

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

INTERDIGITAL COMMUNICATIONS	:	
INC., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 13-8-RGA
	:	
HUAWEI TECHNOLOGIES CO.	:	
LTD, et al.,	:	
	:	
Defendants.	:	

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

INTERDIGITAL COMMUNICATIONS	:	
INC., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 13-9-RGA
	:	
ZTE CORPORATION, et al.,	:	
	:	
Defendants.	:	

**ORDER**

I have in each of these very similar cases a motion for expedited discovery and trial on at least one counterclaim, that is, that I grant a declaratory judgment setting a FRAND rate for three patents. (No. 13-8, D.I. 16; No. 13-9, D.I. 9). The Plaintiff opposes. The gist of the request is that each Defendant will be harmed if its products are excluded from the U.S. by the ITC, that the ITC cannot set a FRAND rate, and that the Plaintiff will not offer it a FRAND rate although it has an obligation to do so. The suggestion is that this gives the Plaintiff too much leverage, so that it is in a position to demand licensing fees that exceed the FRAND rate. (D.I. 17, p.18).

Each Defendant states that it will accept whatever FRAND rate the Court determines in this expedited proceeding. (No. 13-8, D.I. 29, pp.8-10). It seems to me, looking at each Complaint and the Answer, that determination of the FRAND rate would at most resolve a tiny sliver of this case. The defendant argues that the ITC cannot grant an exclusion order unless the Plaintiff has offered the defendant a FRAND rate and the defendant has refused. (No. 13-8, D.I. 17, pp.13-14). The defendant states that almost everybody recognizes this, but implies that the ITC does not. (*Id.*, D.I. 17, p.17). The defendant thus appears also to ask that I enjoin the ITC (although it is couched in the form of enjoining the Plaintiff from presenting arguments to the ITC). (No. 13-8, D.I. 8, Prayer for Relief, §§ c & d).

It does not seem to me like a very practicable idea to try to race to a partial judgment here so that each defendant will be in a better position in the ITC litigation. Therefore, I will deny the motion for expedited discovery and trial in the two cases. We will have a Rule 16 when the two related cases (Nos. 13-10 & 13-11) are positioned for such a conference.

Therefore, this 14<sup>th</sup> day of March 2013, the motions for expedited discovery and trial (No. 13-8, D.I. 16; No. 13-9, D.I. 9) are **DENIED**.

  
United States District Judge