

United States District Court
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

**PANTECH CORPORATION and
PANTECH WIRELESS, LLC**

v.

**ONEPLUS TECHNOLOGY (SHENZHEN)
CO., LTD.**

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Case No. 5:24-cv-00038-RWS-JBB

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

This case is referred to the undersigned United States Magistrate Judge for pretrial purposes in accordance with 28 U.S.C. § 636. Before the Court is OnePlus Technology (Shenzhen) Co., Ltd.’s Motion to Dismiss Pursuant to Rule 12(b)(6) (Dkt. No. 23). OnePlus moves the Court to dismiss Pantech’s claims asserting direct and willful infringement of eight patents (found in Counts I-VIII), breach of FRAND (Count IX), and unjust enrichment (Count X). The Court, having carefully considered the relevant briefing, recommends the motion be **DENIED**.

I. BACKGROUND

This is the second lawsuit filed by Pantech against OnePlus with respect to Pantech’s portfolio of patents. *See Pantech Corp. et al. v. OnePlus Technology (Shenzhen) Co., Ltd.*, Case No. 5:22-cv-00069-RWS (E.D. Tex.) (“*Pantech I*”). Here, Pantech Corporation and Pantech Wireless (together, “Pantech”) allege OnePlus Technology (Shenzhen) Co., Ltd. (“OnePlus”) directly and indirectly infringes eight patents owned by Pantech. The accused products include OnePlus’s LTE and 5G mobile phone products including, but not limited to, the One Plus Open. The patents-in-suit are all asserted by Pantech to be standard-essential patents: U.S. Patent Nos. 9,288,824 (“824 Patent”); 11,212,838 (“838 Patent”); 9,763,283 (“283 Patent”); 10,863,573

(“573 Patent”); 9,369,251 (“251 Patent”); 9,769,776 (“776 Patent”); 8,995,372 (“372 Patent”); and 10,764,803 (“803 Patent”) (Counts I-VIII). Pantech also raises claims for “Breach of FRAND” (Count IX, ¶¶ 160–64) and “Unjust Enrichment” (Count X, ¶¶ 165–67) based on the parties’ negotiations concerning a license for Pantech’s global patent portfolio. Under Federal Rule of Civil Procedure 12(b)(6), OnePlus moves to dismiss Pantech’s claims for direct infringement and “willful” infringement under Counts I–VIII, and the entirety of its “Breach of FRAND” and “Unjust Enrichment” claims (Counts IX and X). Dkt. No. 23 at 1.

II. LEGAL STANDARDS

A party may move to dismiss an action for a “failure to state a claim upon which relief can be granted.” FED. R. CIV. P. 12(b)(6). To survive dismissal at the pleading stage, a complaint must state enough facts such that the claim to relief is plausible on its face. *Arigna Tech. Ltd. v. Bayerische Motoren Werke AG*, 697 F. Supp. 3d 635, 641 (E.D. Tex. 2023) (citations omitted). A complaint states a sufficient claim if it gives the defendant “fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (ellipsis in original) (citation omitted). When considering a Rule 12 motion to dismiss, a court assumes “all well-pleaded facts as true and view[s] those facts in the light most favorable to the plaintiff.” *Bowlby v. City of Aberdeen, Miss.*, 681 F.3d 215, 219 (5th Cir. 2012) (citation omitted).

III. PANTECH’S DIRECT AND WILLFULL INFRINGEMENT CLAIMS (FOUND IN COUNTS 1-VIII)

A. Background

Pantech alleges OnePlus “has and continues to directly infringe [claims of each asserted patent] by making, using, selling, importing, offering to sell within the United States, importing into the United States, and providing to and within the United States, Accused Instrumentalities.” Dkt. No. 1 (“Compl.”), ¶¶ 52, 66, 80, 94, 108, 122, 136, 150. The complaint alleges that OnePlus

“conducts its business extensively throughout Texas and derives substantial revenue in Texas, by shipping, distributing, offering for sale, selling, and advertising (including through an interactive web page) its products and/or services in the State of Texas and the Eastern District of Texas.” *Id.*, ¶¶ 7. Pantech further asserts OnePlus’s infringement has been, and continues to be, willful. *Id.*, ¶¶ 55, 69, 83, 97, 11, 125, 139, 153. According to Pantech, Accused Instrumentalities incorporate at least one processor or modem, “e.g., SnapDragon 8 Gen 2 Mobile Platform,” which implement LTE or 5G cellular standards that Pantech claims infringe the eight asserted patents. *See id.*, ¶¶ 81, 95; *see also* ¶¶ 59, 73, 87, 101, 115, 129, 143, 157.

OnePlus moves to dismiss Pantech’s direct infringement and willful infringement claims.

B. Pantech’s Direct Infringement Claims

OnePlus argues any claims of direct infringement in Counts I-VIII (¶¶ 52, 66, 80, 94, 108, 122, 136, 150) should be dismissed based on OnePlus’s understanding of the “record” in *Pantech I*. According to OnePlus, the parties agreed to facts in *Pantech I* regarding the conduct of third parties in the supply chain of accused products brought into United States, and Pantech did not pursue its direct infringement claims against OnePlus at trial; Pantech instead presented only an indirect infringement theory. Dkt. No. 23 at 2 (citing *Pantech I*, Dkt. 232-1 (Redacted Amended Joint Pretrial Order) at p. 4 (“Pantech contends that OnePlus induces the infringement, literally or under the doctrine of equivalents, of one or more claims of [the patents-in-suit]”), p. 6 at ¶ 6 – p. 7 at ¶ 10). OnePlus asserts those stipulated facts regarding OnePlus’s supply chain should result in dismissal of Pantech’s claims for direct infringement of the Asserted Patents by OnePlus in this case. *Id.* at 3 (citing *Atlas Glob. Techs., L.L.C. v. OnePlus Tech. (Shenzhen) Co.*, 661 F. Supp. 3d 643, 650 (W.D. Tex. 2023) (“[T]he Court agrees with OnePlus that Atlas has not sufficiently plead that OnePlus [Technology (Shenzhen) Co., Ltd.] makes, sells, offers to sell, or imports the accused

devices in the United States.”)). However, to the extent Pantech has a good faith basis to pursue claims of direct infringement by OnePlus in this case, OnePlus states it will withdraw this portion of its motion. *Id.*

In response, Pantech explains it made the “strategic decision” in *Pantech I* to forego any theory of direct infringement before the jury, relying instead on indirect infringement. Dkt. No. 29 at 2. According to Pantech, that decision “does not bind its hands in this case: even with the agreed facts in *Pantech v. OnePlus I* (which in any event are currently improper to consider), direct infringement may still be proven in this case, such as on the basis of the use or offer for sale of the accused products in the United States (*see* 35 U.S.C. § 271(a)), the location of sale or offer for sale for purposes of 35 U.S.C. § 271 legally being construed to occur in the United States, or on the basis of alter-ego liability.” *Id.* (internal footnote omitted). Pantech’s argument is persuasive.

As an initial matter, OnePlus does not identify any specific stipulations, and Pantech asserts there are none, that prevent Pantech from asserting direct infringement here. Even though Pantech declined to pursue direct infringement at trial in *Pantech I*, OnePlus has not shown that Pantech stipulated that OnePlus does not directly infringe or that Pantech would not pursue claims for direct infringement of other patents in the future. OnePlus simply has not shown, based on stipulations in *Pantech I*, that Pantech cannot now pursue direct infringement, or cannot allege sufficient facts supporting direct infringement, in this case.

To state a claim for direct infringement, a plaintiff need only allege facts giving rise to a plausible inference and fair notice of infringement by identifying the accused products and alleging that the accused products meet each and every element of at least one claim of each asserted patent. *Sino Star Glob. Ltd. v. Shenzhen Haoqing Tech. Co.*, No. 4:22-CV-980, 2025 WL 1668216, at *3 (E.D. Tex. June 12, 2025). To survive this Rule 12(b)(6) motion to dismiss, Pantech needs only

place OnePlus on notice of what activity is being accused of infringement, not prove its case. *Lifetime Indus., Inc. v. Trim-Lok, Inc.*, 869 F.3d 1372, 1379 (Fed. Cir. 2017). Pantech’s complaint meets that requirement.

The complaint pleads sufficient facts showing that OnePlus’s sale and offers to sell the Accused Products constitute direct infringement. For example, the complaint alleges that OnePlus “has and continues to directly infringe [claims of each asserted patent] by making, using, selling, importing, offering to sell within the United States, importing into the United States, and providing to and within the United States, Accused Instrumentalities.” Compl., ¶¶ 52, 66, 80, 94, 108, 122, 136, 150. Pantech further alleges OnePlus “advertises its products [] for purchase on its webpage, accessible from the United States, including Texas” (thereby offering the products for sale). *Id.*, ¶ 7.

In reply, OnePlus argues “OnePlus USA Corp., a Nevada corporation” fulfills orders from the OnePlus website. Dkt. No. 30 at 2 (stating Pantech chose not to name OnePlus USA as a defendant, “presumably to anchor venue here, and it must live with that choice”). However, the complaint alleges the website names OnePlus as the party that controls the website; thus, at the pleading stage, Pantech has alleged OnePlus is offering the Accused Products for sale. OnePlus’s argument to the contrary is directed toward a factual dispute with the complaint.

Additionally, Pantech alleges OnePlus has at least sold the Accused Products with the “intention and expectation that they will be purchased and used by consumers in the Eastern District of Texas.” Compl., ¶ 7; *see also Litecubes, L.L.C. v. N. Light Prods.*, 523 F.3d 1353, 1370 (Fed. Cir. 2008) (“in some cases the criterion for determining the location of a ‘sale’ under section 271(a) is not necessarily where legal title passes; the ‘more familiar places of contracting and performance’ may take precedence over the passage of legal title.”). In reply, OnePlus suggests

that “knowledge of the OnePlus distribution chain gained from *Pantech I*” should defeat this theory. Dkt. No. 30 at 2. However, that argument is directed toward another factual dispute, which cannot be resolved at this stage. *See Liberty Access Techs. Licensing L.L.C. v. ASSA ABLOY AB*, No. 2:22-CV-00507-JRG, Dkt. No. 61 at 17-18 (E.D. Tex. Aug. 25, 2023) (holding similar in the context of a 12(b)(6) dispute).

Accepting the complaint’s well-pled allegations as true, Pantech has pleaded enough facts to state a claim for direct infringement under 35 U.S.C. § 271(a). The complaint provides OnePlus with proper and fair notice of the accused infringing activity and the factual basis for Pantech’s allegations at the pleadings stage, and OnePlus’s claims to the contrary should be rejected. The undersigned recommends OnePlus’s Rule 12(b)(6) motion be denied as to Pantech’s direct infringement claims.

C. Pantech’s “Willful” Infringement Claims

OnePlus asserts Pantech’s claims of “willful” infringement should be dismissed. According to OnePlus, based on the facts pleaded by Pantech, OnePlus cannot be found to “willfully” infringe the asserted patents as a matter of law. Dkt. No. 23 at 3. Viewing the allegations as true and the factual conflicts in Pantech’s favor, Pantech’s willfulness allegations are sufficient to withstand OnePlus’s motion to dismiss.

Both induced infringement and willful infringement require that the alleged infringer have knowledge (or willful blindness) of the asserted patents. *Atlas Global*, 661 F. Supp. 3d at 651 (citation omitted). To state a claim for willful infringement, a plaintiff must allege facts plausibly showing that the accused infringer: “(1) knew of the patent-in-suit; (2) after acquiring that knowledge, it infringed the patent; and (3) in doing so, it knew, or should have known, that its conduct amounted to infringement of the patent.” *BillJCo, L.L.C. v. Apple Inc.*, 583 F. Supp. 3d

769, 775 (W.D. Tex. 2022) (citation omitted); *see also Sino Star*, 2025 WL 1668216, at *4. “[A]n allegation that a defendant continues its allegedly infringing conduct even after receiving notice of a complaint is sufficient to at least state a claim for willful infringement.” *Adaptive Spectrum & Signal Alignment, Inc. v. Charter Commc’ns, Inc.*, No. 2:24-CV-00124-JRG-RSP, 2025 WL 1341892, at *13 (E.D. Tex. Mar. 31, 2025), *report and recommendation adopted*, 2025 WL 1539838 (E.D. Tex. May 29, 2025) (citation omitted). Further, provided the above is met, “a plaintiff need not plead facts demonstrating egregious conduct to establish a claim for willful infringement at the 12(b)(6) stage.” *Id.* (citation omitted).

Pantech has sufficiently pleaded willful infringement. Among other things, Pantech alleges OnePlus “was made aware” of the Asserted Patents “and its infringement thereof” based on “correspondence sent to OnePlus by Pantech Corp.” Compl., ¶¶ 54–55, 68–69, 82–83, 96–97, 110–111, 138–139, 152–153. The complaint sets forth numerous allegations regarding the negotiations between the parties, starting with a June 12, 2020 letter from Pantech Corp. offering to license patents including those that are essential to cellular standards including LTE and LTE-Advanced. Compl., ¶ 41. Thereafter, Pantech Corp. engaged in additional communication with OnePlus through emails, letters, and meetings regarding licensing patents owned by Pantech Corp, including those that are essential to cellular standards including LTE and 5G. *Id.*, ¶ 42

Relying on *BillJCo*, 583 F. Supp. 3d at 777, OnePlus argues these allegations are “conclusory” and thus insufficient to show knowledge. Dkt. No. 23 at 5. However, *BillJCo* is distinguishable. There, the plaintiff alleged that “BillJCo sent Apple a letter on June 5, 2019 regarding the Patents-in-Suit” and argued that the court had found, in other cases, “that the question of whether a notice letter was sufficient to put a defendant on notice of infringement is a ‘proof’ issue that cannot be resolved at the pleading stage.” 583 F. Supp. 3d at 776-77. Noting the court

had reviewed the relevant notice letters in the other cases but had not been provided the letter in *BillJCo*, the court held “the totality of BillJCo’s pleadings on the issue [were] reed-thin, amounting only to allegations that the USPTO and BillJCo notified Apple of at least some of the Asserted Patents.” *Id.* at 777. Further noting that knowledge of a patent and knowledge of infringement are “distinct elements,” the court explained the complaint did not allege that “BillJCo’s June 2019 Letter notified Apple that it infringed the Asserted Patents or identified Apple products accused of infringement.” *Id.* (citing *Bench Walk Lighting L.L.C. v. LG Innotek Co.*, 530 F. Supp. 3d 468, 492 (D. Del. 2021) (finding insufficient a letter that did not identify most of the accused products or how the defendant allegedly infringed), *report and recommendation adopted*, 530 F. Supp. 3d 468, 477 (D. Del. 2021); also citing *Teradyne, Inc. v. Astronics Test Systems, Inc.*, No. CV 20-2713-GW-SHKx, 2020 WL 8173024, *3–*5 (C.D. Cal. 2020) (finding insufficient a letter that did not identify any specific product that plaintiff contended infringed the asserted patent)). Without more information about the June 2019 Letter, the court could not find that BillJCo sufficiently pleaded pre-suit willful infringement. *Id.*

Unlike in *BillJCo*, Pantech’s complaint adequately alleges that OnePlus had knowledge of infringement prior to the filing of the complaint. Not only does the complaint detail negotiations between the parties, including notice to OnePlus of its infringement, but it also details Pantech’s identification of certain patents and products, numerous meetings between the parties, and OnePlus’s alleged refusal to take a patent license. Compl., ¶¶ 41-47. What is more, Pantech alleges that “[d]espite the allegations raised in [*Pantech I* filed on June 3, 2022] and the contentions made therein, including by expert witnesses testifying to infringement and damages, OnePlus has refused to accept a license on FRAND terms or even offer a reasonable counteroffer. . . .” *Id.*, ¶ 46; *see*

also id., ¶ 47 (“Defendant has been operating and continues to operate without a license to Plaintiffs’ standards-essential and other patents.”).

Further, OnePlus’s motion does not address that willful patent infringement may occur after a complaint is filed, and that pleading ongoing infringing conduct states a claim for willful patent infringement. *See, e.g., Adaptive Spectrum*, 2025 WL 1341892, at *13 (“Plaintiff’s First Amended Complaint alleges that Defendant, at a minimum, received knowledge of the asserted patent through filing of the complaint.”); *see also Atlas Global*, 661 F. Supp. 3d at 654 (“Serving a complaint will, in most circumstances, notify the defendant of the asserted patent and the accused conduct. So long as the complaint also adequately alleges that the defendant is continuing its purportedly infringing conduct, it will sufficiently plead a post-filing/post-suit willful infringement claim.”). Instead, OnePlus focuses its argument on the fact that the “chips” in its products, which are referred to in the complaint as “SnapDragon 8 Gen 2 Mobile Platform,” are supplied by Qualcomm. OnePlus argues the “knowledge” allegation is not met “through a base allegation that Qualcomm’s chips meet a cellular standard.” Dkt. No. 23 at 5. As described above, Pantech’s complaint contains, in addition to the allegations regarding Qualcomm’s chips, sufficient non-conclusory allegations regarding pre-suit and post-suit willful infringement.

According to OnePlus, Pantech’s “theory of infringement”—that chips supplied by Qualcomm implement “cellular standards” that Pantech allegedly claimed in the asserted patents—“would apply to *all* unlicensed downstream parties that sell products incorporating Qualcomm’s allegedly infringing chips, including phone makers such as OnePlus and retailers such as Walmart.” Dkt. No. 23 at 3 (emphasis original). OnePlus argues “Pantech ought not be permitted to charge downstream sellers of Qualcomm chips with ‘willful’ infringement when it failed to plead that the source of alleged infringement itself acted willfully.” *Id.* at 4. In its reply, OnePlus

argues it cannot willfully infringe the asserted patents where there is no allegation that OnePlus itself intentionally or deliberately designed the chips to infringe, or required Qualcomm to do so. Dkt. No. 30 at 3.

However, courts have allowed willful infringement claims directed to the implementation of wireless standards to proceed past the pleading stage in cases involving manufacturers that do not manufacture wireless chipsets. *See, e.g., Cellular Communs. Equip. L.L.C. v. HTC Corp.*, No. 6:13-cv-507, Dkt. No. 373 at 2, 11-12 (E.D. Tex. March 27, 2015) (maintaining a willfulness claim at the pleading stage for patents relating to the “UMTS, GSM, and LTE wireless standards”); *Atlas Global*, 661 F. Supp. 3d at 646, 654 (for patents covering “Wi-Fi-6,” the court found Atlas sufficient alleged post-suit willful infringement claims and allowed Atlas to amend its complaint after the start of discovery to include pre-suit willful infringement claims if it was able to elicit sufficient facts to support such allegations); *Core Wireless Licensing S.a.r.l. v. LG Elecs., Inc.*, No. 2:14-CV-00911-JRG, 2018 WL 7199139, at *6 (E.D. Tex. Sept. 27, 2018) (“LG next argues that its actions were justified because neither Qualcomm nor the other implementers of the standards had taken a license. This argument relies on the same logic reflected in a young child’s typical protestation raised in the form of ‘But Mama, Johnny didn’t do it either.’ The Court finds that other implementers wrongful acts do not excuse LG’s behavior, and are not a reason to overturn a proper verdict in this regard.”). Additionally, the precedent of *Pantech I* is instructive. *Pantech*’s willful infringement claims regarding standard essential patents were allowed to proceed to trial, and thereafter, the Court denied OnePlus’s post-trial motion for judgment as a matter of law of no willful infringement. *Pantech I*, Dkt. No. 363 (Aug. 20, 2024) at 22 (“*Pantech* shows that there is sufficient evidence on the record to support the jury’s verdict of willfulness for the ’654, ’954, ’839, and ’247 patents. OnePlus had knowledge of the infringement allegations for the

'839 and '247 standard essential patents pre-suit. . . . Similarly, a reasonable jury could have found post-suit willfulness for the '954 patent given OnePlus's continued use of the standard essential technology even after it learned it was being accused of infringement. Willfulness is an especially close call for the '654 patent but the jury heard no evidence that OnePlus did anything to avoid infringement of the '654 patent after it received notice of the complaint.”).

OnePlus asserts Qualcomm is the only party that can ascertain whether the Snapdragon chips meet the claims of the Asserted Patents. Dkt. No. 23 at 5. Thus, according to OnePlus, “there is nothing OnePlus could do to avoid infringement if it sells Qualcomm-based phones compatible within those standards.” *Id.* at 3. Pantech asserts in response that OnePlus could take a license to Pantech's patents, “as several of its competitors have done.” Dkt. No. 29 at 4. More to the point, Pantech persuasively asserts that “what OnePlus could or could not have done to avoid infringement is at most a factual question relevant to willful patent infringement, nor threshold issue that precludes a finding of willfulness.” *Id.* at n. 3.

Finally, OnePlus contends Pantech's failure to allege “OnePlus even has access to the information necessary to determine whether the Qualcomm chips infringe the asserted patents,” Dkt. No. 23 at 5, “militates against a finding that [OnePlus] **deliberately** copied [Pantech's] technology.” *Id.* (quoting *Saint Lawrence Commc 'ns L.L.C. v. Motorola Mobility L.L.C.*, No. 2:15-CV-351-JRG, 2017 WL 6268735, at *2 (E.D. Tex. Dec. 8, 2017) (emphasis added by OnePlus)). However, *Saint Lawrence* is easily distinguishable because it was decided in the context of post-trial issues following the jury's finding that Motorola's infringement was willful. *Id.* at *1. This case is not at the proof stage. Instead, it is at the pleading stage; therefore, the Court must only find that Plaintiff has sufficiently alleged a viable claim. *Parity Networks, L.L.C. v. Cisco Sys., Inc.*, No. 6:19-CV-00207-ADA, 2019 WL 3940952, at *3 (W.D. Tex. July 26, 2019). As noted above,

Pantech’s willfulness allegations are sufficient. *See Multimedia Techs. Pte. Ltd. v. LG Elecs. Inc.*, No. 2:22-CV-00494-JRG-RSP, 2024 WL 1340360, at *4 (E.D. Tex. Mar. 1, 2024), *report and recommendation adopted*, 2024 WL 1338080 (E.D. Tex. Mar. 28, 2024) (findings Multimedia’s willfulness allegations sufficient at 12(b)(6) stage).

In sum, Pantech has pled sufficient facts to plausibly show that, after acquiring knowledge, OnePlus infringed the patents and knew, or should have known, that its conduct amounted to infringement of the patents. That is all that is necessary to plead a claim of willful infringement sufficient to survive a Rule 12(b)(6) challenge; thus, the undersigned recommends OnePlus’s motion to dismiss Pantech’s claims of willful infringement be denied.

IV. PANTECH’S “BREACH OF FRAND” AND UNJUST ENRICHMENT CLAIMS (COUNTS IX AND X)

A. Background

Cellular networks and mobile devices implement standards that allow devices made by different manufacturers to connect with one another in a network environment. *G+ Commc’ns, L.L.C. v. Samsung Elecs. Co.* (“*G+ Commc’ns I*”), No. 2:22-CV-00078-JRG, 2023 WL 3167416, at *1 (E.D. Tex. Apr. 28, 2023) (citation omitted). These standards are promulgated by standards setting organizations (“SSO”) that include the European Telecommunications Standards Institute (“ETSI”). *Id.* A patent embodying technology that is “essential” to implement a standard is called a Standard Essential Patent (“SEP”). *Id.* (citing *ETSI Rules of Procedure*, Annex 6, Clause 15). A patent is “essential” if it is not technically possible to practice the standard without infringing the patent. *Id.* SSOs have intellectual property rights (“IPR”) policies that “define contractual terms for disclosure and licensing of patents that are essential for standard implementation.” *Id.* (citation omitted).

Clause 3.2 of ETSI’s Intellectual Property Right policy states that “IPR holders whether members of ETSI and their AFFILIATES or third parties, should be adequately and fairly rewarded for the use of their IPRs in the implementation of STANDARDS and TECHNICAL SPECIFICATIONS.” *Id.* (quoting ETSI Rules of Procedure, Annex 6, Clause 3.2); *see also* Compl., ¶ 161. In other words, owners of essential patents “should be ... rewarded” when another person, whether a signatory to ETSI or not, uses the patented technology in accordance with a standard. *Id.*

Because standards from the SSOs “often incorporate patented technology, all manufacturers who implement a standard must obtain a license to use those standard-essential patents.” *Atlas Glob. Techs. L.L.C. v. TP-Link Techs. Co., LTD.*, No. 2:21-CV-00430-JRG-RSP, 2023 WL 5284943, at *2 (E.D. Tex. July 28, 2023), *report and recommendation adopted*, 2023 WL 5279456 (E.D. Tex. Aug. 16, 2023) (citing *Microsoft Corp. v. Motorola, Inc.*, 795 F.3d 1024, 1030 (9th Cir. 2015)). While standards offer significant benefits to consumers and manufacturers, they also create risks that companies will engage in anti-competitive behavior. *Id.* (citing *HTC Corp. v. Telefonaktiebolaget LM Ericsson (“HTC IP”)*, 12 F.4th 476, 481 (5th Cir. 2021)). To alleviate that risk, standard essential patent holders are often required to commit to license their patents on fair, reasonable, and non-discriminatory (FRAND) terms. *Id.* Doing so often involves forming a contract with the standard setting organization in accordance with that organization’s policy.

ETSI’s IPR policy states that it shall be governed by the laws of France. *G+ Commc’ns I*, 2023 WL 3167416, at *2. Thus, French law governs ETSI IPR policy, and contract interpretation under French law must be decided by the court. *See Huawei Techs. Co. v. T-Mobile US, Inc.*, No. 2:16-CV-00052-JRG-RSP, 2017 WL 3954108, at *2 (E.D. Tex. Aug. 29, 2017), *report and*

recommendation adopted, 2017 WL 3927177 (E.D. Tex. Sept. 6, 2017); *HTC II*, 12 F.4th at 484–85; *see also Apple, Inc. v. Motorola Mobility, Inc.*, 886 F. Supp. 2d 1061, 1081 (W.D. Wis. 2012) (applying “French law to Apple’s claims involving ETSI” in a breach-of-FRAND case).

In its complaint, Pantech alleges ETSI, a standard-setting organization, sets forth a policy to balance intellectual property protections against the need for an open standard by designating certain intellectual property rights as “essential.” Compl., ¶¶ 38-39. According to Pantech, OnePlus is required to have a license to one or more essential patents owned by Pantech including the Asserted Patents that are identified as essential. *Id.*, ¶ 40. As noted above, the complaint sets forth the negotiations between the parties, starting with a June 12, 2020 letter from Pantech Corp. offering to license patents including those that are essential to cellular standards such as LTE and LTE-Advanced. *Id.*, ¶ 41. Since then, Pantech Corp. engaged in additional communication with OnePlus through emails, letters, and meetings regarding licensing patents owned by Pantech Corp, including those that are essential to cellular standards, including LTE and 5G. *Id.*, ¶ 42. During negotiations between the parties, Pantech provided OnePlus notice that Pantech Wireless had acquired the Signal Trust portfolio of patents, which included additional standard essential patents, and provided a list of acquired patents. *Id.*, ¶ 43. On July 9, 2021, Pantech made a licensing offer that included these patents. *Id.* (further alleging the offer reflected a “substantial discount, taking into account validity, non-infringement, and expiring patents”); *see also id.*, ¶ 45 (alleging Pantech “offered patents on FRAND terms”).¹

According to Pantech, OnePlus never substantively responded to such communications and offers and has not elected to license Pantech’s patents on fair and reasonable terms, but instead,

¹ OnePlus disputes this contention, stating it responded to Pantech’s offer indicating that it did not believe Pantech’s offer was FRAND. Dkt. No. 23 at 8, n. 3. Therefore, even assuming OnePlus was under an obligation to negotiate with Pantech, OnePlus asserts Pantech itself never made a good faith FRAND offer. *Id.*

“engaged in holdout behavior.” *Id.*, ¶¶ 44-45. On June 3, 2022, Pantech Corp. and Pantech Wireless sued OnePlus for patent infringement in *Pantech I. Id.*, ¶ 46. “Despite the allegations raised in that lawsuit and its contentions made therein, including by expert witnesses testifying to infringement and damages, OnePlus has refused to accept a license on FRAND terms or even offer a reasonable counteroffer.” *Id.*

Under “COUNT IX – BREACH OF FRAND,” Pantech quotes ETSI Rules of Procedure Annex 6 at Clause 3.2, which states:

IPR holders whether members of ETSI and their AFFILIATES or third parties, should be adequately and fairly rewarded for the use of their IPRs in the implementation of STANDARDS and TECHNICAL SPECIFICATIONS.

Id., ¶ 161. Pantech then alleges that “[a]n implementer of an adopted standard who fails to negotiate in good faith towards a patent license agreement and thereby prevents a license from being granted on FRAND terms is liable to the patent holder for damages, including but not limited to attorney’s fees and the cost of litigation.” *Id.*, ¶ 162.

According to Pantech, OnePlus, “as an affiliate of Guangdong OPPO Mobile Telecommunications Corp., Ltd. (‘OPPO’) which is a signatory to ETSI, and having invoked FRAND obligations in its communications with Pantech and in prior litigation,” has a contractual obligation “to negotiate in good faith towards a patent license agreement for these patents on FRAND terms, which it has not done.” *Id.*, ¶ 163. OnePlus “failed to negotiate in good faith and engaged in holdout behavior to extract unfair licensing terms.” *Id.* Pantech, in turn, “complied with ETSI’s intellectual property policy and has negotiated in good faith,” but “has been harmed by Defendant’s breach of its FRAND obligations, wherein the damages include but are not limited to the attorney’s fees and the cost of litigation it has thus far incurred and is incurring in its attempts to compel Defendant to enter into a license on FRAND terms.” *Id.*, ¶ 164.

In “COUNT X – UNJUST ENRICHMENT,” Pantech alleges that OnePlus, in negotiations with Pantech, failed to negotiate in good faith and engaged in holdout behavior to extract unfair licensing terms. *Id.*, ¶ 166. According to Pantech, OnePlus has been unjustly enriched, “as it has not paid licensing royalties to adequately and fairly reward Pantech for the innovations of their SEP portfolio,” and Pantech has been harmed by OnePlus’s failure to negotiate in good faith and holdout behavior. *Id.*, ¶ 167.

OnePlus moves to dismiss Pantech’s breach of FRAND claim, and alternative unjust enrichment claim, for failure to state a claim upon which relief can be granted.

B. Pantech’s “Breach of FRAND” Claim

OnePlus moves to dismiss Pantech’s “Breach of FRAND” claim. As explained below, none of OnePlus’s challenges – at the Rule 12(b)(6) stage – are meritorious.

OnePlus asserts Pantech’s legal theory and supported basis for recovery in Count IX are unclear, but to the extent Pantech’s claim is intended as a claim for breach of contract, it fails. Dkt. No. 23 at 6. According to OnePlus, Pantech does not identify any contract for which there has supposedly been any “breach.” *Id.* at 7 (stating the word “contract” is missing from the complaint altogether). Thus, the complaint fails to allege OnePlus is obligated to negotiate or enter into a license with Pantech.²

Even though the word “contract” is missing from the complaint, the complaint alleges a breach of FRAND claim. The complaint alleges the existence of a contractual obligation (¶ 163, alleging OnePlus’s FRAND obligation as created by its affiliate OPPO, a signatory to ETSI), OnePlus’s breach of that obligation (¶¶ 41-46 & 163, alleging OnePlus’s failure to substantively

² OnePlus also briefly argues that Pantech does not “identify *what law* ostensibly controls its ‘Breach of FRAND’ claim.” Dkt. No. 23 at 6, n. 2 (emphasis original). In response, Pantech cites authority holding ETSI commitments are governed by the law of France (Dkt. No. 29 at 9), and OnePlus does not raise the issue again.

respond and lack of negotiation in good faith), Pantech’s performance of its own obligations (¶¶ 41-45 & 164, alleging Pantech’s performance of its FRAND obligations by negotiating in good faith), and damage to Pantech (¶ 164, alleging damages including attorney’s fees and the cost of litigation).

At first glance, this appears sufficient. If this case involved a breach of FRAND claim against a prospective licensor of certain patents declared to ETSI as essential (as opposed to a prospective licensee), similar allegations would be sufficient to state a *prima facie* claim for FRAND violation.³ See *ASUS Tech. Licensing Inc. v. AT&T Corp.*, No. 2:23-CV-00486-JRG-RSP, 2025 WL 969235, at *4 (E.D. Tex. Mar. 17, 2025), *report and recommendation adopted*, 2025 WL 965757 (E.D. Tex. Mar. 31, 2025). OnePlus seems to concede as much. See Dkt. No. 23 at 8 (acknowledging that courts have recognized that prospective licensors of SEPs declared to ETSI are contractually obligated to offer licenses on FRAND terms).

However, this case involves an alleged breach of FRAND against a prospective licensee, and the parties dispute whether this district’s precedent allows such a claim. According to OnePlus, Clause 3.2 of the ETSI IPR policy does not impose any obligations on OnePlus (as Pantech contends), but at most expresses a “Policy Objective,” an objective that does not explain any obligation it supposedly creates, what parties would be bound by this obligation, or what conduct amounts to breach. Dkt. No. 23 at 7.

Both parties rely on opinions from this district for support. On the one hand, OnePlus relies on the decision in *Core Wireless Licensing S.a.r.l. v. Apple Inc.*, No. 6:12-cv-100-JRG, 2015 WL

³ “Companies seeking to license under these terms become third-party beneficiaries of the contract between the standard-essential patent holder and the standard setting organization. They are thus enabled to enforce the terms of that contract.” *Atlas Glob. Techs. L.L.C. v. TP-Link Techs. Co., LTD.*, No. 2:21-CV-00430-JRG-RSP, 2023 WL 5284943, at *2 (E.D. Tex. July 28, 2023), *report and recommendation adopted*, 2023 WL 5279456 (E.D. Tex. Aug. 16, 2023) (citation omitted).

4775973 (E.D. Tex. Aug. 11, 2015), which held, post-trial, the plaintiff had not presented a prima facie case of the existence of a contract. *See id.* at *2–4 (noting that where plaintiff’s argument that the prospective licensee defendant was obligated to “negotiate a FRAND royalty in good faith” was based on “clause 3.2 of ETSI’s IPR Policy,” and that plaintiff “did not point to any other contract . . . that would govern [the parties] respective licensing obligations,” plaintiff “had not presented a prima facie case of the existence of a contract”). On the other hand, Pantech argues its theory is substantially similar to that endorsed more recently by the same court in *G+ Commc’ns I*, 2023 WL 3167416.

In *G+ Commc’ns I*, the court held, at the pleadings stage, that the plaintiff sufficiently alleged the existence of a contract, noting G+ alleged that Samsung was a signatory to ETSI, that as a member of ETSI Samsung was required to conform to the ETSI IPR policy, and that Samsung had specifically agreed to follow the ETSI IPR policy. *Id.* at *4 (further noting the parties appeared to agree that a separate G+/ETSI contract existed and that Samsung was a third-party beneficiary of that contract). Samsung argued that even if there were a contract between Samsung and ETSI, G+ had not pled factual allegations sufficient to show that G+ would be a third-party beneficiary to the contract who was able to enforce it. *Id.* The court found G+ had sufficiently pled that it was an intended beneficiary of the Samsung/ETSI contract, referencing the allegation that Clause 3.2 of the ETSI IPR policy requires members to “reward” IPR holders irrespective of whether the IPR holder is a member or a third party and that G+ was a third-party IPR holder. *Id.* at *5 (stating this was sufficient at the pleading stage to put Samsung on notice that G+ was an alleged third-party beneficiary).

Similarly here, Pantech argues it is an alleged third-party beneficiary and specifically quotes Clause 3.2 of the ETSI IPR policy in its complaint. Compl., ¶ 161; *see also* Dkt. No. 29 at

7. Pantech further alleges OnePlus's affiliate OPPO is a signatory of ETSI. Compl., ¶ 163 (alleging that as an "implementer of wireless standards for which Pantech's patents are essential," and "as an affiliate" of OPPO which is a signatory to ETSI, "and having invoked FRAND obligations in its communications with Pantech and in prior litigation," OnePlus "is and has been obligated to negotiate in good faith towards a patent license agreement for these patents on FRAND terms, which it has not done"). Under this reasoning, OnePlus's motion to dismiss under Rule 12(b)(6) must be denied.

OnePlus attempts to distinguish *G+ Commc 'ns I* by arguing the court in that case relied on the sufficiency of G+'s allegations that a contract between Samsung and ETSI existed by virtue of Samsung's status as an ETSI member Dkt. No. 23 at 9. According to OnePlus, Pantech's complaint does not allege that OnePlus is a party to any contract with ETSI; rather, it merely alleges (without pleading facts in support) that OnePlus's affiliate OPPO is a "signatory" to ETSI.

However, a similar argument was rejected in another *Core Wireless* case. *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, No. 2:14-CV-911-JRG-RSP, 2015 WL 5786501 (E.D. Tex. Sept. 30, 2015). In that case, Core alleged that LG was liable for breaching contractual obligations arising out of the ETSI IPR policy, and LG moved to dismiss Core's breach of contract claim. *Id.* at *4. Among other things, LG argued Core's complaint was deficient because the LG Defendants in the litigation were not members of ETSI, and therefore not parties to the alleged contract. *Id.* at *5. According to LG, LG Electronics Mobilecomm France ("LGEMFR"), who was not a party to the litigation, was the ETSI member – not LG. *Id.* Similar to OnePlus here, LG argued that Core had failed to allege the existence of a valid contract between the named defendant and ETSI. *Id.*

That argument failed because Core's complaint alleged the LG Defendants were "affiliates" of LGEMFR, a term defined in the ETSI IPR policy. *Id.* The IPR policy also defines

ETSI “members” as including both the nominal member and its affiliates, noting the IPR policy, by its plain terms, purported to bind the LG Defendants as Core alleged. *Id.* Finding Core’s allegation “facially plausible,” and noting LG did not cite any authority to undermine the plausibility of Core’s claim, the court denied LG’s motion to dismiss the breach of contract claim. OnePlus’s substantially similar arguments regarding OPPO fail for the same reasons.

Nevertheless, OnePlus argues Pantech’s allegation that OnePlus is an “affiliate” of OPPO (Compl., ¶ 163) is an insufficient “legal conclusion,” which should result in dismissal. Dkt. No. 30 at 6. However, the relationship between OPPO and OnePlus is alleged as a factual matter rather than a legal conclusion. *See* Dkt. No. 37 at 4. Taking Pantech’s allegations regarding the OnePlus-OPPO relationship as true, which is required on a motion to dismiss, necessarily resolves this dispute. The ETSI IPR policy itself binds all of a party’s affiliates, and thus OnePlus is bound by OPPO’s signature. *See* Dkt. No. 29 at 7-8 (citing ETSI’s IPR Policy, attached to OnePlus’s motion)⁴ at § 15(9) (“References to a MEMBER shall wherever the context permits be interpreted as references to that MEMBER and its AFFILIATES”), § 15(1) (“‘AFFILIATE’ of a first legal entity means any other legal entity: directly or indirectly owning or controlling the first legal entity; or under the same direct or indirect ownership or control as the first legal entity; or directly or indirectly owned or controlled by the first legal entity; for so long as such ownership or control lasts.”).

At this stage of the litigation, Pantech has sufficiently alleged the existence of a valid contract. OnePlus’s reliance on the post-trial opinion in *Core Wireless* is misplaced because the

⁴ When considering a motion to dismiss, the Court may consider “the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint.” *Lone Star Fund V (U.S.) L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010). OnePlus attached the ETSI IPR policy to its motion, and it is referenced in Pantech’s complaint as central to this claim for breach of FRAND obligations. *See* Compl., ¶ 161.

present lawsuit is at the pleading stage. Rather than being decided at the pleading stage, a jury trial regarding infringement of the patents-in-suit commenced in *Core Wireless*, providing the plaintiff “a full and fair opportunity to present its case regarding its breach of contract claims as to the Patents-in-Suit.” *Core Wireless*, 2015 WL 4775973, at *2. Only after the parties completed presenting their evidence did the court conclude the plaintiff had not produced adequate evidence of the existence of a contract on which a breach of contract claim could be brought; thus, the court declined to present the breach of contract claim to the jury. *Id.* Following the jury’s verdict of non-infringement, Apple asked the court to lift a stay as to remaining contract claims involving the “entire portfolio of patents and the unjust enrichment claim.” *Id.* Apple asked the court to either dismiss the contract claims or grant summary judgment in its favor, noting Core’s breach of contract claims as to the entire portfolio of patents relied on the same contract as Core’s breach of contract claims as to the patents-in-suit. *Id.* at *2-3.

Finally, OnePlus more broadly argues there is no requirement for prospective licensees of SEPs to accept demands for licenses. Dkt. No. 23 at 8 (citing, among other cases, *Apple Inc. v. Telefonaktiebolaget LM Ericsson*, No. 2:21-CV-00460-JRG, 2022 WL 3904670, at *2 (E.D. Tex. June 8, 2022)); *see also Ericsson Inc., et al. v. Apple Inc.*, Cause No. 2:21-CV-00378-JRG, Dkt. No. 89 at 4 & n.2 (agreeing with the parties that “while the FRAND commitment requires a patent owner to make a FRAND offer, the implementer of the standard is not required to accept that offer” and further stating that performance becomes a duty upon acceptance—not upon the making of an offer—regardless of whether or not (in the SEP context) that offer is FRAND). In response, Pantech argues “this is simply not the case, or at least not the case when the party has failed to negotiate in good faith, as OnePlus has failed to do.” Dkt. No. 29 at 9 (citing *G+ Commc’ns, L.L.C. v. Samsung Elecs. Co.* (“*G+ Commc’ns IP*”), No. 2:22-CV-00078-JRG, 2024 WL 233222 (E.D.

Tex. Jan. 22, 2024)). According to Pantech, OnePlus's argument that a contractual obligation from the ETSI IPR policy cannot apply to implementers of standard essential technology conflicts with this court's recent determination of French law pursuant to Federal Rule of Civil Procedure 44.1:

In a negotiation for a license to a patent where the patent has been contributed to an adopted standard (which patent is known as a standard essential patent), **if either negotiating party (being either the patent holder or the implementer of the adopted standard)** fails to negotiate in good faith and thereby prevents a license from being granted on fair reasonable and non-discriminatory terms, then the party who fails to act in good faith is liable to the other party for any reasonable damages which arise from such breach, including but not limited to attorney's fees and the cost of litigation.

G+ Commc'ns II, 2024 WL 233222, at *2 (emphasis added). Other than unpersuasively contending in a footnote the complaint does not identify the ETSI commitments as a contract subject to French law (*see* Dkt. No. 30 at 7, n. 2), OnePlus fails to show the fault in this reasoning. Considering the facts alleged in Pantech's complaint, and further considering the early stage of this litigation,⁵ Pantech has sufficiently pleaded the elements of a breach of FRAND claim.

In sum, the Court should not dismiss this claim at the pleading stage. Thus, the undersigned recommends this part of OnePlus's motion be denied.

C. Pantech's Unjust Enrichment Claim

As an initial matter, Pantech intends to pursue its unjust enrichment claim as an alternative to its claim for breach of FRAND obligations.⁶ Dkt. No. 29 at 10. In its reply, OnePlus argues Pantech's unjust enrichment claim, as pleaded, is not an "alternative pleading" and relies solely upon the existence of an obligation purportedly arising out of a contract. Dkt. No. 30 at 8. However,

⁵ *See HTC Corp. v. Telefonaktiebolaget LM Ericsson*, No. 6:18-CV-00243-JRG, 2018 WL 6617795, at *6 (E.D. Tex. Dec. 17, 2018) (in a case involving cross-licensing, Judge Gilstrap noted that, to the extent the parties disputed the scope of French law as it related to Ericsson's breach of contract counterclaims, that issue was more appropriately resolved on a motion pursuant to Federal Rule of Civil Procedure 44.1).

⁶ Pantech does not dispute, as a general principle, that a claim for unjust enrichment does not lie if the conduct at issue is ultimately determined to be covered by a contract. *See* Dkt. No. 29 at 10, n. 7.

as discussed more fully below, Pantech’s unjust enrichment is a legally sound basis of recovery against a party that has not negotiated with good faith within the FRAND framework as an alternative theory to Count IX. Dkt. No. 29 at 9-10. There is no prohibition against claims pleaded in the alternative. *See* FED. R. CIV. P. 8(d)(3) (“A party may state as many separate claims or defenses as it has, regardless of consistency”); *Gociman v. Loyola Univ. of Chi.*, 41 F.4th 873, 886 (7th Cir. 2022) (“At the pleading stage, a party may plead breach of contract and unjust enrichment claims in the alternative”). Additionally, whether Pantech’s claims for breach of contract or unjust enrichment lie are factual questions that largely resolve around the existence of a contract, but are inappropriate to resolve at the pleading stage. *See The Lichfield Grp., Inc. v. Dwayne Wade Sch. of Fla., L.L.C.*, No. 10-81413-CIV, 2011 WL 310750, at *3 (S.D. Fla. Jan. 28, 2011) (“Clearly, Lichfield fulfilled the pleading requirements for the unjust enrichment count since it properly alleged that a benefit was conferred upon Next Generation, Next Generation appreciated the benefit, and the circumstances make it inequitable for Next Generation to retain the benefit without paying for it.”).

OnePlus argues that assuming Pantech can plead unjust enrichment in the alternative, it must be dismissed because it would be preempted by the Patent Act. Dkt. No. 30 at 9; *see also* Dkt. No. 23 at 11. That argument fails for the reasons below.

Federal law preempts state law that offers “patent-like protection” to discoveries unprotected under federal patent law. *Ultra-Precision Mfg., Ltd. v. Ford Motor Co.*, 411 F.3d 1369, 1377-78 (Fed. Cir. 2005) (Fed. Cir. 2005) (citing *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 156 (1989)). The Federal Circuit has made clear that, “[i]n the absence of an incremental benefit conferred [over and above the benefit the public received], any attempt to obtain a patent-like royalty for the making, using, or selling of a product in the public domain

under the rubric of state unjust enrichment law is preempted.” *Core Wireless*, 2015 WL 4775973, at *4 (citing *Ultra-Precision*, 411 F.3d at 1379, 1382). The Patent Act allows “damages adequate to compensate for [] infringement.” *G+ Commc’ns*, 2023 WL 3167416, at *7 (quoting 35 U.S.C. § 284). Importantly, however, the Patent Act as cited allows compensation for infringement itself, not for holdout conduct. *Id.*

According to OnePlus, Pantech’s unjust enrichment claim is similar to that rejected by *Core Wireless*, where the plaintiff pleaded that “by implementing the relevant GSM and/or UMTS standards, Apple has thus. . . benefited from the patented contributions” and that Apple “has not paid a FRAND royalty for the benefit of using this patented technology.” *Core Wireless*, 2015 WL 4775973, at *4. The benefit Apple allegedly received was the benefit of the use of the patented invention, rather than “an incremental benefit over and above the benefit the public received.” *Id.* (citation omitted). Thus, Core’s claim of unjust enrichment based on the benefit Apple received for the alleged use of the patented technology, as pleaded, was preempted by the Patent Act. *Id.*

More recently, however, OnePlus’s preemption-type argument was rejected. In *G+ Commc’ns I*, the court found allegations regarding “holdout” behavior similar to those alleged here “differ[ed] from those recoverable under the Patent Act,” and therefore the “unjust enrichment claim [was] not preempted.” *G+ Commc’ns I*, 2023 WL 3167416, at *7 (noting the Patent Act allows compensation for infringement itself, not for holdout conduct). There, G+ alleged that Samsung was unjustly enriched by failing to agree to a FRAND license as offered by G+, and G+ was damaged as a result. *Id.* G+ further argued that Samsung engaged in “holdout,” as evidenced by Samsung’s alleged “refus[al] to negotiate in good faith.” *Id.*

Here, Pantech similarly alleges that OnePlus was unjustly enriched by failing to negotiate in good faith and engaged in “holdout behavior to extract unfair licensing terms.” Compl., ¶ 166.

Pantech alleges it has been harmed by OnePlus's failure to negotiate in good faith and holdout behavior. *Id.*, ¶ 167.

OnePlus unsuccessfully attempts to distinguish *G+ Commc'ns I* by pointing out that Pantech also alleges, within Count X, that OnePlus "has not paid licensing royalties to adequately and fairly reward Pantech for the innovations of their SEP portfolio." Dkt. No. 23 at 11 (citing Compl., ¶ 166). According to OnePlus, a reasonable royalty is the same remedy contemplated by the Patent Act for patent infringement. *Id.* While Pantech does note OnePlus's failure to pay licensing royalties in alleging OnePlus failed to negotiate in good faith and engaged in holdout behavior, Pantech actually seeks an award of restitution to compensate for OnePlus's unjust enrichment. Compl. at 39, 41. The relationship between and possible overlap of restitution and damages for infringement is best explored at summary judgment or in *Daubert* motions, after discovery, not the pleading stage. OnePlus has failed to distinguish *G+ Commc'ns I*. See also Dkt. No. 29 at 11 n. 8 (noting the important consideration in *G+ Commc'ns* was whether the harm was alleged to be the same, not whether any ultimate remedies may overlap). Because the allegations of harm alleged by Pantech in Count X ("holdout conduct") differ from those recoverable under the Patent Act, the unjust enrichment claim is not preempted. *G+ Commc'ns I*, 2023 WL 3167416, at *7.

Lastly, OnePlus argues Count X fails to state a claim for unjust enrichment because the complaint nowhere alleges fraud or duress and fails to set forth an "undue advantage" as required to plead unjust enrichment. Dkt. No. 23 at 12. According to OnePlus, Pantech's allegations of OnePlus's "fail[ure] to negotiate in good faith" and "holdout behavior" depend on its allegations that OnePlus is bound by "obligations" under the ETSI IPR policy; however, "[t]here can be no recovery based on [unjust enrichment] when the same subject matter is covered by an express

contract.” *Id.* at 13 (quoting *In re KP Eng’g, LP*, No. BR 19-03707, 2022 WL 3356409, at *6 (S.D. Tex. Aug. 15, 2022), *aff’d sub nom. Matter of KP Eng’g, L.P.*, 63 F.4th 452 (5th Cir. 2023)).

According to Pantech’s surreply, “[t]he obligation underpinning Pantech’s unjust enrichment claim is not based in contract, but rather in equity and the law of restitution on the basis that OnePlus cannot demand FRAND compliance by Pantech without itself negotiating for a patent license in good faith.” Dkt. No. 37 at 5. The Court agrees with Pantech that this is a legally cognizable theory. *See, e.g., G+ Commc’ns I*. Thus, OnePlus’s argument, under Rule 12(b)(6), fails. The undersigned recommends OnePlus’s motion to dismiss Pantech’s alternative unjust enrichment claim be denied.

IV. RECOMMENDATION

Based on the foregoing analysis, it is hereby

RECOMMENDED OnePlus Technology (Shenzhen) Co., Ltd.’s Motion to Dismiss Pursuant to Rule 12(b)(6) (Dkt. No. 23) be **DENIED**.

Objections

Within **fourteen (14) days** after service of the magistrate judge’s report, any party must serve and file specific written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). Any response shall be filed within **seven (7) days** after the filing of any objections.

In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge’s report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.

Failure to file specific, written objections will bar the party from appealing the unobjected-to factual findings and legal conclusions of the magistrate judge that are accepted by the district court, except upon grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

SIGNED this the 27th day of August, 2025.



J. Boone Baxter
UNITED STATES MAGISTRATE JUDGE