UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

LONGITUDE LICENSING LIMITED, Plaintiff, v. AMAZON.COM, INC., Defendant.	Case No. 8:23-cv-00039-JWH-DFM **ORDER GRANTING WESTERN DIGITAL'S MOTION TO INTERVENE [ECF NO. 30]**

Before the Court is the unopposed motion of non-party Western Digital Technologies, Inc. ("WD") to Intervene as a Defendant in the above-captioned action.[1] Based upon a review of the Motion, the Court determines that the issues presented are appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78, L.R. 7-15. For the reasons stated in this Order, the Court **GRANTS** the Motion.

I. BACKGROUND

Plaintiff Longitude Licensing Limited filed patent infringement actions against Dell Technologies, Inc., *et al.* (Case No. 8:22-cv-02312); ASUSTek Computer, Inc., *et al.* (Case No. 8:23-cv-00033); Lenovo Group Limited, *et al.* (Case No. 8:23-cv-00035); Acer Inc., *et al.* (Case No. 8:23-cv-00036); HP Inc. (Case No. 8:23-cv-00038); and Amazon.com, Inc. (this action—Case No. 8:23-cv-00039) (collectively, "Defendants"). Longitude alleges that WD supplies each Defendant with solid state drives ("SSDs") and memory chips and that Defendants incorporate these SSDs and memory chips into the accused products.[2] In light of this manufacturer-customer relationship, WD moves to intervene as a matter of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure. Alternatively, WD moves to intervene pursuant to Rule 24(b)—permissive intervention.

II. LEGAL STANDARDS

Rule 24(a)(2) provides: "[o]n timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

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[1] WD's Mot. to Intervene (the "Motion") [ECF No. 30].

[2] *See generally* Compl. (the "Complaint") [ECF No. 1].

This provision is construed liberally in favor of potential intervenors. *See California* ex rel. *Lockyer v. U.S.*, 450 F.3d 436, 440 (9th Cir. 2006). In determining whether intervention is appropriate, the Ninth Circuit applies a four-part test:

> (1) the motion must be timely; (2) the applicant must claim a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Id.

Permissive intervention is governed by Rule 24(b), which provides that, on a timely motion, the Court may permit anyone to intervene who "has a claim or defense that shares with the main action a common question of law or fact," so long as the intervention "will [not] unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b) & (c). In the Ninth Circuit, an applicant seeking permissive intervention must prove that: (1) it shares a common question of law or fact with the main action; (2) its motion is timely; and (3) the Court has an independent basis for jurisdiction over the applicant's claims. *See Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998).

III. DISCUSSION

Here, intervention is warranted both as a matter of right and under the permissive intervention standard.

A. Intervention as a Matter of Right

1. Timeliness

This litigation is in its early stages. Amazon has not yet filed its answer, and the Court has not set a case schedule.[3] Accordingly, the Court finds WD's Motion timely.

2. Protectable Interest

To determine whether an applicant has a "significantly protectable" interest necessary for intervention, Courts consider both whether the interest is protectable under some law and whether there is a relationship between the legal protectable interest and the claims at issue. *See Wilderness Soc. v. U.S. Forest Service*, 630 F.3d 1173, 1179 (9th Cir. 2006). "Although the intervenor cannot rely on an interest that is wholly remote and speculative, the intervention may be based on an interest that is contingent upon the outcome of the litigation." *City of Emeryville v. Robinson*, 621 F.3d 1251, 1259 (9th Cir. 2010) (internal quotations and citations omitted).

Here, WD has an interest in preserving its right to continue making its SSDs and memory chips and selling them to customers; Longitude alleges that WD's customers' products infringe its patent rights specifically because those customers incorporate WD's SSDs and memory chips in their products.[4] To protect its rights, WD seeks declaratory judgment of non-infringement.[5] Typically, this kind of manufacturer-customer relationship supports intervention. *See Nazomi Commc'ns, Inc. v. Nokia Corp.*, 2010 WL 11508956, at *4 (C.D. Cal. June 21, 2010) (finding that the petitioner had a significant protectable interest because its products were embedded in the allegedly

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[3] *See* Motion 6:22-26.

[4] *See generally* Complaint.

[5] *See generally* WD's Answer [ECF No. 30-2].

infringing consumer electronics sold by the named defendants). Accordingly, WD meets this requirement.

3. Ability to Protect Interest Impaired or Impeded

As discussed above, a finding that WD's SSDs and memory chips infringe Longitude's patents would impair WD's ability to continue to sell SSDs and memory chips to its customers. Accordingly, WD meets this requirement.

4. Not Adequately Represented by Other Parties

Broadly, WD's interests align with those of Amazon, as well as those of the other Defendants.[6] However, all infringement allegations depend on WD's SSDs and memory chips, which Defendants incorporate into the accused products.[7] Thus, WD is in the best position to provide technical information relevant to this threshold issue of infringement.[8] WD also indicates that, generally, customers may not adequately represent manufacturer interests in patent infringement cases for several reasons, including: (1) customer incentives to disclaim knowledge of whether sub-components in the accused products infringe; (2) customer incentives to blame the manufacturer for concealing the alleged infringement; and (3) customer interest in settlement and stipulation to an infringement finding despite manufacturer loss. *See Nazomi*, 2010 WL 11508956, at *5. Accordingly, WD also meets the fourth requirement.

Thus, the Court finds that WD meets all four requirements for intervention as a matter of right and **GRANTS** WD's motion.

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[6] WD moves to intervene in only this action pending against Amazon. However, Defendants agree to be bound to infringement and validity findings in this action. *See* Reply in Support of Motion to Stay [ECF No. 37] 10:2-4.

[7] *See generally* Complaint.

[8] The Court recognizes that even if the SSDs infringe, Defendants may not infringe depending on the specific factual circumstances surrounding each Defendant's allegedly infringing activity. However, if the SSDs do not infringe, then Defendants' sales of the accused products also do not infringe. Therefore, all infringement allegations in this case depend on the technical infringement allegations with respect to the SSDs.

B. Permissive Intervention

The standard for permissive intervention requires only "(1) an independent ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the movant's claim or defense and the main action." *United States v. Washington*, 86 F.3d 1499, 1506-07 (9th Cir. 1996). As discussed above, the Motion is timely. Additionally, there are common questions of law and fact—Longitude alleges that the accused products infringe because they include WD's SSDs. Therefore, there are common technical questions as to whether the SSDs infringe the asserted patents and there are common questions of patent validity. Finally, there is an independent ground for jurisdiction because WD counterclaims for declaratory judgment of non-infringement.[9] These counterclaims depend on federal patent law. *See Nikon Corp. v. ASM Lithography B.V.*, 222 F.R.D. 647, 651 (N.D. Cal. 2004). Accordingly, WD meets the standard for permissive intervention.

IV. DISPOSITION

For the foregoing reasons, the Court **GRANTS** WD's Motion to Intervene.

IT IS SO ORDERED.

Dated: May 16, 2023

John W. Holcomb
UNITED STATES DISTRICT JUDGE

[9] *See* WD's Answer.