

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

PUBLIC VERSION

STRAIGHT PATH IP GROUP, INC.,

Plaintiff,

v.

VIZIO, INC., et al.,

Defendants.

Civil Action No. 1:13-cv-934 (AJT/IDD)

STRAIGHT PATH IP GROUP, INC.,

Plaintiff,

v.

TOSHIBA CORPORATION, et al.,

Defendants.

Civil Action No. 1:13-cv-934 (AJT/IDD)
[formerly No. 3:13-cv-503, No. 1:13-cv-1070]

STRAIGHT PATH IP GROUP, INC.,

Plaintiff,

v.

LG ELECTRONICS, INC., et al.,

Defendants.

Civil Action No. 1:13-cv-934 (AJT/IDD)
[formerly No. 1:13-cv-933]

**PROPOSED INTERVENOR HULU, LLC'S REPLY IN SUPPORT OF MOTION TO
INTERVENE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 24**

I. PRELIMINARY STATEMENT

Straight Path does not and cannot contest that Hulu has sought to intervene as soon as possible in this action, that this case is in its infancy, and that Hulu's intervention as to the existing defendants alone would not broaden the case. Instead, Straight Path asks why Hulu did not intervene in the Eastern District of Texas case against Samsung.¹ While not relevant, the answer is simple. Prior to September 18, 2014, Hulu's technology was *only* implicated in the Samsung case. Straight Path had *not* accused Hulu functionality in the parallel International Trade Commission investigation against LG, Toshiba, and VIZIO. Straight Path had *not* accused Hulu functionality in any of its other pending lawsuits nationwide. It was not until mid-September that Straight Path revealed that it would attack Hulu's partners piecemeal all over the United States, by providing to LG, Toshiba, and VIZIO in this case claim charts citing Hulu technology. Within days, Hulu sought to intervene here, the jurisdiction that indisputably would provide the fastest adjudication as to whether Hulu's product infringes and Straight Path's patents are invalid. (The Patent Trial and Appeals Board addressed the invalidity question earlier this month by finding the asserted claims of one of Straight Path's three patents-in-suit invalid.²)

Straight Path also argues—without factual support—that Hulu's intervention as to all of its partners would broaden the scope of this case. Not so. Straight Path has presented only speculation that Hulu's product operates differently across those devices or that Straight Path would require extensive third-party discovery to understand how Hulu's product works on those devices. In fact, Hulu typically does not provide its source code to its partners; instead, it makes

¹As in Hulu's opening brief, the following abbreviations apply throughout this reply: (1) "Hulu" means Hulu, LLC; (2) "LG" means LG Electronics, Inc., LG Electronics U.S.A., Inc., and LG Electronics MobileComm U.S.A., Inc.; (3) "Toshiba" means Toshiba Corporation, Toshiba America, Inc., and Toshiba America Information Systems, Inc.; (4) "VIZIO" means VIZIO, Inc.; and (5) "Straight Path" means Straight Path IP Group, Inc.

² See *Sipnet EU S.R.O. v. Straight Path IP Grp., Inc.*, Case IPR2013-00246, 2014 WL 5144564 (P.T.A.B. Oct. 9, 2014).

any changes desired by those partners itself. *See* Decl. of Xinan Wu in Support of Hulu’s Motion to Intervene (“Wu Decl.”), ¶ 3. Because Hulu’s product is not modified or personalized by its partners, Hulu’s intervention would result in only limited (if any) additional third-party discovery.

Straight Path would have Hulu fight many skirmishes by suing Hulu’s partners in three—for now—courts nationwide. But it makes sense for Hulu, its partners, and the millions of people who use the devices at issue to adjudicate this dispute as quickly and efficiently as possible. Hulu’s counsel has already participated in scheduling and substantive discussions in this case, which demonstrates Hulu’s sincerity in securing a speedy adjudication. The Court should grant Hulu’s motion.

II. ARGUMENT

A. Hulu may intervene as a matter of right.

1. Hulu’s motion to intervene is timely.

Straight Path does not contest that Hulu sought to intervene timely. Straight Path attempts to distract from Hulu’s timely action by focusing on the ongoing litigation against Samsung in the Eastern District of Texas, but the key timeliness question for intervention purposes is whether any delay in Hulu’s intervention has prejudiced the parties *to this case*, not to any other case.³ Straight Path cites no authority for looking to cases other than the one in which intervention is sought in order to assess an intervenor’s timeliness.

Even if the Court considers the Samsung case in determining the timeliness of Hulu’s motion, Hulu has acted as promptly as possible. Prior to September 18, Straight Path had only sued one Hulu partner—Samsung—and had never before accused Hulu technology in this case

³ *See Spring Constr. Co. v. Harris*, 614 F.2d 374, 377 (4th Cir. 1980) (“The most important consideration is whether the delay has prejudiced the other parties.”); *Mountain Top Condo. Assoc. v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 370 (3d Cir. 1995) (“[T]he stage of the proceeding is inherently tied to the question of the prejudice the delay in intervention may cause to the parties *already involved*.”) (emphasis added).

or in its investigation against the same defendants before the ITC. It was not until its partners notified Hulu that Straight Path intended to allege infringement in this case on the basis of Hulu technology that Hulu understood Straight Path's strategy: attack Hulu's partners, one by one, all over the country, in an attempt to extract settlements on the basis of Hulu technology, rather than facing Hulu head-on. Once it became apparent that Hulu would not have to deal with one partner sued in one jurisdiction, but five partners sued literally across the country in three jurisdictions, it acted.

2. Hulu has a significantly protectable interest related to the products at issue.

Straight Path admits that Hulu is the designer and supplier of a technology that will be part of their infringement theory these cases. Dkt. 137 at 10 (conceding that Hulu is the supplier of an application that runs on defendants' devices and that Hulu's technology is one way "Defendants' infringement may be proven"). Straight Path's litigation against LG, Toshiba, and VIZIO, both here and before the ITC, has always been focused on third-party applications on the defendants' devices, rather than on the devices themselves. As Straight Path's infringement contentions—just served last Friday—against LG, Toshiba, and VIZIO demonstrate, Hulu's product will be front-and-center in this litigation. *See* Decl. of Katherine M. Lovett in Support of Hulu's Reply in Support of Motion to Intervene ("Lovett Decl."), Ex. A (Straight Path's infringement charts accusing LG, Toshiba, and VIZIO). Courts have held time and again that a designer and supplier of a technology has a significant interest in its clients' or customers' alleged infringement on the basis of the designer's technology.⁴ Straight Path does not cite a single case holding otherwise.

⁴ *See, e.g., Select Retrieval, LLC v. ABT Elecs.*, 11-cv-3752, 2013 WL 6576861, at *2 (N.D. Ill. Dec. 13, 2013); *Advanced Dynamic Interfaces, LLC v. Aderas Inc.*, 12-cv-963, 2013 WL 6989428, at *1 n.1 (D. Del. Jan. 11, 2013); *Honeywell Int'l, Inc. v. Audiovox Commc'ns Corp.*, 04-cv-1337, 2005 WL 2465898, at *4 (D. Del. May 18, 2005).

Furthermore, contrary to Straight Path's arguments,⁵ Hulu has shown that it has an actual obligation to defend the existing defendants with respect to Straight Path's claims against them. *See* Decl. of Anthony Garza in Support of Hulu's Motion to Intervene (Dkt. 125-2), ¶ 4 ("Hulu has agreed to defend VIZIO and LG for infringement claims *made by Straight Path against the Hulu product in this case.*") (emphasis added). Since filing its opening brief, Hulu has similarly agreed to defend Toshiba for infringement claims made by Straight Path against the Hulu product in this case. *See* Lovett Decl., Exs. B-D (letters from Hulu to LG, Toshiba, and VIZIO). Hulu's recognition of its legal obligation to defend its partners is yet another well-established significantly protectable interest. *See Fisherman's Harvest Inc. v. United States*, 74 Fed. Cl. 681, 685 (Fed. Cl. 2006); *Select Retrieval v. L.L. Bean, Inc.*, 12-cv-3, 2013 WL 1099754, at *1 (D. Me. Mar. 15, 2013).

3. The disposition of these actions may impair Hulu's ability to protect its interests.

The Court's decision here—both as to invalidity and non-infringement—will have an impact on the other ongoing litigations against Hulu's partners, as well as in any other suits Straight Path chooses to bring against Hulu or its partners. *See ABT Elecs.*, 2013 WL 6576861, at *2. Moreover, the outcome of this case will have an impact on Hulu's business with *all* of its partners. *See Advanced Dynamic Interfaces*, 2013 WL 6989428, at *1 n.1 (Oracle demonstrated that its interests would be impaired or affected by disposition of the action where the outcome of the action would directly impact Oracle economically). None of these effects are conclusory or contingent—they are the practical reality of the impact this case will have on Hulu's product and future partnerships.

4. The named defendants inadequately represent Hulu's interests.

Finally, Hulu's interests are not adequately represented here by LG, Toshiba, and VIZIO. As the cases Straight Path cites show, Hulu satisfies this element merely by showing that

⁵ *See* Dkt. 137 at 9-10.

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