

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PREFERENTIAL NETWORKS IP, LLC,	§	
	§	
v.	§	Case No. 2:17-CV-00197-JRG-RSP
	§	
SPRINT SPECTRUM L.P., VIRGIN	§	
MOBILE USA, L.P., BOOST MOBILE	§	
LLC		

ORDER

Sprint Spectrum L.P., Virgin Mobile USA, L.P., and Boost Mobile LLC (collectively, “Sprint”) object to Judge Payne’s recommendation that the defendants’ motion to dismiss be denied. Dkt. 39. Having reviewed the objections, and having considered the Report and Recommendation de novo, the Court finds no reason to reject or modify the recommended disposition. *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1)(C).

Sprint complains that the Report and Recommendation did not adequately address Sprint’s basis for dismissing Plaintiff’s claims of willful and indirect patent infringement, but Sprint appears to overlook the amended complaint that Plaintiff filed after Sprint’s motion to dismiss. *See Bosarge v. Mississippi Bureau of Narcotics*, 796 F.3d 435, 440 (5th Cir. 2015) (“An amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading.”) (quoting *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994)). Given that Sprint withdrew the portion of its motion related to improper venue, Dkt. 22, and failed to file a motion testing the sufficiency of the allegations in the superseding complaint, the only ground of dismissal surviving the amended complaint was the portion of Sprint’s motion related to subject-matter eligibility under § 101, a legal issue independent of Plaintiff’s allegations. That portion of Sprint’s motion was adequately addressed by the Report and Recommendation.

Accordingly,

It is **ORDERED**:

(1) Sprint's objections, Dkt. 39, are **OVERRULED**.

(2) Magistrate Judge Payne's Report and Recommendation, Dkt. 38, is **ADOPTED**.

(3) Sprint's motion to dismiss, Dkt. 18, is **DENIED**.

So ORDERED and SIGNED this 6th day of September, 2017.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE