

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

**EVS CODEC TECHNOLOGIES, LLC,**

**Plaintiff,**

**v.**

**LG ELECTRONICS INC.,  
LG ELECTRONICS U.S.A., INC., AND  
LG ELECTRONICS MOBILECOMM  
U.S.A., INC.,**

**Defendants.**

**Civil Action No. 2:18-cv-00343**

**THE LG DEFENDANTS' MOTION TO DISMISS UNDER RULE 12(B)(1)  
FOR LACK OF STANDING**

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**UNLESS OTHERWISE SPECIFIED, ALL EMPHASES  
IN THIS BRIEF HAVE BEEN ADDED**

Pursuant to Federal Rule of Civil Procedure 12(b)(1) and for the reasons set forth below, Defendants LG Electronics Inc., LG Electronics U.S.A., Inc., and LG Electronics Mobilecomm U.S.A., Inc.<sup>1</sup> (collectively, “LG”) respectfully request that this Court dismiss Plaintiff EVS Codec Technologies, LLC’s (“ECT”) Complaint for lack of standing.

## **I. INTRODUCTION**

To have standing to sue for patent infringement, a plaintiff must either be the owner of the patents or be an exclusive licensee with “all substantial rights” under the patents. Plaintiff ECT is neither.

Even accepting the allegations in the Complaint as true for purposes of this facial challenge, ECT only alleges that it “has been granted the exclusive right to license products practicing the EVS Standard.” [Complaint (Dkt. No. 1), ¶¶ 40, 56, 73, 89, 108.] This allegation at most gives ECT the right to grant licenses under the patents-in-suit in one particular technological area (the EVS Standard), which is not sufficient to have “all substantial rights” under controlling precedent.

Furthermore, an alleged exclusive licensee does not have “all substantial rights” under a patent if the patent owner has itself retained the right to bring its own suit for infringement. Yet, as ECT admits, “[t]his Court is currently presiding over a pending case involving” the same patents. [Complaint, ¶ 34.] In that case, where ECT is not a party, the owner of the patents, Saint Lawrence Communications LLC (“SLC”), is actively pursuing infringement allegations against another, unrelated defendant. [*Id.* (citing *Saint Lawrence Commc’ns LLC v. Motorola Mobility LLC*, Case No. 2:15-cv-00351-JRG (E.D. Tex.)).] If SLC is enforcing the patents in

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<sup>1</sup> Effective August 1, 2018, LG Electronics Mobilecomm U.S.A., Inc. (“LGEMU”) merged into LG Electronics U.S.A., Inc. (“LGEUS”), which was to that point LGEMU’s sole and 100% parent company. As a result of the merger, LGEUS is the successor in interest to LGEMU.

that separate case, it has not given up its right to sue for infringement. Thus, ECT's own allegations establish that it lacks prudential standing to sue for infringement of the patents-in-suit.

In some cases, an alleged exclusive licensee can fix its lack of prudential standing by adding the patent owner as a co-plaintiff. Here, ECT cannot even do so, because the allegations in its Complaint indicate that ECT also lacks constitutional standing. Indeed, ECT does not allege that it is an exclusive licensee, or that it even has a right to practice the patents. Instead, the only right that ECT allegedly has is the right to grant licenses in a limited field. [Complaint, ¶¶ 40, 56, 73, 89, 108.] Under clear precedent, ECT's alleged right to license certain products is insufficient to confer constitutional standing, which is a defect that ECT cannot remedy by adding another plaintiff.

Accordingly, ECT lacks both constitutional and prudential standing to bring this patent infringement lawsuit, and its Complaint must be dismissed under Rule 12(b)(1).

## **II. STATEMENT OF THE ISSUES**

Whether ECT has standing to bring suit for infringement of the asserted patents.

## **III. BACKGROUND**

ECT's Complaint asserts that LG infringes U.S. Patent Nos. 6,795,805, 6,807,524, 7,151,802, 7,260,521, and 7,191,123 (collectively, the "Asserted Patents") based on "products containing the EVS Codec and/or practicing the EVS Standard in the United States." [See, e.g., Complaint, ¶ 42.]

ECT does not, however, own the Asserted Patents, as indicated by the lack of any ownership allegation in the Complaint. [See generally Complaint (containing no allegation of ownership).] ECT could not claim ownership because non-party SLC is the actual assignee of

the Asserted Patents, as indicated by numerous cases that SLC has previously filed on the same Asserted Patents in this District. [*Id.*, ¶ 33 (listing cases filed by SLC on the same patents).] In fact, these numerous cases include SLC’s prior litigation against LG involving the Asserted Patents. [*Id.*] LG and SLC settled their dispute, with that case being dismissed in early 2016. [See Order Granting Motion for Entry of Joint Stipulation of Dismissal With Prejudice (Dkt. No. 124), *Saint Lawrence Commc’ns LLC v. LG Elec., Inc. et al.*, Case No. 2:14-cv-01055-JRG (E.D. Tex. Jan. 7, 2016).]<sup>2</sup> While SLC’s case against LG has settled, this Court is currently presiding over a pending case brought by SLC against Motorola Mobility LLC for infringement of the Asserted Patents. [Complaint, ¶¶ 34-35 (citing *Saint Lawrence Commc’ns LLC v. Motorola Mobility LLC*, Case No. 2:15-cv-00351-JRG).] ECT is not a party to these prior actions, and SLC is not a party to this present action brought by ECT against LG. [*See id.*]

Given SLC’s continued ownership of the Asserted Patents, the Complaint in this present case does not claim that ECT is the patentee or assignee. [*See id.*, ¶¶ 7-22 (failing to make any allegation regarding standing in the jurisdictional section of the Complaint).] ECT’s only allegation remotely touching on its supposed standing to sue is a statement that it “has been granted the exclusive right to license products practicing the EVS Standard.” [*Id.*, ¶¶ 40, 56, 73, 89, 108.] Notably, ECT does not allege that it has any right to practice the Asserted Patents, much less the rights to exclude others from making, selling, offering to sell, using, or importing products allegedly practicing these Asserted Patents. [*See id.*]

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<sup>2</sup> The Court may take judicial notice of this order, which this Court previously entered, without affecting the facial nature of this motion to dismiss for lack of subject matter jurisdiction. *See Ace Am. Ins. Co. v. Huntsman Corp.*, 255 F.R.D. 179, 208-09 (S.D. Tex. 2008) (taking judicial notice of pleading in a state court suit in assessing a facial challenge under Rule 12(b)(1)); *see also Lowrey v. Tex. A & M Univ. Sys.*, 117 F.3d 242, 246 n.3 (5th Cir. 1997) (“Although the pleadings in this subsequent lawsuit are not part of the record on appeal in the instant case, we may take judicial notice of pending judicial proceedings.”).



#### IV. LEGAL STANDARDS FOR DISMISSAL UNDER RULE 12(B)(1)

A motion to dismiss for lack of standing is properly brought under Rule 12(b)(1) of the Federal Rules of Civil Procedure as a challenge to a court’s subject-matter jurisdiction. *See Intellectual Ventures I LLC v. Erie Indemnity Co.*, 850 F.3d 1315, 1320-21 (Fed. Cir. 2017); *Script Security Solutions, LLC v. Amazon.com, Inc.*, Case No. 2:15-cv-1030-WCB, 2016 WL 6433776, at \*2-4 (E.D. Tex. Oct. 31, 2016) (Bryson, J., sitting by designation).

“Challenges to jurisdiction, including standing, can be either ‘facial’ or ‘factual.’” *Script Security*, 2016 WL 6433776, at \*2 (citing *Lewis v. Knutson*, 699 F.2d 230, 237 (5th Cir. 1983)).

“A ‘facial’ challenge to jurisdiction is directed to the sufficiency of the complaint to allege facts that give the court jurisdiction.” *Id.* “In the case of a facial challenge to jurisdiction, the factual allegations in the complaint are taken as true, and the court’s task is to determine whether those allegations, if proved, are sufficient to establish that the court has jurisdiction over the matter.”

*Id.* When faced with a challenge under Rule 12(b)(1), the party asserting jurisdiction – in this case, ECT – has the burden to prove that jurisdiction is proper. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).<sup>3</sup> Even accepting the facts alleged in ECT’s Complaint as true, ECT facially lacks standing and its suit must be dismissed.<sup>4</sup>

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<sup>3</sup> Although Federal Circuit law governs the standing inquiry, *Abraxis Bioscience, Inc. v. Navinta LLC*, 625 F.3d 1359, 1364 (Fed. Cir. 2010), the procedural aspects of Rule 12(b)(1) are not unique to patent law and are thus governed by Fifth Circuit law in this case. *See Toxgon Corp. v. BNFL, Inc.*, 312 F.3d 1379, 1380 (Fed. Cir. 2002).

<sup>4</sup> At this early stage of the case, LG has limited its Rule 12(b)(1) motion to dismiss to a facial challenge because it has not had the opportunity to take discovery into the relationship and arrangement between SLC and ECT. Should discovery or ECT’s response to this motion reveal additional bases to question ECT’s standing based on evidence outside of the Complaint, LG reserves the right to raise a factual challenge to ECT’s standing at a later date.

## V. ARGUMENT

### A. Legal Standard Governing Standing to Bring Suit for Patent Infringement

“Federal courts are courts of limited jurisdiction,’ possessing ‘only that power authorized by Constitution and statute.’” *Gunn v. Minton*, 568 U.S. 251, 256 (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). “The doctrine of standing limits federal judicial power and has both constitutional and prudential components.” *Evident Corp. v. Church & Dwight Co.*, 399 F.3d 1310, 1313-14 (Fed. Cir. 2005) (quoting *Media Techs. Licensing, LLC v. Upper Deck Co.*, 334 F.3d 1366, 1369 (Fed. Cir. 2003)).

With respect to constitutional standing, a plaintiff must demonstrate a personal injury traceable to the defendant’s allegedly unlawful conduct and redressable by the requested relief. *Morrow v. Microsoft Corp.*, 499 F.3d 1332, 1338-39 (Fed. Cir. 2007). “Since the patent statutes give rise to the right to sue others for patent infringement, they also define the nature and source of the infringement claim and determine the party that is entitled to judicial relief.” *Id.* at 1339. Under the patent statutes, the “patentee,” which is defined as the person to whom the patent was issued and “successors in title,” has the right to sue for infringement of his patent. 35 U.S.C. § 100(d) (defining “patentee”) & § 281 (“A *patentee* shall have remedy by civil action for infringement of his patent.”). These statutory provisions thus “require that a suit for infringement of patent rights ordinarily be brought by a party holding legal title to the patent.” *Propat Int’l Corp. v. RPost, Inc.*, 473 F.3d 1187, 1189 (Fed. Cir. 2007); *Intellectual Prop. Dev., Inc. v. TCI Cablevision of Cal., Inc.*, 248 F.3d 1333, 1345 (Fed. Cir. 2001).

As a result, parties that do not own a patent typically lack standing to sue for infringement, even if they have a license or other rights under the patent. Non-exclusive licensees, for example, lack constitutional standing to bring suit, even if joined by the patent

owner as a co-plaintiff. *See Intellectual Prop.*, 248 F.3d at 1345. Similarly, a non-owner assigned only “rights to license the patent and sue for its infringement” does not have a sufficient interest in the patent to have standing under Article III. *Propat*, 473 F.3d at 1193-94; *see also Crown Die & Tool Co. v. Nye Tool & Mach. Works*, 261 U.S. 24, 34-43 (1923). But an exclusive licensee with all substantial rights in a patent is deemed to be a virtual assignee of the patent, having both constitutional and prudential standing to sue on its own without the patentee. *Morrow*, 499 F.3d at 1340 (“[I]f a patentee transfers ‘all substantial rights’ to the patent, this amounts to an assignment or a transfer of title, which confers constitutional standing on the assignee to sue for infringement in its own name alone. When a party holds all rights or all substantial rights, it alone has standing to sue for infringement.” (internal citations and footnote omitted)).

Even if a plaintiff has constitutional standing, it may nonetheless lack prudential standing. *Intellectual Prop.*, 248 F.3d at 1347-48 (“[U]nlike an assignee that may sue in its own name, an exclusive licensee having fewer than all substantial patent rights . . . that seeks to enforce its rights in a patent generally must sue jointly with the patent owner.”). As the Federal Circuit explained:

Standing to bring a patent infringement suit is circumscribed by 35 U.S.C. § 281, which provides that “[a] patentee shall have remedy by civil action for infringement of his patent.” Thus, the rule that an exclusive licensee who does not have all substantial rights in a patent must join the patent owner is derived from the statute that defines what parties have standing to sue for patent infringement.

*Mentor H/S, Inc. v. Med. Device Alliance, Inc.*, 240 F.3d 1016, 1018 (Fed. Cir. 2001) (internal citations omitted; bracketed text in original). Several policy concerns underlie this prudential standing requirement with respect to patents. One policy consideration is to prevent “multiple lawsuits on the same patent against the same accused infringer.” *Aspex Eyewear, Inc. v. Miracle*

*Optics, Inc.*, 434 F.3d 1336, 1343 (Fed. Cir. 2006). “[A]nother policy consideration is to prevent a party with lesser rights from bringing a lawsuit that may put the licensed patent at risk of being held invalid or unenforceable in an action that did not involve the patentee.” *Id.*

The requirement that an exclusive licensee must hold “all substantial rights” in the patent to bring suit without joining the patentee is stringent. Courts have held that an exclusive licensee lacks “all substantial rights” if there is nearly any limitation on the scope of the exclusive license or any rights reserved by the patent owner. For example, an exclusive license of limited duration is insufficient to confer prudential standing. *E.g., Aspex Eyewear*, 434 F.3d at 1342-43 (“By having rights only for a limited portion of the patent term . . . [i]t was merely an exclusive licensee without all substantial rights.”). So too, an exclusive license limited to a particular technological field of use falls short of conveying “all substantial rights” for purposes of prudential standing. *Int’l Gamco, Inc. v. Multimedia Games, Inc.*, 504 F.3d 1273, 1274 (Fed. Cir. 2007) (“[A]n exclusive enterprise licensee, like a field of use licensee, does not hold all substantial rights in the licensed patent.”).

Importantly, an exclusive license granting “all substantial rights” for purpose of standing must also divest the patent owner of the same rights under the patents. If the patent owner retains the right to practice its own patents or the right to bring its own suit for infringement, then the exclusive licensee does not have “all substantial rights” in the patents. *See Abbot Labs. v. Diamedix Corp.*, 47 F.3d 1128, 1132 (Fed. Cir. 1995). Even a mere reversionary interest in the patents is generally sufficient to defeat standing. *MOSAID Techs. Inc. v. Freescale Semiconductor, Inc.*, No. 6:11-cv-173, 2012 WL 12903081, at \*3 (E.D. Tex. May 14, 2012).

**B. ECT’s Allegations Do Not Establish Standing under the Patent Act Because ECT Does Not Claim “All Substantial Rights” in the Asserted Patents**

Not only does its Complaint fail to set forth sufficient facts to establish prudential standing, but it reveals that ECT does not hold all substantial rights in the Asserted Patents, at least because (1) the patent owner, SLC has retained the right to recover for infringement of the asserted patents; and (2) ECT admits that its patent rights are subject to a field-of-use limitation. ECT’s Complaint therefore must be dismissed for lack of prudential standing.

**1. SLC’s Concurrently-Pending Lawsuit Establishes that ECT Lacks Prudential Standing**

Nowhere in its Complaint does ECT allege that it is the owner of the Asserted Patents or an exclusive licensee of these patents. [*See generally* Complaint.] Its complaint even refers to the “patent owner” in the third person. [*Id.*, ¶ 37.]

ECT could not state otherwise because SLC currently owns and is currently asserting these same five patents against Motorola in Case No. 2:15-cv-00351-JRG pending before this Court. [*Id.*, ¶ 34 (“This Court is currently presiding over a pending case involving the Patents-in-Suit: *Saint Lawrence Communications LLC v. Motorola Mobility LLC*; Case No. 2:15-cv-00351-JRG.”).] Because the *SLC v. Motorola* case is still pending and a patentee must maintain standing at all stages of the case, SLC clearly has not divested itself of the right to sue for infringement. Indeed, if ECT has standing to sue for infringement of the Asserted Patents in this present case, then SLC cannot maintain its infringement action against Motorola and this Court would have to dismiss that case for lack of jurisdiction. *See Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336, 1342 (Fed. Cir. 2014) (“[W]hichever party has all, or substantially all, rights in the patent ‘*alone* has standing to sue for infringement.’” (quoting *Morrow*, 499 F.3d at 1340));

*Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506-507, 514 (2006) (ruling that a court must dismiss case lacking subject-matter jurisdiction, even after a trial on the merits).

The law is clear that, as in this case, an alleged exclusive licensee does not have all substantial rights in a patent when the patent owner retains the right to sue for infringement. *E.g.*, *Sicom Sys. Ltd. v. Agilent Techs. Inc.*, 427 F.3d 971, 978-80 (Fed. Cir. 2005) (holding that exclusive licensee lacked standing where patent owner retained the right to sue for non-commercial infringement); *Mentor H/S*, 240 F.3d 1016, 1018 (Fed. Cir. 2001) (“Here, in light of [patent owner’s] substantial retained rights, particularly its initial right and obligation to sue for infringement, we conclude that [the exclusive licensee] did not receive all substantial rights in the patent.”); *Abbot Labs.*, 47 F.3d at 1132. Accordingly, the existence of SLC’s own suit for infringement – admitted by ECT in its Complaint – establishes that ECT does not possess all substantial rights in the Asserted Patents.

## **2. ECT’s Admission that It Is Only a Field-of-Use Licensee Precludes Prudential Standing**

The only right that ECT alleges to have in any of the Asserted Patents is “the exclusive right to license products practicing the EVS Standard.” [Complaint, ¶¶ 40, 56, 73, 89, 108.] Except for this assertion, ECT does not allege to have any other right in the Asserted Patents. [See generally Complaint.] That is far from the requisite “all substantial rights” needed for prudential standing. For example, ECT does not allege that its exclusive right to grant a license is unlimited in duration, nor does ECT allege that SLC does not retain any rights in the patents. [Id.] Yet, both allegations are requirements to establish prudential standing. *See, e.g., Aspex Eyewear*, 434 F.3d at 1342-43; *MOSAID Techs.*, 2012 WL 12903081, at \*3. ECT has therefore not alleged facts sufficient to establish that it has “all substantial rights” to any Asserted Patent. *See, e.g., Int’l Gamco*, 504 F.3d at 1274-76.

Even the allegation that ECT included in its Complaint cannot meet the requirements for prudential standing under controlling precedent. By alleging that it has the “exclusive right to license *products practicing the EVS Standard*,” ECT necessarily concedes that it lacks the same rights with respect to products that *do not practice* the EVS Standard, such as those practicing the AMR-WB standard. [See *id.*, ¶¶ 40, 56, 73, 89, 108.] This allegation and tacit concession mean that, at best, ECT supposedly holds exclusive rights in a particular technological “field of use.”

But precedent makes clear that being an exclusive licensee in a field-of-use is insufficient to confer prudential standing. *E.g.*, *A123 Sys., Inc. v. Hydro-Quebec*, 626 F.3d 1213, 1217 (Fed. Cir. 2010) (“Under long-standing prudential standing precedent, an exclusive licensee with less than all substantial rights in a patent, *such as a field-of-use licensee, lacks standing* to sue for infringement without joining the patent owner.”); see also *Alps S. LLC v. Ohio Willow Wood Co.*, 787 F.3d 1379, 1383-84 (Fed. Cir. 2015) (holding that a license agreement’s inclusion of a field-of-use restriction was “fatal to Alps’s argument that it had standing to file this action”); *Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs., Inc.*, 776 F.3d 837, 843 (Fed. Cir. 2015) (rejecting argument that the patent owner assigned all substantial rights based on a license agreement that included a field-of-use restriction), *overruled on other grounds by Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923 (2016); *Int’l Gamco*, 504 F.3d at 1274 (“[A]n exclusive enterprise licensee, like a field of use licensee, does not hold all substantial rights in the licensed patent.”). Accordingly, ECT lacks prudential standing, and its Complaint must be dismissed.

### C. ECT Also Fails to Adequately Allege Constitutional Standing

In some cases, a lack of prudential standing may be cured by joining the patent owner as a co-plaintiff. But this option is not available here because ECT's allegations also fall short of establishing constitutional standing.

Constitutional standing is limited to patent owners and exclusive licensees. *See Intellectual Prop.*, 248 F.3d at 1345-48. ECT is neither according to its Complaint. Nowhere in its Complaint does ECT allege that it owns the Asserted Patents, has any right to practice these patents, or has the prerogative to exclude others from practicing these patents. [*See generally* Complaint.] Indeed, while ECT alleges that its rights are "exclusive," it does not allege that it is an "exclusive *licensee*." [*Id.*, ¶¶ 40, 56, 73, 89, 108.] As such, ECT cannot be an "exclusive licensee" for standing purposes. *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1552 (Fed. Cir. 1995) (*en banc*) ("To be an exclusive licensee for standing purposes, a party must have received . . . the right to practice the invention within a given territory."); *see also Alfred E. Mann Found. For Sci. Research v. Cochlear Corp.*, 604 F.3d 1354, 1360 (Fed. Cir. 2010) (holding that "transfer of the exclusive right to make, use, and sell products or services under the patent is vitally important" to determining whether a patent owner has transferred away sufficient rights for the transferee to have standing).

At most, ECT's allegations describe it as an exclusive *licensing agent* for the patent owner with respect to the EVS Standard. [Complaint, ¶¶ 40, 56, 73, 89, 108.] That is wholly insufficient to confer constitutional standing, because the Federal Circuit has repeatedly held that similar rights to license and/or litigate under a patent do not pass muster for constitutional standing. For example, in *Propat International Corp. v. RPost, Inc.*, the agreement between the patent owner and putative plaintiff (Propat) "did not envision that Propat would practice the



patent, but instead contemplated that Propat would be involved only in licensing and litigation.” 473 F.3d at 1194. Although it recognized that “the rights to sue and grant licenses accord Propat broad authority to act as [the patent owner’s] agent for purposes of licensing and litigation,” *id.* at 1192, the Federal Circuit held that such an arrangement between Propat and the patent owner was insufficient to confer Propat with constitutional standing to sue, even if the patent owner were joined as a co-plaintiff. *Id.* at 1193-94. The Court of Appeals therefore affirmed the dismissal of Propat’s complaint without permitting joinder of the patent owner as a co-plaintiff. *Id.* at 1194.

The Federal Circuit’s ruling in *Morrow* offers another illustration of this principle. *Morrow*, 499 F.3d at 1335. In that case, bankruptcy proceedings separated the title to the patent at issue from the right to sue for infringement and collect damages, contractually dividing these rights between two bankruptcy trusts. *Id.* at 1338. Even though both trusts were parties to the lawsuit such that prudential standing was not in question, the Federal Circuit held that neither trust had constitutional standing. *Id.* at 1342 (“The problem for [the trusts] is that the exclusionary rights have been separated from the right to sue for infringement.”). By dividing patent rights, parties can – and in *Morrow*, did – preclude constitutional standing to sue for all purported plaintiffs: “While parties are free to assign some or all patent rights as they see fit based on their interests and objectives, this does not mean that the chosen method of division will satisfy standing requirements.” *Id.* at 1341 n.8.

Many other courts have applied the same longstanding rule, finding that parties with only licensing-related and/or litigation-related rights lack constitutional standing to participate in – much less bring – a suit for infringement. *E.g.*, *Crown Die & Tool Co. v. Nye Tool & Machine Works*, 261 U.S. 24, 39-43 (1923) (holding that a patent owner cannot “divide up the monopoly

of patent property so that the patentee retains the right to make, use and vend, but gives to many different individuals the right to sue”); *SPH Am., LLC v Huawei Techs., Co.*, No. 13-CV-2323-CAB-KSC, 2017 WL 1331920, at \*3-5 (S.D. Cal. Apr. 10, 2017) (finding that licensing agent of patent owner lacked constitutional standing, and could not cure the defect by adding the patentee as a co-plaintiff). As these cases establish, contractual arrangements that purport to give a non-owner the right to sue cannot create constitutional standing to bring suit for infringement. *Prima Tek II, L.L.C. v. A-Roo Co.*, 222 F.3d 1372, 1381 (“Standing to sue for infringement depends entirely on the putative plaintiff’s proprietary interest in the patent, not on any contractual arrangements among the parties regarding who may sue and who will be bound by judgments.”); *Ortho-Pharm. Corp. v. Genetics Inst., Inc.*, 52 F.3d 1026, 1034 (Fed. Cir. 1995) (“[A] right to sue clause cannot negate the requirement that, for co-plaintiff standing, a licensee must have beneficial ownership of some of the patentee’s proprietary rights.”).

Here, ECT’s only alleged right relating to the Asserted Patents is the right to grant licenses in a limited field of use related to the EVS Standard. [Complaint, ¶¶ 40, 56, 73, 89, 108.] ECT’s right is therefore no different from those deemed insufficient in *Propat*, *Morrow*, *Crown Die*, and *SPH* to establish constitutional standing. Because ECT lacks constitutional standing, the same precedent makes clear that it cannot cure this defect by adding SLC as a co-plaintiff or by entering into a new arrangement with the patentee after the date of the original complaint. *E.g.*, *Propat*, 473 F.3d at 1193-94; *Morrow*, 499 F.3d at 1343; *SPH*, 2017 WL 1331920, at \*5; *see also* *Abraxis*, 625 F.3d at 1364 (“A court may exercise jurisdiction only if a plaintiff has standing to sue on the date it files suit. . . . Thus, if the original plaintiff lacked Article III initial standing, the suit must be dismissed, and the jurisdictional defect cannot be cured after the inception of the lawsuit.” (internal citations and quotation marks omitted)).

Accordingly, this Court lacks subject-matter jurisdiction and ECT's Complaint must be dismissed without leave to amend.

**VI. CONCLUSION**

For all of these reasons, LG respectfully requests that the Court grant its motion to dismiss for lack of standing.

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Respectfully submitted,

By: /s/ Melissa R. Smith

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been served on November 28, 2018, to all counsel of record who are deemed to have consented to electronic service via electronic mail.

*/s/ Melissa R. Smith* \_\_\_\_\_