

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NOKIA CORP.,

Plaintiff,

-against-

08 Civ. 1507 (DAB)  
ORDER

INTERDIGITAL, INC., INTERDIGITAL  
COMMUNICATIONS, LLC and INTERDIGITAL  
TECHNOLOGY CORP.,

Defendants.

-----X  
DEBORAH A. BATTIS, United States District Judge.

On March 10, 2010, this Court denied Defendants recovery against the preliminary injunction bond filed by Plaintiff. Defendants appealed timely. On May 23, 2011, the United States Court of Appeals for the Second Circuit vacated this Court's Order and remanded for reconsideration and consideration.

For reasons detailed herein, after reconsideration on remand, Defendants' motion to recover damages against the injunction bond is GRANTED in part and DENIED in part, and Plaintiff is ORDERED to release the bond to Defendants in its entirety.

I. BACKGROUND

The underlying facts are familiar to the Parties, are laid out in detail in the Second Circuit's decision dated May 23, 2011, and will not be restated here. Defendants seek recovery

against Plaintiff's \$500,000.00 injunction bond for three categories of damages: (1) fees paid for the preparation and filing of a motion to stay the ITC proceedings as against Nokia; (2) fees paid in relation to arbitration; and (3) costs associated with deconsolidating the ITC proceedings against Nokia and Samsung and conducting those proceedings separately.

## II. LEGAL STANDARDS

In the Second Circuit, there now exists a rebuttable presumption in favor of recovery against a bond posted pursuant to Federal Rule of Civil Procedure 65(c). Mandate at \*5-\*9. However, the presumption applies only to "provable" damages – that is, "the wrongfully enjoined party must first demonstrate that the damages sought were proximately caused by the wrongful injunction" before the presumption in favor of recovery takes effect. Mandate at \*9 (citations omitted). As to damages which are adequately shown to have been proximately caused by a wrongful injunction, "[t]he burden of demonstrating that recovery should be denied is on the party opposing recovery." Mandate at \*10. "Good reasons to deny recovery of all or a portion of the alleged damages would be that the damages sought were unreasonable in amount or that a party failed to mitigate them." Id. (citations omitted).

III. ANALYSIS

The Second Circuit having vacated the preliminary injunction issued by this Court, Nokia Corp. v. InterDigital, Inc., No. 08-1642-cv, 2008 WL 2951912 (2d Cir. July 13, 2008) (summary order), Defendants are entitled to a rebuttable presumption of recovery against the injunction bond filed by Plaintiff, though only to the extent that Defendants can establish that their "damages" were proximately caused by the injunction. See Mandate at \*8-\*9.

Here, Defendants have shown that damages in the amount of \$6,437.00 were proximately caused by the issuance of the injunction which the Second Circuit ultimately vacated. That amount, which Defendants paid their attorneys to prepare and file a motion to stay the ITC proceeding against Plaintiff, is directly traceable to the injunction Order, which directed Defendants to file a motion to stay. Defendants may therefore recover \$6,437.00 against Plaintiff's injunction bond.

Similarly, the \$574,542.00 Defendants paid their attorneys to prepare for and conduct arbitration concerning Nokia's TDD license defense are traceable to and were proximately caused by the injunction. See March 20, 2008 Preliminary Injunction Hearing Transcript, Page 114, Lines 13-15 ("I am also compelling Interdigital, pursuant to 9 U.S.C. Section 4, to submit to arbitration for resolution of Nokia's TDD license defense."); see

also Preliminary Injunction and Order Compelling Arbitration, Docket # 39 (" 4. InterDigital must submit to arbitration pursuant to 9 U.S.C. § 4."). Defendants assert, and Plaintiff does not contest, that Defendants paid costs and fees in the amount of approximately \$574,542.00 in connection with the arbitration compelled by the wrongful injunction.

"Recovery of such [fees and expenses], incurred in collateral proceedings required by the terms of a wrongful injunction, does not contravene the American Rule [against recovery of fees] or its Rule 65(c) analogue. . . . Instead, permitting recovery is consistent with the purpose of an injunction bond—to cover the costs and damages incurred as a result of complying with a wrongful injunction." Mandate at \*11. Accordingly, Defendants are entitled to recover against the bond in the additional amount of \$574,542.00.

Because Defendants are entitled to recovery in an amount in excess of the bond posted, the Court need not and does not consider whether the costs Defendants incurred in deconsolidating the ITC proceedings and proceeding separately against Nokia and Samsung are recoverable as damages. See, e.g., Blumenthal v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 910 F.2d 1049, 1056 (2d Cir. 1990) (wrongfully enjoined Parties "are entitled to damages as may be shown to have been proximately caused by the

injunction . . . up to the amount of the bond"). To the extent Defendants seek recovery of costs related to deconsolidation and separate proceedings, their Motion is DENIED as moot.

IV. CONCLUSION

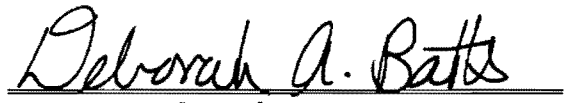
Defendants having established that damages in excess of \$500,000.00 were proximately caused by the wrongful injunction, Defendants are entitled to recover the full amount of the bond posted. Plaintiff is ORDERED to direct its surety promptly to make payment to Defendants.

The Clerk of Court is directed to close the docket in this case.

SO ORDERED.

Dated: New York, New York

July 14, 2011

  
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Deborah A. Batts  
United States District Judge