts have a “compelling interest” in *not* reciprocating.

⁵ Appx8 (Chinese injunction “would frustrate this Court’s compelling interest in ensuring that litigation within its legitimate jurisdiction proceed in this forum”); Appx9 (would “unfairly deprive Ericsson of the right to bring claims it is entitled to bring under United States law”); Appx10-11 & n.8 (similar); Appx13 (prospect of fines would “create an inequitable disparity between the parties which prejudices Ericsson’s right to assert lawful causes of action”)

The district court also misses the point that Samsung’s ability to litigate in China arises from *Ericsson’s voluntary decision* to encumber its worldwide patent rights under the ETSI contract. Encumbrances can affect a patentee’s ability to pursue infringement claims. Ericsson signed a contract governed by French law, committing to license its U.S. and other SEPs on FRAND terms, Samsung properly sued to enforce that contract, and the Chinese court properly entered an antisuit injunction to protect its jurisdiction. Put differently, American federal courts have no obvious “compelling interest” in adjudicating declaratory judgment claims between Korean and Swedish companies that arise under French contract law and duplicate claims already pending elsewhere. *Cf. Bremen*, 407 U.S. at 9 (“The expansion of American business and industry will hardly be encouraged if, notwithstanding solemn contracts, we insist on a parochial concept that all disputes must be resolved under our laws and in our courts.”). The district court also misses that the Chinese court’s injunction is limited in scope and time. Appx573-575. It pauses Ericsson’s competing claims while the Chinese court resolves the predicate contract claim; it does not extinguish them. Appx1309; Appx1314.

Second, the district court emphasized that “Ericsson and Samsung are private parties engaged in a global commercial struggle.” Appx13. Comity interests are heightened in public international law disputes with governmental litigants, but are not absent from “private” “commercial” cases. Other countries have viewed expansive exercises of U.S. jurisdiction in private commercial disputes as offensive to comity and retaliated with legislation or by rejecting U.S. discovery requests. See Br. of Netherlands and United Kingdom and N. Ireland as Amicus Curiae, *Kiobel v. Royal Dutch Petroleum Co.*, S.Ct. No. 10-1491 2012 WL 2312825, at *29-30 (June 13, 2012). The Third Circuit has likewise explained that “comity promotes predictability and stability in legal expectations, two critical components of successful international commercial enterprises.” see also *Deutz*, 270 F.3d at 160. *Karaha* was a private contract dispute, yet the Fifth Circuit analyzed comity considerations at length before *reversing* the district court’s antisuit injunction. 335 F.3d at 371-74.

Third, the district court notes that the Fifth Circuit does not “elevat[e] principles of international comity to the virtual exclusion of all other considerations.” Appx6. But the Fifth Circuit does not disregard

comity either. Every circuit requires courts to “balance domestic judicial interests against concerns of international comity,” in considering antisuit injunctions. *Goss Int’l Corp. v. Man Roland Druckmaschinen AG*, 491 F.3d 355, 360 (8th Cir. 2007). (quoting *Karaha*, 335 F.3d at 366), and errs when it gives comity short shrift. *Karaha* (reversing antisuit injunction). The *Kaepa* case the district court cited confirms the first-filed principle’s force and further refutes the district court’s logic. *Kaepa* affirmed an injunction to protect the first-filed action, reasoning that the defendant’s “belated” filing “smack[ed] of cynicism, harassment, and delay,” such that an antisuit injunction did not offend comity. In similar circumstances, the United Kingdom Patent Court was prepared to grant an antisuit injunction against *later-filed* proceedings in China. *Unwired Planet Int’l Ltd. v. Huawei Tech. Co.*, [2017] EWHC (Pat) 2831, (Eng.) 2017 WL 05316927 ¶¶9-10 (“I would have granted the anti-suit injunction.”). *Kaepa* and *Unwired Planet* support the Chinese court’s antisuit injunction, not the district court’s anti-antisuit injunction.

Fourth, the district court noted it was not ordering Samsung to abandon its lawsuit in China, merely “act[ing] for the targeted purpose of allowing both suits to proceed without interference.” Appx13. It is

irrelevant that the district court did not do more than it did. It is unclear whether Samsung can even respond to Ericsson's reconsideration arguments in China without being accused of violating the district court's injunction. Ericsson has already leveled such accusation based on its own apparent confusion over the Chinese court processing Samsung's security deposit. *See* Fed. Cir. 21-1565, ECF#10-4 (Feb. 8, 2021) (Attachment F). More importantly, the district court's "targeted" label cannot be squared with the scope of the injunction it actually issued. The court never explains, for example, how a *nationwide* injunction, Appx15 ¶¶2-3, accomplishes the "targeted purpose" of allowing Ericsson's Eastern District of Texas suit to proceed.

Finally, Ericsson has contended that its original Texas complaint was not "reactive" and that "timing differences are immaterial" because it followed Ericsson's China complaint by four days. Appx1413(21:14-17) (Ericsson's filing not "reactive"). The district court did not adopt that reasoning, but to the extent Ericsson relies on it on appeal, it is wrong. American courts have sliced matters more finely. *See Huawei*, 2018 WL 1784065, at *12 ("Since this action preceded the Chinese actions—if only by one day—enjoining the foreign action would not 'intolerably affect

comity.”). Moreover, Ericsson’s December 11, 2020 Original Complaint is not the proper reference point. That complaint relied on dubious assertions of diversity jurisdiction, and was a premature effort to forum shop in the Eastern District of Texas before Ericsson had any patent claims to assert. *Statement of Case* §C. Ericsson’s January 1, 2021 Amended Complaint, which asserted patent infringement counts, post-dates Samsung’s filing by nearly a month, and was filed when Ericsson was well aware of both Samsung’s complaint and the Chinese court’s antisuit injunction.

* * *

Ericsson was required to show that “the need to prevent vexatious or oppressive litigation and to protect the court’s jurisdiction” outweighed “the need to defer to principles of international comity,” such that the extraordinary relief of an injunction should issue. *Karaha*, 335 F.3d at 366. The district court erred on both sides of that balance. The injunction should be vacated, and the case remanded with instructions to deny the injunction.

II. If the District Court’s Injunction is Not Fully Vacated, it Should be Narrowed.

If this Court does not vacate the district court’s injunction in full, it should at least strike the second and third provisions, Appx15, and permit Samsung to apply to enforce the Chinese court’s injunction against claims for injunctive relief on SEPs.

Because injunctions are extraordinary relief, they can be no broader than necessary. *Monsanto*, 561 U.S. at 165; *Microsoft*, 696 F.3d at 887 (“Comity teaches that the sweep of the injunction should be no broader than necessary to avoid the harm on which the injunction is predicated.”). If a milder remedy than an injunction is sufficient, no injunction can issue. *Monsanto*, 561 U.S. at 165-66. That is true of all injunctions, but especially important when the injunction is against a foreign court’s proceeding.

Anti-antisuit injunctions or so-called “anti-interference” injunctions exist to protect the *issuing court’s jurisdiction*. Appx5; *cf.* 28 U.S.C. §1651(a) (courts may issue injunctions “necessary or appropriate *in aid of their respective jurisdictions*.”). The district court stated repeatedly that its injunction was limited to that purpose—*i.e.*, “the targeted purpose of allowing both suits to proceed without interference.”

Appx13; *see also* Appx14 (“simply to preserve its jurisdiction”); Appx7 (“to prevent Samsung from ... interfering with this Court’s exercise of its own jurisdiction”); Appx11 (“pursuant to its own legitimate jurisdiction and without interference.”); Appx8 (similar); Appx15 (similar).

Yet, the injunction’s scope reaches far beyond any notion of protecting the Eastern District of Texas’s jurisdiction. Provisions 2 and 3 apply *nationwide*—to any tribunal in the United States and any action Ericsson takes in the United States. All three provisions, moreover, invite Ericsson to seek injunctions on SEPs, even though Ericsson is not presently seeking such relief. By giving Ericsson almost every item of relief it asked for, the district court used a hammer where the law requires a scalpel. If the injunction is not vacated, it should at least be narrowed.

A. The District Court Overreached by Issuing a Nationwide Injunction (Provisions 2 and 3).

The “targeted purpose of allowing both [the U.S. and Chinese] suits to proceed without interference,” Appx13, cannot be reconciled with Provisions 2 and 3. Appx15. Those provisions extend nationwide, far beyond “both suits,” and interfere not only with the action in China, but

with Samsung's ability to defend itself in other lawsuits throughout the country.

As discussed above, the Chinese court only enjoined Ericsson from pursuing two types of claims: **(1)** duplicative claims to adjudicate Ericsson's compliance with its FRAND commitment, and **(2)** claims for injunctive relief on 4G and 5G SEPs. Appx573-575. It is one thing to rule that the Chinese court's injunction should not limit Ericsson's options *in this case*, or perhaps even in related cases in the same district court. Appx15 (¶1). But it is quite another to preemptively rule that the Chinese court's injunction should not affect Ericsson *anywhere* in the United States. *Id.*(¶¶2-3). The district court's jurisdiction is not protected by Ericsson's ability to file additional claims *elsewhere*, such as in the ITC. If Ericsson believes that the Chinese injunction threatens other tribunals' jurisdictions, those other tribunals are the proper places to make those arguments.

When Samsung challenged the injunction's nationwide scope, Appx1317, neither Ericsson nor the district court offered any substantive response. The only statement in the district court's order that is even tangentially responsive is the mistaken belief that Samsung was

asserting SEPs in the ITC, Appx13, which the district court inaccurately criticized as “inequity” and “hypocrisy.” *Argument §I.A.2.c, supra*. The court was not only wrong about the factual premise, but also wrong to suggest it had any legitimate interest in policing Samsung’s ITC filings or imposing its own view of “balance” on the parties’ broader negotiating positions. Appx12; *see also* Appx10 (“[N]ot only would enforcement of the ASI impede Ericsson’s ability to bring lawful causes of action, it would unfairly but necessarily put Ericsson in a weaker negotiating position when it comes to cross licensing its 4G and 5G SEPs to both Samsung and others.”). As the court said elsewhere, “[t]he purpose of an Article III Court is to be an impartial adjudicator of cases and controversies within its lawfully conferred jurisdiction.” Appx8. Neither the district court nor Ericsson has suggested any basis in law or equity for the court to reach beyond that jurisdiction, and to act as nationwide monitor over Samsung and the Chinese court with respect to Ericsson’s patents. None exists.

B. The District Court Overreached by Ordering Samsung to Indemnify Ericsson for Sanctions from the Chinese Court (Provision 3).

If Ericsson takes any action in the United States with respect to SEPs that incurs sanctions from the Chinese court—regardless of any action by Samsung—Samsung must indemnify Ericsson:

(3) Jointly and severally indemnify Ericsson from and against any and all fines or other penal assessments levied against and actually incurred by Ericsson pursuant to the enforcement of the ASI, either on the motion of Samsung, *sua sponte by the Wuhan Court, or otherwise*, as such pertains, and only as such pertains, to *actions Ericsson has taken or takes in the future in the United States* to lawfully litigate or adjudicate claims relating to the 4G and 5G SEPs identified or involved in this case.

Appx15. That provision is unprecedented, raises due process and *ultra vires* concerns, and is an unnecessary affront to comity.

The Fifth Circuit has held that a court’s sanctioning authority is for the litigation before the *court itself*, and not separate proceedings. *FDIC v. Maxxam Inc.*, 523 F.3d 566, 593 (5th Cir. 2008). Sanctions thus cannot be imposed for conduct in a “collateral proceeding[]” that does not violate a court order. *Positive Software Sols. Inc. v New Century Mortg. Corp.*, 619 F.3d 458, 460 (5th Cir. 2010). The injunction explicitly reaches “to actions Ericsson has taken or takes in the future in the United States”

with respect to “claims relating to the 4G and 5G SEPs identified or involved in this case.” Appx15.

Tellingly, neither Ericsson nor the district court has cited any precedent for any similar sanction. In its application, Ericsson simply asked for indemnity as one of three “additional items of relief.” Appx243. Ericsson later cited the narrower injunction the Fifth Circuit struck down in *Karaha*. Appx701. The district court simply refers to the indemnity as “narrowly focused,” “tailored,” and based on a “concern that Samsung may seek the imposition of substantial fines in the Chinese Action for the purpose of creating economic leverage against Ericsson to achieve practically what it may not be able to obtain legally.” Appx14. The indemnity provision’s breadth refutes the district court’s “narrowly focused” and “tailored” labels.

The court’s reference to “what [Samsung] may not be able to obtain legally” is inexplicable except as an insinuation that the Chinese courts may behave illegitimately. Ericsson similarly argued below that “if the Wuhan court imposes those fines [on Ericsson] *sua sponte*, Samsung has no one but itself to blame.” Appx692. Yet, neither Ericsson nor the district court has offered any basis to deny the Chinese court’s legitimacy

or doubt Samsung's un rebutted evidence on that score. It would be one thing if Samsung had violated an order, or if there were serious questions about the legitimacy of Samsung's actions, but there is nothing of the sort here. "To punish a person because he has done what the law plainly allows him to do is a due process violation 'of the most basic sort.'" *United States v. Goodwin*, 457 U.S. 368, 372 (1982) (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978)). The district court recognized that Samsung was entitled to file its action in China and rejected the argument that Samsung should be required to withdraw its injunction motion. Those concessions render the indemnity unsupportable.

More fundamentally, if the shoe were on the other foot, it is unthinkable that an American court would tolerate a similar injunction. By requiring Samsung to bear the consequences of Ericsson's violations, the district court both blocks the Chinese court's ability to enforce its order and invites Ericsson to flout that order. "The power to punish for contempts is inherent in all courts," "settled law," and "essential to the administration of justice." *Michaelson v. United States*, 266 U.S. 42, 65 (1924). China is entitled to the same respect. Moreover, nothing stops the Chinese court from entering its own counter-indemnity order,

inviting an infinite regression of dueling indemnity orders, with Samsung caught in the middle. The indemnity provision is unnecessary and unsupportable, and cannot stand.

C. The District Court Overreached By Nullifying the Chinese Court's Injunction Against Claims in the United States for Injunctive Relief on Ericsson's FRAND-Encumbered SEPs (All Provisions).

The district court's injunction should also be narrowed to permit Samsung to apply to enforce the Chinese court's injunction against claims for injunctive relief on Ericsson's 4G and 5G SEPs. All three provisions of the district court's injunction sweep in Ericsson's ability to seek injunctions on SEPs. Provision 1 refers to "any other cause of action before this court," provision 2 refers to Ericsson's "rights to assert the full scope of [its] U.S. patent rights," and provision 3 refers to "*actions Ericsson has taken or takes in the future in the United States* to lawfully litigate or adjudicate claims relating to the 4G and 5G SEPs identified or involved in this case." Appx15.

By inviting Ericsson to seek injunctions against Samsung on SEPs, the district court overreaches in two ways.

First, that aspect of the injunction is unnecessary because Ericsson is not presently seeking injunctions against Samsung on SEPs, anywhere

in the United States. In motion briefing to this Court, Ericsson derided that prospect as “pure speculation.” Fed. Cir. 21-1565, ECF#9 at 15 (Feb. 3, 2021). Ericsson’s and Samsung’s pending ITC actions against each other only concern *non*-SEPs. Appx1501-1502.⁶ Ericsson’s other pending district court lawsuits against Samsung likewise concern *non*-SEPs. Ericsson’s Amended Complaint in this case asserts infringement of alleged SEPs, but its prayer for relief omits any mention of injunctions. Appx480-481. Thus, any consideration of injunctions in the United States for Ericsson’s SEPs is at least premature in this case and not possible in other pending cases. An injunction preemptively addressing relief not before the court is contrary to the principle that injunctions are extraordinary relief and should be no broader than necessary, *Monsanto*, 561 U.S. at 165; *Microsoft*, 696 F.3d at 887, and exceeds the district court’s “targeted purpose of allowing both suits to proceed without interference.” Appx13.

Second, this aspect of the district court’s injunction is an unnecessary affront to the Chinese court. The Chinese court acted

⁶ As noted, the only reason the district court suggested for addressing claims for injunctive relief in other tribunals was its mistaken belief about Samsung’s ITC action. Appx12-13.

reasonably, and there is no reason to nullify that part of the Chinese injunction unless the district court views the Chinese court system as illegitimate.

Based in part on evidence of Ericsson's past practice, the Chinese court found that it was necessary to enjoin Ericsson temporarily from seeking injunctions on SEPs because an SEP-based injunction might force Samsung to take a license at holdup rates, preempting the Chinese court's rate-setting adjudication. Appx569-570. That is the same view American courts have expressed in similar circumstances. *E.g.*, *Microsoft*, 696 F.3d at 880-81, 885; *Huawei*, 2018 WL 1784065, at *10.

The Chinese court also found that Ericsson would not be unduly harmed, in part because Ericsson had committed to license SEPs on FRAND terms:

With respect to SEPs, this Court recognizes and respects the rights of SEP holders and supports them in obtaining fair and reasonable royalty revenue from the relevant technology implementers. At the same time, the technical solution of the patent will be more widely used after it is incorporated into the technical standard due to the compliance of others with the standard, and the patent holder will gain relatively more royalty revenue and competitive advantage. Therefore, reasonable and necessary restrictions should be imposed on the rights of SEP owners, especially the right to apply for injunctive relief.

Appx570. The Chinese court’s view—that temporarily limiting the right of a FRAND-encumbered SEP holder to seek injunctions is not a significant hardship—is consistent with the views of American courts, academic literature, and American and European government agencies.⁷ There is no *per se* bar in the United States against injunctions on SEPs, but there is a broad consensus that FRAND commitments are in tension with injunctive relief, such that injunctions on FRAND-encumbered SEPs should be rare if not nonexistent.

The reason is straightforward: FRAND commitments exist to alleviate patent hold-up. *Statement of Case* §A.1, *supra*. A patentee like

⁷ *E.g.*, Jorge L. Contreras, Fabian Gaessler, Christian Helmers, & Brian J. Love, *Litigation of Standards-Essential Patents in Europe: A Comparative Analysis*, 32 BERKELEY TECH. L.J. 1457, 1465 & nn. 40-45 (2017) (citing U.S. and Europe court decisions limiting FRAND-encumbered SEP holders’ recourse to injunctions; and competition enforcement agencies acting against such requests for injunctions); Suzanne Michel, *Bargaining for RAND Royalties in the Shadow of Patent Remedies Law*, 77 ANTITRUST L.J. 889, 908 (2011) (FRAND commitment is “strong evidence that denial of an injunction and ongoing royalties will not irreparably harm the patentee”); *Microsoft*, 696 F.3d at 885 (FRAND commitment is “at least arguably, a guarantee that the patent-holder will not take steps to keep would-be users from using the patented material, such as seeking an injunction.”); *Realtek Semiconductor v. LSI*, 946 F.Supp.2d 998, 1008-10 (N.D. Cal. 2013) (enjoining enforcement of ITC exclusion order: “the promise to license on RAND terms implies a promise not to seek injunctive relief ... until the [SEP] holder first satisfies its RAND obligations.”).

Ericsson (or Samsung) who signs a FRAND commitment accepts the benefits from incorporation of its patents into a standard, and in exchange gives up a measure of its exclusionary rights. Under the *eBay* factors, a non-discriminatory pledge to accept reasonable royalties implies that royalties are adequate and no injunction is necessary to prevent irreparable harm. For similar reasons, the balance of harms and the public interest nearly always favor money damages to the FRAND-committed plaintiff over locking a defendant out of an entire market for standard-compliant products.

The Chinese court's reasoning was rational, sensible, and addressed to an issue directly before it. Ericsson's ability seek injunctions on SEPs was not directly at issue in the district court. The district court overreached by including that issue in all three provisions of its injunction, and particularly by doing so without any supporting explanation other than its mistaken view of Samsung's ITC complaint. The district court's injunction should be narrowed to the extent it contradicts the Chinese court's injunction against Ericsson seeking injunctive relief against Samsung on its 4G and 5G SEPs.

CONCLUSION

Samsung respectfully requests that this Court vacate or narrow the district court's injunction.

February 22, 2021

Respectfully submitted,

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ADDENDUM

Memorandum Opinion and Preliminary Injunction (Jan. 11, 2021)	Appx1-16
Temporary Restraining Order (Dec. 28, 2020)	Appx17-20

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

ERICSSON INC.,
TELEFONAKTIEBOLAGET LM
ERICSSON,

Plaintiffs,

V.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC., SAMSUNG RESEARCH AMERICA,

Defendants.



CIVIL ACTION NO. 2:20-CV-00380-JRG

MEMORANDUM OPINION AND PRELIMINARY INJUNCTION

Before the Court is the Emergency Application for Temporary Restraining Order and Anti-Interference Injunction Related to Samsung’s Lawsuit Filed in the Wuhan Intermediate People’s Court of China (the “Motion”) brought by Plaintiffs Ericsson Inc. and Telefonaktiebolaget LM Ericsson (collectively, “Ericsson”). (Dkt. No. 11). Having considered the parties’ oral arguments, and the briefing by the parties and *amici*, the Court finds that the Motion requesting a preliminary injunction should be and hereby is **GRANTED**.

I. INTRODUCTION

On December 11, 2020, Ericsson filed a Complaint against Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Research America (collectively, “Samsung”) alleging that Samsung breached its obligation to license its Standard Essential Patents (“SEPs”) to Ericsson on fair, reasonable, and non-discriminatory (“FRAND”)

terms in accordance with the obligation Samsung made to the European Telecommunications Standards Institute (“ETSI”), a standard development organization (“SDO”). (Dkt. No. 1).

Ericsson and Samsung develop and manufacture cellular technology and have substantial global patent portfolios. (Dkt. No. 11 at 2). Many of both Ericsson’s and Samsung’s patents are SEPs for the 2G, 3G, 4G, and 5G cellular standards. (*Id.*). In the past, Samsung and Ericsson have entered into global patent licenses, most recently in 2014 a cross-license to reciprocally use their SEPs. (*Id.* at 2–3). The 2014 agreement called for its expiration at the end of 2020. (Dkt. No. 43 at 32:22). Accordingly, over the past year the parties have negotiated terms of a renewed global cross-license. (Dkt. No. 11 at 3; Dkt. No. 26 at 3). Despite their efforts, the parties were unable to come to an agreement as the end of 2020 approached. (Dkt. No. 11 at 3; Dkt. No. 26 at 3). In light of the parties’ lack of an agreement, on December 7, 2020¹ Samsung² filed a Civil Complaint in the Wuhan Intermediate People’s Court of Hubei Province (the “Chinese Action”) asking that court to:

1. Determine the global licensing terms, including the royalty rates applicable for [Samsung Electronics Co., Ltd., Samsung (China) Investment Co., Ltd., and Samsung (China) Investment Co., Ltd.’s] communication products in accordance with “Fair, Reasonable and Non-discriminatory” (“FRAND”) principle for the licensing of all the 4G and 5G standard essential patents (“SEPs”) held or controlled by [Telefonaktiebolaget LM Ericsson] and its affiliates;
2. Order [Telefonaktiebolaget LM Ericsson] to bear the litigation costs and the just and proper expenses incurred by [Samsung Electronics Co., Ltd., Samsung (China) Investment Co., Ltd., and Samsung (China) Investment Co., Ltd.] Wuhan Branch as a result of protecting its rights in these proceedings, which tentatively calculated are RMB 10 million.³

¹ Samsung alleges that it attempted to file its Complaint in China on December 4, 2020 but was unsuccessful. (Dkt. No. 26 at 3). The Court will refer to the date the Wuhan Intermediate People’s Court of Hubei Province accepted the filing of Samsung’s China Complaint—December 7, 2020.

² The Samsung entities here are different than those in the Chinese Action. However, Samsung Electronics Co. Ltd. is a party to both actions and is affiliated with every subsidiary in both actions. (Dkt. No. 26-2 at 5; Dkt. No. 17 at 5–6). As such, the Samsung parties in both the Chinese Action and this action are functionally the same. *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-CV-02787-WHO, 2018 WL 1784065, at *6 (N.D. Cal. Apr. 13, 2018).

³ This quote, and all other quotes from all documents originally filed in China, are from certified English translations of such filings. (Dkt. No. 26-2).

(Dkt. No. 26 at 3; Dkt. No. 26-2). No one provided notice to Ericsson of the Chinese Action when it was filed. (Dkt. No. 11 at 4; Dkt. No. 26 at 4). On December 11, 2020, a panel of judges or the “collegiate panel” was assigned to preside over the Chinese Action. (Dkt. No. 26-10 at 7). Also on December 11, 2020, Ericsson filed the Complaint in this case. (Dkt. No. 1). Unaware of the Chinese Action, Ericsson notified Samsung of its Complaint in this Court that same day. (Dkt. No. 11 at 3; Dkt. No. 11-12 ¶ 4).

On December 14, 2020, Samsung filed a Behavior Preservation Application in the Wuhan Intermediate People’s Court of Hubei Province (the “Wuhan Court”) requesting that court to issue an anti-suit injunction (“ASI”) against Ericsson to prevent it from seeking relief relating to its 4G and 5G SEPs anywhere else in the world. (Dkt. No. 30-4). Concurrently, Samsung filed an Application for Delaying Serving the Behavior Preservation Application further requesting the Wuhan Court to “hold the service of the relevant materials of the behavior preservation application of this case and the various notification thereof until the ruling of the behavior preservation comes into effect” based on the high probability that other courts, like this one, would likely take affirmative action to impede enforcement of the ASI in their jurisdiction. (Dkt. No. 30-2 at 2–3).

On December 17, 2020, Samsung notified Ericsson of the Chinese Action but did not provide Ericsson with any of the filings from the Chinese Action.⁴ (Dkt. No. 11 at 4). On December 21, 2020, Samsung again urged the Wuhan Court to issue an anti-suit injunction and to do so within the week through a Supplemental Information from Samsung Regarding Act Preservation Application. (Dkt. No. 26-11). On December 22, 2020, fifteen days after Samsung’s Civil Complaint was filed, and over a week after Samsung sought the ASI, Samsung provided only

⁴ The proceedings in the Chinese Action are conducted solely through paper filings and not via electronic means. (Dkt. No. 11 at 4; Dkt. No. 11-12 ¶ 7). Therefore, Ericsson was unable to access such filings unless and until they were provided by Samsung or the Wuhan Court itself.

the Civil Complaint from the Chinese Action to Ericsson. (Dkt. No. 11-14). On December 23, 2020, Samsung provided the Wuhan Court with a Bank Certificate of Deposit and a Commitment Letter for a bond of RMB 50 million to provide security for the anti-suit injunction. (Dkt. No. 26-9 at 6). On December 25, 2020, the Wuhan Court issued an ASI enjoining Telefonaktiebolaget LM Ericsson and its affiliates from:

- (1) applying for any preliminary and permanent injunctive relief or administrative measures before any courts, customs offices, or administrative enforcement agencies either in China or other countries and regions or through any other procedures against Samsung Electronics Co., Ltd., Samsung (China) Investment Co., Ltd., Samsung (China) Investment Co., Ltd. Wuhan Branch and their affiliates, and other subjects which manufacture, use, offer to sell, sell or import Samsung telecommunications products, in terms of the 4G and 5G SEPs involved in this Case, and the Respondent and its affiliates shall immediately withdraw or suspend such claims that have already been filed;
- (2) . . . applying for the enforcement of any preliminary and permanent injunctive relief or administrative measures or that has been granted or is likely to be granted by any courts, customs offices, or administrative enforcement agencies either in China or any other countries and regions or through any other procedures against Samsung Electronics Co., Ltd., Samsung (China) Investment Co., Ltd., Samsung (China) Investment Co., Ltd. Wuhan Branch and their affiliates, and other subjects which manufacture, use, offer to sell, sell or import Samsung telecommunications products, in terms of the 4G and 5G SEPs involved in this Case;
- (3) . . . requesting any courts either in China or other countries and regions to adjudicate the licensing terms (including the royalty rate) or royalty amount in terms of the 4G and 5G SEPs involved in this Case and the Respondent and its affiliates shall immediately withdraw or suspend such claims that have already been filed;
- (4) . . . initiating any legal proceedings requesting to determine whether the Respondent and its affiliates have fulfilled their FRAND obligations in terms of the present negotiations for licensing the 4G and 5G SEPs involved in this Case before any courts either in China or other countries and regions, and the Respondent and its affiliates shall immediately withdraw or suspend such claims that have already been filed;
- (5) . . . requesting any courts either in China or other countries and regions to order Samsung Electronics Co., Ltd., Samsung (China) Investment Co., Ltd., and Samsung (China) Investment Co., Ltd. Wuhan Branch to withdraw this application for behavior preservation or to prevent Samsung Electronics Co., Ltd., Samsung (China) Investment Co., Ltd., and Samsung (China) Investment Co., Ltd. Wuhan Branch from applying for the enforcement of the behavior preservation ruling issued by this Court, and the Respondent and its affiliates shall immediately

withdraw or suspend such claims that are likely to be filed or have already been filed.

(*Id.* at 12–14). The ASI is in effect for the duration of the Chinese Action and until a future judgment in that Action becomes effective. (*Id.*). If Ericsson violates the ASI the Wuhan Court states that it will “punish such violations in accordance with Chapter 10 of *Civil Procedure Law of the People’s Republic of China*,” which includes the levying of substantial fines. (*Id.* at 14 (italics in original)). In accordance with Samsung’s request, the Wuhan Court gave Ericsson notice of the ASI after the ASI had issued. (Dkt. Nos. 11-1 ¶ 7, 11-8). Ericsson received such notice on December 25, 2020. (Dkt. No. 11-8).

On December 28, 2020, Ericsson came to this Court and requested an emergency *ex parte* temporary restraining order to prevent Samsung from interfering with this action or attempting to prevent Ericsson from asserting the full scope of its patent rights in the United States until the Court could hear argument on whether a preliminary injunction should issue. (Dkt. No. 11). At 10:00 a.m. on December 28, 2020, the Court granted Ericsson’s Motion, issued a temporary restraining order, and set the Motion for a Preliminary Injunction for hearing on January 7, 2021. (Dkt. No. 14).⁵

II. LEGAL STANDARD

It is well established that a federal court is empowered to issue injunctions to protect its jurisdiction. *MWK Recruiting Inc. v. Jowers*, No. 19-51064, 2020 WL 6572570, at *2 (5th Cir. Nov. 6, 2020) (citing *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 626 (5th Cir. 1996)).⁶ A foreign

⁵ Subsequently, on January 1, 2021, Ericsson filed its Amended Complaint asserting patent infringement of eight U.S. Patents. (Dkt. No. 17).

⁶ Pursuant to Ericsson’s Amended Complaint, this is now a case for both breach of contract and patent infringement. The United States Court of Appeals for the Federal Circuit has exclusive appellate jurisdiction over cases arising under the patent laws. 28 U.S.C. § 1295(a). However, for issues not unique to patent law, like the preliminary injunction requested here, the Federal Circuit applies the law of the regional circuit in which the appeal would otherwise lie. *Sanofi-Aventis Deutschland GmbH v. Genentech, Inc.*, 716 F.3d 586, 590 (Fed. Cir. 2013) (internal citations omitted).

anti-suit injunction is a special application of the general preliminary injunction rules, but “the suitability of such relief ultimately depends on considerations unique to anti-suit injunctions.” *Id.* (quoting *Kahara Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 364 (5th Cir. 2003)). The Fifth Circuit has adopted a test—often referred to as the *Unterweser* factors—that weigh “the need to ‘prevent vexatious or oppressive litigation’ and to ‘protect the court's jurisdiction’ against the need to defer to principles of international comity.” *Id.* (citing *Kaepa*, 76 F.3d at 627, and *MacPhail v. Oceaneering Int’l, Inc.*, 302 F.3d 274, 277 (5th Cir. 2002)). Pursuant to the *Unterweser* factors, an injunction against the prosecution of a foreign lawsuit may be appropriate when the foreign litigation would: (1) frustrate a policy of the forum issuing the injunction; (2) be vexatious or oppressive; (3) threaten the issuing court’s *in rem* or *quasi in rem* jurisdiction; or (4) cause prejudice or offend other equitable principles. *Id.* (citing *Kaepa*, 76 F.3d at 627 n.9 and *In re Unterweser Reederei, GmbH*, 428 F.2d 888, 890 (5th Cir. 1970)). In applying this test, the Fifth Circuit has rejected the approach taken by some other Circuits, which “elevates principles of international comity to the virtual exclusion of all other considerations.” *Id.* (citing *Kaepa*, 76 F.3d at 627). Rather, the Fifth Circuit has noted that the “notions of comity do not wholly dominate the analysis to the exclusion of these other concerns.” *Id.* (citing *Kahara Bodas*, 335 F.3d at 366) (alteration omitted).

To determine whether proceedings in another forum constitute “vexatious or oppressive” litigation that threatens the court’s jurisdiction, the domestic court considers the following interrelated factors: (1) the inequitable hardship resulting from the foreign suit; (2) the foreign suit’s ability to frustrate and delay the speedy and efficient determination of the cause; and (3) the extent to which the foreign suit is duplicative of the litigation in the United States. *Id.* (citing *Kaepa*, 76 F.3d at 627). “[T]he duplicative factor is about *legal*, not *factual*, similarity.” *Id.* at *4

(emphasis in original). Suits are duplicative “where they involve the same or similar legal bases or identical claims.” *Id.* (internal citations omitted).

As noted above, Ericsson is not seeking an anti-suit injunction to prevent the Chinese Action from proceeding. Rather, Ericsson is seeking an anti-anti-suit injunction (sometimes called an anti-interference injunction) to prevent Samsung from attempting to enforce the ASI and thereby interfering with this Court’s exercise of its own jurisdiction. To this Court’s knowledge, the Fifth Circuit has not provided guidance on the application of the *Unterweser* factors under these particular circumstances. Thus, while the test set forth above relates to the issuance of an anti-suit injunction, rather than an anti-interference injunction, it is nevertheless instructive and will be applied here. *See Teck Metals Ltd. v. Certain Underwriters at Lloyd’s, London*, No. CV-05-411-LRS, 2009 WL 4716037, at *3 (E.D. Wash. Dec. 8, 2009).

III. DISCUSSION

1. Standing

As an initial matter, Samsung alleges that Ericsson, Inc. does not have standing to seek relief on behalf of Telefonaktiebolaget LM Ericsson because Telefonaktiebolaget LM Ericsson is the defendant in the Chinese Action and is the only entity that would be fined as a result of the ASI. (Dkt. No. 26 at 15; Dkt. No. 37 at 13). Accordingly, Samsung argues there is no risk of irreparable harm to Ericsson, Inc. (Dkt. No. 26 at 15; Dkt. No. 37 at 13); *see Voda v. Cordis Corp.*, 536 F.3d 1311, 1329 (Fed. Cir. 2008). During the hearing on the Motion, counsel for Ericsson confirmed that the Motion and the requested anti-interference injunction are sought on behalf of both Ericsson, Inc. and Telefonaktiebolaget LM Ericsson. (Dkt. No. 43 at 9:9–12). Accordingly, this Court finds that Ericsson, Inc. and Telefonaktiebolaget LM Ericsson have standing to seek the requested relief.

2. *Unterweser* Factors

a. *Frustration of a Policy of the Forum Issuing the Injunction*

The public interest strongly supports this Court's continued exercise of its jurisdiction. Allowing Samsung to enjoin Ericsson from asking this Court to adjudicate legally cognizable claims under United States law would frustrate this Court's compelling interest in ensuring that litigation within its legitimate jurisdiction proceed in this forum. Samsung argues that the ASI was a legitimate exercise of the Wuhan Court's jurisdiction as the first-filed action between Samsung and Ericsson for their worldwide rate dispute. (Dkt. No. 26 at 7). The order in which the suits were filed is not dispositive, and the issues before this Court and the issues before the Wuhan Court are different. *See Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 887 (9th Cir. 2012) (noting that the order in which the foreign and domestic suits are filed is not dispositive). Accordingly, both Courts can properly exercise jurisdiction over the respective causes of action brought before them. The purpose of an Article III Court is to be an impartial adjudicator of cases and controversies within its lawfully conferred jurisdiction. U.S. Const. art. III, § 2. To enforce the ASI in this case would frustrate the "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Colorado River Water Conserv. Dist. v. U.S.*, 424 U.S. 800, 817 (1976).

b. *Vexatious or Oppressive*

In the context of an anti-suit injunction, the Court analyzes whether the foreign litigation would be vexatious or oppressive. *MWK*, 2020 WL 6572570, at *2. However, here a dispute exists as to whether in the context of an anti-interference injunction the litigation should be analyzed from the posture of this Court or the foreign court. There appears to be no direct Fifth Circuit guidance on this issue. Accordingly, the Court will address whether both litigations are vexatious or oppressive from the posture of both jurisdictions under the factors set forth in *MWK* and *Kaepa*.

Id. (citing *Kaepa*, 76 F.3d at 627). Under either analysis, the Court finds that this factor supports the issuance of an anti-interference injunction.

i. Inequitable Hardship Resulting from the Foreign Suit

Proceeding to enforce the ASI will impose an inequitable hardship on Ericsson because it will unfairly deprive Ericsson of the right to bring claims it is entitled to bring under United States law. Furthermore, the ASI was entered with no notice to Ericsson *at the request of Samsung*. (Dkt. No. 30-2). Without notice or an opportunity to be heard, Ericsson found itself enjoined from exercising its right to enforce legitimate causes of action under United States law pertaining to its 4G and 5G SEPs in the United States. The ASI imposes an inequitable hardship on Ericsson because the ASI's sweeping provisions deprive Ericsson of the right to attempt to obtain redress for claims it has the right to bring under the laws of the United States.

Samsung argues that the process for obtaining the ASI is no different than the process this Court used in issuing the *ex parte* temporary restraining order. It is not. Obtaining the ASI as Samsung did is more akin to issuing an *ex parte* preliminary injunction, not a temporary restraining order. A temporary restraining order, such as in this case, typically lasts fourteen days at most. *See* Fed. R. Civ. P. 65(b)(2). The ASI lasts through the ultimate conclusion of the Chinese Action, which could be years from now. (Dkt. No. 26-9 at 12–14). Additionally, before this Opinion and Preliminary Injunction was issued, Samsung had the opportunity to file multiple briefs and present oral argument for this Court to consider. (Dkt. Nos. 26, 34, 37, 43). Notably, the ASI is *only* dissolved if the respondent, Telefonaktiebolaget LM Ericsson, prevails on a motion to *reconsider* filed within five days in the Wuhan Court, completely shifting the burden to the responding party. *See* (Dkt. No. 26-9 at 14). In contrast, this Court's temporary restraining order is dissolved automatically *unless* Ericsson, as the petitioner, meets its burden and prevails in a motion for

preliminary injunction. Regardless of whether the procedure Samsung followed comported with Chinese law, Ericsson had none of the opportunities afforded to Samsung, and as a result would—but for this Court’s preliminary injunction—be excluded from bringing causes of action in this forum where both parties have a significant presence. (Dkt. No. 11 at 1). Additionally, not only would enforcement of the ASI impede Ericsson’s ability to bring lawful causes of action, it would unfairly but necessarily put Ericsson in a weaker negotiating position when it comes to cross licensing its 4G and 5G SEPs to both Samsung and others. Ericsson argues this was the real motivation behind the ASI. (Dkt. No. 11 at 2). This Court does not disagree.

Conversely, Samsung will not suffer inequitable hardship if litigation proceeds in both courts. In fact, Samsung’s counsel agreed on the record in this Court that parallel actions are inevitable. (Dkt. No. 43 at 36:4–10). The United States is both Ericsson’s and Samsung’s largest market, and both Ericsson and Samsung have large offices, including relevant personnel involved in these licensing discussions, in the Eastern District of Texas. (Dkt. No. 11 at 1). When asked if this action was vexatious or oppressive to it, Samsung readily admitted it was not. (Dkt. No. 43 at 76:18–21). Accordingly, the Court finds that Ericsson would suffer inequitable hardship due to the enforcement of the ASI, while Samsung would not suffer inequitable hardship if this case is allowed to proceed.

ii. The Foreign Suit’s Ability to Frustrate and Delay the Speedy and Efficient Determination of the Cause

If unaddressed, the ASI⁷ would frustrate and delay the speedy and efficient determination of legitimate causes of action before this Court. In fact, the ASI specifically prohibits their

⁷ The Court analyzes the enforcement of the ASI because Ericsson seeks only to enjoin the enforcement of the ASI, not the entire Chinese Action.

adjudication.⁸ Samsung furnished Ericsson’s Complaint to the Wuhan Court and specifically asked for an injunction preventing this case from moving forward. (Dkt. Nos. 30-2, 30-3). If the ASI is given its full effect, it would lay claim to causes of action properly raised in this Court and *not raised in the Chinese Action*.

On the other hand, the causes of action here have no implication on the speedy and efficient determination of the issues raised before the Wuhan Court. The Wuhan Court can continue to adjudicate the claims that Samsung has brought before it, pursuant to its laws and its rules of civil procedure. This Court does not intend—nor does it wish—to frustrate or delay the speedy and efficient determination of the case brought in Wuhan. Without hesitation this Court equally insists that it be permitted to adjudicate the issues raised here pursuant to its own legitimate jurisdiction and without interference.

iii. The Extent to Which the Foreign Suit and the Domestic Suit are Duplicative

The Chinese Action and this suit are not duplicative. As the Fifth Circuit has recently clarified, “the duplicative factor is about *legal*, not *factual*, similarity.” *MWK*, 2020 WL 6572570 at *4 (emphasis in original). Suits are duplicative “where they involve the same or similar legal bases or identical claims.” *Id.* (internal citations omitted). The Chinese Action and this suit may be factually similar but involve very separate legal questions.⁹ Samsung asks the Wuhan Court to determine the global licensing terms, including the FRAND royalty rates applicable for Samsung’s communication products implementing all of Ericsson’s 4G and 5G SEPs. Ericsson, on the other hand, asks this Court to look at the parties’ pre-suit negotiation conduct and determine whether the

⁸ Samsung notes that not all causes of action before this Court are enjoined by the ASI. (Dkt. No. 43 at 78:2–7). While that may be true, the inability for this Court to hear one or many causes of action equally offends the efficient adjudication of such issues. Ericsson has a right to join “as many claims as it has” in one action. Fed. R. Civ. P. 18(a).

⁹ By recognizing that these two questions are not one and the same, this Court is not commenting on whether it would or would not be ultimately willing to set a global FRAND rate. The question of whether a global FRAND rate should be set is not now before this Court.

parties breached or complied with their mutual FRAND obligations. The Wuhan Court is asked to provide a number. This Court is asked to evaluate conduct. The legal questions presented to each Court are different.¹⁰

c. Threaten the Issuing Court's In Rem or Quasi In Rem Jurisdiction

This factor is not applicable. Although Ericsson brings claims for patent infringement and breach of contract, Samsung acknowledges the only claims within the scope of the ASI are Ericsson's breach of contract claims. (Dkt. No. 43 at 78:8–11). Breach of contract claims are *in personam* actions. *See Page v. JPMorgan Chase Bank, N.A.*, No. 4:13-CV-407-Y, 2013 WL 12198405, at *1 (N.D. Tex. Oct. 30, 2013). As such, this factor is not implicated.

d. Cause Prejudice or Offend Other Equitable Principles

Issuance of an anti-interference injunction in this case will not cause prejudice to Samsung or offend other equitable principles. Through the ASI, Samsung attempts to prevent Ericsson from seeking injunctive relief relating to its 4G and 5G SEPs in any tribunal in the world except in the Wuhan Court. (Dkt. No. 26-9 at 12–13). However, on January 7, 2021, Samsung filed a Complaint in the United States International Trade Commission seeking injunctive relief *against* Ericsson for Ericsson's 4G and 5G compliant products based on alleged infringement of *Samsung's* 4G and 5G SEPs—seeking the very type of injunctive relief the ASI bars Ericsson from seeking. *See* Certain Wireless Communications Equipment and Components Thereof, Inv. No. 337-TA-3522 (Jan. 7,

¹⁰ In fact, Ericsson argues that its FRAND obligation is subject to the express condition that Samsung grant a reciprocal license. (Dkt. No. 30 at 7). Therefore, Ericsson argues, the unilateral relief Samsung seeks in the Chinese Action may or may not be available. (*Id.*). Regardless of how this issue plays out on the merits, it demonstrates that it is far from certain that the question posed to the Wuhan Court will impact or interfere with the issues presented here. The Court does not currently express an opinion regarding whether any judgment from the Chinese Action would have a res judicata effect. To the extent, however, the Wuhan Court provides a global FRAND rate for Ericsson's 4G and 5G SEPs in isolation, such a rate is unlikely to obviate this Court's FRAND determinations because the causes of action here require this Court to consider offers and negotiations for a *cross-license* in which Samsung would make a balancing payment that inherently accounts for the value of *its own* 4G and 5G SEPs and not solely the value of Ericsson's 4G and 5G SEPs.

2021). If Samsung can seek redress of its claims through injunctive relief in the United States, it would be the height of inequity (and hypocrisy) to allow the ASI to tie Ericsson's hands from doing the same.

Additionally, the Court is persuaded that the financially significant penal provisions of the ASI create an inequitable disparity between the parties which prejudices Ericsson's right to assert lawful causes of action. Drawing from the well of its inherent authority, this Court should not allow Samsung to impose financial penalties against Ericsson for attempting to file the same claims that Samsung itself has filed without a counterbalance. The issues present before this Court, the Wuhan Court, the United States International Trade Commission, and elsewhere should be resolved on the merits and not based on unfair economic leverage gained through litigious gamesmanship. Equity demands no less.

Furthermore, international comity is not offended by the issuance of an anti-interference injunction which seeks to preserve the ability for litigation to proceed in parallel. *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 926–27 (D.C. Cir. 1984). No international public policy or issue is implicated by this case: Ericsson and Samsung are private parties engaged in a global commercial struggle. *Kaepa*, 76 F.3d at 627. This Court is not instructing Samsung that it cannot continue to prosecute its claims in the Wuhan Court nor is this Court seeking to enjoin the furtherance of that proceeding. This Court believes it must act for the targeted purpose of allowing both suits to proceed without interference. Under these circumstances, this Court finds that an anti-interference injunction in no way threatens notions of international comity.

3. Ericsson's Requested Relief

Although, under the *Unterweser* factors, an anti-interference injunction is warranted in this case, the Court finds that some aspects of Ericsson's requested relief is too broad. Injunctive relief

is an extraordinary remedy that should be narrowly tailored to prevent irreparable harm. *MWK*, 2020 WL 6572570, at *2. Ericsson requests that this Court issue a preliminary anti-interference injunction ordering Samsung to: (1) not take actions in the Chinese Action that would interfere with this Court's jurisdiction over this matter; (2) not take actions in the Chinese Action that would deprive Ericsson, Inc. and all of its corporate parents, subsidiaries, and affiliates of its right to assert the full scope of its U.S. patent rights; (3) promptly send documents filed in the Chinese Action to Ericsson; and (4) withdraw the ASI as to the U.S., or indemnify Ericsson against any fines levied against Ericsson due to the ASI, or bar Samsung from participating any further in the Chinese Action unless and until any fine related to the ASI is lifted.

As this Court has previously stated, this Court does not seek to insert itself into matters of Chinese law or civil procedure, but simply to preserve its jurisdiction over the causes of action properly before it. Accordingly, the Court declines to order Samsung to withdraw the ASI, bar Samsung from participating in the Chinese Action, or require Samsung to promptly send documents filed in the Chinese Action to Ericsson. Although this Court maintains a public docket equally accessible by electronic means to both parties and the public, it is not for this Court to require Samsung to operate in a foreign jurisdiction as though it were here. Furthermore, this Court will not order Samsung to make any formal motion in the Chinese Action or seek to interfere with it participating therein. That said, this Court affirmatively finds that a tailored indemnification provision will adequately address this Court's concern that Samsung may seek the imposition of substantial fines in the Chinese Action for the purpose of creating economic leverage against Ericsson to achieve practically what it may not be able to obtain legally. This Court finds that a narrowly focused indemnification provision will ensure that both proceedings can progress on the merits without the risk of unbalanced economic pressure being imposed by one party on another.

IV. CONCLUSION


Accordingly, in light of the foregoing, effective **10:00 a.m. CT, January 11, 2021** and until the judgment of this Court is final, the Court hereby **ORDERS AND ENJOINS** Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Research America to:

- (1) Take no action in the Chinese Action that would interfere with this Court's jurisdiction to determine whether Ericsson¹¹ or Samsung have met or breached their FRAND obligations as they relate to both Ericsson and Samsung's 4G and 5G SEPs, or that would interfere with any other cause of action before this Court;
- (2) Take no action in the Chinese Action that would deprive Ericsson or all of its corporate parents, subsidiaries, and affiliates of their rights to assert the full scope of their U.S. patent rights before any Article III Court, customs office, or administrative agency in the United States; and
- (3) Jointly and severally indemnify Ericsson from and against any and all fines or other penal assessments levied against and actually incurred by Ericsson pursuant to the enforcement of the ASI, either on the motion of Samsung, *sua sponte* by the Wuhan Court, or otherwise, as such pertains, and only as such pertains, to actions Ericsson has taken or takes in the future in the United States to lawfully litigate or adjudicate claims relating to the 4G and 5G SEPs identified or involved in this case.

Pursuant to Fed. R. Civ. P. 65(c), the Court finds that the proper amount of security for this anti-interference injunction is **Zero United States Dollars (\$0)**. *See Kaepa*, 76 F.3d at 628.

¹¹ Ericsson was previously defined as Ericsson, Inc. and Telefonaktiebolaget LM Ericsson. *See infra* at 1.

So ORDERED and SIGNED this 11th day of January, 2021.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

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

ERICSSON INC.,	§	
TELEFONAKTIEBOLAGET LM	§	
ERICSSON,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 2:20-CV-00380-JRG
	§	
SAMSUNG ELECTRONICS CO., LTD.,	§	
SAMSUNG ELECTRONICS AMERICA,	§	
INC., SAMSUNG RESEARCH AMERICA,	§	
	§	
<i>Defendants.</i>	§	

**ORDER GRANTING EMERGENCY APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ANTI-INTERFERENCE INJUNCTION RELATED TO
SAMSUNG’S LAWSUIT FILED IN THE WUHAN INTERMEDIATE PEOPLE’S
COURT OF CHINA**

The Court has considered the submissions presented in connection with Plaintiff Ericsson Inc.’s (“Ericsson”) Emergency Application for Temporary Restraining Order and Anti-Interference Injunction Related to Samsung’s Lawsuit Filed in the Wuhan Intermediate People’s Court of China (the “Wuhan Action”). Having considered the matter, the Court finds good cause exists to temporarily restrain Defendants as requested in Ericsson’s application. The Court finds that the status quo should be maintained pending the Court’s evaluation of, and ruling on, a preliminary injunction. The Court finds a substantial risk of irreparable harm to Ericsson, and to the jurisdiction of this Court, if Samsung were to attempt to enforce or further pursue its antisuit injunction against Ericsson. In contrast, the harm to Samsung of maintaining the status quo is negligible.

IT IS THEREFORE ORDERED THAT, effective immediately, Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Research America (collectively, “Samsung”), and all of their affiliates, officers, directors, shareholders, and employees, or those in active concert with them, shall refrain from any of the following acts until further order of this Court:

- A. Make any request, claim, application, or motion further pursuing or enforcing an injunction from a foreign court—including but not limited to the Intermediate People’s Court of Wuhan Municipality, Hubei Province, China—which would prohibit, deter, impose monetary fines on, or otherwise limit in any way Ericsson Inc.’s, and all of its corporate parents, subsidiaries, and affiliates, ability to fully and completely prosecute this action, request and enforce relief, or which would impair this Court’s ability to adjudicate any and all matters in this lawsuit;
- B. Make any request, claim, application, or motion further pursuing or enforcing an injunction from a foreign court—including but not limited to the Intermediate People’s Court of Wuhan Municipality, Hubei Province, China—which would prohibit or otherwise limit in any way Ericsson Inc.’s, and all of its corporate parents, subsidiaries, and affiliates, ability to file suits or administrative actions to enforce or defend its United States patent rights.

IT IS FURTHER ORDERED THAT Samsung Electronics Co., Ltd., Samsung Electronics America, Inc. and Samsung Research America shall (1) jointly and severally indemnify, within five business days, Ericsson Inc.’s, and all of its corporate parents, subsidiaries, and affiliates, for any fines imposed by the Intermediate People’s Court of Wuhan Municipality, Hubei Province, China related to the Wuhan court’s order of December 25, 2020, or any other orders that in any way contravene the prohibitions on Samsung contained in this Order; (2) send

to Ericsson, within 24 hours of this Order, by email a copy of all filings made or received in the Wuhan Action; and (3) promptly send to Ericsson, by email, a copy of all future filings made or received in the Wuhan Action.

This Order is issued without notice because Defendants are yet to appear in this case and because the emergency relief Ericsson requests is highly time sensitive. Accordingly, Ericsson, or its authorized agents, are **ORDERED** to promptly provide actual notice, by emailing a copy of this Order and all papers upon which this Order is based to two Samsung Intellectual Property Licensing employees who have directly interfaced with Ericsson's license negotiators regarding the Wuhan Action.

IT IS FURTHER ORDERED THAT Defendants shall respond to Ericsson's request for a preliminary injunction enjoining Defendants, pending the final hearing and determination of this action, from such activities as is described in the paragraphs above and as Defendants have been temporarily enjoined from. The Court establishes the following briefing schedule for consideration of Ericsson's preliminary injunction request:

1. The Court will consider Ericsson's motion for temporary restraining order as also constituting its motion for preliminary injunction.
2. Defendants shall have until **5:00 p.m. CT on January 1st, 2021** to file with this Court and serve on Ericsson's counsel any Opposition to the Continuation of the Temporary Restraining Order or Conversion to Preliminary Injunction. Defendants Opposition will be limited to **15 pages**, exclusive of evidence.
3. Ericsson will have until **5:00 p.m. CT on January 5th, 2021** to serve a Reply. Ericsson's Reply will be limited to **15 pages**, exclusive of evidence.

IT IS FURTHER ORDERED THAT a preliminary injunction hearing is set for **9:00 a.m. CT on January 7th, 2021** in Courtroom 106 of the Sam B. Hall, Jr. United States Courthouse in Marshall, Texas.

Because Samsung is unlikely to suffer harm by continuing to be subject to the jurisdiction of this Court and by maintaining the status quo, the Court finds that the proper amount of security under Rule 65(c) is **Zero United States Dollars (\$0.00)**.


This Order shall expire on its own terms on **January 11, 2021**, unless further extended by Order of this Court.

For good cause shown and upon written application to the Court, this Order may be extended for a longer period determined by the Court.

So Ordered this

Dec 28, 2020

at 10:00 a.m. CT



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF COMPLIANCE WITH
TYPE-VOLUME LIMITATION**

This brief complies with the type-volume limitations of Fed. Cir. Rule 32 and Fed. R. App. P. 32. According to the word processing system used to prepare it, the brief contains 13,992 words.

/s/ John C. O'Quinn