

## Judge Albright Grants Defendants Ericsson and Verizon's Motion To Sever and Stay

FEBRUARY 7, 2023

On January 30, 2023, Judge Albright granted Defendants Ericsson and Verizon's motion to sever Plaintiff Dali Wireless's infringement claims against Verizon, and to stay these claims pending the resolution of the infringement claims against Ericsson.

The "*customer-suit exception*" provides that litigation against or brought by the manufacturer of infringing goods takes precedence over a suit by the patent owner against customers of the manufacturer. This exception exists to avoid imposing the burdens of trial on the customer, given the manufacturer is generally the true defendant in a dispute.

In determining whether the customer-suit exception applies, the Fifth Circuit analyzes three factors: "(1) whether the customer-defendant in the earlier-filed case is merely a reseller; (2) whether the customer-defendant agrees to be bound by any decision in the later-filed case that is in favor of the patent owner; and (3) whether the manufacturer is the only source of the infringing product."

Before applying these factors, the Court recognized that this was not a typical application of the customer-suit exception because Verizon and Ericsson were joined in one action in a single forum. Nevertheless, the Court extended the application to this scenario in its discretion.

Applying these factors, first, the Court held factor one favored Verizon. Despite the Court agreeing that Verizon was more than a mere reseller, the Court noted the "significant overlap" between the infringement contentions against the manufacturer and the customer. The Court also emphasized that Dali's infringement contentions did not rely on acts or components from Verizon, only Ericsson.

Second, the Court held factor two weighed in favor of Verizon. It reasoned that Verizon agreed to be bound by the Court's determinations of infringement and invalidity

Third, the Court held factor three also weighed in favor of Verizon. It reasoned that Dali did not allege in its complaint or infringement contentions that Verizon infringed the asserted patents independently of Ericsson's Radio Dot system.

Further, the Court also addressed the traditional stay factors for the sake of completeness. In doing so, the Court found that Dali would not be unduly prejudiced by a stay of the claims against Verizon. It found that a stay would simplify the issues of the current case because resolving the claims against Ericsson would resolve the major issues against Verizon. Further, the Court found that because the case is still in its infancy, timing would not weigh heavily against a stay.

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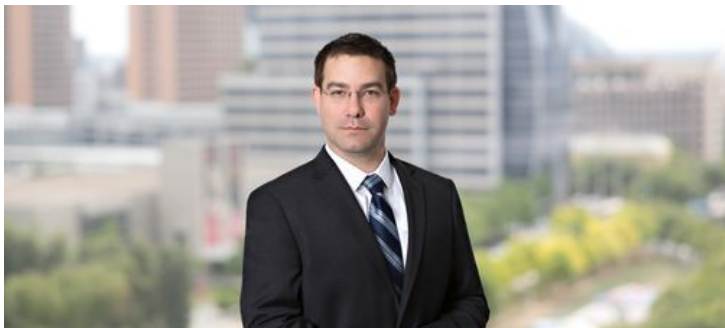
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