

Lovsin, James

From: Becker, Jeff <Jeff.Becker@BakerBotts.com>
Sent: Friday, April 29, 2022 6:23 PM
To: Andres Healy
Cc: Tamar Lusztig; Adam Tisdall; Joanna Stanley; Michelle Wimmer; andrea@wsfirm.com; Claire A. Henry; DL BB KPN v Ericsson; Russell Rennie; Ericsson-KPN; Ted Stevenson
Subject: RE: KPN v. Ericsson - Correspondence regarding case streamlining

EXTERNAL Email

Andres, I'm sure you are aware that Rule 41(a) does not permit dismissal of a claim without consent or leave of the court after Ericsson filed its Answer. KPN initiated the suit on the '426 Patent and Ericsson responded with a declaratory judgment counterclaim of noninfringement. Ericsson has expended considerable resources establishing that it does not infringe this patent, including providing fact discovery and by securing a claim construction over KPN's opposition that confirms no infringement in this case. The logical, reasonable, next step in this case is for KPN to stipulate to noninfringement based on the claim construction and agree to a dismissal of its claims on the 426 Patent with prejudice, reserving its right to appeal the claim construction. Because KPN has refused that course, Ericsson is left with no option but to seek to strike the new theories in KPN's expert report, to continue preparing what should have been unnecessary expert reports on that patent, and ultimately to seek summary judgment of noninfringement. As we noted before, we believe KPN's conduct with respect to this patent (along with the others I have explained in detail in my prior letters) makes this case stand out from others and is a basis for seeking fees. To the extent your position is that withdrawing an infringement claim under a patent without prejudice somehow ends the controversy on which our corresponding noninfringement counterclaim is based, the Federal Circuit squarely rejected that position in *Grit Energy Sols., LLC v. Oren Techs., LLC*, 957 F.3d 1309, 1320 (Fed. Cir. 2020).

With respect to the '669 Patent, in light of the lack of U.S. sales of any of the accused products, Ericsson consents to KPN dismissing all claims regarding the '669 Patent without prejudice and Ericsson will dismiss its counterclaim regarding the '669 Patent without prejudice while leaving the IPR intact.

Regards, Jeff

From: Andres Healy <AHealy@susmangodfrey.com>
Sent: Friday, April 29, 2022 11:19 AM
To: Becker, Jeff <Jeff.Becker@BakerBotts.com>
Cc: Tamar Lusztig <TLusztig@susmangodfrey.com>; Adam Tisdall <ATisdall@susmangodfrey.com>; Joanna Stanley <jstanley@SusmanGodfrey.com>; Michelle Wimmer <MWimmer@susmangodfrey.com>; andrea@wsfirm.com; Claire A. Henry <claire@wsfirm.com>; DL BB KPN v Ericsson <DLBBKPNvEricsson@BakerBotts.com>; Russell Rennie <RRennie@susmangodfrey.com>; Ericsson-KPN <Ericsson-KPN@McKoolSmith.com>; Andres Healy <AHealy@susmangodfrey.com>; Ted Stevenson <tstevenson@mckoolsmith.com>
Subject: RE: KPN v. Ericsson - Correspondence regarding case streamlining

[EXTERNAL EMAIL]

Jeff,

KPN is not willing to dismiss its 426 claims with prejudice. Given the Court’s encouragement that “parties . . . narrow their case for trial,” if Ericsson is unwilling to agree to the mutual dismissal without prejudice that we proposed, then please treat this email as notice that KPN no longer is pursuing its 426 claims. *SanDisk Corp. v. Kingston Tech. Co.*, 695 F.3d 1348, 1353 (Fed. Cir. 2012) (holding that notification by plaintiff that it was no longer pursuing certain claims “akin to either a Federal Rule of Civil Procedure 15 amendment to the complaint . . . or a Rule 41(a) voluntary dismissal of claims without prejudice”). Please also let us know today if, despite our withdrawal, Ericsson intends to pursue its 426 counterclaims. If so, we intend to move to dismiss them – noting that Ericsson’s continued pursuit of such claims is inconsistent with its own position that KPN should “further narrow[]” its affirmative case to avoid “unnecessary expenses.” Obviously, any expenses incurred related to the 426 would be attributable solely to Ericsson.

As to the 669, we continue to await your position. Please provide it today.

Best,

Andres C. Healy | Susman Godfrey LLP
206.505.3843 | ahealy@susmangodfrey.com
1201 Third Ave | Suite 3800 | Seattle, Washington 98101
HOUSTON • LOS ANGELES • SEATTLE • NEW YORK

This message may be protected by the attorney client privilege or the work product doctrine.

From: Becker, Jeff <Jeff.Becker@BakerBotts.com>
Sent: Thursday, April 28, 2022 1:22 PM
To: Andres Healy <AHealy@susmangodfrey.com>; Russell Rennie <RRennie@susmangodfrey.com>
Cc: Tamar Lusztig <TLusztig@susmangodfrey.com>; Adam Tisdall <ATisdall@susmangodfrey.com>; Joanna Stanley <jstanley@SusmanGodfrey.com>; Michelle Wimmer <MWimmer@susmangodfrey.com>; andrea@wsfirm.com; Claire A. Henry <claire@wsfirm.com>; DL BB KPN v Ericsson <DLBBKPNvEricsson@BakerBotts.com>; Ericsson-KPN <Ericsson-KPN@McKoolSmith.com>; Ted Stevenson <tstevenson@mckoolsmith.com>
Subject: RE: KPN v. Ericsson - Correspondence regarding case streamlining

EXTERNAL Email

Andres,

We are considering your proposal to consent to dismissal of the '669 Patent without prejudice while leaving the IPR intact. We do not agree to dismissing the '426 Patent without prejudice. We would, however, agree to dismissing the '426 Patent with prejudice and to a commensurate dismissal of our IPRs on that patent. Otherwise, we will be filing our motion to strike KPN’s new theories on the '426 Patent.

Regards, Jeff

From: Andres Healy <AHealy@susmangodfrey.com>
Sent: Thursday, April 28, 2022 9:24 AM
To: Russell Rennie <RRennie@susmangodfrey.com>; Becker, Jeff <Jeff.Becker@BakerBotts.com>
Cc: Tamar Lusztig <TLusztig@susmangodfrey.com>; Adam Tisdall <ATisdall@susmangodfrey.com>; Joanna Stanley <jstanley@SusmanGodfrey.com>; Michelle Wimmer <MWimmer@susmangodfrey.com>; andrea@wsfirm.com; Claire A. Henry <claire@wsfirm.com>; DL BB KPN v Ericsson <DLBBKPNvEricsson@BakerBotts.com>; Andres Healy

<AHealy@susmangodfrey.com>; Ericsson-KPN <Ericsson-KPN@McKoolSmith.com>; Ted Stevenson <tstevenson@mckoolsmith.com>

Subject: RE: KPN v. Ericsson - Correspondence regarding case streamlining

[EXTERNAL EMAIL]

Jeff,

Following up on our call last night, KPN is willing to agree to mutual dismissals without prejudice of the 669 and 426 district court claims/counterclaims – leaving the IPRs as-is. Let us know if that works for Ericsson.

Andres C. Healy | Susman Godfrey LLP

206.505.3843 | ahealy@susmangodfrey.com

1201 Third Ave | Suite 3800 | Seattle, Washington 98101

HOUSTON • LOS ANGELES • SEATTLE • NEW YORK

This message may be protected by the attorney client privilege or the work product doctrine.

From: Russell Rennie <RRennie@susmangodfrey.com>

Sent: Wednesday, April 27, 2022 6:25 PM

To: Becker, Jeff <Jeff.Becker@BakerBotts.com>; Andres Healy <AHealy@susmangodfrey.com>

Cc: Tamar Lusztig <TLusztig@susmangodfrey.com>; Adam Tisdall <ATisdall@susmangodfrey.com>; Joanna Stanley <jstanley@SusmanGodfrey.com>; Michelle Wimmer <MWimmer@susmangodfrey.com>; andrea@wsfirm.com; Claire A. Henry <claire@wsfirm.com>; DL BB KPN v Ericsson <DLBBKPNvEricsson@BakerBotts.com>; Ericsson-KPN <Ericsson-KPN@McKoolSmith.com>; Ted Stevenson <tstevenson@mckoolsmith.com>

Subject: RE: KPN v. Ericsson - Correspondence regarding case streamlining

Jeff,

Please see the attached letter on behalf of Andres.

Best,
Russell

From: Becker, Jeff <Jeff.Becker@BakerBotts.com>

Sent: Friday, April 15, 2022 4:29 PM

To: Andres Healy <AHealy@susmangodfrey.com>

Cc: Tamar Lusztig <TLusztig@susmangodfrey.com>; Adam Tisdall <ATisdall@susmangodfrey.com>; Joanna Stanley <jstanley@SusmanGodfrey.com>; Michelle Wimmer <MWimmer@susmangodfrey.com>; andrea@wsfirm.com; Claire A. Henry <claire@wsfirm.com>; DL BB KPN v Ericsson <DLBBKPNvEricsson@BakerBotts.com>; Ericsson-KPN <Ericsson-KPN@McKoolSmith.com>; Russell Rennie <RRennie@susmangodfrey.com>; Ted Stevenson <tstevenson@mckoolsmith.com>

Subject: RE: KPN v. Ericsson - Correspondence regarding case streamlining

EXTERNAL Email

Andres,

Further to the issues raised in my March 26 letter, please see the attached correspondence.

Regards,
Jeffery S. Becker
Partner

Baker Botts L.L.P.
jeff.becker@bakerbotts.com
T +1.214.953.6526
F +1.214.661.4526
M +1.214.926.6798

2001 Ross Avenue, Suite 900
Dallas, Texas 75201
USA



From: Andres Healy <AHealy@susmangodfrey.com>
Sent: Wednesday, April 13, 2022 5:15 PM
To: Becker, Jeff <Jeff.Becker@BakerBotts.com>
Cc: Tamar Lusztig <TLusztig@susmangodfrey.com>; Adam Tisdall <ATisdall@susmangodfrey.com>; Joanna Stanley <jstanley@SusmanGodfrey.com>; Michelle Wimmer <MWimmer@susmangodfrey.com>; andrea@wsfirm.com; Claire A. Henry <claire@wsfirm.com>; DL BB KPN v Ericsson <DLBBKPNvEricsson@BakerBotts.com>; Andres Healy <AHealy@susmangodfrey.com>; Ericsson-KPN <Ericsson-KPN@McKoolSmith.com>; Russell Rennie <RRennie@susmangodfrey.com>; Ted Stevenson <tstevenson@mckoolsmith.com>
Subject: RE: KPN v. Ericsson - Correspondence regarding case streamlining

[EXTERNAL EMAIL]

Jeff,

Apologies for the delay in getting back to you, but I was in trial last week. For reasons previously discussed, we disagree with your assertions in your letter. If you feel a call would be productive, please let us know.

Andres C. Healy | Susman Godfrey LLP
206.505.3843 | ahealy@susmangodfrey.com
1201 Third Ave | Suite 3800 | Seattle, Washington 98101
HOUSTON • LOS ANGELES • SEATTLE • NEW YORK

This message may be protected by the attorney client privilege or the work product doctrine.

From: Becker, Jeff <Jeff.Becker@BakerBotts.com>
Sent: Saturday, March 26, 2022 2:51 PM
To: Russell Rennie <RRennie@susmangodfrey.com>; Andres Healy <AHealy@susmangodfrey.com>
Cc: Tamar Lusztig <TLusztig@susmangodfrey.com>; Adam Tisdall <ATisdall@susmangodfrey.com>; Joanna Stanley

<jstanley@SusmanGodfrey.com>; Michelle Wimmer <MWimmer@susmangodfrey.com>; andrea@wsfirm.com; Claire A. Henry <claire@wsfirm.com>; DL BB KPN v Ericsson <DLBBKPNvEricsson@BakerBotts.com>; Ericsson-KPN <Ericsson-KPN@McKoolSmith.com>; Ted Stevenson <tstevenson@mckoolsmith.com>

Subject: RE: KPN v. Ericsson - Correspondence regarding case streamlining

EXTERNAL Email

Counsel,

Please see the attached correspondence.

Regards,

Jeffery S. Becker

Partner

Baker Botts L.L.P.

jeff.becker@bakerbotts.com

T +1.214.953.6526

F +1.214.661.4526

M +1.214.926.6798

2001 Ross Avenue, Suite 900

Dallas, Texas 75201

USA



Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.