

Ericsson's Licensing Offer To HTC Is FRAND, Texas Jury Finds

By **Daniel Siegal**

Law360 (February 19, 2019, 10:07 PM EST) -- A Texas federal jury on Friday rejected HTC's allegation that Ericsson is trying to overcharge on licensing fees for its standard-essential cellular patents, finding that the Swedish telecom giant's offer to HTC is fair, reasonable and nondiscriminatory and that both companies failed to negotiate in good faith.

After deliberating for roughly three hours following a five-day trial before U.S. District Judge Rodney Gilstrap, the Tyler jury returned with a verdict largely in favor of Telefonaktiebolaget LM Ericsson and its Texas subsidiary, Ericsson Inc., rejecting HTC Corp.'s allegation that Ericsson's proposed per-phone royalty violated its contractual obligation to offer fair, reasonable and nondiscriminatory, or FRAND, terms.

The jury found that HTC did not prove Ericsson failed to offer a FRAND license to its cellular standard-essential patents.

The jury did find that HTC had proved Ericsson failed to negotiate in good faith, and that Ericsson had proved its own claim that HTC had itself failed to negotiate in good faith.

Friday's verdict addressed HTC's attempt to get a better rate on the standard-essential patents going forward. The two companies' dispute also includes HTC's claim that it was overcharged for the standard-essential patents in the past, which Judge Gilstrap severed and sent to arbitration to November.

HTC filed suit in April 2017, accusing Ericsson of demanding unreasonable licensing terms and overcharging it for soon-to-be-obsolete technology covering aging cellular and wireless standards. In addition to failing to account for the diminishing value of the legacy technology, in breach of its FRAND obligations, HTC also accused Ericsson of colluding with other large standard-essential patent holders to manipulate the standards-setting process.

The suit was transferred to Texas in June after Ericsson successfully argued that its Washington offices, facilities and sales cited by HTC did not establish personal jurisdiction in that district. HTC added its antitrust claims in an amended complaint filed in August.

Ericsson asked the Texas court to sever, stay and arbitrate HTC's claims covering past overpayments because they involve licensing agreements struck between the companies in 2003, 2008 and 2014, all of which, it argued, contain arbitration provisions. The company then asked to have the antitrust

allegations sent to arbitration, arguing that they too center on the prior licensing agreements.

Judge Gilstrap sided with Ericsson in a November order, finding that the company had not waived its arbitration rights and that its request was timely. Ericsson, the order said, had looked to force arbitration in the Washington court, though the request was denied, and it filed its motions in Texas once it learned HTC was planning to seek arbitration on the past claims while still pursuing its claims in federal court.

Attorneys for the parties did not immediately respond to requests for comment on Tuesday.

HTC is represented by Jennifer H. Doan and Joshua R. Thane of Haltom & Doan, and David J. Burman, Andrew Culbert, Susan Foster, Jessica Everett-Garcia, Kevin A. Zeck, Jonathan R. Putman, Laura K. Hennessey and Adam G. Hester of Perkins Coie LLP.

Ericsson is represented by Theodore Stevenson III, Frank Vecella, Nicholas Mathews, Warren Lipschitz, Chelsea A. Priest, Jonathan Powers, Christine Woodin, Blake Bailey and Kevin L. Burgess of McKool Smith PC.

The case is HTC America Inc. et al. v. Ericsson Inc. et al., case number 6:18-cv-00243-JRG, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Matthew Perlman. Editing by Haylee Pearl.