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VIA ELECTRONIC-FILING

The Honorable Leonard P. Stark
The United States District Court for the District of Delaware
J. Caleb Boggs Federal Building
844 N. King Street
Wilmington, DE 19801-3568

Re: Robert Bosch LLC v. Alberee Products, Inc., et al.
C.A. Nos. 12-574-LPS, 14-142-LPS

Dear Chief Judge Stark:

We represent the plaintiff in the above-captioned matter and write to request leave to file an amended complaint. The proposed amendment will add one additional defendant, Costco Wholesale Corporation (“Costco Wholesale”), and assert three additional patents, U.S. Patent Nos. 6,668,419 (“the ’419 patent”), 7,941,891 (“the ’891 patent”), and 8,544,136 (“the ’136 patent”) against all of the defendants. Bosch contacted counsel for defendants on September 24, 2014 requesting consent to file an amended complaint, but defendants did not respond to Bosch’s request by the agreed-upon deadline. We have enclosed a copy of the proposed amended complaint as Exhibit 1 to this letter, and have enclosed a black-lined comparison to the current complaints as Exhibit 2 (we combined the complaints in the consolidated cases to create this exhibit).

I. Factual and Procedural Background

The original complaint in this case was filed on May 4, 2012, alleging infringement of twelve Bosch patents directed to automotive wiper blades. (D.I. 1 in C.A. No. 12-574-LPS.) On January 18, 2013, Bosch added an additional defendant and asserted a thirteenth patent. (D.I. 38 in C.A. No. 12-574-LPS.) On February 5, 2014, Bosch added a fourteenth patent to the now-consolidated case. (D.I. 1 in C.A. 14-142-LPS; D.I. 67 in C.A. No. 12-574-LPS). Because defendants filed motions to dismiss in each case, there was no substantial activity in either case since the original complaint was filed. Per the Court’s recently issued Scheduling Order (D.I. 67), the defendants answered the complaints on September 2, 2014 (D.I. 60, 61, 62 in C.A. No. 12-574-LPS), and on August 29, 2014 (D.I. 32, 33, 34 in C.A. 14-142-LPS). The cases were formally consolidated under the C.A. No. 12-574-LPS caption (D.I. 67). A protective order (D.I. 65) was entered on September 9, 2014. In accordance with the Scheduling Order, the parties made their initial Rule 26(a)(1) disclosures on August 29, 2014, and Bosch identified the accused products, asserted patents, and the damages model on September 19, 2014. Bosch has also served the first set of discovery requests on September 17, 2014. There has been no other

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substantive activity in this case. The deadline for joining other parties and amending pleadings is March 20, 2015.

Bosch owns a portfolio of patents in the field of beam-type wiper blades, and over the last several years has successfully asserted these patents against various infringers. Saver makes and/or sells in the United States infringing wiper blades under, *e.g.*, the Goodyear Assurance brand, which are assembled by Alberee and Saver using components supplied by API. (Ex. 1, ¶¶ 10–12.) Saver has sold the Goodyear Assurance blades to Costco Wholesale, which resells them throughout the United States to end users for use on vehicles. (Ex. 1, ¶¶ 15–17.) Bosch first notified Costco Wholesale of its infringement of the twelve patents originally asserted in this case on May 30, 2012. (Ex. 1, ¶¶ 38, 60, 76, 99, 128, 157, 186, 215, 244, 273, 302, 331.) Since then, Bosch has attempted to resolve its dispute with Costco without litigation. These efforts have failed, and Bosch now seeks to add Costco Wholesale to the present action. Bosch also seeks to add three related patents to this case. The '891 and '136 patents are from the same families as several of the currently asserted patents. The '419 patent was recently assigned to Bosch.

II. Argument

Leave to amend the complaint should be granted here because Bosch brought this request without undue delay, Bosch's proposed amendments are not prejudicial, and there is no bad faith, dilatory motive, or repeated failures to cure deficiencies to indicate futility of the amendment.

A. Bosch's Request Is Timely

Bosch brought this request within the time period for amendments to pleadings, which is open until March 20, 2015 (D.I. 67). Leave to amend is normally granted when the request is made before the deadline for motions to amend. *Greatbatch Ltd. v. AVX Corp.*, C.A. No. 13-723-LPS, 2014 WL 491683, at *1 (D. Del. Feb. 4, 2014) (plaintiff was granted leave to amend the complaint to add five additional patents to the suit, when the request was made before the scheduling deadline); *Softview LLC v. Apple Inc.*, C.A. No. 10-389-LPS, 2011 WL 4571793, at *1 (D. Del. Sept. 30, 2011) (plaintiff's motion for leave to amend to add additional "allegations of infringement of the same patents in-suit against additional defendants" was granted in part because the motion was "timely under the Scheduling Order.>").

B. None of the Defendants Will Be Prejudiced by the Proposed Amendments

The proposed amendments are not prejudicial to any of the defendants. The accused products are the same as in the existing complaint, and the new patents are closely related to the patents already in this case. Discovery in this case has just begun. The parties have made their initial Rule 26(a)(1) disclosures, and Bosch served initial infringement disclosures less than a month ago. There has been no other substantive activity in this case. Neither party has answered any discovery requests, and over ten months remain before the date for the close of fact discovery. The current case schedule does not need to be changed to accommodate this amendment. Under such circumstances, the existing defendants will not be prejudiced by adding patents or related defendants to the suit. *Greatbatch*, 2014 WL 491683, at *1; *Softview*, 2011

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WL 4571793, at *1. Nor, given the early stage of the case, will the new defendant be prejudiced if it is named by amendment rather than in a separate complaint with a new docket number.

C. **Bosch Has Not Acted in Bad Faith or with Dilatory Motive, and the Amendment Is Not Futile**

Bosch does not seek to delay the existing case schedule, and as noted above the proposed amendment does not require any such change. Nor is there any reason the amendment would be futile.

III. Conclusion

Because Bosch's request is timely, made in good faith, not prejudicial to the defendants, and not futile, Bosch respectfully requests that the Court grant its motion for leave to amend the complaint to add Costco Wholesale and the three related patents to this case.

Respectfully,

/s/ David E. Moore

David E. Moore

DEM:nm
1167151/39026

Enclosures

cc: Clerk of the Court (via hand delivery)(w/enc.)
Counsel of Record (via electronic mail)(w/enc.)