

FILED UNDER SEAL

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

STELLAR, LLC,

Plaintiff,

v.

MOTOROLA SOLUTIONS, INC. and
WATCHGUARD VIDEO, INC.,

Defendants.

C.A. No. 4:23-cv-750-SDJ

JURY TRIAL DEMANDED

FILED UNDER SEAL

**STELLAR, LLC'S CORRECTED OPPOSED MOTION FOR LEAVE TO AMEND
ITS INFRINGEMENT CONTENTIONS UNDER P.R. 3-6**

FILED UNDER SEAL

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	LEGAL STANDARD.....	1
III.	ARGUMENT	2
	A. Until Recently, Motorola Behaved as Though the M500 Was Part of the Case	2
	B. Motorola Will Not Be Prejudiced by the Inclusion of the M500	6
	C. The M500 Is Important to the Full Resolution of the Parties’ Dispute	6
	D. Availability of a Continuance to Cure Such Prejudice	7
IV.	CONCLUSION.....	7

FILED UNDER SEAL

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alt v. Medtronic, Inc.</i> , No. 2:04-CV-370, 2006 WL 278868 (E.D. Tex. Feb. 1, 2006).....	1
<i>O2 Micro Int’l Ltd. v. Monolithic Power Sys., Inc.</i> , 467 F.3d 1355 (Fed. Cir. 2006).....	1
<i>Polaris PowerLED Tech., LLC v. Samsung Electronics America, Inc.</i> , No. 2:22-cv-00469-JRG, 2024 WL 3363687	4
<i>S&W Enters., L.L.C. v. SouthTrust Bank of Ala., NA</i> , 315 F.3d 533 (5th Cir. 2003)	2
<i>STA Grp. LLC v. Motorola Sols., Inc.</i> , C.A. No. 2:23-CV-00030-JRG-RSP, 2023 U.S. Dist. LEXIS 219905 (E.D. Tex. Dec. 11, 2023).....	2

FILED UNDER SEAL**I. INTRODUCTION**

Plaintiff Stellar, LLC (“Stellar” or “Plaintiff”) respectfully submits this motion for leave to amend its infringement contentions (“ICs”) under P.R. 3-6(b)¹ to assert infringement by Defendants’ M500 In-Car Video System (“the M500”). As discussed in detail herein, Defendants Motorola Solutions, Inc. and Watchguard Video, Inc. (collectively “Motorola”) have already produced technical documents and source code for the M500, and Motorola has admitted that the M500 shares source code in common with the already accused products. Good cause for this amendment exists because sufficient non-public information was unavailable to Stellar at the time it served its contentions, Motorola would not be prejudiced by the amendment, amendment would assist in the full resolution of the parties’ dispute, and no continuance would be necessary.

II. LEGAL STANDARD

“[A] party claiming patent infringement must serve on all parties” infringement contentions. P.R. 3-1. “Amendment or supplementation of any Infringement Contentions or Invalidity Contentions . . . may be made only by order of the Court, which shall be entered only upon a showing of good cause.” P.R. 3- 6(b). “Good cause,” according to the Federal Circuit, “requires a showing of diligence.” *O2 Micro Int’l Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1366 (Fed. Cir. 2006). Courts in this District routinely apply a four-factor test to determine whether good cause has been shown. *See Alt v. Medtronic, Inc.*, No. 2:04-CV-370, 2006 WL 278868, at *2 (E.D. Tex. Feb. 1, 2006) (citation omitted). Those four factors are: (1) the explanation for the failure to meet the deadline; (2) potential prejudice in allowing the thing that would be excluded; (3) the importance of the thing that would be excluded; and (4) the availability of a continuance to cure such prejudice. *Id.* at *2; *S&W Enters., L.L.C. v. SouthTrust Bank of Ala.*,

¹ “P.R.” refers to this Court’s “Patent Rules,” available online at: <https://www.txed.uscourts.gov/?q=patent-rules>.

FILED UNDER SEAL

NA, 315 F.3d 533, 536 (5th Cir. 2003). The burden of proving good cause rests with the party seeking the amendment. *STA Grp. LLC v. Motorola Sols., Inc.*, C.A. No. 2:23-CV-00030-JRG-RSP, 2023 U.S. Dist. LEXIS 219905, *4 (E.D. Tex. Dec. 11, 2023).

III. ARGUMENT

A. Until Recently, Motorola Behaved as Though the M500 Was Part of the Case

Stellar has been careful and diligent in its efforts to evaluate and identify those Motorola products for which evidence exists to demonstrate they are “Accused Instrumentalities” based on Stellar’s analysis and reasonable belief of infringement.

When Stellar served its initial infringement contentions on January 16, 2024, Stellar identified the WatchGuard 4RE In-Car Video System and Vista line of body-worn cameras, as well as the Motorola V300, V700, and VB400 body-worn cameras as the “Accused Instrumentalities.” (Ex. 1 at 3.)² But Stellar’s identification of Accused Instrumentalities has always been “[s]ubject to ongoing discovery and investigation[.]” (Ex. 1 at 3.) These efforts include Stellar’s ongoing investigation, its review of Motorola’s discovery responses, as well as its review of source code for the Accused Instrumentalities.

When Motorola raised issues with the sufficiency of Stellar’s infringement contentions, Stellar agreed to amend its contentions to address Motorola’s concerns and served its first amended contentions on February 7, 2024. (Ex. 2.) Unlike the Accused Instrumentalities identified in Stellar’s initial and first amended ICs, at the time Stellar served its first amended ICs Stellar did not have sufficient information regarding the M500 to believe it infringed the patents-in-suit.³

² Citations to Exhibits in this brief refer to the Exhibits attached to the co-filed Declaration of Robert Kiddie in Support of Stellar’s Motion for Leave to Amend Its Infringement Contentions Under P.R. 3-6 (“Kiddie Decl.”).

³ For example, Stellar was able to identify three user guides for the 4RE, two user guides for the V300 and one user guide for the V700. Notably, the lack of available information at the time concerning Motorola’s M500 is important context for Stellar counsel’s February 5, 2024 email

FILED UNDER SEAL

Because Stellar could not locate fulsome information regarding the M500 it was not identified as an Accused Instrumentality at the time.

Subsequently, Motorola produced technical documents regarding the Accused Instrumentalities on February 9, 2024 but those documents did not pertain to the M500. (Kiddie Decl. at ¶ 4.) Stellar propounded its First Set of Interrogatories (Nos. 1-13) on Motorola on March 19, 2024 and Motorola responded on April 18, 2024. (Ex. 3; [REDACTED].) [REDACTED]
[REDACTED]
[REDACTED]; Kiddie Decl. at ¶¶ 7-9.)

Between April 16th and June 7th, the parties were engaged in claim construction briefing and Stellar began its source code inspection for the Accused Instrumentalities on June 20th. While the parties remain in discussions over whether sufficiently complete and operational source code was made available, the code supplied for inspection notably included allegedly ‘complete’ source code for the M500. Motorola’s inclusion of the M500 code, along with its provision of certain M500 technical documents in response to Stellar’s March 19th discovery requests indicated to Stellar three things about Motorola’s position vis-à-vis the M500. First, Motorola does not contest the M500’s relevance to this case. Second, Motorola suffers no undue prejudice in supplying technical information about and the source code for the M500—indeed, Motorola has already done so. Third, Motorola’s inclusion of the M500 source code led Stellar to believe Motorola would not contest the M500’s inclusion as an “Accused Instrumentality” in the IC amendments that naturally follow a code inspection, should the inspection reveal the M500 infringed. It was not

representation to Motorola’s counsel that it would “not be adding any claims or products” with Stellar’s February 7, 2024 IC amendment to which Motorola stipulated.

FILED UNDER SEAL

until Motorola's August 2, 2024 email resisting further discovery into the M500 that Stellar realized Motorola disputed the M500's status as an Accused Instrumentality in this case.

Stellar's source code review is ongoing. As noted above, it is typical in this District, when patent litigation implicates software, for plaintiffs to be permitted to amend their infringement contentions to include citations to source code upon completion of the code review. *See, e.g., Polaris PowerLED Tech., LLC v. Samsung Electronics America, Inc.*, No. 2:22-cv-00469-JRG, 2024 WL 3363687, at *2-3 (permitting amended contentions to add source code citations once plaintiff had received the information necessary to make such citations). In the course of Stellar's ongoing source code review, counsel for the parties have conferred several times regarding certain aspects of the source code and Motorola has thus far cooperated in obtaining responses to Stellar's questions.

In particular, [REDACTED]

[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Motorola has since represented to Stellar that they have produced the entirety of the source code for each accused product line, including the M500. (Ex. 5 at 1; Kiddie Decl. at ¶ 12.)

FILED UNDER SEAL

The July 26th call was a pivotal moment in Stellar's investigation into the M500's infringement because, prior to that call, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Additionally, [REDACTED], Stellar requested that Motorola supplement its document production to include financial information regarding the M500. (Ex. 9 at 1-2.) Notwithstanding its production of technical documents and source code regarding the M500, when Stellar requested financial information regarding the M500, Motorola then took the position that the M500 was not properly in the case. (Ex. 9 at 1.) Again, Motorola's prior behavior, including its production of technical information and source code for the M500 suggested acquiescence to inclusion of the M500.

While it did not seem efficient for Stellar to move for leave to supplement its infringement contentions until after its completion of source code, Motorola's opposition to producing financial information makes this issue ripe for disposition. Stellar has demonstrated diligence under the circumstances, because Stellar seeks amendment even prior to its completion of source code review of the M500 and does so in response to Motorola providing the M500 code, [REDACTED], yet refusing to provide M500 financial discovery. Again, Motorola's provision of technical documents and the allegedly 'complete' code for the M500 led Stellar to reasonably believe that Motorola did not object to the investigation of this product for inclusion as an Accused Instrumentality in the case. Thus, this factor weighs in favor of granting leave to amend.

FILED UNDER SEAL

B. Motorola Will Not Be Prejudiced by the Inclusion of the M500

As noted above, because Motorola has already produced technical information regarding—and the allegedly ‘complete’ source code for—the M500, there is little to no prejudice to Motorola if the Court grants this Motion.

The parties have ample time left in discovery, which does not close until December 6, 2024. (Dkt. 45.) The parties have yet to take any depositions. Motorola has already produced technical documents for the M500, [REDACTED], and has represented that it has produced the entirety of the source code for these products. Additionally, the proposed amendment (submitted herewith) does not add any additional patents or claims nor any new theory of infringement. (Ex. 10.)

While the Markman hearing is set for August 28th (Dkt. 45), none of the issues pertain to the construction of any terms or phrases but, instead, are focused primarily on whether any term is governed by § 112 ¶ 6 and/or is indefinite. (*See, e.g.* Dkt. 39.)

Given the foregoing, any claim of prejudice by Motorola is belied by the current record. Accordingly, there is little to no prejudice that would result from granting the Motion.

C. The M500 Is Important to the Full Resolution of the Parties’ Dispute

Inclusion of the M500 is important for the full resolution of the dispute between the parties.

[REDACTED]

[REDACTED]

[REDACTED]

Motorola further underscored the importance of including the M500, on a recent call between counsel concerning the ongoing source code inspection. Specifically, Motorola’s counsel acknowledged that it would be difficult, because of its age, to provide a sample for inspection and/or testing of Motorola’s 4RE Accused Instrumentalities, a predecessor to the M500 and the

FILED UNDER SEAL

only other in-car video system accused in this case. (Kiddie Decl. at ¶ 12.) This reveals that Motorola is no longer manufacturing and delivering the 4RE and have moved on to its successor, the M500, samples of which appear to be readily available. Exclusion of the M500 would undermine the ability to obtain full resolution of the parties' dispute in this case.

Given the lack of prejudice to Motorola, the time remaining to complete discovery, and the implication that Motorola is no longer manufacturing and delivering the predecessor in-car video product, it would be in the interest of judicial efficiency to allow Stellar to amend its contentions to include the M500. Accordingly, this factor favors granting the Motion.

D. Availability of a Continuance to Cure Such Prejudice

As noted above, Motorola has already produced source code and technical documentation regarding the M500. Additionally, no depositions have taken place yet and discovery does not close until December giving the parties ample time to further develop the record concerning the M500. As such, there is little or no prejudice to Motorola and no need for a continuance. As such, this factor favors granting the Motion.

IV. CONCLUSION

For the reasons set forth above, Stellar respectfully requests that this Court grant Stellar's Motion for Leave to Amend Its Infringement Contentions.

FILED UNDER SEAL

Dated: August 23, 2024

/s/ Robert Kiddie

Timothy Devlin

tdevlin@devlinlawfirm.com

Jim Lennon

jlennon@devlinlawfirm.com

Robert Kiddie (State Bar No. 24060092)

rkiddie@devlinlawfirm.com

DEVLIN LAW FIRM LLC

1526 Gilpin Avenue

Wilmington, DE 19806

Telephone: (302) 449-9010

Facsimile: (302) 353-4251

Attorneys for Plaintiff

Stellar, LLC

FILED UNDER SEAL

CERTIFICATE OF CONFERENCE

The undersigned certifies that on August 14, 2024 counsel for Plaintiff Stellar, LLC has conferred with counsel for Defendants Motorola Solutions, Inc. and WatchGuard Video, Inc., via telephone and further via email on August 21, 2024, and Defendants oppose the foregoing Motion For Leave to Amend Its Infringement Contentions.

/s/Robert Kiddie

Robert Kiddie

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2024 I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, and a copy of the same is served upon all counsel of record via electronic mail.

/s/Robert Kiddie

Robert Kiddie

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I certify that a motion to seal this document is being filed contemporaneously pursuant to Local Rules CV-5(a)(7) and CV-7(k).

/s/Robert Kiddie

Robert Kiddie