

REVISED

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

June 21, 2022

Lyle W. Cayce  
Clerk

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No. 20-11032

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CONTINENTAL AUTOMOTIVE SYSTEMS, INCORPORATED, *a  
Delaware corporation,*

*Plaintiff—Appellant,*

*versus*

AVANCI, L.L.C., *a Delaware corporation*; AVANCI PLATFORM  
INTERNATIONAL LIMITED, *an Irish company*; NOKIA  
CORPORATION, *a Finnish corporation*; NOKIA OF AMERICA  
CORPORATION, *a Delaware corporation*; NOKIA SOLUTIONS AND  
NETWORKS U.S., L.L.C., *a Delaware corporation*; NOKIA  
SOLUTIONS AND NETWORKS OY, *a Finnish corporation*; NOKIA  
TECHNOLOGIES OY, *a Finnish corporation*; OPTIS UP HOLDINGS,  
L.L.C., *a Delaware corporation*; OPTIS CELLULAR TECHNOLOGY,  
L.L.C., *a Delaware corporation*; OPTIS WIRELESS TECHNOLOGY,  
L.L.C., *a Delaware corporation*; SHARP CORPORATION, *a Japanese  
corporation,*

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:19-CV-2933

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ON PETITION FOR REHEARING

Before STEWART, HO, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:\*

Auto-parts supplier Continental Automotive Systems, Inc. (“Continental”) sued several standard-essential patent (“SEP”) holders (“Patent-Holder Defendants”) and their licensing agent Avanci,<sup>1</sup> seeking declaratory and injunctive relief. Before the district court, Continental asserted that Patent-Holder Defendants and Avanci’s refusals to license SEPs to the supplier on fair, reasonable, and nondiscriminatory (“FRAND”) terms violated Sections 1 and 2 of the Sherman Antitrust Act of 1890 (“the Sherman Act”), as well as associated state law. The district court dismissed Continental’s claims at the pleading stage, and Continental appealed.

Section 1 of the Sherman Act prohibits every “contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce.” 15 U.S.C. § 1. Continental alleges that Patent-Holder Defendants and Avanci conspired to license exclusively down the chain to original-equipment manufacturers based on their underlying patent pool licensing agreement, and that Continental’s inability to obtain FRAND licenses through the pool from Avanci and outside of the pool from individual Patent-Holder Defendants demonstrates that the agreement has unreasonably restrained trade.

Section 2 of the Sherman Act makes it unlawful to “monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize.” 15 U.S.C. § 2. Continental alleges that Patent-Holder Defendants deceived standard-setting organizations into adopting

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

<sup>1</sup> Patent-Holder Defendants are certain Nokia Corporation entities, PanOptis Equity Holdings entities, and Sharp Corporation. Avanci collectively refers to Avanci, LLC and Avanci Platform International Limited, both of which are parties to this lawsuit.

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technical standards reliant on their SEPs by promising to license those patents on FRAND terms and reneged on this promise, and that Patent-Holder Defendants and Avanci abused monopoly power thereby acquired in the standardization process to exclude certain implementers and extract supra-competitive royalty rates.

Having reviewed the district court's detailed order, and considered the oral arguments and briefs filed by the parties and amicus curiae, we AFFIRM the judgment of the district court that Continental failed to state claims under Sections 1 and 2 of the Sherman Act. *See Cont'l Auto. Sys., Inc. v. Avanci, LLC*, 485 F. Supp. 3d 712 (N.D. Tex. 2020).

*United States Court of Appeals*

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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NEW ORLEANS, LA 70130

June 21, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing  
or Rehearing En Banc

No. 20-11032 Cntntl Auto Sys v. Avanci, L.L.C.  
USDC No. 3:19-CV-2933

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

**FED. R. APP. P. 39** through **41**, and **5TH CIR. R. 35**, **39**, and **41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that Appellant pay to Appellees the costs on appeal. A bill of cost form is available on the court's website [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov).

Sincerely,

LYLE W. CAYCE, Clerk

*Christina Rachal*

By: \_\_\_\_\_  
Christina C. Rachal, Deputy Clerk

Enclosure(s)

Mr. Stephen Akerley  
Mr. Theodore J. Angelis  
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