

Gilstrap Won't Let Samsung Enforce China FRAND Injunction

By **Dani Kass**

Law360 (January 11, 2021, 12:26 PM EST) -- U.S. District Judge Rodney Gilstrap on Monday barred Samsung from enforcing a Chinese injunction that would have required a dispute with Ericsson over patents essential to the 4G and 5G wireless standards to be heard exclusively in Wuhan.

The Eastern District of Texas judge issued a preliminary injunction that maintained his right to hear a dispute alleging Samsung refused to accept a fair, reasonable and nondiscriminatory rate offered by Ericsson when renegotiating a cross-license agreement, without fully barring a Chinese court from doing the same.

"This court does not seek to insert itself into matters of Chinese law or civil procedure, but simply to preserve its jurisdiction over the causes of action properly before it," Judge Gilstrap wrote.

When the parties failed to agree on a license, Samsung sued in China, and Ericsson sued in Texas. The Chinese court in late December issued an antisuit injunction, barring Ericsson from seeking its own injunctive relief anywhere in the world on these patents. It also barred Ericsson from seeking an anti-antisuit injunction, under which someone like Judge Gilstrap would bar the Chinese court from barring Ericsson from asking for an injunction.

Monday's U.S. injunction also bars Samsung from using the Chinese suit to stop Ericsson from enforcing its own patents in the U.S., and indemnified Ericsson from any related fines or penalties levied by the Chinese court over the antisuit injunction.

Judge Gilstrap didn't make Samsung withdraw its antisuit injunction or block the Chinese court from reviewing the merits of the patent dispute.

"This court affirmatively finds that a tailored indemnification provision will adequately address this court's concern that Samsung may seek the imposition of substantial fines in the Chinese action for the purpose of creating economic leverage against Ericsson to achieve practically what it may not be able to obtain legally," the judge said. "This court finds that a narrowly focused indemnification provision will ensure that both proceedings can progress on the merits without the risk of unbalanced economic pressure being imposed by one party on another."

Judge Gilstrap had issued a temporary restraining order and anti-interference injunction on Dec. 28, trying to keep the status quo while deciding the preliminary injunction. The dispute drew opposing takes

from former Federal Circuit chiefs, with Judge Randall R. Rader throwing his weight behind Samsung in support of China, and Judge Paul Michel backing Ericsson.

The patents-in-suit are U.S. Patent Nos. 8,102,805; 8,607,130; 9,949,239; 9,532,355; 10,454,655; 10,193,600; 10,425,817; and 10,516,513.

Ericsson is represented by Theodore Stevenson III, Nicholas Mathews, Christine Woodin, Blake Bailey, Samuel F. Baxter and Jennifer L. Truelove of McKool Smith PC.

Samsung is represented by Melissa R. Smith of Gillam Smith LLP, Gregory S. Arovas, Edward C. Donovan, F. Christopher Mizzo and David Rokach of Kirkland & Ellis LLP, Kevin Hardy and Thomas D. Pease of Quinn Emanuel Urquhart & Sullivan LLP, and Paul Zeineddin of Axinn Veltrop & Harkrider LLP.

The cases are Ericsson Inc. et al. v. Samsung Electronics Co. Ltd. et al., case numbers 2:20-cv-00380 and 2:21-cv-00001, in the U.S. District Court for the Eastern District of Texas.

--Editing by Marygrace Murphy.

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