

Ericsson Ups FRAND War Against Apple With Patent Suits

By **Britain Eakin**

Law360 (January 18, 2022, 9:11 PM EST) -- Ericsson has fired the latest salvo in its battle with Apple over patents essential to telecommunication standards, including 5G, filing a pair of lawsuits in the Western District of Texas and a complaint at the U.S. International Trade Commission.

Delaware-based Ericsson Inc. and Swedish company Telefonaktiebolaget LM Ericsson lodged the lawsuits on Monday in the Western District of Texas — where plaintiffs have already won enormous verdicts — accusing Apple of infringing four patents in one suit and eight patents in a separate complaint.

The ITC action followed on Tuesday, with Ericsson accusing Apple of violating Section 337 of the Tariff Act of 1930 by importing allegedly infringing iPhones, iPads, Apple Watches, Apple HomePods and Apple TV digital media players.

Ericsson alleged Apple infringed five patents in the ITC case, all of which were asserted in one of the two Texas suits. In all three complaints, Ericsson stressed its "long history of innovative technical contributions," noting that it's been granted 57,000 patents and saying its inventions "are a valuable part of the fundamental technology used in phones and cellular networks worldwide."

"Worldwide, more than forty percent of all mobile phone calls are made through Ericsson networks," all three complaints said.

The complaints were filed as licensing negotiations between the parties have seemingly faltered after their seven-year licensing agreement for patents essential to 2G, 3G and 4G cellular standards expired in December.

Ericsson's complaints come on the heels of a suit filed by Apple in December in the Eastern District of Texas accusing the telecommunications giant of breaching their 2015 licensing agreement, seeking declarations that three Ericsson patents on 5G technology — none of which are involved in the complaints Ericsson lodged this week — are not infringed and are not standard-essential.

Apple has also asked the Eastern District of Texas judge to set fair, reasonable and nondiscriminatory, or FRAND, rates for those patents.

Counsel information for Apple has not yet been entered into any of the three cases Ericsson filed this week, but a spokesperson for the company told Law360 Tuesday it has "always been willing" to pay fair

prices for the technology used in its products.

"Ericsson has refused to negotiate fair terms for renewing our patent licensing agreement, and instead has been suing Apple around the world to extort excessive royalties. To protect our innovation, we're asking the court to help determine a fair price for their standard essential patents that would apply worldwide. We will continue to defend against their tactics," the spokesperson said.

Counsel and representatives for Ericsson did not immediately return a request for comment Tuesday.

While Ericsson's complaints this week were short on details about the larger licensing dispute between the parties, Apple portrayed itself in its December complaint as the victim of a legacy patent-holding behemoth. When Ericsson's efforts at marketing cellphones had fallen apart at the turn of the century, Apple contends Ericsson turned to patent licensing and assertion, which it now earns \$1 billion in revenue from.

Ericsson said in its complaints this week that it reinvests a lot of its licensing revenue into developing future generations of telecommunication technologies, and pours about \$5 billion into research and development every year.

Some of the licensing revenue it earns has come from Apple, as the two companies inked a seven-year global licensing deal in 2015 following a protracted round of patent litigation between. In those lawsuits, Apple claimed its phones didn't use Ericsson's patents, and if they did, Ericsson wasn't offering the licenses on FRAND terms.

Like it did then, Apple said in its December lawsuit that its phones do not infringe Ericsson's patents, which were declared to be essential to operating 5G networks by the European Telecommunications Standards Institute.

According to Apple, the current wave of litigation kicked off when Ericsson's lawyers "secretly went to court" in the Netherlands in late September to seek an injunction that would bar Apple from seeking anti-suit injunctions against Ericsson in any forthcoming battle between the companies. Apple calls this move an "anti-anti-suit injunction."

A Dutch judge declined to award Ericsson such a thing; meanwhile, Ericsson officially sent Apple its "sticker price" terms for how much it wanted to charge the smartphone giant to use Ericsson's patents on what it believed to be standard-essential 5G technology. That rate was \$5 per phone.

But Apple said it didn't have much time to officially vet the proposal after Ericsson's representatives had sent it over. "Just six minutes later," Apple says Ericsson filed a lawsuit in the Eastern District of Texas in October, accusing Apple of negotiating in bad faith to renew their license agreement. It asked the court to declare that its licensing practices are fair, reasonable and non-discriminatory, claiming that Apple has wrongly accused it of employing unfair practices in the tech giant's attempt to dodge higher royalty payments.

The patents-in-suit are U.S. Patent Nos. 8,102,805; 9,532,355; 10,425,817; 11,139,872; 7,151,430; 7,957,770; 8,472,999; 8,792,454; 9,509,273; 9,705,400; 9,853,621; and 10,880,794.

Ericsson is represented by M. Brett Johnson, Michael A. Bittner and Thomas M. Melsheimer of Winston & Strawn LLP, and Douglas Cawley, Nicholas Mathews, Richard Kamprath, Eric Hansen, Eleanor

Callaway, Josh Budwin, Kevin Hess, Mitch Verboncoeur and Caroline Burks of McKool Smith PC.

Counsel information for Apple could not be immediately identified.

The cases are Ericsson Inc. et al. v. Apple Inc., case numbers 6:22-cv-00061 and 6:22-cv-00060, in the U.S. District Court for the Western District of Texas.

--Additional reporting by Andrew Karpan, Vin Gurrieri and Hailey Konnath. Editing by Adam LoBelia.

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