

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ITT MANUFACTURING ENTERPRISES,
INC.,

Plaintiff,

v.

CELLCO PARTNERSHIP (d/b/a Verizon
Wireless), LG ELECTRONICS, INC., LG
MOBILECOMM U.S.A., INC., MOTOROLA,
INC., KYOCERA CORPORATION,
KYOCERA INTERNATIONAL, INC.,
KYOCERA WIRELESS CORP., and
KYOCERA COMMUNICATIONS, INC. (f/k/a
KYOCERA SANYO TELECOM, INC.),
QUALCOMM INC., NOKIA CORPORATION,
and NOKIA, INC.,

Defendants.

Civ. No. 09-190-JFF-LPS

JURY TRIAL DEMANDED

**ORDER REGARDING DEFENDANT LG'S OBJECTIONS
TO DISCOVERY AND NON-PARTY AT&T'S
MOTION TO QUASH THE SUBPOENA SERVED BY ITT**

At Wilmington this 17th day of February, 2010,

IT IS HEREBY ORDERED that the objections of Defendants' LG Electronics, Inc. and LG MobileComm U.S.A., Inc. (collectively, "LG") to certain discovery sought by Plaintiff ITT Manufacturing Enterprises, Inc. ("ITT") are OVERRULED and that non-party AT&T Mobility, LLC's ("AT&T") motion for a protective order and to quash the subpoena served by ITT is GRANTED, in accordance with the following:

1. The parties submitted letters regarding four discovery disputes in early January

2010. (D.I. 175, D.I. 177) Previously, in November 2009, non-party AT&T had filed a motion to quash the subpoena served on it by ITT for third-party discovery. (D.I. 122) After a teleconference on January 8, 2010, the Court refrained from ruling on one of the parties' discovery disputes, which presented essentially the same issue as AT&T's motion: whether ITT could obtain discovery relating to how GPS phones transfer data on "non-CDMA" cellular networks (*e.g.*, GSM networks). (D.I. 188) ITT has sought such discovery from Defendant LG. ITT has likewise sought such discovery from AT&T, which operates a non-CDMA cellular network for which LG manufactures phones. On January 20, 2010, a second teleconference was held, this time regarding AT&T's motion to quash; this teleconference was attended by all of the parties to the litigation as well as AT&T. (D.I. 232)

2. ITT contends that it needs the non-CDMA discovery in order to resolve, in the instant suit, all of its infringement claims against LG, which manufactures phones that operate on CDMA cellular networks and phones that operate on non-CDMA cellular networks. ITT has sought this discovery directly from LG, in the form of document requests and interrogatories. Through its subpoena, ITT has likewise sought this discovery from AT&T, which operates a non-CDMA cellular network for which LG manufactures phones.

3. Defendant LG argues that ITT's non-CDMA discovery requests should be denied because there has been no allegation of infringement against its phones as they operate on any non-CDMA network. LG contends that ITT has failed to articulate a reasonable basis for asserting that the operation of its phones on a non-CDMA network infringes the patent-in-suit. LG has objected to the discovery sought by ITT on the grounds that ITT lacks a good faith factual basis for requesting discovery related to combinations of LG's phones and unaccused

non-CDMA networks.

4. AT&T argues that ITT's third-party subpoena served on it should be quashed because it is not a party to this litigation, the deadline for adding parties to this litigation has passed, and, given ITT's failure (up to this point) to accuse AT&T's network or products of infringement, ITT is simply fishing for information to use in a future lawsuit against AT&T.

5. The Court has concluded that LG's objections to the non-CDMA discovery should be and hereby are OVERRULED and that AT&T's motion should be and hereby is GRANTED. With respect to LG, the Court finds that the discovery sought is relevant, as it is reasonably calculated to lead to the production of admissible evidence, in that the operation of LG-manufactured GPS phones on a non-CDMA cellular network may be found to infringe the patent-in-suit. ITT's complaint states a claim against mobile phones as they operate on "an assisted AGPS mobile communications network," which is broad enough to encompass both CDMA and non-CDMA networks. (D.I. 1 ¶ 30) (emphasis added) With respect to non-party AT&T, however, the balance is different. AT&T is not a party and is not alleged to have infringed the patent-in-suit. Moreover, and more fundamentally, ITT cannot, at this point, establish that it has no other means of obtaining the discovery it seeks from AT&T. The discovery ITT seeks may be available from LG (or other defendants) and, pursuant to this Order, ITT will now obtain from LG whatever responsive material it possesses.

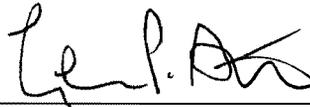
Accordingly, IT IS HEREBY ORDERED THAT:

a. LG's objections are OVERRULED. LG shall produce to ITT all non-privileged discovery responsive to ITT's non-CDMA document requests and interrogatories that has previously been withheld on the grounds of lack of a good faith factual basis, no later than

seven (7) days from the date of this Order.

b. AT&T's motion to quash is GRANTED.¹

Delaware counsel are reminded of their obligations to inform out-of-state counsel of this Order. To avoid the imposition of sanctions, counsel shall advise the Court immediately of any problems regarding compliance with this Order.



Honorable Leonard P. Stark
United States Magistrate Judge

¹By its ruling today, the Court does not intend to preclude the possibility that, after review of the discovery that will be provided pursuant to this Order by LG, ITT may conclude again that it needs to pursue discovery from AT&T. If ITT reaches this conclusion, and if AT&T continues to oppose providing such discovery, ITT and AT&T may contact the Court pursuant to the procedures for addressing discovery matters set forth in Order Regarding Discovery Matters. (D.I. 117)