

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**SIPCO, LLC, and IP CO., LLC (d/b/a
INTUS IQ),**

Plaintiffs,

v.

**STREETLINE, INC.; KAPSCH
TRAFFICCOM HOLDING CORP.; and
KAPSCH TRAFFICCOM U.S. CORP.,**

Defendants.

Civ. No. 1: 16-cv-00830-RGA

PLAINTIFF SIPCO'S RESPONSE TO DEFENDANTS'

MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT

Dated: July 10, 2017

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Plaintiffs SIPCO, LLC and IP CO, LLC (collectively, “Plaintiffs”) hereby submit this Memorandum in opposition to the Motion For Extension Of Time To Respond To The Second Amended Complaint, filed by Defendants Streetline, Inc., Kapsch TrafficCom Holding Corp. and Kapsch TrafficCom U.S. Corp. (collectively “Defendants”) (“Motion”).

I. DEFENDANTS FAILED TO COMPLY WITH LOCAL RULE 7.1.1

Defendants’ Motion includes a purported “Rule 7.1.1 Statement.” (DI 27 at p. 4). Defendants failed to comply with Local Rule 7.1.1, however, and Defendants’ statement is insufficient to allow consideration of Defendants’ Motion.

Local Rule 7.1.1 requires “oral communication that involves Delaware counsel for any moving party and Delaware counsel for any opposing party.” No such communications were ever proposed or took place. Further, the Rule provides that “[u]nless otherwise ordered, failure to so aver may result in dismissal of the motion.” In view of the failure to have the necessary oral communication and failure to so aver, the Motion should be dismissed.

The failure to comply with the Rule is not merely a matter of form. As shown in the emails attached to Defendants’ Motion, Plaintiffs were questioning “why do you need more time,” and particularly an additional month, to which Defendants never responded. (DI 27-1, Exhibit A). Proper engagement could have resolved the issues.

II. DEFENDANTS DO NOT JUSTIFY A MONTH DELAY

As Defendants admit, Plaintiffs agreed to afford Defendants a 28-day extension to answer the Second Amended Complaint. But, Defendants never provided any reasons for why Defendants required an additional 28 days to otherwise respond to the Complaint, if Defendants would not answer the Complaint.

Defendants' Motion for the first time states that Defendants require the additional month to determine whether Plaintiffs' claim charts, which Plaintiffs attached to the Complaint, "allege sufficient facts to state a plausible claim for infringement under *Twombly/Iqbal*." (DI 27 p. 2). Defendants' argument is meritless. Even a cursory review of the Second Amended complaint and the attached claim charts demonstrates that there 284 pages of charts, and that every element of every claim in each of the asserted patents is tied to Defendants' Streetline parking system and method of using that system. (DI 25, 26). There can be no legitimate question that, by providing the detailed claim charts which tie every claim element to the Accused Instrumentalities, *Twombly/Iqbal* has been more than satisfied.

Defendants propose that they require time for a detailed analysis of the claim charts. But, there is nothing in such analysis that can support a motion to dismiss. There may be claim construction issues that may be raised in the future, and there may be disputes as to whether a claim element is satisfied by the Accused Instrumentalities. But, these are not issues under *Twombly/Iqbal*. Plaintiffs are required to plead grounds of its entitlement to relief, and, having done so, that ends the Rule 12(b)(6) inquiry. The Court is not permitted to perform claim constructions or to assess the merits of Plaintiffs' infringement contentions at this stage of the proceedings.

Defendants' second argument, also raised for the first time in its Motion, is that one of their counsel is "currently studying to take the California Bar Exam, which will be held on July 25." But, Stroock & Stroock & Lavan LLP is a large law firm with hundreds of lawyers in New York, Washington DC and Miami, in addition to their office in Los Angeles. Defendants should not be asking for a month delay in filing a preliminary motion simply because one associate has

moved to the Los Angeles office. Moreover, Defendants did not raise this as a justification for the delay, before filing the Motion.

Defendants' third argument, also raised for the first time in its Motion, is that "Plaintiffs' Second Amended Complaint fails to cure the deficiencies of the prior Complaints pertaining to the alleged involvement of the Kapsch Defendants in the allegedly infringing conduct." (DI 27 p. 2). Defendants' argument is self-defeating. Defendants admit that they intend to raise the same issue as before. Yet, the issue was previously briefed, and the Court did not find any fault Plaintiffs' allegations against the Kapsch Defendants. (*Cf.*, DI 24). But, even if Defendants want to again raise the issue, Defendants admit that it is the same argument that they had previously made. Defendants do not require a 28-day extension to repeat the same argument as before.

Finally, Defendants allege that "Plaintiffs cannot identify any genuine prejudice that they would suffer from a 28-day extension." Plaintiffs are prejudiced. To be sure, in retrospect Plaintiffs were too short in their initial Complaint. Taking seriously the Court's initial decision, Plaintiffs thought they had rectified the deficiency in the First Amended Complaint by clearly identifying the Accused Instrumentalities. That Complaint turned out to be insufficient also, as the Court noted that the relationship of the products and methods pled in the Complaint to the asserted patent claims was not sufficiently understandable to one not skilled in the art. Plaintiffs believed that Defendants should have easily understood Plaintiffs' rationale for the allegations against the Accused Instrumentalities. But, to avoid further burdening the Court, rather than merely providing more detailed pleadings, Plaintiffs finalized and filed claim charts for every patent, to demonstrate, element-by-element, how the previously-pled Accused Instrumentalities met each claim element.

The case has now been delayed long enough. Plaintiffs have gone far beyond what is normally required of pleadings by providing claim charts to demonstrate Plaintiffs' infringement contentions. In response, Defendants provided no explanation, and did not follow Local Rule 7.1.1, but simply filed the Motion seeking another month's delay, in which Defendants raised for the first time arguments that are not only meritless, but should have been raised in a proper meet-and-confer. Defendants seek to delay based on a legally-meritless argument that a motion to dismiss can be based by challenging the truth of the well-pleaded allegations of the Complaint. The delay is prejudicial and Defendants have not provided any justification for the delay.

WHEREFORE, Plaintiffs respectfully request that the Defendants' Motion be denied.

Dated: July 10, 2017

Respectfully submitted,

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