

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

TRAXCELL TECHNOLOGIES, LLC.,)
Plaintiff,)
v.) Civil Action No. 6:21-CV-00074-ADA
APPLE INC.)
Defendant.)

OPPOSED MOTION TO AMEND COMPLAINT

Traxcell respectfully files this Motion to Amend Complaint in the above captioned matter (“Motion”). The Motion should be granted for the following reasons.

I. BACKGROUND

Traxcell originally pled allegations that Apple infringes claims from two patents: U.S. Patent Nos. 9,918,196 and 9,549,388.¹ These were followed by corresponding preliminary infringement contentions. On June 24, 2021, Traxcell added preliminary infringement contentions regarding U.S. Pat. No. 10,820,147 (the ‘147 Patent).² On July 28, 2021, after several back-and-forth communications regarding Traxcell’s intention on amending the complaint to add the ‘147 Patent, counsel for Apple informed Traxcell’s counsel that they were “still discussing with Apple” regarding whether to oppose Traxcell’s motion to amend.³ On July 30, 2021, counsel for Traxcell confirmed that it would amend its pleading to add the ‘147 Patent and would provide a copy of the amended pleading “early next week” for counsel to review.⁴ Counsel for Apple acknowledged

¹ Doc. 1.

² Declaration of Donald Mahoney at ¶3.

³ Ex. A, July 28, 2021 email from Apple counsel regarding discussing with Apple regarding any opposition.

⁴ Ex. B, July 30, 2021 email from Apple counsel to Traxcell counsel regarding providing copy of amended pleading.

this in response.⁵ On August 5, Traxcell filed their opposition to Apple’s Motion to Stay, noting therein that “Traxcell intends to amend its complaint by August 6, 2021 to assert infringement of U.S. Pat. No. 10,820,147 as well.”⁶ Attached as Exhibit C is Traxcell’s Amended Complaint.

II. ARGUMENT

This Motion is brought well before the deadline to amend pleadings (May 11, 2022) in the Agreed Scheduling Order.⁷ This Motion is brought per Federal Rule 15(a). In this Court:

A district court reviewing a motion to amend pleadings under Rule 15(a) considers five factors: (1) undue delay; (2) bad faith or dilatory motive; (3) repeated failure to cure deficiencies by previous amendments; (4) undue prejudice to the opposing party; and (5) futility of amendment. *Smith v. EMC*, 393 F.3d F.3d 590, 595 (5th Cir. 2004) (citing *Forman v. Davis*, 371 U.S. 178, 182 (1962)).⁸

There should be no finding of undue delay as the motion for leave was filed within the court-ordered deadline.⁹ As Traxcell has not previously moved to amend, there should be no finding of bad faith or dilatory motive.¹⁰ Given the notice provided to Apple in advance and the fact that Apple never expressed that it would face undue prejudice if Traxcell amended its complaint, there should be no reason to deny the amendment.¹¹

III. CONCLUSION

For all the above reasons, Traxcell respectfully argues that its Motion be granted.

Respectfully submitted,

Ramey & Schwaller, LLP

⁵ *Id.*

⁶ Doc. No. 26 n.2.

⁷ Doc. 23.

⁸ *Frantz Design v. Diamond Orthotic Lab.*, No. 1:19-CV-00970-ADA, 2020 U.S. Dist. LEXIS 256818 at *6 (W.D. Tex. May 26, 2020).

⁹ *Id.*

¹⁰ *Id.* at *6-7.

¹¹ *Id.* at *7.

By: /s/ William P. Ramey, III
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CERTIFICATE OF CONFERENCE

Pursuant to the Federal Rules of Civil Procedure, counsel for Traxcell had a number of email correspondences with counsel for Apple regarding the subject of this Motion, as described above. Today, August 6, 2021, counsel for Apple informed counsel for Traxcell that “Apple has decided to litigate the ’147 patent in the Northern District of California.” Apple filed a complaint for declaration judgment of noninfringement of the ’147 patent on August 5, 2021. *Apple, Inc. v. Traxcell Techs. LLC*, NDCA 5-21-cv-06059. Accordingly, Traxcell is treating this Motion as opposed.

/s/ William P. Ramey, III
William P. Ramey, III

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that all counsel of record who have appeared in this case are being served today, August 6, 2021, with a copy of the foregoing via the Court's CM/ECF system.

/s/ William P. Ramey, III
William P. Ramey, III