

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BROADSIGN INTERNATIONAL, LLC,

Plaintiff,

v.

T-REX PROPERTY, AB,

Defendant.

Civil Action No.: 1:16-cv-04586 (LTS)

**DEFENDANT T-REX PROPERTY, AB'S MEMORANDUM OF LAW IN
OPPOSITION TO PLAINTIFF BROADSIGN INTERNATIONAL, LLC'S
MOTION FOR LEAVE TO AMEND**

Steven R. Daniels (*admitted pro hac vice*)
FARNEY DANIELS PC
800 S. Austin Ave., Suite 200
Georgetown, Texas 78626
Tel: (512) 582-2828
Fax: (512) 582-2829
sdaniels@farneydaniels.com

*Attorneys for Defendant
T-Rex Property, AB*

TABLE OF CONTENTS

I. INTRODUCTION	1
II. STATEMENT OF FACTS	1
III. LEGAL STANDARD	1
IV. ARGUMENT	2
A. Amendment Would Be Futile Because T-Rex’s Lawsuits Against Other Suppliers Do Not Establish A Case Or Controversy Between T-Rex and BroadSign.	2
B. Amendment Would Be Futile Because T-Rex’s Lawsuits Against BroadSign’s Customers Do Not Establish A Case Or Controversy.	4
1. BroadSign’s Proposed Second Amended Complaint Does Not Plead An <i>Obligation</i> To Indemnify Its Customers.	4
2. BroadSign’s Proposed Second Amended Complaint Does Not Adequately Plead Allegations of Indirect Infringement.....	5
C. Amendment Would Be Futile Because This Case is Moot.....	7
V. CONCLUSION	8

..

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Arris Group v. British Telecomm</i> , 639 F.3d 1368 (Fed. Cir. 2011).....	5, 6, 7
<i>Arrowhead Indus. Water, Inc. v. Ecolochem, Inc.</i> , 846 F. 2d 731 (Fed. Cir. 1988).....	3
<i>Benitec Australia, Ltd. v. Nucleonics, Inc.</i> , 495 F. 3d 1340 (Fed. Cir. 2007).....	6
<i>Commil USA, LLC v. Cisco Systems, Inc.</i> , 135 S. Ct. 1920 (2015).....	6
<i>Dougherty v. North Hempstead Zoning Bd. of Zoning Appeals</i> , 282 F.3d 83 (2nd Cir. 2002).....	2
<i>Foman v. Davis</i> , 371 U.S. 178 (1962).....	1
<i>Innovative Therapies, Inc. v. Kinetic Concepts, Inc.</i> , 599 F.3d 1377 (Fed Cir. 2010).....	3
<i>Micron Technology, Inc. v. Mosaid Technologies, Inc.</i> , 518 F. 3d 897 (Fed. Cir. 2008).....	3, 4
<i>Microsoft Corp. v. DataTern, Inc.</i> , 755 F.3d 899 (Fed. Cir. 2014).....	5

Statutes

35 U.S.C. § 271(c)	5
--------------------------	---

Other Authorities

Fed. R. Civ. P. 12(b)	2
Fed. R. Evid. 201(b)(2)	7

...

Declaratory Judgment Defendant T-Rex Property, AB (“T-Rex”) hereby submits this memorandum of law in opposition to Plaintiff BroadSign International, LLC’s Motion for Leave to Amend its Complaint (D.I. 42). A declaration of Steven R. Daniels accompanies this memorandum.

I. INTRODUCTION

This Court properly dismissed BroadSign’s prior complaint, finding that BroadSign had not pled facts establishing the existence of a “substantial controversy” between itself and T-Rex. D.I. 40 at 10. BroadSign’s motion for leave to amend should be denied as futile for two reasons: (1) it fails to adequately address the deficiencies the Court identified in its Order; and (2) any controversy is now clearly moot because all of T-Rex’s cases against BroadSign’s customers have been resolved.

II. STATEMENT OF FACTS

At the time that T-Rex’s motion to dismiss was being decided, by Defendant’s admission, all but two of T-Rex’s cases against BroadSign’s customers had been resolved. D.I. 23 ¶ 24 (stating that “only the cases against Adaptive Micro Systems and ContextMedia Health are still pending”). BroadSign’s proposed second amended complaint does not plead any new lawsuits against BroadSign’s customers in the time since that motion was decided. D.I. 23 ¶ 24 (identifying seven lawsuits); D.I. 44-1 ¶ 29 (identifying “seven (7) BroadSign customers”). Moreover, BroadSign fails to disclose that, since that time, T-Rex’s cases against those two remaining BroadSign customers have now concluded. Daniels Decl. Exhs. A, B.

III. LEGAL STANDARD

“[U]ndue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party ... [or] futility of amendment” are grounds for denying leave to amend. *Foman v. Davis*, 371 U.S.

178, 182 (1962). An amendment to a pleading will be futile if a proposed claim could not withstand a motion to dismiss pursuant to Rule 12(b). *Dougherty v. North Hempstead Zoning Bd. of Zoning Appeals*, 282 F.3d 83, 88 (2nd Cir. 2002).

IV. ARGUMENT

A. Amendment Would Be Futile Because T-Rex's Lawsuits Against Other Suppliers Do Not Establish A Case Or Controversy Between T-Rex and BroadSign.

BroadSign argues that its proposed second amended complaint establishes a case or controversy because T-Rex has allegedly “filed complaints alleging patent infringement of the Patents-in-Suit against suppliers similarly-situated to BroadSign.” Pl.’s Mem. at 3-4; D.I. 41-1 ¶¶ 13-28. However, BroadSign’s argument fails for two reasons: (1) the proposed second amended complaint fails to plead facts sufficient to establish that the other parties are actually “suppliers similarly-situated to BroadSign”; and (2) the mere fact that T-Rex has previously filed suits against some suppliers of unrelated products is insufficient to establish an “aggressive” litigation campaign that would create reasonable apprehension that BroadSign is next.

First, BroadSign’s conclusory pleadings are insufficient to establish that T-Rex has engaged in a litigation campaign against others similarly situated to BroadSign. By BroadSign’s own admission, BroadSign is “in the business of providing digital out-of-home software and solutions for digital signage and displays,” and in particular, “hardware and software solutions” “built to order for its customers.” D.I. 44-1 ¶¶ 3, 46. By contrast, a vast majority of the alleged suppliers identified by BroadSign were accused of infringement by operating a digital signage *network*. D.I. 44-1 ¶¶ 14, 16-23, 25-26. But BroadSign does not allege, or point to any allegation by T-Rex, that BroadSign is operating a digital signage network. This difference strongly counsels against a finding of an immediate and real substantial controversy. As to the remaining alleged suppliers, BroadSign fails to provide any specific facts that those suppliers are

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.