

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

FACET TECHNOLOGY CORP.,

Plaintiff,

v.

MOBILEYE GLOBAL, INC.,

Defendants.

Case No. 2:24-cv-00058-RWS-RSP

JURY TRIAL DEMANDED

**DEFENDANT MOBILEYE GLOBAL, INC.'S OPPOSITION TO
FACET'S MOTION FOR LEAVE TO JOIN ADDITIONAL PARTIES**

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I. Introduction

For two reasons, Defendant Mobileye Global, Inc. (“Mobileye Global”) opposes Facet Technology Corporation’s (“Facet”) Motion for Leave to Join Additional Parties. First and most significantly, Facet argues that adding the new parties is “of extreme importance so that all of the responsible parties to infringement can be sued in one action.” DI 32 at 7. While there is at least one other Court where Facet can achieve that goal, it cannot happen in the Eastern District of Texas because, as a corporate executive of Mobileye Global recently confirmed under oath, Mobileye Global:

- is a Delaware corporation headquartered in Jerusalem, Israel;
- has no place of business in the Eastern District of Texas, nor has it ever had a place of business anywhere in the United States;
- has no real property or any other property anywhere in the United States, let alone in the Eastern District of Texas; and
- has never had an employee in the Eastern District of Texas nor anywhere in the U.S. and has no records of any of its employees ever traveling to Texas.

Facing dismissal or transfer, Facet contrives a theory that the private home of a single traveling southwest regional salesman of a subsidiary, Mobileye Inc., who “just happened” to live in Fairview, Texas, was a regular and established place of business of Mobileye Inc. That stretch alone could not cure the lack of venue for Mobileye Global, forcing Facet to stretch further with the argument that Mobileye Inc. is the alter ego of Mobileye Global. In other words, Facet seeks to establish venue in this district for Mobileye Global based on the private home of a former salesman of a subsidiary. In a separate venue brief due later this week, Mobileye Global will address why Facet’s double venue stretch is contravened by both fact and law. In this brief,

Mobileye Global addresses the impropriety of seeking to join new parties more than 10 months after suit was filed, and two months after the deadline to join new parties, when the evidence shows that Facet had every reason to know of the two new parties and their relevance earlier and is now seeking their joinder for tactical purposes.

The record shows that Facet must have known earlier of the two parties it now wishes to join. For example, Facet represented in its original Complaint that “Mobileye is registered to do business in Texas,” indicating that Facet checked Texas entity records before filing its original Complaint. DI 1 ¶ 12. Those entity records identify Mobileye Inc. as the only company ever registered to do business in Texas.

Similarly, in its infringement contentions served nearly a month before the cut-off date to join new parties, Facet relied on two patents of Mobileye Vision Technologies, Ltd. as alleged proof of infringement. This demonstrates Facet’s knowledge before the cutoff date to join new parties of both new parties Facet seeks to join. Mobileye Global negotiated in good faith with Facet to arrive at the deadline to join new parties. Facet should not now be permitted to flout its agreement and this Court’s related Docket Control Order in a makeshift attempt to contrive a venue allegation.

II. Background

Facet filed its original Complaint against Mobileye Global on January 26, 2024. DI 1. In it, Facet alleged that Mobileye Global¹ “is registered to do business in Texas.” DI 1 ¶ 12. Searching “Mobileye” on Texas’s entity search, however, does not identify Mobileye Global as registered in Texas. Ex. 1. Rather, the only Mobileye entity identified is Mobileye Inc. Ex. 1.

¹ Facet defined Mobileye Global, Inc. as “Mobileye” in the original Complaint’s first paragraph. DI 1.

Taxable Entity Search Results

3 matches found for the search string : mobileye

If you have questions about the search results, send an email to tax_help@cpa.texas.gov or call 1-800-252-1386.

Results

Name	Taxpayers ID#	Zip
MOBILEYE INC	32044706664	10018
MOBILEYE INC.	32070570638	10018
MOBILEYES TELEMEDICINE TECHNOLOGY SOLUTIONS , LLC	32069006016	77254

Ex. 1.

Accordingly, for Facet to have had a good faith basis for its statement in paragraph 12 of its original Complaint, Facet must have been aware of Mobileye Inc. before filing its original Complaint on January 26, 2024—over ten months ago.

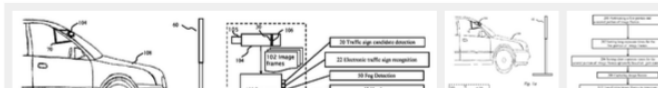
Similarly, Facet served its infringement contentions on August 26, 2024, alleging infringement of two patents with reference to two claim charts. In both charts, Facet sought to prove infringement by relying on statements in U.S. Patent Nos. 8,254,635 and 7,566,851, repeatedly referring to those patents as “assigned to Mobileye.” *E.g.*, Ex. 2 at 7, 8, 9, 10, 11, 13; Ex. 3 at 40, 41, 44. There is no company legally referred to solely as “Mobileye.” For Facet to have made an ownership representation, it would have had to check ownership records of the patents, and when it did, either on Google as illustrated below or in the USPTO records, Facet must have seen Mobileye Vision Technologies Ltd. as the identified owner of both patents.²

² See Ex. 4 (Google Patents for ’635 patent) at 1; Ex. 5 (Google Patents for ’851 patent) at 1; Ex. 6 (USPTO public assignment record for the ’635 and ’851 patents) at 1.

Abstract

A traffic sign recognition system including a detection mechanism adapted for detecting a candidate traffic sign and a recognition mechanism adapted for recognizing the candidate traffic sign as being an electronic traffic sign. A partitioning mechanism may be adapted for partitioning the image frames into a first partition and a second partition. The detection mechanism may use the first portion of the image frames and the recognition mechanism may use the second portion of the image frames. When the candidate traffic sign is detected as an electronic traffic sign, the recognition mechanism may use both the first partition of the image frames and the second portion of the image frames.

Images (17)



Headlight, taillight and streetlight detection

Abstract

A method in a computerized system including an image sensor mounted in a moving vehicle. The image sensor captures image frames consecutively in real time. In one of the image frames, a spot is detected of measurable brightness; the spot is matched in subsequent image frames. The image frames are available for sharing between the computerized system and another vehicle control system. The spot and the corresponding spot are images of the same object. The object is typically one or more of headlights from an oncoming vehicle, taillights of a leading vehicle, streetlights, street signs and/or traffic signs. Data is acquired from the spot and from the corresponding spot. By processing the data, the object (or spot) is classified, producing an object classification. The vehicle control system controls preferably headlights of the moving vehicle based on the object classification. The other vehicle control system using the image frames is one or more of: lane departure warning system, collision warning system and/or ego-motion estimation system.

Images (9)



US8254635B2
United States

Download PDF Find Prior Art Similar

Inventor: Gideon Stein, Ori Shachar, Efir Belman, Gaby Hayon, Itay Gat

Current Assignee: Mobileye Vision Technologies Ltd

Worldwide applications
2009 - EP EP US EP

Application US12/573,836 events

US7566851B2
United States

Download PDF Find Prior Art Similar

Inventor: Gideon P. Stein, Ofer Hadassi, Noam Ben Haim, Uri Wolfvitz

Current Assignee: Mobileye Vision Technologies Ltd

Worldwide applications
2007 - EP US

Application US11/689,523 events

By August 26, 2024, Facet “referenced and relied upon” these patents assigned to Mobileye Vision Technologies, Ltd. for “provid[ing] supportive descriptions for Mobileye functionality” in its infringement contentions. *E.g.*, Ex. 2 at 1; Ex. 3 at 1.

The parties agreed on a proposed Docket Control Order, setting September 16, 2024, as the deadline to “Join Additional Parties.” DI 23; DI 23-1 at 7. The Court adopted the parties’ proposed Docket Control Order, setting the deadline to “Join Additional Parties” as September 16, 2024—nearly nine months after the latest Facet was aware of Mobileye Inc. and nearly one month after the latest Facet was aware of Mobileye Vision Technologies, Ltd. DI 25.

Mobileye Global filed its Motion to Dismiss for lack of venue on April 4, 2024, (DI 9), yet Facet waited over six months to add the companies it must have known of earlier.

III. Legal Standard: Facet Bears the Burden to Show Good Cause to Amend the Schedule

Under Rule 16(b), the Docket Control Order “may be modified only for good cause and with the judge’s consent.” 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 Enterprises, L.L.C. v. SouthTrust Bank of Alabama, NA*, 315 F.3d 533, 535 (5th Cir. 2003) (quoting 6A Charles Alan Wright et al., *Federal Practice and Procedure* § 1522.1 (2d ed. 1990)). To determine whether the movant has shown good cause, 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.” *Id.* at 536 (citation omitted) (cleaned up).

IV. The Four Factors Weigh Against Facet’s Motion for Leave to Amend

A. Facet Fails to Show Diligence Because It Knew of or At Least Should Have Known of Both Mobileye Vision Technologies, Ltd. and Mobileye Inc.

Facet cannot meet the “most important factor bearing on the ‘good cause’ inquiry” because Facet cannot show “that it has been diligent in pressing its claims but despite its diligence could not reasonably have met the scheduling deadline.” *Allergan, Inc. v. Teva Pharms. USA, Inc.*, No. 2:15-cv-01455-WCB, 2017 WL 119633, at *3 (E.D. Tex. Jan. 12, 2017). Facet alleges that “it only learned of the facts giving rise to the direct infringement caused by the New Mobileye Defendants through depositions” recently taken. DI 32 at 4. But its own pleadings show otherwise, or at a minimum, demonstrate that had Facet exercised reasonable diligence, it could have met the Court’s ordered deadline.

Facet knew or at least should have known about Mobileye Inc. by January 26, 2024, and that Mobileye Inc. was related to its claims asserted in this case. As part of its Complaint, Facet alleged that “Mobileye is registered to do business in Texas, and upon information and belief,

Mobileye has transacted business in this District and has committed acts of direct and indirect infringement in this District.” DI 1 ¶ 12. However, the *only* entity with Mobileye in its name and registered in Texas is Mobileye Inc.—the same entity Facet now seeks to add to this case. Rule 11 requires Facet to have a good faith basis for every allegation in its Complaint. To comply with this requirement for paragraph 12 of its Complaint, Facet must have searched the Texas entity database and learned that the registered entity it intended to accuse of “commit[ing] acts of direct and indirect infringement in this District” was, in fact, Mobileye Inc., the party it now seeks to add months after the deadline for doing so. Facet’s attorney argument that it could not have known of Mobileye Inc. earlier should not be given any weight, especially given contrary evidence in Facet’s own pleadings. *See, e.g., ecoNugenics, Inc. v. Bioenergy Life Sci., Inc.*, 355 F. Supp. 3d 785, 794 (D. Minn. 2019) (“[L]eave to amend is [only] warranted if the deficiencies... do not contradict the allegations in the original complaint.”).

Similarly, before Facet submitted its infringement contentions on August 26, 2024, citing two Mobileye Vision Technologies, Ltd. patents, Facet must have checked the patent ownership records of the patents to have made the representation that they were “assigned to Mobileye.” *See* Ex. 2 at 7-11, 13; Ex. 3 at 40-41, 44. In doing so, Facet must have seen that Mobileye Vision Technologies, Ltd. was the owner of both patents and the developer of technology implicated in Facet’s infringement contentions. *E.g.*, Ex. 6 at 16; *see also* Section II. Facet did not simply reference these patents, but rather went further to reference them as being “assigned to Mobileye” multiple times and stating that they “provide supportive descriptions for Mobileye functionality.” Ex. 2 (’255 patent) at 1, 7, 8, 9, 10, 11, 13; Ex. 3 (’328 patent) at 1, 40, 41, 44 (same). Again, without checking assignment records, Facet could not have had a basis to allege that the patents were “assigned to Mobileye.” *See id.* And readily accessible public records clearly identify the two

patents upon which Facet bases its infringement allegations as assigned to Mobileye Vision Technologies, Ltd. Exs. 4-6; *see also* Section II. Moreover, Facet should have conducted a pre-suit investigation before filing its Complaint, and likely was—or at least should have been—already aware of these patents alleged to support Facet’s infringement allegations. Accordingly, Facet likely knew or should have known about Mobileye Vision Technologies, Ltd., including its relevance to Facet’s infringement allegations by January 26, 2024, if not earlier.

Facet’s reliance on Mobileye Global’s initial disclosures or document productions miss the point. DI 32 at 4-5. The inquiry is not whether Facet knew all facts but rather whether Facet exercised diligence and could have added Mobileye Inc. and Mobileye Vision Technologies, Ltd. by the Court’s ordered deadline of September 16, 2024. Facet’s reliance on Mobileye Inc.’s Texas registration and Mobileye Vision Technologies, Ltd.’s patents well before the Court-ordered deadline show that if Facet exercised reasonable diligence, then it could have reasonably met the scheduling deadline. Accordingly, the “most important factor” supports denying Facet’s motion to belatedly join additional parties. *Allergan*, 2017 WL 119633, at *3.

B. Adding the New Mobileye Defendants Is Not Important Because the Case Should Proceed in an Already-Pending District of Minnesota Case

Facet states that it “is of extreme importance . . . that all of the responsible parties to infringement can be sued in one action.” DI 32 at 7. But that does not mean all parties must proceed in *this* case. For all parties to proceed in one action, they must all be subject to or waive venue before that court. As explained in the pending motion to dismiss for improper venue in which Mobileye Global is scheduled to file a brief later this week, this Court lacks venue over Mobileye Global and Mobileye Inc.³ Therefore, to protect their rights, Mobileye, Inc, and Mobileye Vision

³ Defendant’s forthcoming supplemental brief will explain why venue is further improper for Mobileye Inc.

Technologies, Ltd. filed a declaratory judgment action in the District of Minnesota, where venue may be exercised over all named parties.⁴ This is the exact opposite of Facet’s allegation of any Mobileye entity attempting to “shield itself from liability.” To the contrary, Mobileye Inc. and Mobileye Vision Technologies, Ltd. seek a court ruling on liability. Moreover, there is no risk of a multiplicity of lawsuits because Mobileye Global will consent to being added to the District of Minnesota litigation so that all parties can be present in a single action, just as Facet wishes. Accordingly, joining Mobileye Inc. and Mobileye Vision Technologies, Ltd. to this suit is not important.

C. Each of the Mobileye Entities Would Be Prejudiced Because the Court Lacks Venue Over Mobileye Inc. and Mobileye Global, Requiring Unnecessary Cost

Facet’s argument about the “extreme importance” of having all parties in a single suit underscores the prejudice that Facet’s motion causes. There is already another case pending between Facet and the two defendants Facet seeks to join. Minnesota is believed to be the only Court where venue exists over Facet and where all the accused parties will voluntarily consent to venue. Any other result will multiply costs for each of the defendants who would be forced to coordinate across jurisdictions and attend to reconciling potentially conflicting positions or decisions across jurisdictions.

D. A Continuance Cannot Cure the Prejudice

The last factor is not simply whether a continuance is available or needed but rather whether a continuance would cure the prejudice. *S&W Enterprises*, 315 F.3d at 536. Any schedule change, however, will not alleviate the prejudice of belatedly joining two new parties. *See* Section

⁴ Attached as Exhibit 7 is counsel’s email responding to Facet’s allegation that the Minnesota action is improper. As noted, both Minnesota plaintiffs are separate companies from the Defendant in this action and have the right to seek declaratory judgement relief in the face of Facet’s threats. Minnesota is not only Facet’s place of business, but also a location where the case can be jointly pursued against all accused parties.

IV.C. And a continuance will do nothing to remedy a lack of venue for two of Facet’s three targets. Where, like here, a continuance “would not cure the potential prejudice,” this factor supports denying the motion. *See, e.g., Mojo Mobility, Inc. v. Samsung Elecs. Co.*, No. 2:22-cv-00398-JRG-RSP, 2024 WL 3297145, at *2 (E.D. Tex. July 3, 2024).

V. Conclusion

The Court should deny Facet’s motion to join additional parties because before the deadline to join additional parties, Facet knew or at least should have known of Mobileye Inc. and Mobileye Vision Technologies, Ltd. and any relevance to this case. Moreover, there is already a case pending in Minnesota to which all three of Facet’s targets can be joined, thereby accomplishing Facet’s stated “extreme[ly] important[t]” goal of joining all three in a single action.

DATED: December 2, 2024

/s/ Melissa R. Smith

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a) on December 2, 2024.

/s/ Melissa R. Smith
Melissa R. Smith