

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

REALTIME ADAPTIVE STREAMING LLC,

Plaintiff,

v.

HAIVISION NETWORK VIDEO INC.,

Defendant.

Case No. 17-1520-JFB-SRF

**PLAINTIFF REALTIME ADAPTIVE STREAMING LLC'S REPLY BRIEF IN
SUPPORT OF ITS MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

July 17, 2019

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I. REALTIME’S MOTION TO AMEND—ITS FIRST ADDRESSING PATENT ELIGIBILITY—IS BOTH PROCEDURALLY AND SUBSTANTIVELY PROPER

A. There Is No Procedural Basis to Ignore or Discount Realtime’s Amended Complaint

In their effort to have this Court avoid or ignore the substance of Realtime’s factual allegations in its Amended Complaint, Defendant presents three arguments for why Realtime’s Amendment is procedurally improper. None have merit.

1. Defendants’ Own Cases Make Clear There Is No “Waiver” Here.

Relying on *Sincavage v. Barnhart*, Defendant first argues that Realtime “waived its opportunity to seek further amendment” by supposedly not raising this issue within the period of time it had to object to the Magistrate’s R&R. (D.I. 46, at 3.) But *Sincavage* is inapposite—and neither *Sincavage* nor the cropped quotes Defendant pulls out from it support their sweeping and flawed position. If anything, even *Sincavage* compels this Court to reject Defendant’s argument.

Defendant’s own cherrypicked quote from *Sincavage* merely states that “[t]he failure of a party to object to *legal* conclusions *may* result in the lost of the right to *de novo* review in the District Court.” *Id.* (emphasis added). But the “conclusion” in the R&R was not a “legal” one and also did not address the current request to amend to include Realtime’s additional factual allegations concerning patent eligibility, Realtime’s first amendment on that issue. Thus, Defendant’s quote from *Sincavage* is inapplicable.

Regardless, even if *Sincavage* were much more factually similar to the case and issue before this Court now, it does not support Defendant’s sweeping “waiver” rule. Even focusing on Defendant’s cropped quote, it merely states that the failure to object “*may*” result in the loss of “*de novo*” review, which does not get Defendant anywhere close to the novel “waiver” rule it

proposes. In fact, in expressly rejecting the “waiver” argument before it, the court in *Sincavage* held that “*whether or not* objections are made to the magistrate’s report, the district court ‘may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.’” 171 F.3d F. App’x 924, 925 (3rd Cir. 2006). While this alone contradicts Defendant’s sweeping “waiver” argument, the Third Circuit went even further—and outright stated that, even without any objections, it is “*the better practice* is for the district judge to afford some level of review to dispositive legal issues raised by the report” because “[t]authority—and the responsibility—to make an informed, final determination ... remains with the judge.” *Id.* (citing *Mathews v. Weber*, 423 U.S. 261, 271 (1976). Thus, if anything, even if *Sincavage* were applicable, it compels a review of the magistrate judge’s reversible error in recommending that Defendant’s motion be granted with prejudice.

2. Defendant’s “Undue Delay” Argument Has No Legal or Factual Support.

Defendant’s next contention of supposed “undue delay” suffers from similar fatal flaws. While conceding that “delay alone” is insufficient under the law, Defendant points to virtually nothing else and boldly asks this Court to find “undue delay” because “[i]n this Circuit, delay ‘become[s] undue when a movant has had previous opportunities to amend a complaint.’” (D.I. 46 at 4 (citing *Cureton v. NCAA*, 252 F.3d 267, 273 (3rd Cir. 2001)).)

Even a cursory review of Defendant’s cited authority reveals the lengths to which it is going to stretch the law to try to have this Court improperly ignore Realtime’s meaningful and detailed factual allegations. Indeed, right after the quote that Defendant’s use from *Cureton*, the Third Circuit made clear that the “undue delay” exception to the liberal amendment rules that control Realtime’s motion are narrow—and have only been applied in cases involving multiple amendments on the same issue, over years of substantive litigation. 252 F.3d at 273 (citing cases

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