

1 Broadcom Corp. v. Qualcomm Inc., 501 F. 3d 297 (3rd. Cir. 2007)

2 EXCERPTS

4 OPINION OF THE COURT

5 BARRY, Circuit Judge.

7 This appeal presents important questions regarding whether a patent holder's deceptive
... conduct before a private standards-determining organization may be condemned under
... antitrust laws and, if so, what facts must be pled to survive a motion to dismiss.
... Broadcom Corporation ("Broadcom") alleged that Qualcomm Inc. ("Qualcomm"), by its
... intentional deception of private standards-determining organizations and its predatory
... acquisition of a potential rival, has monopolized certain markets for cellular telephone
... technology and components, primarily in violation of Sections 1 and 2 of the Sherman Act
... and Sections 3 and 7 of the Clayton Act. The District Court dismissed the Complaint, and
... Broadcom appeals. For the reasons that follow, we conclude that Broadcom has stated claims
... for monopolization and attempted monopolization under § 2 of the Sherman Act – Claims 1
... and 2 of the Complaint. [...]

9 I. Background

11 A. Mobile Wireless Telephony and the UMTS Standard

13 Mobile wireless telephony is the general term for describing the technology and equipment
... used in the operation of cellular telephones. A cellular telephone contains one or more
... computer "chipsets" – the core electronics that allow it to transmit and receive
... information, either telephone calls or data, to and from the wireless network. Chipsets
... transmit information, via radio waves, to cellular base stations. Base stations, in turn,
... transmit information to and from telephone and computer networks. It is essential that all
... components involved in this transmission of information be able to communicate seamlessly
... with one another. Because multiple vendors manufacture these components, industry-wide
... standards are necessary to ensure their interoperability. In mobile wireless telephony,
... standards are determined privately by industry groups known as standards-determining
... organizations ("SDOs").

15 Two technology paths, or families of standards, are in widespread use today: "CDMA," which
... stands for "code division multiple access"; and "GSM," which stands for "global system for
... mobility." Cellular telephone service providers operate under one or the other path, with,
... for example, Verizon Wireless and Sprint Communications operating CDMA-path networks, and
... Cingular (now AT&T) and T-Mobile operating GSM-path networks. The CDMA and GSM technology
... paths are not interoperable; equipment and technologies used in one cannot be used in
... the304*304 other. For this reason, each technology path has its own standard or set of
... standards. The standard used in current generation GSM-path networks is the third
... generation ("3G") standard created for the GSM path, and is known as the Universal Mobile
... Telecommunications System ("UMTS") standard.[1]

17 The UMTS standard was created by the European Telecommunications Standards Institute
... ("ETSI") and its SDO counterparts in the United States and elsewhere after a lengthy
... evaluation of available alternative equipment and technologies. Qualcomm supplies some of
... the essential technology that the ETSI ultimately included in the UMTS standard, and holds
... intellectual property rights ("IPRs"), such as patents, in this technology. Given the
... potential for owners of IPRs, through the exercise of their rights, to exert undue control
... over the implementation of industry-wide standards, the ETSI requires a commitment from
... vendors whose technologies are included in standards to license their technologies on
... fair, reasonable, and non-discriminatory ("FRAND") terms. Neither the ETSI nor the other

17... relevant SDOs further define FRAND.

18

19 Broadcom alleged that Qualcomm was a member of the ETSI, among other SDOs, and committed
... to abide by its IPR policy. Specifically, Broadcom alleged, the ETSI included Qualcomm's
... proprietary technology in the UMTS standard only after, and in reliance on, Qualcomm's
... commitment to license that technology on FRAND terms. The technology in question is called
... Wideband CDMA ("WCDMA"), not to be confused with the CDMA technology path. Although it
... represents only a small component of the technologies that collectively comprise the UMTS
... standard, WCDMA technology is said to be essential to the practice of the standard.

20

21 B. Broadcom's Complaint

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23 Broadcom filed this action in the U.S. District Court for the District of New Jersey on
... July 1, 2005, and filed its First Amended Complaint (the "Complaint") shortly thereafter.
... The Complaint alleged that Qualcomm induced the ETSI and other SDOs to include its
... proprietary technology in the UMTS standard by falsely agreeing to abide by the SDOs'
... policies on IPRs, but then breached those agreements by licensing its technology on
... non-FRAND terms. The intentional acquisition of monopoly power through deception of an
... SDO, Broadcom posits, violates antitrust law.

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25 [...]

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27 C. The District Court's Opinion

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29 Qualcomm moved to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6) for
... failure to state a claim. On August 30, 2006, [...] little more than a year after the
... filing of the Complaint and while discovery was ongoing, the District Court granted the
... motion.

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33 II. Jurisdiction and Standard of Review

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37 III. Discussion

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39 Broadcom raises these issues on appeal: whether deception of an SDO may give rise to
... antitrust liability under the circumstances alleged, whether the Complaint adequately pled
... claims of attempted monopolization and monopoly maintenance, and whether the claim
... relating to Qualcomm's acquisition of Flarion was properly dismissed. Broadcom does not
... appeal the dismissal of its claims for tying and exclusive dealing.

40

41 A. The District Court erred in dismissing Claim 1 – the monopolization claim – on the
... ground that abuse of a private standard-setting process does not state a claim under
... antitrust law.

42

43 Claim 1 of the Complaint alleged that Qualcomm monopolized markets for WCDMA technology by
... inducing the relevant SDOs to include Qualcomm's patented technology as an essential
... element of the UMTS standard. Qualcomm did this by falsely promising to license its
... patents on FRAND terms, and then reneging on those promises after it succeeded in having
... its technology included in the standard. These actions, the Complaint alleged, violated §
... 2 of the Sherman Act, 15 U.S.C. § 2.

44

45 1. Unlawful Monopolization under § 2: Monopoly Power

46
47 Section 2 of the Sherman Act, in what we have called "sweeping language," makes it
... unlawful to monopolize, attempt to monopolize, or conspire to monopolize, interstate or
... international commerce.[2] It is, we have observed, "the provision of the antitrust laws
... designed to curb the excesses of monopolists and near-monopolists." *LePage's Inc. v. 3M*,
... 324 F.3d 141, 169 (3d Cir.2003) (en banc). Liability under § 2 307*307 requires "(1) the
... possession of monopoly power in the relevant market and (2) the willful acquisition or
... maintenance of that power as distinguished from growth or development as a consequence of
... a superior product, business acumen, or historic accident." *United States v. Grinnell*
... *Corp.*, 384 U.S. 563, 570-71, 86 S.Ct. 1698, 16 L.Ed.2d 778 (1966). Monopoly power is the
... ability to control prices and exclude competition in a given market. *Id.* at 571, 86 S.Ct.
... 1698. If a firm can profitably raise prices without causing competing firms to expand
... output and drive down prices, that firm has monopoly power. *Harrison Aire, Inc. v.*
... *Aerostar Int'l, Inc.*, 423 F.3d 374, 380 (3d Cir.2005).

48
49 The existence of monopoly power may be proven through direct evidence of supracompetitive
... prices and restricted output. *United States v. Microsoft Corp.*, 253 F.3d 34, 51
... (D.C.Cir.2001) (en banc); *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1434 (9th
... Cir.1995). It may also be inferred from the structure and composition of the relevant
... market. *Harrison Aire*, 423 F.3d at 381; *Microsoft*, 253 F.3d at 51. To support an inference
... of monopoly power, a plaintiff typically must plead and prove that a firm has a dominant
... share in a relevant market, and that significant "entry barriers" protect that market.
... *Harrison Aire*, 423 F.3d at 381; *Microsoft*, 253 F.3d at 51. Barriers to entry are factors,
... such as regulatory requirements, high capital costs, or technological obstacles, that
... prevent new competition from entering a market in response to a monopolist's
... supracompetitive prices. *Microsoft*, 253 F.3d at 51; *Rebel Oil*, 51 F.3d at 1439; see also
... *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 591 n. 15, 106 S.Ct.
... 1348, 89 L.Ed.2d 538 (1986) ("[W]ithout barriers to entry it would presumably be
... impossible to maintain supracompetitive prices for an extended time.").

50
51 Proving the existence of monopoly power through indirect evidence[3] requires a definition
... of the relevant market. See *SmithKline Corp. v. Eli Lilly & Co.*, 575 F.2d 1056, 1062-63
... (3d Cir.1978). The scope of the market is a question of fact as to which the plaintiff
... bears the burden of proof. *Queen City Pizza, Inc. v. Domino's Pizza, Inc.*, 124 F.3d 430,
... 436 (3d Cir. 1997); *Weiss v. York Hosp.*, 745 F.2d 786, 825 (3d Cir.1984). Competing
... products are in the same market if they are readily substitutable for one another; a
... market's outer boundaries are determined by the reasonable interchangeability of use
... between a product and its substitute, or by their cross-elasticity of demand. *Brown Shoe*
... *Co. v. United States*, 370 U.S. 294, 325, 82 S.Ct. 1502, 8 L.Ed.2d 510 (1962). Failure to
... define the proposed relevant market in these terms may result in dismissal of the
... complaint. *Queen City Pizza*, 124 F.3d at 436. 308*308

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53 2. Unlawful Monopolization under § 2: Anticompetitive Conduct

54
55 The second element of a monopolization claim under § 2 requires the willful acquisition or
... maintenance of monopoly power. As this element makes clear, the acquisition or possession
... of monopoly power must be accompanied by some anticompetitive conduct on the part of the
... possessor. *Verizon Commcn's Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398,
... 407, 124 S.Ct. 872, 157 L.Ed.2d 823 (2004). Anticompetitive conduct may take a variety of
... forms, but it is generally defined as conduct to obtain or maintain monopoly power as a
... result of competition on some basis other than the merits. *LePage's*, 324 F.3d at 147.
... Conduct that impairs the opportunities of rivals and either does not further competition
... on the merits or does so in an unnecessarily restrictive way may be deemed

55... anticompetitive. *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 604-05 &
... n. 32, 105 S.Ct. 2847, 86 L.Ed.2d 467 (1985). Conduct that merely harms competitors,
... however, while not harming the competitive process itself, is not anticompetitive. See
... *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 224, 113 S.Ct. 2578,
... 125 L.Ed.2d 168 (1993) ("It is axiomatic that the antitrust laws were passed for `the
... protection of competition, not competitors.'" (quoting *Brown Shoe*, 370 U.S. at 320, 82
... S.Ct. 1502)); *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458, 113 S.Ct. 884, 122
... L.Ed.2d 247 (1993) ("The law directs itself not against conduct which is competitive, even
... severely so, but against conduct which unfairly tends to destroy competition itself.").

56
57 In activities that enjoy First Amendment protection, such as lobbying, firms may enjoy
... broad immunity from antitrust liability for concerted efforts to influence political
... action in restraint of trade, even when such efforts employ unethical or deceptive
... methods. See *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S.
... 127, 136-38, 144-45, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961); *Mine Workers v. Pennington*, 381
... U.S. 657, 669-72, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965); see also *Allied Tube & Conduit*
... *Corp. v. Indian Head, Inc.*, 486 U.S. 492, 499-500, 108 S.Ct. 1931, 100 L.Ed.2d 497 (1988).
... "[I]n less political arenas," however, such as here, "unethical and deceptive practices
... can constitute abuses of administrative or judicial processes that may result in antitrust
... violations." *Allied Tube*, 486 U.S. at 500, 108 S.Ct. 1931. Private standards-determining
... organizations, in contrast to legislative or quasi-legislative bodies, have historically
... been subject to antitrust scrutiny. *Id.*; *Am. Soc. of Mech. Eng'rs, Inc. v. Hydrolevel*
... *Corp.*, 456 U.S. 556, 571, 102 S.Ct. 1935, 72 L.Ed.2d 330 (1982) ("[A] standard-setting
... organization ... can be rife with opportunities for anticompetitive activity.").

58
59 The primary goal of antitrust law is to maximize consumer welfare by promoting competition
... among firms. *Areeda & Hovenkamp*, supra, ¶ 100a; see also *LePage's*, 324 F.3d at 169.
... Private standard setting advances this goal on several levels. In the end-consumer market,
... standards that ensure the interoperability of products facilitate the sharing of
... information among purchasers of products from competing manufacturers, thereby enhancing
... the utility of all products and enlarging the overall consumer market. [...] This, in
... turn, permits firms to spread the costs of research and development across a greater
... number of consumers, resulting in lower per-unit prices. (*Br. of Amici Texas Instruments*
... *Inc. et al.* [hereinafter "*Texas Instruments Br.*"] 4.) Industry-wide standards may also
... lower the cost to consumers of switching between competing products and services, thereby
... enhancing competition among suppliers. (*Id.*)

60 Standards enhance competition in upstream markets, as well. One consequence of the
... standard-setting process is that SDOs may more readily make an objective comparison
... between competing technologies, patent positions, and licensing terms before an industry
... becomes locked in to a standard. (*AAI/CFA Br.* 19.) Standard setting also reduces the risk
... to producers (and end consumers) of investing scarce resources in a technology that
... ultimately may not gain widespread acceptance. (*Texas Instruments Br.* 5.) The adoption of
... a standard does not eliminate competition among producers but, rather, moves the focus
... away from the development of potential standards and toward the development of means for
... implementing the chosen standard. (*Cf. id.* at 17.)[4]

61
62 Each of these efficiencies enhances consumer welfare and competition in the marketplace
... and is, therefore, consistent with the procompetitive aspirations of antitrust law. See
... *Areeda & Hovenkamp*, supra, ¶ 100a. Thus, private standard setting – which might otherwise
... be viewed as a naked agreement among competitors not to manufacture, distribute, or
... purchase certain types of products – need not, in fact, violate antitrust law. [...].

63
64 This is not to say, however, that acceptance, including judicial acceptance, of private
... 310*310 standard setting is without limits. Indeed, that "private standard-setting by

64... associations comprising firms with horizontal and vertical business relations is permitted
... at all under the antitrust laws [is] only on the understanding that it will be conducted
... in a nonpartisan manner offering procompetitive benefits," Allied Tube, 486 U.S. at 506-07,
... 108 S.Ct. 1931 and in the presence of "meaningful safeguards" that "prevent the
... standard-setting process from being biased by members with economic interests in stifling
... product competition," id. at 501, 108 S.Ct. 1931; Hydrolevel, 456 U.S. at 572, 102 S.Ct.
... 1935; see also Clamp-All Corp. v. Cast Iron Soil Pipe Inst., 851 F.2d 478, 488 (1st
... Cir.1988) (acknowledging possibility of antitrust claim where firms both prevented SDO
... from adopting a beneficial standard and did so through "unfair, or improper practices or
... procedures"). As the Supreme Court acknowledged in Allied Tube, and as administrative
... tribunals, law enforcement authorities, and some courts have recognized, conduct that
... undermines the procompetitive benefits of private standard setting may, at least in some
... circumstances, be deemed anticompetitive under antitrust law.

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66 a. Patent Hold-up

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68 Inefficiency may be injected into the standard-setting process by what is known as "patent
... hold-up." An SDO may complete its lengthy process of evaluating technologies and adopting
... a new standard, only to discover that certain technologies essential to implementing the
... standard are patented. When this occurs, the patent holder is in a position to "hold up"
... industry participants from implementing the standard. Industry participants who have
... invested significant resources developing products and technologies that conform to the
... standard will find it prohibitively expensive to abandon their investment and switch to
... another standard. They will have become "locked in" to the standard. In this unique
... position of bargaining power, the patent holder may be able to extract supracompetitive
... royalties from the industry participants. [...]

69

70 In actions brought before the Federal Trade Commission ("FTC"), patent holders have faced
... antitrust liability for misrepresenting to an SDO that they did not hold IPRs in essential
... technologies, and then, after a standard had been adopted, seeking to enforce those IPRs.

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72 [...]

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74 These decisions reflect a growing awareness of the risks associated with deceptive conduct
... in the private standard-setting process. The Supreme Court acknowledged these risks in
... Allied Tube, and the FTC has found deception of an SDO to constitute anticompetitive
... conduct in violation of § 2 of the Sherman Act. Recent statements by Department of Justice
... officials support this trend. [...] 313*313

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76 b. FRAND Commitments

77

78 Against this backdrop, we must determine whether Broadcom has stated actionable
... anticompetitive conduct with allegations that Qualcomm deceived relevant SDOs into
... adopting the UMTS standard by committing to license its WCDMA technology on FRAND terms
... and, later, after lock-in occurred, demanding non-FRAND royalties. As Qualcomm is at pains
... to point out, no court or agency has decided this precise question and, in that sense, our
... decision will break new ground. The authorities we have cited in our lengthy discussion
... that has preceded this point, however, decidedly favor a finding that Broadcom's
... allegations, if accepted as true, describe actionable anticompetitive conduct.

79

80 To guard against anticompetitive patent hold-up, most SDOs require firms supplying
... essential technologies for inclusion in a prospective standard to commit to licensing
... their technologies on FRAND terms. (E.g., IEEE Br. 9 & n. 13 (stating that under IEEE
... bylaws, the absence of irrevocable FRAND assurances will preclude approval of standards

80... known to incorporate essential, proprietary technologies.) A firm's FRAND commitment,
... therefore, is a factor – and an important factor – that the SDO will consider in
... evaluating the suitability of a given proprietary technology vis-a-vis competing
... technologies. (Id. 9.)

81

82 The FRAND commitment, or lack thereof, is, moreover, a key indicator of the cost of
... implementing a potential technology. See Rambus, No. 9302, at 4 (noting that FRAND
... commitments "may further inform [SDO] members' analysis of the costs and benefits of
... standardizing patented technologies"); see also id. at 35 (noting that predisclosure of
... IPRs enables SDO participants "to make their choices with more complete knowledge of the
... consequences"); cf. F.T.C. v. Indiana Fed'n of Dentists, 476 U.S. 447, 461-62, 106 S.Ct.
... 2009, 90 L.Ed.2d 445 (1986) (noting that efforts to obscure "information desired by
... consumers for the purpose of determining whether a particular purchase is cost justified
... is likely enough to disrupt the proper functioning of the price-setting mechanism of the
... market that it may be condemned" under antitrust law). During the critical competitive
... period that precedes adoption of a standard (see AAI/CFA Br. 11 ("[T]he competition to
... become the standard is critical.")), technologies compete in discrete areas, such as cost
... and performance characteristics (id. 12 n. 8). Misrepresentations concerning the cost of
... implementing a given technology may confer an unfair advantage and bias the competitive
... process in favor of that technology's inclusion in the standard. See Allied Tube, 486 U.S.
... at 501, 108 S.Ct. 1931 (noting the need for private standard setting to be free "from
... being biased by members with economic interests in stifling product competition"); see
... also Rambus, No. 9302, at 29 ("[D]istorting choices through deception obscures the
... relative merits of alternatives and prevents the efficient selection of preferred
... technologies."); Qualcomm, 2007 WL 314*314 2296441, at *15 (noting that intentional
... concealment of IPRs deprived SDO of opportunity to design around patented technologies in
... developing standard).

83

84 A standard, by definition, eliminates alternative technologies. See Hydrolevel, 456 U.S.
... at 559, 102 S.Ct. 1935 ("Obviously, if a manufacturer's product cannot satisfy the
... applicable [standard], it is at a great disadvantage in the marketplace."). When a
... patented technology is incorporated in a standard, adoption of the standard eliminates
... alternatives to the patented technology. Although a patent confers a lawful monopoly over
... the claimed invention, Ethyl Gasoline Corp. v. United States, 309 U.S. 436, 456, 60 S.Ct.
... 618, 84 L.Ed. 852 (1940); Scheiber v. Dolby Labs., Inc., 293 F.3d 1014, 1018 (7th
... Cir.2002), its value is limited when alternative technologies exist. See Northern Pac. Ry.
... Co. v. United States, 356 U.S. 1, 10 n. 8, 78 S.Ct. 514, 2 L.Ed.2d 545 (1958) ("Often the
... patent is limited to a unique form or improvement of the product and the economic power
... resulting from the patent privileges is slight."); see also Ill. Tool Works Inc. v. Indep.
... Ink, Inc., 547 U.S. 28, 44, 126 S.Ct. 1281, 1292, 164 L.Ed.2d 26 (2006) ("[A] patent does
... not necessarily confer market power."). That value becomes significantly enhanced,
... however, after the patent is incorporated in a standard. Rambus, No. 9302, at 35. Firms
... may become locked in to a standard requiring the use of a competitor's patented
... technology. The patent holder's IPRs, if unconstrained, may permit it to demand
... supracompetitive royalties. It is in such circumstances that measures such as FRAND
... commitments become important safeguards against monopoly power. See Daniel G. Swanson &
... William J. Baumol, Reasonable and Nondiscriminatory (RAND) Royalties, Standards Selection,
... and Control of Market Power, 73 Antitrust L.J. 1, 5, 10-11 (2005).

85

86 We hold that (1) in a consensus-oriented private standard-setting environment, (2) a
... patent holder's intentionally false promise to license essential proprietary technology on
... FRAND terms, (3) coupled with an SDO's reliance on that promise when including the
... technology in a standard, and (4) the patent holder's subsequent breach of that promise,
... is actionable anticompetitive conduct.

87
88 This holding follows directly from established principles of antitrust law and represents
... the emerging view of enforcement authorities and commentators, alike. Deception in a
... consensus-driven private standard-setting environment harms the competitive process by
... obscuring the costs of including proprietary technology in a standard and increasing the
... likelihood that patent rights will confer monopoly power on the patent holder. See Rambus,
... No. 9302, at 68 (holding that "distorting [the SDO's] technology choices and undermining
... [SDO] members' ability to protect themselves against patent hold-up ... caused harm to
... competition"). Deceptive FRAND commitments, no less than deceptive nondisclosure of IPRs,
... may result in such harm. See *id.* at 66 (noting that SDO's rules requiring members to
... disclose IPRs and commit to FRAND licensing "presented the type of consensus-oriented
... environment in which deception is most likely to contribute to competitive harm").[8]

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90 315*315

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92 3. Claim 1 States a Claim for Monopolization of WCDMA Technology Markets

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94 The District Court's only stated reason for dismissing Broadcom's Claim 1 was that it did
... not plead an antitrust cause of action. Having now held that a firm's deceptive FRAND
... commitment to an SDO may constitute actionable anticompetitive conduct, we conclude
... quickly and easily that Claim 1 states a claim for monopolization under § 2 of the Sherman
... Act.[9]

95
96 First, the Complaint adequately alleged that Qualcomm possessed monopoly power in the
... relevant market. The Complaint defined the relevant market as the market for Qualcomm's
... proprietary WCDMA technology, a technology essential to the implementation of the UMTS
... standard. (¶¶ 2, 3; see also ¶ 58.)[10] This technology was not interchangeable with or
... substitutable for other technologies (¶¶ 7, 48, 58-59), and adherents to the UMTS standard
... have become locked in (¶ 53). With respect to monopoly power, Qualcomm had the power to
... extract supracompetitive prices (¶¶ 13, 87-109), it possessed a dominant market share (see
... ¶¶ 9, 10, 14, 58, 82), and the market had entry barriers (¶¶ 82, 86). These allegations
... satisfied the first element of a § 2 monopolization claim.

97
98 Qualcomm objects to a relevant market definition that is congruent with the scope of its
... WCDMA patents, arguing that such a definition would result in every patent holder being
... condemned as a monopolist. This objection misconstrues Broadcom's theory. It is the
... incorporation of a patent into a standard – not the mere issuance of a patent – that makes
... the scope of the relevant market congruent with that of the patent.

99
100 Second, the Complaint also adequately alleged that Qualcomm obtained and maintained its
... market power willfully, and not as a consequence of a superior product, business acumen,
... or historic accident. Qualcomm excluded competition (¶ 10) and refused to compete on the
... merits (¶ 12). As discussed above, the alleged anticompetitive conduct was the intentional
... (¶¶ 9, 99) false promise (¶ 82) that Qualcomm would license its WCDMA technology on FRAND
... terms, on which promise the relevant SDOs relied in choosing the WCDMA technology for
... inclusion in the UMTS standard (¶¶ 82, 84-85, 140), followed by Qualcomm's insistence on
... non-FRAND licensing terms (¶¶ 3, 12, 13, 86, 87-109). Qualcomm's deceptive conduct induced
... (¶ 140) relevant SDOs to incorporate a technology into the UMTS standard that they would
... not have considered absent a FRAND commitment. (¶¶ 3, 42.) Although the Complaint did not
... specifically allege that Qualcomm made its false statements in a consensus-oriented
... environment of the type discussed in *Microsoft 316*316* and *Rambus*, this omission is not
... fatal in light of allegations that FRAND assurances were required (¶ 42), see *Rambus*, No.
... 9302, at 66, as well as allegations concerning the SDOs' reliance on Qualcomm's assurances
... (¶¶ 82, 140). Together, these allegations satisfy the second element of a § 2 claim.

101
102 Qualcomm makes much of the Complaint's failure to allege that there were viable
... technologies competing with WCDMA for inclusion in the UMTS standard. (Qualcomm's Br. 31.)
... As Qualcomm concedes, however, the Complaint does allege that an SDO's adoption of a
... standard eliminates competing technologies. (¶¶ 58, 82.) The District Court also inferred
... that the relevant SDOs selected Qualcomm's WCDMA technology "to the detriment of those
... patent-holders competing to have their patents incorporated into the standard." (App. at
... A21.) This inference was reasonable, particularly because even if Qualcomm's WCDMA
... technology was the only candidate for inclusion in the standard, it still would not have
... been selected by the relevant SDOs absent a FRAND commitment. (See ¶ 42.) Thus, the
... allegations of the Complaint foreclose the possibility that WCDMA's inclusion in the
... standard was inevitable.

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104 [...]

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107 B. The District Court erred in dismissing Claim 2 – the attempted monopolization claim.

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109 A claim of attempted monopolization under § 2 of the Sherman Act must allege "(1) that the
... defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent
... to monopolize and (3) a dangerous probability of achieving monopoly power." Crossroads
... Cogeneration Corp. v. Orange & Rockland Utils., Inc., 159 F.3d 129, 141 (3d Cir.1998)
... (internal quotation marks omitted).

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111 [...]

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113 C. The District Court did not err in dismissing Claim 7 – the monopoly maintenance claim.

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115 [...]

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117 D. The District Court did not err in dismissing Claim 8 – the claim under Section 7 of the
... Clayton Act seeking to enjoin Qualcomm's acquisition of Flarion.

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119 [...]

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121 323*323 IV. Conclusion

122
123 For the reasons discussed, we will affirm in part and reverse in part, and remand for
... further proceedings consistent with this Opinion. Because the District Court summarily
... dismissed Claims 9 through 13 – Broadcom's state and common-law claims – for lack of
... supplemental jurisdiction pursuant to 28 U.S.C. § 1367(c)(2), we will order the
... reinstatement of those claims. See Berkeley Inv. Group, Ltd. v. Colkitt, 455 F.3d 195,
... 224 n. 28 (3d Cir.2006); Siegel v. Alpha Wire Corp., 894 F.2d 50, 56 (3d Cir.1990).

124
125 Comments

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