

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

LENOVO (UNITED STATES) INC. and
MOTOROLA MOBILITY LLC,

Plaintiffs,

v.

C.A. No. 20-493-LPS

INTERDIGITAL TECHNOLOGY
CORPORATION, IPR LICENSING, INC.,
INTERDIGITAL COMMUNICATIONS,
INC., INTERDIGITAL HOLDINGS, INC.,
and INTERDIGITAL, INC.

Defendants.

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MEMORANDUM OPINION

March 24, 2021
Wilmington, Delaware



STARK, U.S District Judge:

Pending before the Court is a Motion to Dismiss for Failure to State a Claim and Lack of Jurisdiction (D.I. 7) filed by Defendants IPR Licensing, Inc., InterDigital Communications, Inc., InterDigital Holdings, Inc., InterDigital Inc., InterDigital Patents Holdings, Inc., and InterDigital Technology Corporation (collectively, “InterDigital” or “IDC”). InterDigital seeks to dismiss Plaintiffs Lenovo (United States) Inc. and Motorola Mobility LLC’s (collectively, “Lenovo”) Sherman Act Section 1 and Section 2 antitrust counts for lack of antitrust standing and failure to state a claim. InterDigital further asks this Court to require Lenovo to plead its antitrust counts (as well as a breach of contract count, which is not the subject of the pending motion) as compulsory counterclaims in a patent infringement suit InterDigital is pressing in this Court.

For the reasons stated below, InterDigital’s motion will be granted in part and denied in part.

I. BACKGROUND

InterDigital is a patent holding company that holds Standard Essential Patents (“SEPs”) related to cellular technologies underlying 3G and 4G LTE wireless standards. (D.I. 1 Ex. 2 ¶ 27) Lenovo is a cellular telephone manufacturer that wishes to incorporate those standards into the chipsets it places in its phones. (*Id.* at ¶¶ 18-19) The relevant standards are promulgated by the European Telecommunications Standards Institute (“ETSI”), a member of the Third Generation Partnership Project. (D.I. 1 ¶ 1)

The parties’ dispute relates in part to obligations that InterDigital incurred pursuant to its relationship with ETSI. As a standards-promulgating organization, ETSI commercialized the

technology that is now used worldwide as 3G and 4G LTE phones. (*Id.* ¶¶ 42-43) To do so, ETSI developed new technology via patented and unpatented technological innovations. (*Id.* ¶ 44)

In promulgating the 3G and 4G LTE standards, ETSI necessarily prevents other technological competition by disincentivizing development of other standards. *See Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 314 (3d Cir. 2007) (“When a patented technology is incorporated in a standard, adoption of the standard eliminates alternatives to the patented technology.”). Further, ETSI’s implementation of the standards requires would-be implementers to risk infringing the many patents underlying them. (*Id.* ¶¶ 44-45) This poses a substantial antitrust risk – in obtaining market power, ETSI and those with rights to SEPs may be able to hold-up implementers by demanding payment for licenses potentially not commensurate with the patents’ worth. (*Id.*)

To mitigate the risk of antitrust concerns, ETSI enters into a contract with SEP holders. That contract, governed by French law (D.I 1 Ex. 2 § 12), provides that any holder of a patent that may reasonably relate to the ETSI 3G and 4G LTE standards must notify ETSI “in a timely fashion.” (*Id.* § 4.1) SEP holders must also agree to bestow licenses to any would-be implementer under fair, reasonable, and non-discriminatory (“FRAND”) terms. (*Id.* § 6.1)

InterDigital submitted its patents for consideration by ETSI (D.I. 1 ¶ 61), thereby contractually obligating InterDigital to license its patents under FRAND terms upon their incorporation into the 3G and 4G LTE standards (D.I. 1 Ex. 2 §§ 6.1-6.4 & App’x A). That FRAND obligation underlies the dispute between the parties here.

Further actions involving Lenovo and InterDigital are pending in the United Kingdom and in this Court, generally relating to issues of InterDigital’s compliance with its FRAND

obligations. The United Kingdom litigation was filed by InterDigital on August 27, 2019, and asks the Business and Property Courts of England and Wales to declare that InterDigital has complied with its FRAND obligations in its offers to Lenovo. (D.I. 1 ¶¶ 86-88) In the alternative, InterDigital asks that the United Kingdom court determine a reasonable royalty that is FRAND for Lenovo to pay for practicing the InterDigital SEP portfolio. (*Id.*) The United States action was filed by InterDigital one day later, on August 28, 2019, and seeks a declaration that Lenovo’s actions are an infringement of InterDigital’s U.S. SEPs. (*Id.* ¶ 89) InterDigital further asks for a determination that InterDigital’s licensing offers are FRAND, thereby entitling InterDigital to an injunction against Lenovo’s infringing activity. (*Id.*)

The instant matter concerns antitrust. In it, Lenovo alleges that InterDigital defrauded ETSI when it agreed to license its SEPs on FRAND terms, allowing InterDigital to obtain unlawful monopoly power and subjecting Lenovo to a risk of antitrust harm from InterDigital’s exercise of that unlawful monopoly power. (*See generally* D.I. 1 Ex. 2) InterDigital responds that because it has offered licenses on FRAND terms – and has filed the United Kingdom and United States actions to confirm that its offers are FRAND – Lenovo has not (and cannot, as a matter of law) suffer any antitrust harm. (D.I. 8 at 8-11)

In considering the issues presented by InterDigital’s motion, the Court has considered not only the parties’ extensive briefing (*see* D.I. 8, 18, 20, 23, 36) but also a statement of interest and a further brief from the United States (D.I. 13, 28) and an amicus brief from The App Association (D.I. 14). The Court also reviewed the multiple supplemental authorities submitted by the parties. (*See* D.I. 27, 29, 31, 38) The Court heard argument on October 27, 2020. (D.I. 40) (“Tr.”)

II. LEGAL STANDARDS

A. Motions to Dismiss

Evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) requires the Court to accept as true all material allegations of the complaint. *See Spruill v. Gillis*, 372 F.3d 218, 223 (3d Cir. 2004). “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997) (internal quotation marks omitted). Thus, the Court may grant such a motion to dismiss only if, after “accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief.” *Maio v. Aetna, Inc.*, 221 F.3d 472, 481-82 (3d Cir. 2000) (internal quotation marks omitted).

However, “[t]o survive a motion to dismiss, a civil plaintiff must allege facts that ‘raise a right to relief above the speculative level on the assumption that the allegations in the complaint are true (even if doubtful in fact).’” *Victaulic Co. v. Tieman*, 499 F.3d 227, 234 (3d Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). At bottom, “[t]he complaint must state enough facts to raise a reasonable expectation that discovery will reveal evidence of [each] necessary element” of a plaintiff’s claim. *Wilkerson v. New Media Tech. Charter Sch. Inc.*, 522 F.3d 315, 321 (3d Cir. 2008) (internal quotation marks omitted).

The Court is not obligated to accept as true “bald assertions,” *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (internal quotation marks omitted), “unsupported

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