

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RUGGED CROSS HUNTING BLINDS, LLC

Plaintiff

CASE NO.: 1:23-cv-2231

v.

DBR FINANCE, INC.,

Defendants.

_____ /

**PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT AND
MEMORANDUM OF LAW IN SUPPORT THEREOF**

Plaintiff, Rugged Cross Hunting Blinds, LLC (“RCHB” or “Plaintiff”), by and through its undersigned attorneys pursuant to Federal Rule of Civil Procedure 15(a)(2) hereby files this motion for leave to amend the Complaint, and file a Third Amended Complaint, to include a Count alleging DBR Finance, Inc. (“DBR” or “Defendant”) induced a third party’s, FeraDyne Outdoors LLC (“FeraDyne”), direct infringement of one or more claims of U.S. Patent No. 11,399,535. Prior to this case being transferred back to the Northern District of Ohio from the Western District of Wisconsin, RCHB raised this issue against DBR when it first filed its Motion for Leave to File a Third Amended Complaint, on September 26, 2023, which was then denied as moot by the Western District of Wisconsin.

By amending its complaint, RCHB seeks to remove the Count I for direct patent infringement against FeraDyne Outdoors, LLC (“FeraDyne”), which claim is proceeding in the

LLC, et al. Case No.3:22-CV-00690. In addition, RCHB seeks to add a count against DBR for indirect patent infringement as a result of its active inducement of the direct infringement of FeraDyne. Accordingly, RCHB's third amended complaint includes a Count I for direct patent infringement against DBR, pursuant to 35 U.S.C §271(a), and a Count II for indirect patent against DBR, pursuant to 35 U.S.C. §271(b) for its active inducement of the direct infringement by FeraDyne. Attached as Exhibit A is a redlined version of the third amended complaint and attached as Exhibit B is a clean version of the third amended complaint.

With RCHB's claims against DBR now firmly rooted in the Northern District of Ohio, and with a case management conference being scheduled for January 8, 2024, RCHB again asserts its additional claim against DBR in this Motion for Leave to File an Amended Complaint. In support of this motion Plaintiff states as follows:

I. BACKGROUND

1. On December 5, 2022, by Plaintiff filed a complaint against FeraDyne for patent infringement of U.S. Patent No.: 11,399,535 entitled "Camouflage Material, for a Hunting Blind" (hereinafter the "'535" Patent") in the Western District of Wisconsin, *Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC, et al.* Case No.3:22-CV-00690.

2. On June 28, RCHB filed a Second Amended Complaint naming DBR as a defendant including a Count II for patent infringement under 35 U.S.C. §271(a), i.e., direct infringement.

3. On August 28, 2023, DBR filed a Motion to Dismiss for Improper Venue (Doc. 35).

4. RCHB filed its Response (Doc. 47) in opposition to DBR's Motion to Dismiss on September 25, 2023. The next day, September 26, 2023, RCHB filed a Motion for Leave to file a Third Amended Complaint (Doc. 49) to include a third count, Count III, which is a claim against

DBR, pursuant to 35 U.S.C. §271(b) for DBR's alleged active inducement of FeraDyne's direct infringement of the '535 Patent.

5. On October 2, 2023, RCHB and DBR filed an Unopposed Joint Motion to Transfer Action (Doc. 50) as to DBR only to the Northern District of Ohio relying on 28 U.S.C §1404(a). The court in Wisconsin granted the motion. (Doc. 51). The court in Wisconsin also dismissed RCHB's motion to amend the complaint and DBR's motion to dismiss as being moot.

6. The case was transferred to this Court and assigned Case No.: 1:23-cv-01944. However, this Court transferred the case back to the Western District of Wisconsin, reasoning, at least in part, that 35 U.S.C. §1404(a) did not provide the proper procedural vehicle to affect the transfer the parties sought. (Doc. 65).

7. Via a text order dated November 3, 2023, the Western District of Wisconsin assigned the returned case to DBR Case No. 3:23-cv-00756.

8. On November 11, 2023, RCHB and DBR filed a Joint Statement Relating to Proceedings and Transfer (Doc. 53) noting that the parties agreed that venue in the Northern District of Ohio is proper as to DBR, and that the claims of Case No. 3:23-cv-00756 should be formally severed from the initial action, Case No.: 3:22-cv-00690, pursuant to Federal Rule of Civil Procedure 21, and transferred as a separate case to the Northern District of Ohio pursuant to 23 U.S.C §1406.

9. In the Joint Statement, RCHB and Defendant, FeraDyne, of the initial action, Case No.: 3:22-cv-00690, agreed not to seek a stay of the initial action.

10. In an order dated November 15, 2023, the Western District of Wisconsin court severed Count II, which is a claim for direct patent infringement under 35 U.S.C. §271(a), noting that the severed claim shall proceed under Case No. 23-cv-756. The Court further ordered the

transfer of the action, Case No. 23-cv-00756 to the Northern District of Ohio, pursuant to 28 U.S.C. §1406(a).

11. The severed action was transferred to this Court on November 17, 2023. (Doc. 70).

12. A case management conference has been scheduled for January 8, 2024. (Doc. 72).

The parties have scheduled to meet on December 20, 2023, to discuss the case and prepare a proposed discovery plan.

13. On December 1, 2023, DBR filed its answer (Doc. 73) to the Second Amended Complaint.

II. MEMORANDUM OF LAW

Motions to amend a complaint are governed by Fed. R. Civ. P. 15(a)(2), which provides that courts should “freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). The decision of whether to grant leave to amend is within the sound discretion of the Court. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330 (1971). Also, “[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be freely given.” *Parchman v. SLM Corp.*, 896 F.3d 728, 737 (6th Cir. 2018) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

The Sixth Circuit Court of Appeals has also “emphasized that the case law in this Circuit manifests liberality in allowing amendments to a complaint.” *Id.* It has also previously stated that “the thrust of Rule 15 is to reinforce the principle that cases should be tried on their merits rather than the technicalities of pleadings.” *Tefft v. Seward*, 689 F.2d 637, 639 (6th Cir. 1982). The Court should further Rule 15’s liberal policy in favor of amendments by permitting RCHB to amend its

complaint to assert an additional claim against DBR, pursuant to 35 U.S.C §271(b), for DBR's active inducement of FeraDyne's direct infringement of the '535 Patent.

At the time DBR sold assets to FeraDyne, DBR knew about RCHB's claim for patent infringement relative to DBR's manufacturing and selling of the Rhino 180 hunting blinds, by virtue of the letter dated August 25, 2022, sent by RCHB's counsel to DBR. That letter identified the '535 Patent owned by RCHB as the subject of RCHB's claims and the letter included a claim chart as to claim 1 of the '535 Patent relative the Rhino 180 blinds manufactured and sold by DBR.

On October 24, 2022, DBR FeraDyne acquired substantially all of DBR's assets relating to DBR's outdoor and hunting business. (DKT 37). In addition, DBR entered into the Transition Services Agreement with FeraDyne, by which DBR provided, and/or provides, to FeraDyne services related to the management of the manufacture and sale of the Rhino 180 hunting blinds.

On April 13, 2023, FeraDyne produced a copy of the FeraDyne/DBR Asset Purchase Agreement (the "Agreement") and the above-referenced Transition Services Agreement (the "TSA"). On May 5, 2023, counsel for DBR disclosed to counsel for RCHB that the sale of DBR's assets included the sale of DBR's inventory of the Rhino 180 hunting blinds the manufacture and sale of which forms the basis for this lawsuit.

While Plaintiff's counsel acknowledges having received the Agreement and the TSA in April of this year, RCHB's claim for inducing infringement against DBR was not fully appreciated until recently. It was only when Plaintiff's counsel reviewed and considered the TSA in more detail during preparations to respond to DBR's Motion to Dismiss for Improper Venue, filed in the Western District of Wisconsin, that counsel for RCHB realized the extent to which DBR was involved in FeraDyne's sales of the infringing Rhino 180 hunting blinds after the date of the

Agreement. Accordingly, in September RCHB sought leave to amend its complaint to include the count for DBR's alleged inducement of FeraDyne's direct infringement.

Therefore, RCHB has not unduly delayed in bringing this motion. Delay is undue only when it places an unwarranted burden on the court, or is prejudicial, placing an unfair burden on the opposing party. *See Bridgeport Music, Inc. v. Dimension Films*, 410 F.3d 792, 806 (6th Cir. 2005). As set forth above, RCHB had previously filed a Motion for Leave to Amend the Complaint, back on September 26, 2023, to add this exact same count against DBR while the instant case was pending in the Western District of Wisconsin. That court denied RCHB's Motion as moot because RCHB's claims against DBR were due to be severed and transferred to this Court. Furthermore, the instant case was only transferred back to this Court on November 17, 2023. Therefore, RCHB is well short of any time period that constitutes undue delay as a matter of law. *See CSX Transportation, Inc. v. Columbus Downtown Dev. Corp.*, No. 2:16-CV-557, 2018 WL 4090199, at *2 (S.D. Ohio Aug. 28, 2018) (one month delay is not undue); *Loew v. Regret Inc.*, No. 2:19-CV-5242, 2020 WL 6882597, at *2 (S.D. Ohio Nov. 24, 2020) (same).

RCHB is also not acting in bad faith nor with a dilatory motive by bringing this amendment. RCHB gave DBR ample notice of its need to amend when the case was pending in Wisconsin when RCHB filed to request this exact same amendment. As such, DBR has known about RCHB induced infringement claim in this amendment. For similar reasons, DBR will not be prejudiced by the amendment. This case was not transferred to the Northern District of Ohio until November 17, 2023. The case management conference is now scheduled for January 8, 2024, over a month away, so this Court has not entered a scheduling order with respect to discovery, motions, patent related matters and trial. Other than Rule 26 initial disclosures coming due, discovery has not been conducted by either party. Moreover, RCHB and DBR have preliminarily agreed to jointly move

this Court to stay this case pending the final decision of the Wisconsin case, which begs the question, if DBR is willing to agree to stay this case, how can DBR claim that is in anyway prejudiced by RCHB's delay in amending the complaint.

Finally, RCHB's proposed amendment is not futile. This proposed additional patent induced infringement claim covers a separate and distinct cause of action stemming from infringement of the same patent by the manufacture and sale of the same accused products as set forth in the original complaint. To that end, in order to establish its claim for DBR's induced infringement, RCHB will establish FeraDyne's direct infringement; and, DBR is potentially jointly and severally liable for at least some, if not all of, FeraDyne's direct acts of infringement.

RCHB respectfully submits that justice so requires that leave be granted for RCHB to amend its complaint to include a count for DBR's inducement of FeraDyne's direct infringement of the '535 Patent. Permitting RCHB's amendment will allow for a resolution to claims RCHB may have against DBR for direct infringement or inducing the direct infringement of the '535 Patent. Furthermore, DBR cannot demonstrate any of the factors, such as undue delay, bad faith or a dilatory motive, undue prejudice, or futility, that would warrant denial of a motion for leave to amend. *See Parchman*, 896 F.3d at 737.

WHEREFORE, Plaintiff RCHB respectfully requests this Court grant leave to the to file a Third Amended Complaint to include a count for active inducement of patent infringement against DBR, pursuant to 35 U.S.C. §271(b).

CERTIFICATE OF COMPLIANCE UNDER RULE 15(a)(2)

Undersigned counsel hereby certifies that he has conferred with Counsel for Defendant and

Defendant does not consent to the relief requested herein.

DATED this 8th day of December, 2023.

Respectfully Submitted,

WOLTER, VAN DYKE, DAVIS PLLC
1900 Summit Tower Blvd., Suite 140
Orlando, FL 32810
Telephone: (407) 926-7700
Facsimile: (407) 926-7720
Email: rwolter@savvyiplaw.com
Email: adavis@savvyiplaw.com
Attorneys for Plaintiff
/s/ Robert L. Wolter
Robert L. Wolter
Florida Bar No. 0906344
Amber N. Davis
Florida Bar No: 0026628

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been electronically filed with the Clerk of Court utilizing the CM/ECF system this 8th day of December, 2023, which will send notice by electronic mail to: Dennis J. Abdelnour, Esquire (dabdelnour@honigman.com), HONIGMAN LLP, 155 N. Wacker Dr., Ste. 3100, Chicago, IL 60606.

/s/ Robert L. Wolter

Attorney

**RUGGED CROSS HUNTING BLINDS, LLC EX. 2003
IPR 2024-00291**