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United States District Court  
Central District of California

MORRIS REESE,  
Plaintiff,  
v.  
AT&T MOBILITY II, LLC,  
Defendant.

Case No. 2:13-cv-05198-ODW(PLAx)

**ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT [28]**

**I. INTRODUCTION**

Plaintiff Morris Reese notified virtually the entire cellular wireless industry of U.S. Patent No. 6,868,150 (“the ’150 Patent”) in 2005 through letters alleging that providing call-waiting and caller-ID services infringed the ’150 Patent. But it was not until May 2013—more than eight years later—that Reese filed patent-infringement suits against the five cellular service providers. Finding this delay unfair, the five service providers, including Defendant AT&T Mobility II, Inc., all individually filed motions for summary judgment against Reese based on the defense of laches. Faced with dismissal of his current suits because of his prolonged delay, Reese now offers excuses—such as his illness and involvement in other litigation—to justify his delay in bringing suit. Because none of Reese’s explanations excuse his delay, the Court **GRANTS** AT&T’s Motion for Summary Judgment. (ECF No. 28.)

## II. FACTUAL BACKGROUND

1  
2 Reese is the sole named inventor on the '150 Patent, which issued on March 15,  
3 2005. (SUF ¶¶ 1–2; Ex. 1.) The '150 Patent is a continuation of the '009 Patent  
4 which issued on July 30, 2002. The '150 Patent expired in 2011, two years prior to  
5 Reese's suit against AT&T. (SUF ¶ 3.)

6 On April 13, 2005, Reese sent a letter to Cingular Wireless LLC asserting that it  
7 infringed the '150 Patent with its call-waiting ID service. (SUF ¶ 5; Mot. Ex. 4.) The  
8 April 13, 2005 letter informed Cingular of the '150 Patent, and directed it in particular  
9 to claims 25 and 36—which Reese indicated were “applicable to [Cingular] customers  
10 subscribed to ‘Call Waiting ID’ service.” (*Id.*) Reese asserted that for Cingular's to  
11 continue to provide that service to its customers, AT&T required a license from Reese.  
12 (*Id.*) Reese also sent a second letter to Cingular on May 11, 2006, (Mot. Ex. 5.)  
13 Reese did not inform Cingular in either letter that it would be sued if it did not take a  
14 license. (Mot. Exs. 4, 5.)

15 On April 13, 2005, Cingular Wireless LLC was a parent company of Cingular  
16 Wireless II LLC. (Begué Del. ¶ 2.) Both Cingular Wireless LLC and Cingular  
17 Wireless II LLC operated to provide telephone services marketed under the  
18 “Cingular” name. (*Id.* ¶ 3.) On January 8, 2007, Cingular Wireless LLC changed its  
19 name to AT&T Mobility LLC. (*Id.* ¶ 2; Ex. A.) Similarly, on April 20, 2007, Cingular  
20 Wireless II LLC changed its name to AT&T Mobility II LLC. (*Id.* ¶ 2; Ex. B.) The  
21 marketing of the telephone services changed to the “AT&T” name as well. (*Id.* ¶ 3.)  
22 AT&T continues to provide the same call-waiting and caller-ID services provided by  
23 Cingular in 2005 and accused by Reese of infringing the '150 Patent. (*Id.*)

24 Cingular was one of twelve different telecommunications companies who  
25 received infringement notices from Reese in 2005—BellSouth, Verizon, Motorola,  
26 Nextel, Nokia, Qwest Communications, Samsung, SBC Communications, Sprint, and  
27 T-Mobile also received letters. (Mot. Ex. 4.) Between 2005 and 2013, Reese litigated  
28

1 several other patent-infringement lawsuits across the country.<sup>1</sup> (SUF ¶¶ 10–11.) Four  
2 of these suits involved the '150 Patent or its immediate parent. (*Id.* ¶¶ 12–13.) Reese  
3 was represented by counsel for all of these suits, with the exception of *Reese v.*  
4 *Verizon Cal., Inc. et al.*, Case No. CV-11-01934 SJO (C.D. Cal. Aug. 11, 2011), which  
5 he litigated pro se. (Reese Decl. ¶ 33.)

6 From 2000 to 2008, Reese experienced serious health problems. Reese began  
7 dialysis treatments for renal failure in 2000. (*Id.* ¶ 29.) Reese's dialysis treatments  
8 were performed three times per week until Reese had a kidney transplant in 2008. (*Id.*  
9 ¶¶ 30–32.)

10 On May 29, 2013, Reese filed suit against AT&T—along with Sprint Nextel  
11 Corp., TracFone Wireless, Inc., United States Cellular Corporation, Verizon, and T-  
12 Mobile USA, Inc. (*Morris Reese v. Sprint Nextel Corporation et al.*, 2:13-cv-03811-  
13 ODW-PLA (C.D. Cal. May 29, 2013) ECF No. 1.) The Court severed the case on July  
14 15, 2013. (*Id.* ECF No. 18.) Reese refiled a separate complaint against AT&T on July  
15 18, 2013. (ECF No. 1.)

### 16 III. LEGAL STANDARD

17 Summary judgment should be granted if there are no genuine issues of material  
18 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.  
19 56(c). The moving party bears the initial burden of establishing the absence of a  
20 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).  
21 Once the moving party has met its burden, the nonmoving party must go beyond the  
22 pleadings and identify specific facts through admissible evidence that show a genuine

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23 <sup>1</sup> *Reese v. BellSouth Telecommunications*, No. 5:97-cv-00568-BO (E.D.N.C Nov. 14, 1997); *Reese*  
24 *v. U.S. West Inc.*, No. 98-cv-80575-CRW (S.D. Iowa Mar. 12, 1999) (transferred to *Reese v. U.S.*  
25 *West Inc.*, No. 1:99-cv-00773-WDM-MJW (D. Col. Sept. 23, 2002)); *N. Telecom, Inc. v. Reese*, No.  
26 2:98-cv-09591-LGB (C.D. Cal. Feb. 9, 1999) (transferred to *N. Telecom, Inc. v. Reese*, No. 4:99-cv-  
27 80081-CRW (S.D. Iowa Mar. 10, 1999)); *Reese v. Aastra Technologies*, No. 2:03-cv-00267-TJW  
28 (E.D. Tex. Feb. 9, 2005); *Reese v. Samsung Telecommunications America, L.P.*, No. 2:05-cv-00415-  
DF (E.D. Tex. Jan. 31, 2007); *Reese v. Southwestern Bell Telephone, L.P., et. al.*, Case No. 2:07-  
CV-219 (E.D. Tex. Dec. 23, 2008); and *Reese v. Verizon California, Inc. and AT&T California*,  
Case No. CV-11-01934 SJO (C.D. Cal. Dec. 21, 2012).

1 issue for trial. *Id.*; Fed. R. Civ. P. 56(c). Conclusory or speculative testimony in  
2 affidavits and moving papers is insufficient to raise genuine issues of fact and defeat  
3 summary judgment. *Thornhill's Publ'g Co. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir.  
4 1979).

5 A genuine issue of material fact must be more than a scintilla of evidence, or  
6 evidence that is merely colorable or not significantly probative. *Addisu v. Fred Meyer*,  
7 198 F.3d 1130, 1134 (9th Cir. 2000). A disputed fact is “material” where the  
8 resolution of that fact might affect the outcome of the suit under the governing law.  
9 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1968). An issue is “genuine” if  
10 the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving  
11 party. *Id.* Where the moving and nonmoving parties’ versions of events differ, courts  
12 are required to view the facts and draw reasonable inferences in the light most  
13 favorable to the nonmoving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

#### 14 IV. DISCUSSION

15 In the interest of fairness, those who are granted a monopoly under the patent  
16 system have an obligation to enforce their rights in a timely manner. A defendant in a  
17 patent-infringement suit may raise the equitable defense of laches when the plaintiff is  
18 dilatory bringing suit and that delay prejudices the defendant. *A.C. Aukerman Co. v.*  
19 *R.L. Chaides Const. Co.*, 960 F.2d 1020, 1030 (Fed. Cir. 1992). In patent cases, laches  
20 bars recovery of damages for any infringement that occurs prior to the filing of suit.  
21 *Id.* at 1040. A laches defense is a matter within the trial court’s discretion based on  
22 consideration of all of the facts in a particular case. *Id.* at 1040–41.

23 To prevail on a laches defense, a defendant must prove by a preponderance of  
24 the evidence that: (1) the plaintiff knew or should have known of the infringement and  
25 with that knowledge delayed filing suit for an unreasonable and inexcusable length of  
26 time, and (2) the defendant was materially prejudiced by the delay. *Id.* at 1032; *see*  
27 *also Hearing Components, Inc. v. Shure, Inc.*, 600 F.3d 1357, 1375 (Fed. Cir. 2010).  
28 Where the delay in filing the suit exceeds six years, the court will presume the delay

1 was unreasonable and prejudicial to the defendant. 35 U.S.C. § 286; *Hearing*, 600  
2 F.3d at 1375 (citing *Aukerman*, 960 F.2d at 1035–36.) The burden is then on the  
3 plaintiff to prove the existence and reasonableness of an excuse for the delay, and to  
4 show a lack of prejudice to the infringer. *Hearing*, 600 F.3d at 1375.

5 Determining the length of the delay involves two sub-issues: when the delay  
6 period begins to run and when the delay period ends. The delay period begins to run  
7 from the time that the plaintiff had actual or constructive knowledge of the alleged  
8 infringing activities. *Aukerman*, 960 F.2d at 1032; *Hearing Components*, 600 F.3d at  
9 1375. But the plaintiff need not be certain that the conduct is infringing; time starts to  
10 run when the patentee is aware of sufficient facts to form a reasonable belief that some  
11 infringing conduct exists. *Aukerman*, 960 F.2d at 1032. The delay period ends no  
12 later than the date of the filing of suit. (*Id.*)

13 The reasonableness of the delay is not determined by application of mechanical  
14 rules. *Aukerman*, 960 F.2d at 1032. Rather, the reasonableness of the delay depends  
15 on the particular facts and circumstances of the individual case. *Id.* The court must  
16 consider and weigh any justification offered by the plaintiff for its delay. *Id.* at 1033.

17 Prejudice to the defendant may be either economic or evidentiary. *Id.*  
18 Economic prejudice arises when a defendant incurs damages that would likely have  
19 been prevented by earlier suit. *See id.* Economic prejudice is not merely damages  
20 attributable to patent infringement liability. *Id.* at 1033. Evidentiary or “defense”  
21 prejudice arises when the defendant can no longer present a full and fair defense on  
22 the merits due to the plaintiff’s delay. *Id.* at 1032. This inability may be occasioned  
23 by “the loss of records, the death of a witness, [or] the unreliability of memories of  
24 long past events.” *Id.*

25 AT&T asserts that it is entitled to a laches presumption because of Reese’s eight  
26 -year delay in filing suit. Reese contends that AT&T is not entitled to a laches  
27 presumption because there is no evidence that the delay period, for laches purposes,  
28 began to run in 2005. In the alternative, Reese argues that he can rebut the laches

1 presumption because his delay was reasonable and resulted in no prejudice to AT&T.  
2 The Court considers each in turn.

3 **A. Laches Presumption**

4 AT&T asserts that it is entitled to a presumption that Reese’s delay in filing suit  
5 was unreasonable and prejudicial to AT&T. In support of this assertion, AT&T argues  
6 that Reese knew or should have known of AT&T’s alleged infringement as of April  
7 13, 2005, when Reese sent the infringement-allegation letter to Cingular. Reese then  
8 failed to formally assert his infringement claims against AT&T until 2013. AT&T  
9 asserts that because this amounts to a more than eight-year delay, it is entitled to the  
10 laches presumption under § 286.

11 Reese argues that the delay period did not begin to run on April 13, 2005  
12 because AT&T didn’t exist in 2005. This argument has no merit. AT&T is the same  
13 entity as the Cingular Wireless to which Reese directed his infringement allegation  
14 letters—it merely underwent a corporate name change. (Begué Del. ¶¶ 2–3; Exs. A,  
15 B.) In fact, in his amended interrogatory responses Reese recognized that Cingular  
16 Wireless was the “predecessor company” and the “entity which became AT&T  
17 Mobility II LLC.” (Galluzzo Decl. Ex. 8.) Reese also admitted that he first provided  
18 notice to AT&T of his infringement claim “through correspondence to Cingular  
19 Wireless sent April 13, 2005.” (*Id.*)

20 Two days after the Court granted AT&T’s request to file this Motion Reese  
21 again amended his interrogatory responses; despite his prior admissions, Reese now  
22 claims he did not become aware of AT&T until 2013. (*Id.* Exs. 9, 10.) This amended  
23 response is self-serving, suspect, and insufficient to raise a genuine issue of material  
24 fact. *Accord Gagné v. Nw. Nat’l Ins. Co.*, 881 F.2d 309, 315 (6th Cir. 1989) (“a party  
25 may not create a factual issue by filing an affidavit, after a motion for  
26 summary judgment has been made, which contradicts his earlier deposition  
27 testimony”); *Trans-Orient Marine Corp. v. Star Trading & Marine, Inc.*, 925 F.2d 566,  
28 572 (2d Cir. 1991) (“a party may not, in order to defeat a summary judgment motion,

1 create a material issue of fact by submitting an affidavit disputing his own prior sworn  
2 testimony”); *Babrocky v. Jewel Food Co.*, 773 F.2d 857, 861 (7th Cir. 1985) (holding  
3 that a “party should not be allowed to create issues of credibility by contradicting his  
4 own earlier testimony.”); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 249(“If  
5 the [non-movant’s] evidence is merely colorable . . . or is not significantly probative . .  
6 . summary judgment may be granted.”).

7 Reese presents no authority for his assertion that AT&T, as a different legal  
8 entity from Cingular, must independently show entitlement to a laches defense. There  
9 has never been any magic in a corporate entity; Federal Circuit precedent confirms  
10 that the related equitable defense of estoppel applies to successors-in-interest where  
11 privity has been established. *Radio Sys. Corp. v. Lalor*, 709 F.3d 1124, 1131 (Fed. Cir.  
12 2013); *see also Jamesbury Corp. v. Litton Indus. Prods., Inc.*, 839 F.2d 1544, 1555  
13 (Fed.Cir.1988), *overruled on other grounds by Aukerman*, 960 F.2d at 1042 (holding  
14 that a successor-defendant is entitled to rely on the lack of communication to its  
15 predecessor as well as to itself). Although generally personal in nature, equitable  
16 defenses are available to successors-in-interest so long as the equitable doctrine’s aims  
17 are not somehow frustrated by such an application.

18 The key inquiries for a laches defense are *when* Reese new of his infringement  
19 claims, and *how long* Reese waited before asserting those claims. So long as the  
20 corporate name change did not have the effect of concealing the entity’s identity—  
21 such that Reese was impeded from bringing suit—there is no principled reason to  
22 refuse to allow AT&T to assert Cingular’s laches defense. *Accord Autoclave*  
23 *Engineers, Inc. v. Duriron Co., Inc.*, No. 73-2640, 1976 WL 21019 (E.D. Pa. Feb. 19,  
24 1976) (permitting “tacking” of the delay period for laches purposes where the identity  
25 of the business entity remained unchanged after acquisition). To hold otherwise to  
26 would be to exalt form over substance.

27 Here, Reese knew of Cingular’s infringement in 2005 as evidenced by his  
28 infringement-allegation letter. (Mot. Ex. 4.) Cingular’s corporate name change to

1 AT&T did not change the corporation’s identity—the business was carried on and  
2 controlled as it was before the change, just under a new name. (Begué Del. ¶¶ 2–3.)  
3 There is no evidence that Reese was impeded from bringing suit by this name change.  
4 Most importantly, AT&T continues to provide the same call-waiting and caller-ID  
5 services provided by Cingular in 2005 that Reese asserts infringe the ’150 Patent. (*Id.*  
6 ¶ 3.) Accordingly, AT&T may rely on the 2005 infringement-allegation letters sent to  
7 Cingular for purposes of its laches defense.

8 In the alternative, Reese argues his letter to AT&T was not an infringement  
9 allegation, but merely an invitation for AT&T to open licensing discussions with  
10 Reese. Thus, Reese contends, there is no evidence that Reese actually knew of  
11 AT&T’s infringement in 2005. This argument is contrary to the plain text of the letter.  
12 Reese states in his letter to AT&T that in order for it to continue to provide call-  
13 waiting-ID services, AT&T “requires a license from Mr. Reese.” (Mot. Ex. 1.) It  
14 strains credibility to argue that a patent owner who demands that a company take a  
15 license can somehow not know of his infringement claim on that patent.

16 Moreover, Federal Circuit precedent establishes that knowledge as to whether  
17 the device *actually* infringes is not required to establish laches. A good-faith belief is  
18 sufficient. *Aukerman*, 960 F.2d at 1032. Reese clearly believed that AT&T’s call-  
19 waiting-ID services infringed the ’150 Patent—evidenced by his attempt to open  
20 licensing negotiations in 2005. Accordingly, the Court finds that Reese had actual  
21 knowledge of AT&T’s infringement at least on April 13, 2005. Because Reese failed  
22 to formally assert his rights until 2013, AT&T is entitled to a presumption of laches.  
23 Thus, Reese “must come forward with evidence sufficient to put the existence of these  
24 presumed undisputed facts into genuine dispute, either by showing that the delay was  
25 reasonable or that the movant did not suffer prejudice caused by the wait.” *Id.*  
26 at 1038.

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1           **B. Reasonableness of the delay**

2           Reese argues that even if he had knowledge of AT&T’s infringement in 2005,  
3 his eight-year delay in filing suit was reasonable. Reese proffers two justifications for  
4 his delay: his involvement in other litigation and his worsening medical condition.  
5 Reese also claims he is entitled to leniency because he was representing himself for  
6 some of the litigation. The Court addresses each in turn.

7           First, Reese argues that his eight-year delay in filing suit against AT&T was  
8 reasonable because he was extensively involved in other litigation. On August 31,  
9 2005, Reese filed suit against cellular phone manufacturers Samsung, Motorola, Sony,  
10 Siemens, LG, RiM and Palm, alleging infringement of the ’009 Patent (the immediate  
11 patent of the ’150 Patent). (Reese Decl. ¶ 17.) That suit continued through January  
12 31, 2007. (*Id.* ¶ 18.) Four months later, Reese sued land-line telephone service  
13 providers Southwestern Bell Telephone Company, GTE Southwest, and their parent  
14 companies AT&T and Verizon, for infringement of the ’150 Patent. (*Id.* ¶ 21.) Reese  
15 voluntarily dismissed AT&T and Verizon from that action, but later brought a separate  
16 suit against the same companies that lasted from March 2011 to December 21, 2012.  
17 (*Id.* ¶¶ 24, 33.) Approximately five months later, Reese filed this action against the  
18 AT&T, again alleging infringement of the ’150 Patent.

19           Involvement in other enforcement litigation may, in some circumstances,  
20 excuse a plaintiff’s delay in suing an alleged infringer. But the Federal Circuit has  
21 held that a plaintiff’s calculated choice to proceed with certain lawsuits while delaying  
22 others—absent other factors—is a strategic decision that does not excuse or otherwise  
23 toll the presumption period for laches. *Hall v. Aqua Queen Mfg., Inc.*, 93 F.3d 1548,  
24 1554 (Fed. Cir. 1996).

25           In *Hall*, the Federal Circuit noted that delay occasioned by involvement in other  
26 enforcement litigation *may* be reasonable if the alleged infringer has knowledge of  
27 (1) the existence of the other litigation, and (2) the plaintiff’s intent to enforce its  
28 rights against the infringer at the conclusion of the other litigation. Although there is

1 no rigid requirement that such notice be given, “[w]here there is prior contact  
2 [between the patentee and the accused infringer], the overall equities may require  
3 appropriate notice.” *Hall*, 93 F.3d at 1554 (internal quotations omitted); *accord*  
4 *Aukerman*, 960 F.2d at 1039.

5 Here, AT&T received no communications from Reese for eight years after  
6 receipt of the 2005 infringement-allegation letters. There is no evidence that AT&T  
7 had any notice—from Reese or otherwise—that Reese intended to sue it after the  
8 close of his other litigation. Reese’s eight-year silence made it reasonable for AT&T  
9 to believe that Reese had simply declined to assert his rights against AT&T. Where  
10 there is prior contact between the plaintiff and the accused infringer—especially when  
11 the contact is in the form of an infringement accusation—notice becomes essential to  
12 a finding of excusable delay. A clear indication that the plaintiff intends to enforce its  
13 rights against the alleged infringer after the conclusion of the other litigation allows  
14 the accused infringer an opportunity to take steps to protect itself from liability.  
15 *Accord Odetics, Inc. v. Storage Tech. Corp.*, 919 F. Supp. 911 (E.D. Va. 1996). Here,  
16 AT&T had no such opportunity.

17 The equivocal nature of Reese’s contact with AT&T failed to give adequate  
18 notice that it may be subject to suit in the future. The equities dictate that notice of  
19 intent to pursue infringement claims against AT&T at the conclusion of Reese’s other  
20 litigation was required in this case. Accordingly, Reese’s choice to strategically  
21 pursue other lawsuits while ignoring AT&T is legally insufficient to overcome the  
22 presumption of unreasonable delay.

23 Second, Reese argues that his delay in bringing suit was reasonable because of  
24 the serious health problems he experienced from 2000 to 2008. He argues that his  
25 ability to sue AT&T was significantly restricted because of his frequent dialysis  
26 treatments and eventual kidney transplant.

27 Generally, illness is not recognized as an adequate excuse for a plaintiff’s delay  
28 in bringing suit. And although Reese certainly was afflicted with a debilitating illness,

1 Reese’s assertion that his delay was necessary because of his failing health is directly  
2 contradicted by his previous excuse—his extensive involvement in other litigation.  
3 Notwithstanding his poor health, Reese was able to file multiple suits against other  
4 infringers during his illness and litigate them to conclusion. (Reese Decl. ¶¶ 17–33.)  
5 The fact that Reese was able to competently litigate several other lawsuits undermines  
6 his contention that he was physically unable to pursue lawsuits against AT&T.

7 Moreover, Reese ignores the five years that have passed since his kidney  
8 transplant. Even after his health issues ended in 2008, Reese did and said nothing  
9 until he filed suit in 2013. Reese does not assert that his health issues continued after  
10 2008. Thus, at a minimum Reese had three years after the resolution of his health  
11 issues before laches would be presumed.

12 Finally, an inability to find willing counsel, another of Reese’s excuses, is  
13 widely rejected as a legally cognizable reason to excuse an unreasonable delay in  
14 filing suit. *Hall*, 93 F.3d at 1554. Additionally, Reese’s litigation history shows that  
15 he has used multiple counsel at various times, and was fully capable of engaging in  
16 different litigation activities with different counsel—or by himself.

### 17 **C. Prejudice**

18 A plaintiff can also rebut the laches presumption by raising a genuine fact issue  
19 regarding the absence of prejudice to the defendant. *Aukerman*, 960 F.2d 1030. Reese  
20 contends that his delay did not materially prejudice AT&T. But Reese attempts to  
21 prove this lack of prejudice by asserting that *AT&T* has failed to demonstrate that it  
22 has been prejudiced by Reese’s delay—thus placing the burden of production on  
23 AT&T. This is incorrect; the *Auckerman* presumption places the burden of production  
24 on the plaintiff. *Hall*, 93 F.3d at 1553. Thus it is Reese’s burden to come forward  
25 with affirmative evidence of a lack of prejudice. AT&T may remain “utterly mute on  
26 the issue of prejudice and nonetheless prevail[.]” *Hall*, 93 F.3d at 1554.

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1           1. *Evidentiary prejudice*

2           Reese has provided no affirmative evidence that AT&T will not suffer  
3 evidentiary prejudice from his eight-year delay. In contrast, AT&T argues that it will  
4 suffer evidentiary prejudice because Reese is unable to account for evidence relevant  
5 to AT&T's defense of this action. Reese does not dispute that he no longer has a  
6 complete set of documents produced in or generated during the course of his prior  
7 litigation relating to '150 Patent. (SUF ¶¶ 21–24.) To date, Reese has been unable to  
8 produce all the documents that existed for the *US West, Northern Telecom, Aastra,*  
9 *Samsung,* or *Verizon California* cases. (*Id.* ¶ 22.) Additionally, Reese does not  
10 dispute that he no longer has a complete set of licensing agreements for the '150 or  
11 related patents. (*Id.* ¶¶ 21, 22, 24.) Reese's prior counsel also admitted to destroying  
12 68 folders of documents related to Reese's prior litigation—some of which directly  
13 involved the '150 Patent. (*Id.* ¶ 25.)

14           The loss of these documents is problematic for two major reasons. First,  
15 because the licenses—many of which were given to cell-phone-handset  
16 manufacturers—may protect AT&T from Reese's infringement allegations. If Reese  
17 licensed customers to use handsets that subscribe to AT&T's services or network, that  
18 license may protect AT&T from infringement claims. Second, those licenses are  
19 essential to allow AT&T to propose a reasonable-royalty rate for any potential  
20 damages involving unlicensed products. In the absence of this evidence, AT&T's  
21 opportunity to defend itself against Reese's infringement claim is somewhat less than  
22 “full and fair.”

23           Reese attempts to argue that AT&T should endeavor to reconstruct the evidence  
24 for its defense, which he alleges should still be available from some other sources.  
25 But Reese presents no authority for his novel proposition that AT&T is required to  
26 attempt to gather whatever evidence remains and hope that it works for their defense.  
27 This burden lies with Reese, not AT&T. Consequently, Reese has not met his burden  
28 to come forward with affirmative evidence of a lack of evidentiary prejudice.

