

CAFC Lowers Bar for Antisuit Injunctions in SEP Cases

[*Ericsson v. Lenovo, Inc.*, 2024 WL 4558664 \(Fed. Cir. 2024\)](#)

By: Joseph F. Marinelli and Alexander Bennett | Nov. 25, 2024

On October 24, 2024, the Federal Circuit in *Ericsson v. Lenovo* vacated a district court’s denial of Lenovo’s request for an antisuit injunction in a case involving standard essential patents (SEPs). The court held that when a party declares its patents essential to the 5G wireless communications standard, it must negotiate in good faith over a license to its SEPs before pursuing injunctive relief. The court also lowered the bar to obtain an antisuit injunction in SEP cases, which is an order by one court that can block an SEP holder from enforcing an injunction it obtained in another, even foreign, jurisdiction.

SEPs are patents declared essential to a technical standard. The European Telecommunications Standards Institute (ETSI) is the standard-setting organization that developed the 5G standard with its members. Ericsson and Lenovo, as ETSI members and contributors to the standard, are contractually bound by ETSI’s policies. This includes the obligation that they be prepared to grant licenses to their SEPs on fair, reasonable, and non-discriminatory (FRAND) terms.



Ericsson and Lenovo tried to reach a global cross-license covering their SEPs, including Ericsson’s 5G SEPs. When negotiations broke down, Ericsson sued Lenovo in a U.S. district court asserting that Lenovo infringed Ericsson’s 5G SEPs. Ericsson also obtained injunctions against Lenovo in Colombia and Brazil, asserting that Lenovo infringed Ericsson’s 5G SEPs in those countries. Lenovo responded by requesting that the U.S. district court issue an antisuit injunction to prevent Ericsson from enforcing its foreign injunctions. Under the framework articulated by the 9th Circuit in *Microsoft Corp. v. Motorola*, an antisuit injunction is only proper if the domestic suit, as a threshold issue, is “dispositive” of the foreign lawsuit. The district court denied Lenovo’s request, concluding that because the U.S. suit may not have necessarily resulted in a global patent license, the U.S. suit was not dispositive of the foreign suits under *Microsoft*.

The Federal Circuit vacated and remanded the district court’s decision, finding that the threshold “dispositive” requirement had been met. First, the court interpreted ETSI’s policies to require that when a party has made an ETSI FRAND commitment, it must then negotiate in good faith over a license to its SEPs before it pursues injunctive relief regarding those SEPs. On this issue, the court drew support from earlier decisions by the United Kingdom Supreme Court and the Northern District of California. Then, the court explained that for a domestic suit to be dispositive for purposes of an antisuit injunction under *Microsoft*, it need not result in a global patent license between the parties. Rather, in this case, if the U.S. district court finds that Ericsson breached its obligation to negotiate in good faith, then that finding will be dispositive of whether Ericsson may seek injunctions in foreign suits.

In the global world of SEPs, the Federal Circuit’s ruling may make it more difficult for SEP holders to embark on global litigation campaigns to pressure potentially infringing implementers of technical standards with the threat of foreign injunctions. Although foreign injunctions may be faster and easier to obtain, antisuit injunctions obtained in co-pending U.S. litigation may curb that strategy.