

alleged that CSI infringed upon i2M's copyrights to two patterns used for printing on swimming pool liners. The parties engaged in various—and somewhat contentious—discovery up until May of 2016. By May 31, 2016, both parties had filed motions for summary judgment. (Docs. 23, 56). Then, on August 5, 2016, this Court referred the case to Magistrate Judge Saporito for the purpose of conducting settlement negotiations. (Doc. 78). Those negotiations were ultimately unsuccessful.

The Court also referred both summary judgment motions to Magistrate Judge Carlson for a Report and Recommendation (“R&R”). On February 3, 2017, the Magistrate Judge issued an R&R concerning i2M's Motion for Summary Judgment. (Doc. 95). On February 8, 2017, the Magistrate Judge issued a second R&R, this one concerning CSI's Motion for Summary Judgment. (Doc. 96). Upon review of the R&Rs, the Court ultimately resolved the two summary judgment motions, (Docs. 104, 107, 108), and then set a trial date of January 29, 2018. (Doc. 113).

Subsequent to setting a trial date, i2M filed the present motion on April 23, 2017, seeking to amend its Complaint to add four new copyrighted patterns to the lists of patterns it alleges that CSI infringed.¹ In the brief accompanying the Motion, i2M asserts that it first became aware that CSI infringed upon the four additional copyrighted patterns when i2M received a group of documents from CSI on May 31, 2016. (Doc. 120-1 at 3). i2M further

¹ Additionally, the proposed Amended Complaint, in the words of i2M, “updates certain matters, such as eliminating its original third claim for breach of implied warranty as to which the Court granted summary judgment in CSI's favor, striking the specific dollar amounts of estimated damages, and making minor language changes.” (Doc. 120-1 at 6). While opposing i2M's motion as a whole, CSI has not made any specific arguments that address these additional changes to i2M's Complaint.

contends that it first “shared its conclusions about CSI’s infringement of at least four additional i2M-owned patterns” with CSI at the settlement negotiations in August of 2016. (*Id.* at 4).

III. ANALYSIS

Federal Rule of Civil Procedure 15 provides that a party may amend their complaint once within twenty-one days of service. Fed. R. Civ. P. 15(a)(1). After that time, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). “The United States Court of Appeals for the Third Circuit has adopted a liberal approach to the amendment of pleadings in order to ensure that ‘a particular claim will be decided on the merits rather than on technicalities.’” *Payne v. Duncan*, 2016 WL 2859612, at *1 (M.D. Pa. 2016) (quoting *Dole v. Arco Chem. Co.*, 921 F.2d 484, 486-87 (3d Cir. 1990)). Indeed, the Third Circuit has noted that “[g]enerally, Rule 15 motions should be granted,” *United States ex rel. Customs Fraud Investigations, LLC v. Victaulic Co.*, 839 F.3d 242, 249 (3d Cir. 2016), and that “the pleading philosophy of the Rules counsels in favor of liberally permitting amendments to a complaint” or pleading, *CMR D.N. Corp. v. City of Phila.*, 703 F.3d 612, 629 (3d Cir. 2013).

Nevertheless, “[t]here are three instances when a court typically may exercise its discretion to deny a Rule 15(a) motion for leave to amend: when ‘(1) the moving party has demonstrated undue delay, bad faith or dilatory motives, (2) the amendment would be futile,

or (3) the amendment would prejudice the other party.” *United States ex rel. Customs Fraud Investigations*, 839 F.3d at 249 (quoting *United States ex rel. Schumann v. Astrazeneca Pharma. L.P.*, 769 F.3d 837, 849 (3d Cir. 2014)). “[P]rejudice to the nonmoving party is the touchstone for the denial of the amendment.” *Dole*, 921 F.2d at 488 (quotation marks omitted).

In its Brief in Opposition, CSI argues that i2M’s motion should be denied because (1) i2M’s motion was unduly delayed, and (2) granting i2M’s motion would cause prejudice to CSI.² The Court will address each of CSI’s arguments in turn.

“Delay alone will not constitute grounds for denial” of a motion for leave to amend. *Bjorgung v. Whitetail Resort, LP*, 550 F.3d 263, 266 (3d Cir. 2008) (citing *Cureton v. Nat’l Collegiate Athletic Ass’n*, 252 F.3d 267, 273 (3d Cir. 2001)). Undue delay, however, may justify a denial of a motion for leave to amend. *United States ex rel. Customs Fraud Investigations*, 839 F.3d at 249. “Delay becomes ‘undue,’ and thereby creates grounds for the district court to refuse leave, when it places an unwarranted burden on the court or when the plaintiff has had previous opportunities to amend.” *Bjorgung*, 550 F.3d at 266. Nevertheless, “[t]he passage of time, without more, does not require that a motion to amend a complaint be denied.” *Adams v. Gould Inc.*, 739 F.2d 858, 868 (3d Cir. 1984).

² CSI also, in several places in its brief, accuses i2M of having a dilatory motive in moving to amend its Complaint at this time. CSI fails, however, to point to any extrinsic evidence of dilatory motive or bad faith outside of the fact that the motion was not made earlier in the case. Thus, because CSI provides no support for its contention that i2M acted with a dilatory motive in moving for leave to amend, the Court rejects this argument. However, to the extent that CSI argues that the asserted “undue delay” evidences i2M’s bad faith, the Court will address that contention in the context of its discussion of whether the motion was indeed unduly delayed.

While there has been some delay in the filing of the present motion, the Court cannot say that it rises to the level of undue delay and requires the Court to deny i2M's motion. According to i2M, it first came to believe that CSI printed four other patterns for which i2M possessed the copyrights to on May 31, 2016, when CSI turned over certain documents to i2M. (Doc. 120-1 at 3). CSI agrees that it turned over documents it obtained from a third party on this date. (Doc. 123 at 6). i2M then made CSI aware during settlement negotiations that i2M believed it had additional claims against CSI. (Doc. 120-1 at 4; Doc. 123 at 6). Then, in December of 2016, approximately two months after settlement negotiations failed, i2M moved to supplement the record on its Motion for Summary Judgment to include information about the other four patterns. (Doc. 91). Thereafter, on February 3, 2017, Magistrate Judge Carlson issued an R&R which explicitly did not consider this additional material. (Doc. 95 at 7). The R&R advised the parties that, if they felt "that recent discovery has broadened their dispute, they should seek to amend their pleadings, and conduct orderly discovery on these newly disputed matters." (*Id.*). Then, on March 10, 2017, this Court adopted the R&R. (Doc. 104). Approximately six weeks later, i2M filed the present Motion to Amend. (Doc. 120).

While this timeline shows that there has been some delay in moving to amend, the Court cannot say it is undue. Granting the motion at this stage in the litigation will not burden the Court. Although a trial date is set, that date is months away, and there is still ample time for the parties to conduct discovery on these additional matters. Thus, allowing

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