

Case No. 20-11032

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Continental Automotive Systems, Incorporated, a Delaware corporation,

Plaintiff – Appellant,

v.

Avanci, L.L.C., a Delaware corporation, et al.,

Defendants – Appellees.

**MOTION FOR A 30-DAY EXTENSION OF TIME
TO FILE A PETITION FOR REHEARING EN BANC**

Plaintiff-Appellant Continental Automotive Systems, Inc. respectfully moves for a 30-day extension of time, from July 5, 2022, to and including August 4, 2022, to file a petition for rehearing en banc. Defendants oppose the request for a 30-day extension.

1. Continental is a leading provider of automotive components that use cellular standards, such as the 4G standard. Defendants own or license patents essential to those cellular standards, meaning that Continental cannot make its products without infringing Defendants’ patents. Continental brought antitrust claims and non-federal claims against Defendants, alleging (among other things)

that Defendants breached their contractual obligations to grant licenses to Continental on fair, reasonable, and nondiscriminatory (FRAND) terms. Continental also alleged that Defendants violated § 1 and § 2 of the Sherman Act by: (1) agreeing with each other to refuse to grant licenses for their standard-essential patents to component suppliers like Continental; and (2) deceiving standard-setting organizations into including Defendants' patents in the cellular standards by concealing their intent to refuse to deal with suppliers like Continental, and thereby obtaining the ability to charge monopoly prices for licenses to their patents.

2. The district court granted Defendants' motion to dismiss Continental's antitrust claims and declined to exercise supplemental jurisdiction over Continental's non-federal claims. The district court held that—although Continental had Article III standing because it suffered an injury in fact when Defendants refused to grant Continental licenses to their standard-essential patents on FRAND terms—Continental failed to state claims for unlawful restraint of trade or unlawful monopolization under the Sherman Act. Continental timely appealed.

3. On February 28, 2022, the panel issued its opinion and vacated the district court's judgment. The panel held that Continental lacked Article III standing because it was not an intended beneficiary of Defendants' commitments to license their patents on FRAND terms. The panel also held, alternatively, that

Continental did not suffer an injury in fact because Defendants grant licenses to car manufacturers—the end users of Continental’s products—and thus Continental does not need those licenses to operate its business.

4. Continental filed a petition for rehearing en banc. The petition demonstrated that the panel’s decision created an inter- and intra-circuit split as to who is an intended beneficiary of a FRAND commitment and conflicted with Supreme Court precedent on Article III standing. The petition also argued that the panel’s decision would disrupt major technological industries that rely on standard-essential patents and the corresponding FRAND commitments.

Six amicus briefs supported the petition.

On April 25, the Court requested a response to the petition.

5. On June 13, the panel construed Continental’s petition for rehearing en banc as a petition for panel rehearing, granted the petition, and withdrew its opinion.

6. On June 21, the panel issued a revised opinion, this time affirming the district court’s judgment on the grounds that Continental failed to state claims under § 1 and § 2 of the Sherman Act.

7. The current due date for Continental’s petition for rehearing en banc is July 5. Continental requests a 30-day extension in light of the complexity and

importance of the matter as well as the press of other business. The requested 30-day extension would move the due date to August 4.

8. This appeal presents complex and important issues concerning the intersection of antitrust law and standard-essential patents. The requested extension is necessary to ensure that the petition thoroughly presents the new and important issues raised by the revised opinion, and the ramifications of that opinion.

9. The extension is further justified by counsel's press of business on other pending matters. Counsel's other obligations during the relevant period include: preparing a joint status report due July 1 in *Netafim Irrigation, Inc. v. Jain Irrigation, Inc. (Netafim I)*, No. 1:21-cv-00540-AWI-EPG (E.D. Cal.); preparing for a July 11 status conference in *Netafim I*; preparing for and defending a witness in a non-party witness deposition from July 14-15 in *In re California Gasoline Spot Market Antitrust Litigation*, No. 3:20-cv-03131-JSC (N.D. Cal.); preparing a reply due July 22 in support of a motion for a protective order in *Jain Irrigation, Inc. v. Netafim Irrigation, Inc. (Netafim II)*, No. 37-2019-00035422-CU-AT-CTL (Cal. Super. Ct.); and preparing for a July 29 oral argument on the *Netafim II* motion for a protective order.

10. In addition, the July 4th holiday falls within the relevant time period.

11. On June 24, counsel for Continental asked Defendants for their position on this motion. On June 28, Defendants' counsel responded that while Defendants

CERTIFICATE OF COMPLIANCE

I certify that this document complies with Federal Rules of Appellate Procedure 32(g)(1) and 27(d)(2)(A) because it contains 850 words—excluding, pursuant to Federal Rule of Appellate Procedure 32(f), the cover page, signature block, and certificates of counsel—and was prepared in Microsoft Word using 14-point Times New Roman typeface.

/s/Michael W. Scarborough
Michael W. Scarborough

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2022, a copy of the foregoing pleading was electronically served on counsel for Defendants-Appellees by filing the document with the Clerk of the United States Court of Appeals for the Fifth Circuit by using the electronic case filing system of the court.

/s/ Michael W. Scarborough
Michael W. Scarborough