



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

LED WAFER SOLUTIONS LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS, INC.,

Defendants.

CASE NO. 6:21-cv-00292

**SEOUL SEMICONDUCTOR CO., LTD.'S
MOTION TO INTERVENE**

INTRODUCTION

Seoul Semiconductor Co., Ltd. (“SSC”) moves to intervene as a defendant in this case to defend its light emitting diodes (“LEDs”) supplied to Samsung Electronics Co., Ltd. and/or Samsung Electronics America, Inc. (collectively “Samsung”) from LED Wafer Solutions LLC’s (“LED Wafer”) patent infringement allegations. In its Complaint and its infringement contentions, LED Wafer accuses various Samsung products, including televisions, mobile phones, and computers/tablets that contain LED components. Samsung has taken the position that it most likely uses SSC LEDs in products that have been accused of infringement in this case. LED Wafer’s infringement allegations are directed to the LEDs themselves. Accordingly, SSC seeks to intervene as a defendant to defend its LEDs that are at the core of this case.

SSC’s motion to intervene is timely because this case is at a very early stage; the scheduling conference has not yet occurred, and SSC’s counsel plans to be available at the conference in person. LED Wafer will not be prejudiced by SSC’s intervention in the present action; indeed, LED Wafer will benefit from being able to obtain technical information about SSC’s LEDs which is exclusively in SSC’s possession. By contrast, SSC would be severely prejudiced if intervention were not permitted because SSC’s ability to defend its own LEDs against LED Wafer’s allegations would be impaired or impeded. Samsung does not have specific technical information about SSC’s manufacturing of LEDs required to adequately defend against LED Wafer’s infringement allegations.

Samsung has indicated that it does not oppose this motion.

BACKGROUND

LED Wafer's complaint against Samsung asserts four patents: U.S. Patent No. 8,941,137 (the "'137 patent"), U.S. Patent No. 8,952,405 (the "'405 Patent"), U.S. Patent No. 9,502,612 (the "'612 Patent"), and U.S. Patent No. 9,786,822 (the "'822 Patent"). (Complaint, ¶ 15.)

LED Wafer accuses Samsung of infringing the '137 Patent based on the "manufacture, sale, offer for sale, importation, or distribution of the Samsung Galaxy S8 mobile phone and Samsung LED backlight strips," as well as Samsung Q Series televisions (Q70T Smart TV) and Samsung TU Series televisions (TU8000 Smart TV). (*Id.* ¶ 23; LED Wafer infringement contentions). SSC manufactures and sells LEDs to Samsung for televisions. This includes Samsung Q70 Smart TVs and the TU8000 Smart TVs, both of which television models are listed in LED Wafer's infringement contentions. Samsung has taken the position that it most likely uses SSC LEDs in at least some of the accused televisions in this case, and it has sought indemnity from SSC based upon the TV models described in LED Wafer's infringement contentions.

LED Wafer accuses Samsung of infringing the '405 Patent through "making, using (including for testing purposes), importing, selling, and offering for sale LEDs . . . [which] include, but are not limited to, the Samsung LM101A Series LED, Samsung LED backlight strips such as those used in the Samsung TU8000 Smart Television, and Samsung LED flash devices as used in the Samsung Galaxy S20 smartphone, Samsung Galaxy S9 smartphone, Samsung Note 20 smartphone, and the Samsung Galaxy Tab S7 tablet." (*Id.* ¶ 58). SSC manufactures and sells LEDs to Samsung for televisions. This includes Samsung Q70 Smart TVs and the TU8000 Smart TVs, both of which television models are listed in LED Wafer's infringement contentions. Samsung has taken the position that it most likely uses SSC LEDs in

at least some of the accused televisions in this case, and it has sought indemnity from SSC based upon the TV models described in LED Wafer's infringement contentions.

LED Wafer accuses Samsung of infringing the '822 Patent through "making, using (including for testing purposes), importing, selling, and offering for sale LEDs . . . [which] include, but are not limited to, the Samsung Galaxy S8 mobile phone, the Samsung TU8000 Television, and Samsung LM101A Series LED and all other substantially similar devices," as well as Samsung Q Series televisions (Q70T Smart TV) and Samsung TU Series televisions (TU8000 Smart TV). (*Id.* ¶ 132; LED Wafer infringement contentions). SSC manufactures and sells LEDs to Samsung for televisions. This includes Samsung Q70 Smart TVs and the TU8000 Smart TVs, both of which television models are listed in LED Wafer's infringement contentions. Samsung has taken the position that it most likely uses SSC LEDs in at least some of the accused televisions in this case, and it has sought indemnity from SSC based upon the TV models described in LED Wafer's infringement contentions.

LEGAL STANDARDS

I. INTERVENTION AS OF RIGHT UNDER RULE 24(a)

Rule 24(a)(2) specifies that the Court "must permit anyone to intervene" as a matter of right "[o]n timely motion" when the applicant: "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). A prospective intervenor is entitled to intervention if each of the following elements is satisfied:

- (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; and (4) the

applicant's interest must be inadequately represented by the existing parties to the suit.

Uniloc 2017 LLC v. AT&T Mobility LLC, No. 2:18-CV-00514-JRG, 2019 WL 1773117, at *2 (E.D. Tex. Apr. 23, 2019). "Failure to satisfy one requirement precludes intervention of right." *Id.* Although all requirements must be met, "the rule 'is to be liberally construed,' with 'doubts resolved in favor of the proposed intervenor.'" *Id.*

II. PERMISSIVE INTERVENTION UNDER RULE 24(b)

A court may permit intervention by a third party if the party "[o]n timely motion . . . has a claim or defense that shares with the main action a common question of law or fact" even if intervention is not mandated as a matter of right. Fed. R. Civ. P. 24(b)(1)(B); *Uniloc 2017 LLC*, 2019 WL 1773117, at *2; *see also Realtime Data, LLC v. Packeteer, Inc.*, No. 6:08CV144, 2009 WL 10742270, at *2 (E.D. Tex. May 19, 2009). "Permissive intervention is also allowed when a statute confers a conditional right to intervene." *Bandspeed v. Sony Electronics Inc.*, No. A-09-CA-593-LY (W.D. Tex. Order dated March 5, 2010), Document 143 at 3 (Judge Lee Yeakel). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." *Uniloc 2017 LLC*, 2019 WL 1773117, at *2. "A court has full permission to deny permissive intervention even where there is a common question of law or fact." *Id.*; *U.S. Ethernet Innovations, LLC v. Acer, Inc.*, No. 6:09-CV-448-JDL, 2010 WL 11488729, at *2 (E.D. Tex. May 10, 2010).

ARGUMENT

I. SSC IS ENTITLED TO INTERVENE UNDER RULE 24(a) AS OF RIGHT

A. This Motion Is Timely

SSC meets the first requirement for intervention as of right because this motion is timely. First, this proceeding is still in its early stages. In fact, as of the filing of this motion, no

discovery has been exchanged, and the scheduling conference has not yet occurred. *See, e.g., Uniloc 2017 LLC*, 2019 WL 1773117, at *2 (finding motion to intervene timely where it is in the “early stages of the case” after the filing of the complaint but before the scheduling conference or start of discovery).

Second, SSC’s involvement will not prejudice LED Wafer. Rather than be prejudiced, LED Wafer will benefit from SSC’s involvement because technical information regarding SSC’s LEDs, which according to Samsung comprise at least some of the technology at issue, is most readily available from SSC. Furthermore, SSC intends to make itself fully available to participate in this case, including in the scheduling conference, while this motion is pending to avoid any unnecessary delay. Because discovery has not started, “intervention would not materially prejudice any of the existing parties . . .” *Uniloc 2017 LLC*, 2019 WL 1773117, at *2.

Third, although SSC has been aware of LED Wafer’s lawsuit against Samsung since shortly after the Complaint was filed, the point at which a party knows of the litigation does not factor into an analysis for timeliness of intervention. Rather, courts look to when a party becomes aware that its interests are no longer adequately protected by the existing parties to the litigation. *Uniloc 2017 LLC*, 2019 WL 1773117, at *3; *Team Worldwide Corp. v. Wal-Mart Stores, Inc.*, No. 2:17-CV-00235-JRG, 2017 WL 6059303, at *3 (E.D. Tex. Dec. 7, 2017) (motion to intervene filed after scheduling conference but before claim construction and trial was timely because intervenors moved after learning of their interest in the case).

Here, the Complaint did not provide enough reverse engineering data or other information for SSC to determine whether its LED components were part of LED Wafer’s infringement accusations, because Samsung has LED multiple suppliers for its products. However, after receiving LED Wafer’s infringement contentions, Samsung has taken the

position that it is most likely using SSC LEDs in televisions that are accused of infringement in this case, whereupon SSC promptly filed this motion.

Furthermore, even if it could be said that SSC became aware that its interests were not adequately protected from the start of the current action, this proceeding is still in its early stages and thus the length of the delay is too short to be considered untimely. *See Edwards v. City of Houston*, 78 F.3d 983, 1001 (5th Cir. 1996) (“[M]ost of our case law rejecting petitions for intervention as untimely concern motions filed after judgment was entered in the litigation.”); *Team Worldwide Corp.*, 2017 WL 6059303, at *4 (even where proposed intervenors were aware that their interests were affected for four months before filing motions to intervene, this was timely and did not constitute delay). No other party has challenged the timeliness of SSC’s motions, and there are no unusual circumstances in this case that would suggest otherwise.

B. SSC Has Significant Protectable Interests That Are The Subject Of This Litigation

Rule 24(a)(2) requires that an intervenor must have an “interest relating to the property or transaction that is the subject of the action.” Here, SSC has a direct, substantial and legally protectable interest that justifies mandatory intervention. *Sierra Club v. Espy*, 18 F.3d 1202, 1207 (5th Cir. 1994).

First, SSC is a “true defendant” to LED Wafer’s claims against the accused products in this action because, according to Samsung, SSC is the manufacturer of certain of the LED components that are accused of infringement. A finding of infringement by SSC’s LEDs supplied to Samsung would directly affect SSC. This interest goes beyond “a generalized preference that the case come out a certain way.” *Id.*; *Team Worldwide Corp.*, 2017 WL 6059303, at *4. SSC’s products will be a focus in the litigation, and “manufacturers of accused product[s] have a substantial interest in patent case[s] against their customers.” *Uniloc 2017*

LLC, 2019 WL 1773117, at *3 (citing *Team Worldwide Corp.*, 2017 WL 6059303, at *4). At a minimum, SSC has a substantial practical interest in the outcome, which is sufficient to support SSC's intervention. *Id.* at *2-3; *Realtime Data LLC*, 2009 WL 10742270, at *1.

It is not required that an intervenor have an interest in all of the accused products. So long as there is “an interest” in certain of the accused products, that is sufficient to meet the interest requirement. *Uniloc 2017 LLC*, 2019 WL 1773117, at *3 (emphasis in original).

Second, SSC sells accused products to other customers that may wind up in the stream of commerce in the United States. Allegations against its products “could negatively affect future sales.” *Uniloc 2017 LLC*, 2019 WL 1773117, at *3. A manufacturer such as SSC “faces the loss of its customer base and reputation as a result of patent infringement allegations.” *U.S. Ethernet Innovations*, 2010 WL 11488729, at *2. This impact on customer relationships gives SSC “a financial interest in the outcome of this litigation and that interest is borne out by agreements to indemnify losses sustained by its customers.” *Id.* Therefore, SSC has an interest in directly defending potential claims against those products. *Team Worldwide Corp.*, 2017 WL 6059303, at *4.

Third, Samsung has asserted that SSC is obligated to provide indemnification for accused products, and therefore, has a contractually created financial interest in the litigation. SSC has an agreement to indemnify Samsung against certain claims of patent infringement asserted against SSC's products, and Samsung has taken the position that SSC must indemnify it based upon LED Wafer's infringement contentions against certain television models. This alone is a sufficient basis to give SSC a substantial interest in the outcome – particularly here, where LED Wafer alleges that it is entitled to obtain damages for willful infringement based on prior notice that it allegedly gave to Samsung before filing the complaint. *See, e.g. U.S. Ethernet*

Innovations, 2010 WL 11488729, at *2 (“the indemnification agreements between Intel and six of its customers supports granting [the motion to intervene] because an offer or agreement to indemnify its customers against enforcement of a patent establishes a legal relationship that traditionally warrants declaratory jurisdiction in a dispute between the manufacturer and a patentee who has threatened or brought suit against the manufacturer’s customers”); *see also Uniloc 2017 LLC*, 2019 WL 1773117, at *3 (citing *Kadlec Med. Ctr. v. Lakeview Anesthesia Assocs.*, No. CIV.A. 04-997, 2004 WL 2035005, at *2 (E.D. La. Sept. 10, 2004) for the proposition that the interest requirement met where named defendant intends to seek indemnification against the intervenor).

Finally, although SSC does not believe that an injunction would be an appropriate remedy for a non-practicing entity such as LED Wafer, LED Wafer’s complaint seeks injunctive relief. (Complaint, Docket No. 1, Prayer for Relief, ¶ D). As pled, if entered, an injunction with respect to the accused products would have a “direct, immediate, and harmful” effect on SSC because SSC would no longer be able to supply its LEDs to Samsung for sale in the U.S.

C. The Relief Sought By Plaintiff Will Impair SSC’s Interests

For the same reasons stated above, the relief sought by the plaintiff – a finding of infringement, damages and injunctive relief with respect to Samsung’s products containing SSC LEDs – would impair SSC’s interests as a concrete, practical matter. The courts in this Circuit have squarely held that impairment is demonstrated where, as here, the manufacturer could not safeguard prospective sales of the accused products or avoid the possibility of future, inconsistent judgments. *Uniloc 2017 LLC*, 2019 WL 1773117, at *3 (noting that an adverse ruling and denying a motion to intervene could certainly impacts its relationship with other customer, trigger indemnity obligations, and the manufacturer could find itself unable to sell additional implicated products to U.S. customers).

Here, the relief requested by plaintiff would directly impair SSC's rights of because "an adverse ruling could certainly impact [SSC's] relationship with other retail customers and trigger indemnity obligations . . ." *Uniloc 2017 LLC*, 2019 WL 1773117, at *4. This is enough to satisfy this requirement of Rule 24(a). *Id.*; see also *Indus. Tech. Rsch. Inst. v. LG Elecs., Inc.*, No. 3:13-CV2016-GPC-WVG, 2014 WL 5325709, at *4 (S.D. Cal. Oct. 17, 2014) ("As there is no dispute that LG Display may be unable to sell liquid crystal displays to U.S. customers if Plaintiff were to succeed in this litigation, the Court finds that disposition of this action may adversely impair LG Display's significantly protectable interest.").

D. SSC's Interests Are Not Adequately Represented By The Existing Parties

A prospective intervenor must show that the existing parties cannot adequately represent its interests, but this burden is "minimal" and "is satisfied if the applicant shows that the representation of his interest 'may be' inadequate." *Uniloc 2017 LLC*, 2019 WL 1773117, at *3 (emphasis in original, citations omitted). Here, there are two key grounds for finding that SSC's interests would not be adequately represented by Samsung.

First, Samsung has asserted that SSC is the manufacturer of at least some of the accused products, and therefore, SSC is the only entity in possession of information necessary to fully defend those products. Samsung lacks detailed knowledge regarding the design detail and operation of at least those products. Accordingly, Samsung may not be able to adequately represent SSC's interests in this litigation and may not be in a position to assess and develop fully the applicable non-infringement defenses associated with the SSC LEDs. *Uniloc 2017 LLC*, 2019 WL 1773117, at *5 (granting motion to intervene where defendant had "some knowledge" of the accused products, but manufacturer likely possessed superior knowledge of how the accused products "are configured and operate" and was "thus better situated to

understand and defend its own products”). Courts have found inadequate representation where “it is clear that the applicant will make a more vigorous presentation of arguments than existing parties.” *Bush v. Viterna*, 740 F.2d 350, 357 (5th Cir. 1984). Here, no one will make a more vigorous defense of SSC’s products than SSC, who is the most familiar and has the most at stake to defend its own products.

Second, Samsung has multiple suppliers for the LED components in question in this patent case. Some of those suppliers have products with different LED structures and features than the components supplied by SSC. Not only does Samsung lack the specialized knowledge to deal with these differences in structure, but Samsung has no interest of its own in prioritizing one structure over another when it comes to non-infringement defenses. SSC is the only entity that has an interest in developing non-infringement defenses for the unique structure of its own LED products, and therefore the only entity that is able to adequately represent those interests. The court in *Team Worldwide* recognized this in a situation where Walmart had multiple suppliers who sought to intervene in the case. The court stated:

Each proposed intervenor provides a product to Walmart that *directly* competes with other products, sold by Walmart, including those of the other proposed intervenors. The Court agrees that Walmart’s interest in this suit may diverge from that of each individual proposed intervenor’s interest, and, as a result, finds that Walmart *may* not adequately represent each proposed intervenor’s interest in this case. That is all that Rule 24(a)(2) requires.

2017 WL 6059303, at *6 (emphasis in original).

The court in *Uniloc 2017 LLC* also recognized that, where there are multiple suppliers, even if the proposed intervenor and defendant “may have the same ultimate objective – avoiding or minimizing liability, there is a real possibility that those interests may diverge to the extent [defendant’s] positions and defenses align with the suppliers of other [supplier products] that are also accused of infringing . . .” *Uniloc 2017 LLC*, 2019 WL 1773117, at *5.

Thus, SSC has met its minimal burden of showing that representation of its interests by Samsung may be inadequate, and has rebutted any presumption that Samsung representation of SSC's interest is adequate.

For all of the foregoing reasons, SSC's intervention as a matter of right should be permitted, and SSC should be granted leave to file its proposed Intervention Answer and Affirmative Defenses attached hereto as Exhibit A.

II. THE COURT SHOULD ALTERNATIVELY PERMIT INTERVENTION UNDER RULE 24(b)

Alternatively, SSC should be granted permissive intervention because SSC separately and independently satisfies each of the requirements for permissive intervention pursuant to Rule 24(b). First, inasmuch as SSC and Samsung are both asserting claims and defenses based on non-infringement, there are common questions of law and fact. *See Team Worldwide Corp.*, 2017 WL 6059303, at *7 (proposed intervenors that make, sell or distribute accused products will bring defenses of non-infringement, invalidity and other defenses which will overlap with the named defendant's defenses, and within these defenses are numerous common questions of law and fact, such as whether the patent claims are valid and enforceable, and whether the sales of said products infringe the asserted patents); *U.S. Ethernet Innovations, LLC*, 2010 WL 11488729, at *2. Where infringement contentions identify products manufactured by a proposed intervenor, there will be claims and defenses of non-infringement that "share common questions of law and fact with similar defenses and claims asserted by Defendant," which is sufficient to satisfy the requirements of Rule 24(b). *Realtime Data, LLC*, 2009 WL 10742270, at *1; *see also Reid v. General Motors Corp.*, 240 F.R.D. 257, 260 (E.D. Tex. 2006).

Second, as discussed above, SSC's motion is timely as discovery has yet to begin and the initial case management conference is still pending. *Team Worldwide Corp.*, 2017 WL 6059303,

at *7 (where case is still in a relatively early stage, existing parties have time “to prepare adequately for discovery, claim construction and trial, even with the addition of the proposed intervenors” and therefore a motion to intervene is timely and will not cause undue prejudice under Rule 24(b)).

Finally, as discussed above, SSC’s involvement will not prejudice LED Wafer or Samsung. Samsung has not opposed this motion, and rather than be prejudiced, LED Wafer will benefit from SSC’s involvement because technical information regarding SSC’s manufacturing of its LEDs, which concerns at least some of the technology at issue, is only available from SSC—not Samsung. Furthermore, SSC intends to make itself fully available to participate in this case, including in the scheduling conference, while this motion is pending to avoid any unnecessary delay, and to abide by any existing scheduling orders. SSC also commits that it will not seek transfer if permitted to intervene so that its intervention will not otherwise disrupt the flow of this litigation.

In sum, SSC satisfies each requirement for permissive intervention and its participation would aid the decisional processes of this Court.

CONCLUSION

For the foregoing reasons, SSC respectfully requests that this Court grant its motion to intervene as of right pursuant to Rule 24(a). In the alternative, SSC respectfully requests that its motion to intervene should be granted at the Court’s discretion pursuant to Rule 24(b).

Dated: September 7, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by email via the Western District of Texas ECF System to all counsel of record on this the 7th day of September, 2021.

/s/ Steven J. Wingard
Steven J. Wingard