

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

INTERDIGITAL COMMUNICATIONS,	)	
INC.; INTERDIGITAL TECHNOLOGY	)	
CORPORATION; IPR LICENSING, INC.;	)	
and INTERDIGITAL HOLDINGS, INC.,	)	
	)	
Plaintiffs/Counterclaim-	)	
Defendants,	)	
	)	C.A. No. 13-010 (RGA)
v.	)	
	)	
NOKIA CORPORATION and NOKIA INC.,	)	
	)	
Defendants/Counterclaim-	)	
Plaintiffs.	)	

**ANSWERING BRIEF OF MICROSOFT MOBILE OY IN RESPONSE TO PLAINTIFFS'  
MOTION TO ADD IT, AND OPENING BRIEF IN SUPPORT OF CROSS-MOTION  
TO SUBSTITUTE PARTIES UNDER FED. R. CIV. P. 25 OR ALTERNATIVELY  
TO DISMISS NOKIA CORP. AS A NAMED PARTY ON COUNTERCLAIMS**

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<p><b>IPR Licensing, Inc.</b> <b>Exhibit 2001</b> <b>Microsoft Corp v. IPR Licensing, Inc.</b> <b>IPR2015-00074</b></p>
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# TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES .....	ii
INTRODUCTION .....	1
NATURE AND STAGE OF THE PROCEEDINGS .....	2
SUMMARY OF THE ARGUMENT .....	3
STATEMENT OF FACTS .....	5
ARGUMENT .....	8
I.    THE COURT SHOULD SUBSTITUTE MMO FOR NOKIA CORPORATION .....	8
A.    Transfer of All of the Interests at Stake Supports Substitution. ....	8
B.    InterDigital’s Objections to Removal of Nokia Corporation as a Defendant are Inapposite .....	10
1.    Removal of Nokia Corporation Does Not Pose any Significant Prejudice to InterDigital .....	10
2.    Nokia Corporation’s Future Activities Provide No Reason to Keep it in the Case .....	11
C.    Rule 25(c) Substitution is Required for the Presently Pled Counterclaims, Regardless of Nokia Corporation’s Status as a Defendant. ....	12
II.    ALTERNATELY, NOKIA CORPORATION SHOULD BE DISMISSED AS A COUNTERCLAIM PLAINTIFF .....	13
CONCLUSION .....	13

TABLE OF AUTHORITIES

	<u>Page(s)</u>
 <b>CASES</b>	
<i>Abbott Labs. v. Roxane Labs., Inc.</i> , C.A. No. 12-457-RGA, 2013 WL 2322770 (D. Del. May 28, 2013) .....	8
<i>Bank of New England, N.A. v. Callahan</i> , 758 F. Supp. 61 (D.N.H. 1991) .....	9
<i>Chafin v. Chafin</i> , 133 S. Ct. 1017 (2013) .....	11
<i>Dollar Dry Dock Sav. Bank v. Hudson St. Dev. Assocs.</i> , 1995 WL 412572 (S.D.N.Y. July 12, 1995) .....	9, 10
<i>Gen. Battery Corp. v. Globe-Union, Inc.</i> , 100 F.R.D. 258 (D. Del. 1982) .....	9, 12
<i>Hawke Assocs. v. City Fed. Sav. Bank</i> , 787 F. Supp. 423 (D.N.J. 1991) .....	9
<i>Luxliner P/L Exp., Co. v. RDI/Luxliner, Inc.</i> , 13 F.3d 69 (3d Cir. 1993) .....	12
<i>North Carolina v. Rice</i> , 404 U.S. 244 (1971) .....	12
<i>Travelers Ins. Co. v. Broadway W. St. Assocs.</i> , 164 F.R.D. 154 (S.D.N.Y. 1995) .....	9
 <b>RULES AND STATUTES</b>	
Fed. R. Civ. P. 17 .....	2, 4, 13
Fed. R. Civ. P. 25 .....	Passim

## INTRODUCTION

In this patent infringement action, Plaintiffs InterDigital Communications, Inc., InterDigital Technology Corporation, IPR Licensing, Inc., and InterDigital Holdings, Inc. (collectively, “Plaintiff” or “InterDigital”) allege that certain mobile telephones formerly made by Nokia Corporation (or its affiliates at the time) and imported into the U.S. by Nokia Inc. infringe Plaintiffs’ patents. In response, defendants Nokia Corporation and Nokia Inc. have asserted various counterclaims, including those based on InterDigital’s failure to comply with obligations to license its allegedly standards essential patents on fair, reasonable, and non-discriminatory (“FRAND”) terms (*see, e.g.*, D.I. 49, Counterclaims ¶¶ 1-114; *see also* D.I. 230-231 (dismissing Nokia’s Counterclaims III and VIII, while leaving remaining counterclaims unaffected)).

On April 25, 2014, Nokia Corporation sold its mobile telephone business (sometimes referred to as its “Devices & Services Business” or the “D&S Business”) to Microsoft Mobile Oy (MMO), a wholly owned Finnish subsidiary of Microsoft Corporation. MMO and its subsidiaries (including Nokia Inc., now wholly owned by MMO) are now solely responsible for the operation of this business as it relates to the United States, including producing, selling and any importing of the mobile telephones accused in this case.<sup>1</sup> MMO has assumed all of any Nokia Corporation’s liabilities that might arise out of this action and has sole

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<sup>1</sup> All of Nokia Corporation’s manufacturing facilities for mobile phones, with two exceptions, have been transferred to Microsoft. The Nokia facility in India owned by Nokia Corporation sells the products it manufactures there only to Microsoft, and any importation of such devices into the United States ceased no later than May 2014. The Nokia facility in South Korea made its last deliveries before the Nokia/Microsoft transaction closed in April, and Nokia Corporation is investigating options to liquidate or otherwise dispose of that facility and associated assets. As a result, all of the import and distribution channels for the accused products are now through Microsoft (*see* Nokia Form 6-K, Ex. 1, at 14).

control over the defense of this action with respect to the acquired D&S Business, including sole authority to resolve this action. MMO has also acquired all of Nokia Corporation's presently pled counterclaims, including the surviving claims that were not dismissed related to InterDigital's failure to comply with obligations to license its allegedly standards essential patents on FRAND terms.

In light of the acquisition and consistent with Fed. R. Civ. P. 25 and 17, MMO should be substituted for Nokia Corporation in this case because MMO is the real party in interest. Nokia Inc., now a subsidiary of MMO, will remain as a defendant and counterclaim plaintiff. Fact and expert discovery on patent liability are now closed, so the scope of accused products at issue is fixed. Only MMO products are at issue, MMO is responsible for the defense of the litigation and for any judgment that may be entered with respect to those accused products, and MMO has sole rights to the remaining pled counterclaims. Conversely, given that Nokia Corporation has sold the business and transferred the related liabilities and counterclaims to MMO, there is no reason for Nokia Corporation to remain a party; indeed, it would be improper to keep Nokia Corporation as a named counterclaim plaintiff now.

Accordingly, and for the reasons set forth herein, MMO respectfully submits that the most straightforward and efficient course of action is for MMO to be substituted for Nokia Corporation, thus removing Nokia Corporation from this case. Alternatively, at a minimum, Nokia Corporation should be dismissed as a named counterclaim plaintiff now.

#### **NATURE AND STAGE OF THE PROCEEDINGS**

On January 2, 2013, InterDigital filed a complaint in this Court accusing the Nokia Corporation and Nokia Inc. of infringing U.S. Patent No. 7,941,151. InterDigital later amended its complaint to add infringement allegations relating to U.S. Patent No. 8,380,244.

InterDigital presently accuses certain Lumia mobile phones of infringing both patents. Fact discovery on patent liability issues closed on March 14, 2014, and expert discovery closed on May 23, 2014. The patent liability issues are scheduled for a five-day trial commencing on September 8, 2014. No trial is set on damages or the remaining counterclaims. Of the counterclaims pending, Counts III and VIII were dismissed by this Court on May 28, 2014.

### **SUMMARY OF THE ARGUMENT**

1. Because a transfer of all interest in the businesses and claims at issue has occurred under the transaction in which MMO purchased Nokia Corporation's Devices & Services Business,<sup>2</sup> substitution of parties in this action is appropriate under Fed. R. Civ. P. 25(c). MMO is now wholly responsible for producing and selling the accused products, as it has taken over the operations, facilities, employees, and management personnel related to Nokia's Devices and Services Business.<sup>3</sup> In addition, MMO has assumed any liabilities that Nokia Corporation may have accrued relating to the Devices & Services Business. MMO is therefore a successor-in-interest to Nokia Corporation with respect to any devices accused of infringing in this action. MMO also holds all interest in the presently pled counterclaims, and Nokia Corporation no longer owns the rights being asserted in those counterclaims with respect to the transferred business and products.

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<sup>2</sup> One component of the Devices & Services Business was Nokia Inc., which was formerly a wholly owned subsidiary of Nokia Corporation, responsible for importing and selling the accused Nokia Lumia phones in the U.S., and now a wholly-owned subsidiary of MMO, but still responsible for importing and selling the accused Nokia Lumia phones in the U.S.

<sup>3</sup> See *supra* fn1, regarding Nokia Corporation's retention of certain facilities in India and Korea not relevant here.

2. There is no reason to keep Nokia Corporation in the case. As a result of MMO's acquisition, MMO and its subsidiary Nokia Inc. are now the real parties in interest in this litigation, and whatever interest or liabilities Nokia Corporation once had now reside with MMO. Discovery regarding patent liability is closed, and the scope of accused products is limited to those acquired and currently being imported and sold by MMO. To the extent additional discovery remains, MMO is in the best position to provide it, given the transfer from Nokia Corporation to MMO of the business that relates to the accused products in this case (including its employees and business records). Nokia Corporation has also agreed to cooperate with reasonable discovery requests, even after MMO takes control of the case (*see* D.I. 270-1, Declaration of Maura L. Rees, Ex. C ¶ 4). Conversely, Nokia Corporation no longer has any interest in this action, as it does not produce, manufacture, or sell the products accused in this case, and has sold its interests in the presently pled counterclaims involving the transferred business to MMO. Nor will Nokia Corporation's presence in this case facilitate the litigation. Rather, it would increase the case's complexity and result in unnecessary costs for the parties and the Court. InterDigital will suffer no prejudice from Nokia's absence as a party because MMO will continue to have access to all relevant information (*see* Orndorff Decl., Ex. 2, at ¶ 4; Nokia Form 6-K, Ex. 1, at 46). Under these circumstances, substitution of MMO for Nokia Corporation should be granted.

3. Whatever claims InterDigital may have had against Nokia Corporation, it now has against MMO as the successor in interest to the entirety of the relevant Nokia Corporation business. There can be no doubt that MMO is fully capable of satisfying any judgment that InterDigital might obtain here.

4. Finally, at a minimum, Nokia Corporation should be dismissed as a named party on the presently pled counterclaims. Nokia Corporation no longer holds an interest in these claims but has transferred any interest in them to MMO. Federal Rule of Civil Procedure 17 requires that the claims be prosecuted in MMO's name, and not in Nokia Corporation's name, going forward.

### **STATEMENT OF FACTS**

**The Stock Asset and Purchase Agreement Governing Microsoft's Acquisition of Nokia's Devices & Services Business.**

On September 2, 2013, Microsoft International Holdings B.V., an affiliate of Microsoft Corporation ("Microsoft"), and Nokia Corporation entered into a Stock and Asset Purchase Agreement (the "Purchase Agreement").<sup>4</sup> Under the terms of the Purchase Agreement, Microsoft agreed to acquire substantially all of Nokia's D&S Business, which includes the business responsible for the accused products in this action (*see* Nokia Form 6-K, Ex. 1, at 19, 36-37). In addition, Microsoft agreed to "assume liabilities primarily relating to the D&S Business and liabilities arising from the assets primarily used in the D&S Business" (*id.* at 19, 39-40). The liabilities that Microsoft agreed to assume include pending litigation concerning the D&S Business, including cases in which a Nokia mobile device is alleged to infringe a patent (*see id.*; *see also* D.I. 270-1, Rees Decl., Ex. C, Agreement Regarding Pending Litigation, at ¶¶ 1-2). Along with transfer of these assumed liabilities, Nokia

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<sup>4</sup> See Press Release, Microsoft Corp., D.I. 270-1, Rees Decl., Ex. B, *Microsoft to Acquire Nokia's Devices & Services Business, License Nokia's Patents and Mapping Services* (Sept. 3, 2013) ("Microsoft Press Release"); D.I. 270-1, Rees Decl., Ex. B, Press Release, Nokia Corporation, *Nokia to Sell Devices & Services Business to Microsoft in EUR 5.44 Billion All-Cash Transaction* (Sept. 3, 2013) ("Nokia Press Release"); Nokia Corp., Report of Foreign Private Issuer, Form 6-K (Sept. 19, 2013) ("Nokia Form 6-K," attached as Ex. 1) at 1; Microsoft Corp., Quarterly Report, Form 10-Q (Oct. 24, 2013) (attached as Ex. 5) at 42.



Corporation sold to Microsoft the “defenses, rights of offset or counterclaims related to the Assumed Liabilities” (Nokia Form 6-K, Ex. 1, at 37).

**The Closing of the Transaction.** The parties completed Microsoft’s acquisition of Nokia’s D&S Business on April 25, 2014 (*see* Declaration of Benjamin O. Orndorff (hereinafter, “Orndorff Decl.”) ¶ 2 (attached as Ex. 1); Press Release, Microsoft Corp., *Microsoft Officially Welcomes the Nokia Devices and Services Business* (Apr. 25, 2014) (attached as Ex. 3)). The acquisition was consummated through MMO, a wholly-owned subsidiary of Microsoft incorporated in Finland and registered under the Finnish Trade Register Business ID 2583660-5 (*see* National Board of Patents and Registration of Finland, *Trade Register* (Feb. 26, 2014) (attached as Ex. 4); Orndorff Decl., Ex. 2, at ¶¶ 1-2). At closing, MMO acquired the assets of Nokia Corporation’s D&S Business as well as Nokia Corporation’s equity interest in certain Nokia subsidiaries, including defendant Nokia Inc. (*see* Orndorff Decl., Ex. 2, at ¶ 2; *see also* Nokia Form 6-K, Ex. 1, at 36; *see also supra* fn1).

As of the closing, MMO and its subsidiaries became solely responsible for the operation of the D&S Business acquired from Nokia Corporation. MMO and its subsidiaries, including its wholly owned subsidiary Nokia Inc., now have sole responsibility for all past sales as well as any future production and sale of the accused products in this case (*see* Orndorff Decl., Ex. 2, at ¶ 4; *see also* Microsoft Press Release; Nokia Press Release D.I. 270-1, Rees Decl., Ex. B). Nokia Corporation no longer has any control over these activities (*see* Nokia Form 6-K, Ex. 1, at 14). Approximately 30,000 Nokia employees have joined MMO and its subsidiaries as MMO has taken over substantially all of the production and manufacturing facilities relating to the D&S Business, including Nokia employee teams devoted to operations, design, marketing, and related support functions (*see* Orndorff Decl., Ex. 2, at ¶ 4; *see also* Microsoft Press Release;

Nokia Press Release; Press Release, Microsoft Corp., D.I. 270-1, Rees Decl., Ex. B; *Steve Ballmer Email to Microsoft Employees on Nokia Devices & Services Acquisition* (Sept. 3, 2013) (“Ballmer Email,” attached as Ex. 6); *supra* fn1). As a result of the transaction, all of the accused products are currently made by and imported (through Nokia Inc.) by MMO (*see* Orndorff Decl., Ex. 2, at ¶ 4).

**MMO’s Assumption of Nokia Corporation’s Liability and Counterclaims.**

Pursuant to the terms of the Purchase Agreement, MMO has agreed to assume all of Nokia Corporation’s liability for this action – including any losses, damages, or judgments – with respect to the D&S Business (*see* Orndorff Decl., Ex. 2, at ¶ 2; *see also* D.I. 270-1, Rees Decl., Ex. C, Agreement Regarding Pending Litigation at ¶¶ 1-2). MMO is a well-capitalized operating entity and will be fully able to discharge any such losses, damages, or judgments (*see* Orndorff Decl., Ex. 2, at ¶ 5). MMO has also obtained all right to, and control over, the counterclaims presently pled in this action (*see* D.I. 270-1, Rees Decl., Ex. C, Agreement Regarding Pending Litigation at ¶¶ 1-2; Nokia Form 6-K, Ex. 1, at 37).

Upon closing, MMO has thus assumed this action in its entirety with respect to the acquired D&S Business, and will control and direct it at MMO’s own cost and expense. MMO thus has the sole authority to prosecute, defend, and settle the action.

**Substitution in ITC Proceedings.** In the two proceedings currently pending at the ITC, Investigation No. 613 and Investigation No. 868, Nokia Corporation and MMO moved to substitute MMO for Nokia Corporation because Nokia Corporation was no longer importing the phones accused of infringing.

Both motions were “Granted in Part,” with MMO being added as an additional respondent but not replacing Nokia Corporation (*see* Ex. 7, and D.I. 270-1, Rees Decl., Ex. F).

InterDigital had opposed replacing Nokia Corporation in both Investigations on the theory that, because it might import some new product at some unspecified time in the future, the Commission should retain jurisdiction over Nokia Corporation. The ITC staff, likewise, had urged that the ALJ retain jurisdiction over Nokia Corporation to address the contingency of future products. The ALJ accepted the argument that the ITC could and should keep Nokia Corporation as a named respondent based on the possibility that it might in the future again seek to import accusable products. Defendants and MMO petitioned this issue to the full Commission, and the Commission declined to review the ALJ's initial determinations in both investigations.

On the same day as the order adding MMO to the 868 Investigation, however, the ALJ also issued his ruling on the merits, finding no infringement of the asserted patents.<sup>5</sup>

## **ARGUMENT**

### **I. THE COURT SHOULD SUBSTITUTE MMO FOR NOKIA CORPORATION**

#### **A. Transfer of All of the Interests at Stake Supports Substitution**

MMO should be substituted for Nokia Corporation, removing the latter from this case. Although there is no dispute that there has been a transfer of interest under Rule 25(c), the parties dispute whether there is any reason to keep Nokia Corporation in the action. Under the facts of this case, the Court should substitute MMO for Nokia Corporation, thus removing Nokia Corporation.<sup>6</sup>

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<sup>5</sup> A public version of this decision was previously submitted to the Court (*see* D.I. 271-2).

<sup>6</sup> Nokia Inc., now a wholly owned subsidiary of MMO, is already a party to this action and will remain a defendant and counterclaim plaintiff under either side's proposed relief (*see* Orndorff Decl., Ex. 2, at ¶ 2; *see also* Nokia Form 6-K, Ex. 1, at 36).

Rule 25(c) provides courts with discretion to use an approach that best facilitates conduct of the litigation. *See Abbott Labs. v. Roxane Labs., Inc.*, C.A. No. 12-457-RGA, 2013 WL 2322770, at \*4 (D. Del. May 28, 2013) (emphasizing that “a court’s focus when assessing a Rule 25(c) motion must be on whether substitution or joinder would best facilitate the conduct of the litigation” (internal quotation marks and citation omitted)); <sup>7</sup> *see also Travelers Ins. Co. v. Broadway W. St. Assocs.*, 164 F.R.D. 154, 164 (S.D.N.Y. 1995) (substitution proper under Rule 25(c) where parties to be substituted were the “real parties in interest and their substitution as plaintiffs w[ould] facilitate th[e] action”); *Dollar Dry Dock Sav. Bank v. Hudson St. Dev. Assocs.*, 1995 WL 412572, at \*4 (S.D.N.Y. July 12, 1995) (same); *see also Gen. Battery Corp.*, 100 F.R.D. at 261. Where there is no dispute that a party’s interest has been transferred in its entirety – as is the case here – courts routinely substitute the true party in interest, thus removing the original party from the action. *See, e.g., Hawke Assocs. v. City Fed. Sav. Bank*, 787 F. Supp. 423, 425 (D.N.J. 1991) (substitution required for “the actual transferee in interest of any rights and obligations” of the original party); *Bank of New England, N.A. v. Callahan*, 758 F. Supp. 61, 62-63 (D.N.H. 1991) (substitution required where successor purchased assets of plaintiff that included rights being sued on).

There is no reasonable basis to keep Nokia Corporation in this action. It has no remaining interest in this action, and its presence will only impose unnecessary burden, complexity, and expense on the parties and the Court. Nokia Corporation no longer produces, manufactures, or sells the products at issue in this case (*see* Nokia Form 6-K, Ex. 1, at 14; *see also supra* fn1). It will not be subjected to any ultimate liability as a result of this action, it will

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<sup>7</sup> This Report & Recommendation by Magistrate Burke was adopted in its entirety by Judge Andrews on June 18, 2013. *See* C.A. NO. 12-457-RGA-CJB (D. Del.), D.I. 65.

not be entitled to recovery under any of the pled counterclaims regarding the transferred business, and its presence will not facilitate the litigation in any way. To the contrary, if Nokia Corporation remains as a party, it will only increase the burden and expense for the other parties and for the Court. *See, e.g., Dollar Dry Dock Sav. Bank*, 1995 WL 412572, at \*4 (granting substitution under Rule 25(c) where it “will expedite and simplify the action.”).

MMO – including the transferred subsidiary Nokia Inc. – is now the interested party, not Nokia Corporation. MMO has sole responsibility for controlling and directing the litigation with respect to the acquired business, and it has the sole authority to enter into any settlement of the case. MMO’s assumption of liability in this action ensures that it will bear the burden of any alleged damages or losses – which, as a well-capitalized entity, MMO will be fully able to discharge (*see* Orndorff Decl., Ex. 2, at ¶ 5).

**B. InterDigital’s Objections to Removal of Nokia Corporation as a Defendant are Inapposite**

**1. Removal of Nokia Corporation Does Not Pose any Significant Prejudice to InterDigital**

InterDigital will not face any significant prejudice from the proposed substitution. The only issue it raises, regarding an alleged need for further discovery from Nokia Corporation, is illusory. MMO is in the best position to respond to factual allegations given the transfer of the D&S Business operations, including employees and business records, to MMO. MMO now employs the D&S Business personnel and management, and it possesses, or has access to, all relevant documents and records (*see* Orndorff Decl., Ex. 2, at ¶ 4; Nokia Form 6-K, Ex. 1, at 46). To the extent there may be remaining discovery required from Nokia Corporation, it has expressly agreed “to reasonably respond, subject to appropriate objections, to discovery requests directed at Nokia [Corporation] and propounded in the Action both before and after Microsoft Mobile takes control of the Actions” (D.I. 270-1, Rees Decl., Ex. C ¶ 4 (emphasis added)).

InterDigital fails to cite any specific factual issue for which its claims would require further discovery from Nokia Corporation. Although it references two Nokia Corporation employees as potential witnesses (*see* InterDigital Br. at 5), InterDigital does not explain the purported relevance of their testimony to InterDigital's claims. InterDigital even goes so far as to suggest it may require discovery of the "Purchase Agreement between MMO and Nokia," despite the Court having already rejected that same request (*see id.*; Transcript of February 5, 2014 Hearing (attached as Ex. 8) at 16:13-17:3)). Moreover, information about the acquisition is also available from MMO, to the extent discoverable. Any suggestion that substitution of MMO for Nokia Corporation would impair discovery is thus unfounded.

**2. Nokia Corporation's Future Activities Provide No Reason to Keep it in the Case**

Similar to InterDigital's arguments to the ITC, it makes a vague suggestion that substitution is inappropriate because Nokia Corporation "can continue sales of infringing products at anytime if it so chooses" (InterDigital Br. at 5). Whatever the ultimate resolution of this issue may be at the ITC, it has no merit in an Article III court. InterDigital's contentions have only identified MMO products as being accused, and discovery is now closed. With both fact and expert discovery on patent liability complete, this case is well past the point where InterDigital can seek to expand the scope of its allegations to any products other than those now owned by MMO, including any products Nokia Corporation might make, import, or sell in the future. This case is now limited to a very specific set of products, and Nokia Corporation no longer has any involvement with them. In this regard, the ITC ALJ's initial determinations to keep Nokia Corporation in the ITC investigations have no bearing here (*see* Ex. 7; D.I. 270-1, Rees Decl., Ex. F). Requiring Nokia Corporation to remain in this case based on mere speculation that Nokia Corporation *may* someday manufacture some yet unidentified product

that InterDigital *might* think infringes its patent falls far short of any cognizable claim or controversy under the Article III. Leaving Nokia Corporation in the case under such reasoning would amount to seeking an improper advisory opinion. *E.g., Chafin v. Chafin*, 133 S. Ct. 1017, 1023 (2013) (“Federal courts may not . . . give ‘opinion[s] advising what the law would be upon a hypothetical state of facts.’”) (quoting *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (per curiam)).

**C. Rule 25(c) Substitution is Required for the Presently Pled Counterclaims, Regardless of Nokia Corporation’s Status as a Defendant.**

Rule 25(c) applies not only to the transfer of liabilities from MMO to Nokia Corporation, but also to the transfer of Nokia Corporation’s presently pled affirmative counterclaims to MMO, which are not addressed by InterDigital’s motion. A “transfer of interest” in a counterclaim occurs, for example, when a new party assumes all interest in that claim. *See, e.g., Gen. Battery Corp. v. Globe-Union, Inc.*, 100 F.R.D. 258, 261-63 (D. Del. 1982). Thus, it is proper to replace an original counterclaim-plaintiff with a party to whom the original plaintiff has transferred all interest in the counterclaim, particularly where that new party “is placed in the identical position of” the original plaintiff and the “allegations in the counterclaim and the relief sought are identical.” *Id.* at 263.

There can be no reasonable dispute that a “transfer of interest” has also occurred with respect to the presently pled counterclaims. In parallel with MMO assuming the liability of Nokia’s Devices & Services Business, Nokia Corporation agreed to sell to Microsoft “all assets primarily related to . . . the D&S Business, including . . . defenses, rights of offset or counterclaims related to the Assumed Liabilities” (*see* Nokia Form 6-K, Ex. 1, at 19, 36-37, 39-40). *See Luxliner P/L Exp., Co. v. RDI/Luxliner, Inc.*, 13 F.3d 69, 72 (3d Cir. 1993). Under this agreement, MMO thus obtained the right to any “defenses, rights of offset or counterclaims” in

this action, including the pending FRAND counterclaims, while also being liable for any damages or losses, past or future, that may be incurred by Nokia Corporation in this action.

Again, the proper approach under Rule 25(c) is to substitute MMO for Nokia Corporation as the counterclaim plaintiff. This may be done independently of the Court's determination regarding Nokia Corporation's status as a defendant. InterDigital faces no prejudice from a change in the counterclaim plaintiff. There is no risk, for example, of InterDigital being subject to double recovery or inconsistent rulings relating to the pending counterclaims because MMO and Nokia Corporation agree that the counterclaims presently pled in this case are now owned by MMO. It would make no sense to join MMO and keep Nokia Corporation as a counterclaim plaintiff when Nokia Corporation has no intention of pursuing the pending claims in this action given that it has no products at issue.

## **II. ALTERNATELY, NOKIA CORPORATION SHOULD BE DISMISSED AS A COUNTERCLAIM PLAINTIFF**

Nokia Corporation no longer has any interest in the counterclaims currently pending in its name. Therefore, Nokia Corporation should be removed as a counterclaim plaintiff without prejudice, and those counterclaims must be pursued by MMO, the real party in interest at this time. Fed. R. Civ. P. 17. It would be improper and misleading under the Federal Rules for Nokia Corporation to remain as a named counterplaintiff at this point.

## **CONCLUSION**

Because Nokia Corporation no longer owns the interests at stake in this litigation, Microsoft Mobile Oy and Nokia Inc. respectfully request that this Court grant the Motion and substitute MMO for Nokia Corporation as a defendant and counterclaim plaintiff in this action. Alternatively, Nokia Corporation should be dismissed as a counterclaim plaintiff without prejudice.



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**CERTIFICATE OF SERVICE**

I hereby certify that on July 22, 2014, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on July 22, 2014, upon the following in the manner indicated:

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