

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CONTINENTAL AUTOMOTIVE
SYSTEMS, INC.,

Plaintiff,

v.

AVANCI, LLC, et al.

Defendants.

No. 3:19-CV-02933-M

MOTION FOR LEAVE TO FILE STATEMENT OF INTEREST

The United States respectfully moves for leave to file the Statement of Interest attached hereto as Exhibit A pursuant to 28 U.S.C. § 517, which permits the Attorney General to send “any officer of the Department of Justice” to “any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States[.]”

The Antitrust Division of the Department of Justice enforces the federal antitrust laws and has a strong interest in their correct application. The United States has an interest in this pending case because of the application of Section 2 of the Sherman Act (15 U.S.C. § 2) in the matter as described below. Notwithstanding the United States’ statutory authorization to file a Statement of Interest, in the interest of avoiding any conflict with Local Rules, the United States respectfully moves the Court for an order permitting it to file its Statement of Interest attached hereto.

I. Procedural Background

On July 23, 2019, Plaintiff Continental Automotive Systems, Inc. (“Continental” or “Plaintiff”) brought suit in the Northern District of California against Avanci LLC and Avanci

Platform International Limited (collectively “Avanci”) along with other entities (collectively, with Avanci, “Defendants”) based on Defendants’ patent licensing practices. With a motion to dismiss pending, venue for this matter was transferred to the Northern District of Texas. On January 27, 2020, this Court ordered both sides to re-brief the motion to dismiss, limited to the change in Circuit law and any other change in status since the motion was originally briefed. (Dkt. 264.) The United States consulted with counsel for each side and informed them that it was considering filing a Statement of Interest regarding Continental’s Section 2 claims. The United States further conferred with counsel for both parties on February 25-26, 2020, regarding the Statement of Interest and this Motion for Leave. At this time, counsel for each of the Defendants informed the United States that each consented to the filing. Counsel for Continental informed the United States that it would oppose the filing. Continental will submit its opposition to Defendants’ Motion to Dismiss on or before February 28, 2020.

II. Argument

The Antitrust Division of the Department of Justice enforces the federal antitrust laws and has a strong interest in their correct application. The United States has a particular interest in this case because it involves the intersection of antitrust law and intellectual property rights, a topic which the United States has long studied and with which it has considerable enforcement experience.¹ The United States seeks to ensure that the antitrust laws are correctly applied to promote innovation and enhance consumer welfare, and are not misinterpreted in ways that could

¹ See U.S. Dep’t Of Justice & Fed. Trade Comm’n, Antitrust Guidelines For The Licensing Of Intellectual Property (2017), https://www.ftc.gov/system/files/documents/public_statements/1049793/ip_guidelines_2017.pdf; U.S. Dep’t of Justice & Fed. Trade Comm’n, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition (2007), <https://www.justice.gov/sites/default/files/atr/legacy/2007/07/11/222655.pdf>.

undermine these critical goals. This Statement explains that Continental’s attempts to base Section 2 antitrust violations upon alleged breaches of “fair, reasonable, and nondiscriminatory” (“FRAND”) licensing commitments made during standard-setting processes, including claims of purported “deception” regarding FRAND rates, do not articulate cognizable antitrust claims. In particular, the Statement argues that courts in the Fifth Circuit should not follow the Third Circuit’s decision in *Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297 (3d Cir. 2007), in the standard-setting context. The United States takes no position on the merits of the remaining claims or the motion to dismiss them.

III. Conclusion

Accordingly, the United States respectfully requests leave to file its attached Statement of Interest regarding the proposed application of Section 2 of the Sherman Act (15 U.S.C. § 2).

Respectfully submitted,

/s/ Andrew DeLaney

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Certificate of Conference

I certify that counsel for the United States conferred with counsel for each of parties on February 25-26, 2020. Counsel for each of the Defendants informed the United States that each consented to the filing. Counsel for Plaintiff informed the United States that it would oppose the filing.

/s/ Andrew DeLaney
Andrew DeLaney
Attorney, Antitrust Division
U.S. Department of Justice

Certificate of Service

On February 27, 2020, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Andrew DeLaney
Andrew DeLaney
Attorney, Antitrust Division
U.S. Department of Justice

EXHIBIT A

Explore Litigation Insights

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