PUBLIC VERSION

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

GREENTHREAD, LLC **Plaintiff,** **vs.** **CIRRUS LOGIC, INC.** **Defendant.**	**Civil Action No. 1:23-cv-00369-DC** **JURY TRIAL DEMANDED**

PLAINTIFF GREENTHREAD, LLC'S OPPOSED MOTION FOR LEAVE TO AMEND FINAL INFRINGEMENT CONTENTIONS AND COMPLAINT

[redacted]

PUBLIC VERSION

TABLE OF CONTENTS

I. Introduction 1

II. Background 2

III. Legal Standard 4

A. Amending Infringement Contentions 4

B. Leave to Amend Pleadings 5

IV. Argument 6

A. Good Cause Exists to Permit Greenthread to Amend its Final Infringement Contentions 6

1. Greenthread has been diligent, and has good cause for amending its contentions. 6

2. Greenthread's contention amendments are important and should be allowed. 7

3. There is no prejudice to Cirrus Logic, whereas denial would greatly prejudice Greenthread. 7

4. The availability of a continuance would cure any potential prejudice. 7

B. Good Cause Exists to Permit Greenthread to Amend its Complaint to Add GlobalFoundries as a Defendant 8

1. Greenthread can provide adequate explanation for not adding GlobalFoundries as a defendant before the deadline. 8

2. Greenthread's proposed amendment is particularly important and should be permitted. 9

3. There is no prejudice to Cirrus Logic or GlobalFoundries, whereas denial would greatly prejudice Greenthread. 9

4. The availability of a continuance mitigates any potential prejudice that would result from permitting Greenthread to amend its complaint. 10

Greenthread Ex. 2077, p. 2 of 16
Cirrus Logic, et al. v. Greenthread
IPR2024-00021

5. No substantial reason exists for the Court to deny Greenthread's proposed amendment to its complaint. 10

V. Conclusion 10

Greenthread Ex. 2077, p. 3 of 16
Cirrus Logic, et al. v. Greenthread
IPR2024-00021

TABLE OF AUTHORITIES

Page(s)

Cases

Cutting Edge Vision, LLC v. TCL Tech. Grp. Corp., No. W-22-CV-00285-ADA, 2023 WL 4002539, at *1 (W.D. Tex. June 14, 2023) 2, 4, 5

CyWee Grp. Ltd. v. Samsung Elecs. Co., No. 217CV00140RWSRSP, 2018 WL 574871 (E.D. Tex. Jan. 26, 2018).....5

IGT v. Zynga Inc., No. W-21-CV-00331-ADA, 2022 U.S. Dist. LEXIS 35393 (W.D. Tex. Mar. 1, 2022) 2, 3, 5

Koss Corp. v. Apple Inc., No. 6:20-cv-00665-ADA, Order, ECF No. 151 (W.D. Tex. Mar. 8, 2022) 3

WSOU Invs. LLC v. Oneplus Tech. Shenzhen Co., No. 6:20-cv-00952-ADA, 2022 WL 174517 (W.D. Tex. Jan. 18, 2022).....3, 4, 5, 6

Greenthread Ex. 2077, p. 4 of 16
Cirrus Logic, et al. v. Greenthread
IPR2024-00021

PUBLIC VERSION

I. INTRODUCTION

Plaintiff Greenthread LLC ("Plaintiff" or "Greenthread") seeks to amend its infringement contentions and complaint to streamline the case.

Greenthread filed its complaint in June 2023 based on a reverse engineering report and infringement analysis of Defendant Cirrus Logic Inc.'s ("CL") CLI1793B1 chip. During a deposition last month, [redacted] Until 9:30pm the night before the deposition, CL had not produced any information about [redacted] or which manufacturing processes are used for which products. In the same deposition, Greenthread also learned that approximately *half* of CL's products are made by the *same* manufacturer using the *same* process.

Greenthread seeks leave to amend its infringement contentions and complaint to 1) define the accused products as those made with [redacted], and 2) add GF as a party to the case. Greenthread's infringement theories are not changing in the slightest. CL just failed to produce technical information regarding its manufacturing and the product that initiated this litigation until last month.[1]

Further, in proceedings before the USPTO, GF has admitted that it is the "real party in interest" to this litigation. GF is presumably funding CL's defense and IPRs. Greenthread's amendments do no more than match the list of accused products to Greenthread's original infringement theory and change GF from a "real party in interest" to simply a "party."

[1] Separately, Greenthread seeks to drop any currently accused products that are not made with [redacted]

Greenthread Ex. 2077, p. 5 of 16
Cirrus Logic, et al. v. Greenthread
IPR2024-00021

II. BACKGROUND

On June 16, 2023, Greenthread filed its First Amended Complaint against CL, using CL CLI1793B1 as an exemplar product for the infringement chart attached to the complaint. Dkt. 22-8 at 1. Greenthread's patents pertain to "dopants" in semiconductor devices. Dopants are elements, like phosphorous and boron, introduced into pure silicon during manufacturing to change its electrical properties and create the semiconductor device. Discovery opened on January 29, 2024, following the *Markman* hearing. That same day, Greenthread served requests for production seeking "Documents Relating to the dopant concentrations in" the accused products and an interrogatory asking CL to identify the manufacturing process (or "Recipe") for each of its products. Ex. 1 (Plaintiff's First Set of Requests for the Production of Documents), at 8 (Request No. 5); Ex. 2 (Plaintiff's First Set of Interrogatories), at 10-11 (Interrogatory No. 8). On February 28, 2024, CL responded that it "has not located any documents responsive to" Greenthread's request for doping information and that it "does not maintain recipes" for its products. Ex. 3 (Defendant's Objections and Responses to Plaintiff's First Set of RFPs), at 15-16 (Response to Request No. 5); Ex. 4 (Defendant's Objections and Responses to Plaintiff's First Set of Interrogatories), at 21-22 (Response to Interrogatory No. 8).

Greenthread was shocked that CL could possibly lack information on the doping in its products, because that information is essential to CL's core business—designing semiconductors. A semiconductor company would be expected to have doping information and Greenthread pointed CL to numerous public documents indicating that CL specifically concerns itself with the doping in its products. Ex. 5, at 5-6 (Email from Greenthread's counsel on May 8 regarding CL documents and production). For example, Greenthread pointed CL to one of CL's own patent applications, naming CL's Vice President of Technology, Scott Warrick, as an inventor. The application describes a semiconductor device where "[t]he dopant distribution in the channel

Greenthread Ex. 2077, p. 6 of 16
Cirrus Logic, et al. v. Greenthread
IPR2024-00021

region may be formed by lateral diffusion of dopants from the source side of the channel region which forms a *laterally graded channel region*." Ex. 6, U.S. Patent Pub. No. 2020/0006551 (emphasis added). Graded concentrations of dopants are elements of all of Greenthread's patent claims.

Nevertheless, CL emphatically stood by its claim not to have any doping information about its products. CL said there was "*no 'equivocation'* … Cirrus does not have … any technical documents relating to dopant concentrations." Ex. 5, at 4-5 (Email from CL's counsel on May 9) (emphasis added). CL's counsel represented "*as officers of the court* that Cirrus does not have" any doping documents. Ex. 5, at 4 (Email from CL's counsel on May 9) (emphasis added). CL told Greenthread that it should take Mr. Warrick's deposition to confirm that its counsel's representations were accurate. Ex. 5, at 1 (Email from CL's counsel on May 13).

On May 15, 2024 Greenthread noticed Mr. Warrick's deposition and on May 24, 2024 noticed a 30(b)(6) deposition of CL. Ex. 7; Ex. 8. CL designated Mr. Warrick as its corporate representative on, among other topics, "technical and/or design documents relating to the dopant concentrations in the Accused Products." Ex. 8 (Rule 30(b)(6) Deposition Notice) at Topic 28; Ex. 9 (Warrick Dep. Tr.), at 7:1-7.

At first, Mr. Warrick testified that he was [redacted] Ex. 9 (Warrick Dep. Tr.), at 107:16-108:9. However, at 9:30 pm the night before the deposition, CL had produced various technical documents which CL said "may pertain to your 30(b)(6) deposition." Ex. 10 (Email from CL's counsel on June 6). One of those documents was titled "[redacted]." Ex. 11. When confronted with [redacted] and similar documents from the overnight production, Mr. Warrick changed his testimony. [redacted]

Greenthread Ex. 2077, p. 7 of 16
Cirrus Logic, et al. v. Greenthread
IPR2024-00021

[redacted] Ex. 9 (Warrick Dep. Tr.), at 132:18-133:9. [redacted] Ex. 9 (Warrick Dep. Tr.), 97:4-12; 102:22-103:4.

III. LEGAL STANDARD

A. Amending Infringement Contentions

The Court's scheduling order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). This Court's Scheduling Order states that after the deadline to serve final infringement contentions has passed, "leave of Court is required for any amendment to infringement" contentions. Dkt. 52, 2. However, "[t]his deadline does not relieve the parties of their obligation to amend if new information is identified after initial contentions." *Id.* This Court has stated that "[t]he inclusion of this language indicates that the Court anticipates, and expects, parties to amend their final contentions as discovery progresses in the case and the parties further develop their infringement theories." *Cutting Edge Vision, LLC v. TCL Tech. Grp. Corp.*, No. W-22-CV-00285-ADA, 2023 WL 4002539, at *1 (W.D. Tex. June 14, 2023) (Gilliland, J.) (permitting supplementation of final infringement contentions when additional infringing products came to light after the submission of final infringement contentions).

[2] Ex. 9 (Warrick Dep. Tr.), at 138:18-20 [redacted]

[3] Ex. 9 (Warrick Dep. Tr.), at 139:8-17 [redacted]

Greenthread Ex. 2077, p. 8 of 16
Cirrus Logic, et al. v. Greenthread
IPR2024-00021

"Courts consider '(1) the reason for the delay and whether the party has been diligent; (2) the importance of what the court is excluding and the availability of lesser sanctions; (3) the danger of unfair prejudice; and (4) the availability of a continuance and the potential impact of a delay on judicial proceedings.'" *Id*. at *2.

B. Leave to Amend Pleadings

Under Federal Rules of Civil Procedure, a party may only amend pleadings after a scheduling order deadline has expired "upon a showing of good cause and by leave of the district judge." *S&W Enters., L.L.C. v. SouthTrust Bank of Ala., NA*, 315 F.3d 533, 536 (5th Cir. 2003); Fed. R. Civ. P. 16(b)(4). The good cause standard requires the "party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party needing the extension." *S&W Enters.*, 315 F.3d at 535. "In determining whether good cause is shown, the Court considers '(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice.'" *Bandy v. TRC Sols., Inc.*, No. 1:22-CV-00144-DAE, 2023 WL 8285219, at *2 (W.D. Tex. Nov. 30, 2023) (quoting *Filgueira v. U.S. Bank Nat. Ass'n*, 734 F.3d 420, 422 (5th Cir. 2013)). Upon demonstration of good cause, the more liberal standard of Federal Rule of Civil Procedure 15(a) applies to the district court's decision to grant or deny leave. *S&W Enterprises*, 315 F.3d at 536. Rule 15(a) "requires the trial court to grant leave to amend freely, and the language of this rule evinces a bias in favor of granting leave to amend." *Big Thirst, Inc. v. Donoho*, 657 F. Supp. 3d 914, 926-27 (W.D. Tex. 2023) (quoting *Lyn-Lea Travel Corp. v. Am. Airlines*, 283 F.3d 282, 286 (5th Cir. 2002)). Absent a substantial reason, such as undue delay, bad faith, dilatory motive, repeated failures to cure deficiencies, or undue prejudice to the opposing party, "the discretion of the district court is not broad enough to permit denial." *Id.* at 926-27.

Greenthread Ex. 2077, p. 9 of 16
Cirrus Logic, et al. v. Greenthread
IPR2024-00021

IV. ARGUMENT

A. Good Cause Exists to Permit Greenthread to Amend its Final Infringement Contentions

There is good cause to permit Greenthread to amend its final infringement contentions. Greenthread's infringement theory is the same today as the day Greenthread filed its complaint. All that has changed is that now, after months of delay, CL has finally identified the specific process used to make the product Greenthread charted at the outset of the case and has started producing relevant technical information. *See Cutting Edge Vision, LLC*, 2023 WL 4002539, at *1-3. CL cannot show any prejudice from Greenthread's proposed amendment. *Id.* CL is responsible for delaying this case with its false claims not to have vital technical information and failure to produce the [redacted] at the outset.

1. Greenthread has been diligent, and has good cause for amending its contentions.

Before the Warrick deposition, Greenthread was unaware of the [redacted] and had no reason to think it was relevant to the case. During the Warrick deposition, on Friday, June 7, 2024, Greenthread learned that CL uses [redacted] Ex. 9 (Warrick Dep. Tr.), 97:4-12; 102:22-103:4. The next business day, Monday, June 10, Greenthread asked CL to consent to this motion. Ex. 12 (Letter from Greenthread's counsel), at 1. Between June 10 and the filing of this motion, Greenthread sought CL's consent to this motion, which CL confirmed it would not grant on July 1. Ex. 13 (Email from CL's counsel on July 1), at 1. Greenthread's diligence weighs in favor of permitting the proposed supplement. *See Koss Corp. v. Apple Inc.*, No. 6:20-cv-00665-ADA, Order, ECF No. 151 (W.D. Tex. Mar. 8, 2022) (granting motion for leave to supplement final invalidity contentions even after expert reports had been served).

2. Greenthread's contention amendments are important and should be allowed.

Greenthread's amendments are important for the case, because without adding the additional [redacted] into the case, the largest part of the parties' dispute will be unresolved. "It would be highly wasteful to require the parties to file a second lawsuit on the additional accused products." *Koss*, No. 6:20-cv-00665-ADA, Order, ECF No. 151. Greenthread has always been accusing products made with [redacted] and it would be inefficient for Greenthread to have to file a second lawsuit regarding the same products.

3. There is no prejudice to Cirrus Logic, whereas denial would greatly prejudice Greenthread.

The amendment would cause no prejudice to CL. The additional "accused devices are highly similar, share nearly identical infringement reads, and should not be a surprise to Defendant[]." *Id.* Any increase in the scope of discovery will be small. Further, CL clearly understood Greenthread's intent to accuse the CL CLI1793B1, and CL knew that this product is made with the [redacted], along with nearly half of its products. *CL simply chose to withhold that information from Greenthread*. Moreover, Greenthread is also seeking to remove [redacted] from the case, which further demonstrates Greenthread's desire to streamline the case and focus its infringement contentions on product that employ the [redacted]

4. The availability of a continuance would cure any potential prejudice.

Greenthread's proposed amendments will not delay or prejudice these proceedings in any way. As detailed above, CL has long been on notice regarding the type of products Greenthread accuses in this case and adding additional CL products to Greenthread's infringement contentions will not change its infringement theories. There is no reason CL would be unable to meet its obligations by the close of discovery. Even if that were not the case, an extension of the discovery

period would cure any prejudice. CL cannot seriously claim that an extension of the schedule would harm it, because CL is currently seeking to delay the proceedings indefinitely with its motion to stay. Dkt. No. 64.

B. Good Cause Exists to Permit Greenthread to Amend its Complaint to Add GlobalFoundries as a Defendant

Greenthread has met the four part test to establish good cause to allow Greenthread to amend its Complaint to add GF as a defendant.

1. Greenthread can provide adequate explanation for not adding GlobalFoundries as a defendant before the deadline.

Before CL's production of its [redacted] and the Warrick deposition, Greenthread had little reason to add GF as a defendant. In December last year, CL told Greenthread that the majority of the products listed in Greenthread's preliminary infringement contentions were made by two other contract manufacturers. Ex. 14 at 1. [redacted] Ex. 9 (Warrick Dep. Tr.), 101:19-102:1. [redacted] *Id.* at 103:3. Now that it is clear that [redacted], including the product that Greenthread charted at the outset of the case, making GF a party makes great sense. GF is no stranger to this litigation. GF admits that it is a "real party in interest" to CL's IPRs, is already represented by the same counsel as CL, and is presumably funding and controlling CL's defense. Ex. 15 (CL IPR Petition), at 1. Finally, CL claims that GF is the superior source of technical information relevant to infringement. Therefore, adding GF as a party will make the case far more efficient. The first factor weighs strongly in favor of the Court finding good cause to amend.

2. Greenthread's proposed amendment is particularly important and should be permitted.

Greenthread's proposed amendment is particularly important to its ability to obtain the information necessary to prove its case. CL has obstructed Greenthread's attempts to seek information regarding the accused products and the GF [redacted] CL claims that GF has that information. Further, GF has other customers besides CL. Adding GF as a party will afford Greenthread complete relief regarding GF's infringement on behalf of other parties, rather than saving for another day and another suit the rest of GF's infringement. Again, adding GF will conserve judicial resources without prejudicing any party, because GF is already effectively part of the case.

3. There is no prejudice to Cirrus Logic or GlobalFoundries, whereas denial would greatly prejudice Greenthread.

Neither CL nor GF will suffer any prejudice as a result of the Court granting Greenthread leave to amend its complaint. Both CL and GF are well aware of GF's involvement in Greenthread's claims. CL's corporate designee, Mr. Warrick, stated that he [redacted] to prepare for his deposition. Ex. 9 (Warrick Dep. Tr.), at 32:2-8; *see also id.*, 32:9-34:12. The same lawyers that represent CL here (presumably paid for by GF) are representing GF regarding Greenthread's subpoena. Therefore, GF "has little work remaining in this litigation, as [GF]controls the entire operation" already. *SB IP Holdings LLC v. Vivint Smart Home, Inc.*, No. 4:20-CV-00886, 2022 WL 3331254, at *3 (E.D. Tex. Aug. 11, 2022).

Since GF "is already apprised of the status of the suit, and has participated in discovery," "[i]t would not be unduly prejudicial to require [GF] to further defend the suit and participate in this case," regardless of whether it does so through CL or as a defendant itself. *Bandy v. TRC Sols., Inc.*, No. 1:22-CV-00144-DAE, 2023 WL 8285219, at *3 (W.D. Tex. Nov. 30, 2023). Factor

three therefore weighs in favor of finding that good cause exists to permit Greenthread to amend its complaint.

4. The availability of a continuance mitigates any potential prejudice that would result from permitting Greenthread to amend its complaint.

Factor four also weighs in favor of finding that good cause exists to permit Greenthread to amend its complaint. The Scheduling Order provides that fact discovery remains open until August 22, 2024, giving ample time for CL and GF to finally comply with Greenthread's discovery requests. Although no prejudice will result from allowing Greenthread to amend its complaint, any potential prejudice to either CL or GF could be cured with an extension of the discovery schedule. CL and GF cannot reasonably claim otherwise, as CL filed a motion to stay this case in favor of the IPR proceedings to which GF is a "real party in interest."

5. No substantial reason exists for the Court to deny Greenthread's proposed amendment to its complaint.

Having satisfied the good cause standard under Federal Rule of Civil Procedure 16(b)(4), Greenthread can also satisfy the more liberal standard under Federal Rule of Civil Procedure 15(a). No substantial reason exists for this Court to deny leave to amend under Federal Rule of Civil Procedure 15(a). Greenthread expeditiously seeks to amend its complaint and does so in good faith and without dilatory motives. CL's delay tactics made it impossible for Greenthread to uncover GF's true role in this case without taking CL's 30(b)(6) deposition. Now, newly equipped with facts CL had previously withheld, Greenthread moves for leave to amend its complaint.

V. CONCLUSION

For at least the reasons stated above, Greenthread respectfully requests that the Court grant this motion for leave to (1) amend its final infringement contentions as set forth in Exhibits 16 (redline) and 17 (clean), and (2) amend its complaint to add GF as a defendant as set forth in Exhibits 18 (redline) and 19 (clean).

Greenthread Ex. 2077, p. 14 of 16
Cirrus Logic, et al. v. Greenthread
IPR2024-00021

Dated: July 11, 2024

MCKOOL SMITH, P.C.

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PUBLIC VERSION

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that, on July 11, 2024, all counsel of record who have appeared in this case are being served with a copy of the foregoing by electronic mail.

/s/ *Alan L. Whitehurst*
Alan L. Whitehurst

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(h), I hereby certify that counsel for Plaintiff met and conferred with counsel for Defendants concerning the subject of this motion at multiple times, including on July 1, 2024, and Defendants indicated they oppose this motion.

/s/ Alan L. Whitehurst
Alan L. Whitehurst