

the thing that would be excluded; and (4) the availability of a continuance to cure such prejudice. The burden of proving good cause rests with the party seeking the untimely amendment. *Id*; *S&W Enters., L.L.C. v. SouthTrust Bank of Ala., NA*, 315 F.3d 533, 536 (5th Cir. 2003)).

At the hearing, the parties agreed that parts of the proposed amended infringement contentions were unopposed. Those are the infringement allegations related to Ericsson’s Street Macro 6701, and the AIR 1279, 1652, 1672, 5331, 5332, 4455. *See* Dkt. No. 52 at 2, 9. Additionally, that includes the accusation of Ericsson Radio Dot System for the ’100 patent. The Court **GRANTS** leave for these amendments.

The rest of the categories of the Motion are opposed by Defendants. At the hearing, the Court heard arguments based on the categorization Defendants provided in their sur-reply. *See* Dkt. No. 58. The first category is proposed new asserted claims. First, Plaintiff seeks to add claim 19 of the ’521 patent. Plaintiff served proposed amended infringement contentions including claim 19 back in July of 2024. Plaintiff does not adequately explain why it delayed so long to move the Court for leave to amend once it failed to reach agreement with Defendants. The Court finds that Plaintiff has failed to show good cause for this amendment and thus **DENIES** leave to add claim 19 of the ’521 patent. Second, Plaintiff seeks leave to add claims 5 and 6 of the ’813 patent. Based on new discovery from Defendants, in January 2025, Plaintiff alleges that it clarified the structures it was focusing on. The Court finds that Plaintiff has shown good cause for this amendment. Thus, the Court **GRANTS** leave to amend on this basis.

The second category consists of new “doctrine of equivalents” theories. The Court finds that Plaintiff has failed to carry its burden to show good cause for these amendments. Specifically, the Court finds that the amendments are untimely—particularly based on the fact that the accused features are structural. The Court further finds the proposed amendment to be prejudicial to Defendants and to lack sufficient importance for Plaintiff. Thus, the Court **DENIES** leave to amend

on this basis.

The third category relates to amendments to the contentions for the '100 patent. Only one new theory remains live as Plaintiff has withdrawn its proposed new DAS systems theory. What remains is Plaintiff's theories that relate to 4G. Plaintiff contends that those amendments relied on source code and other technical discovery that it received from Defendants after it served its initial contentions. While Plaintiff waited from October 2024 to the filing of its Motion in February 2025, the Court nevertheless finds that Plaintiff has shown good cause for this amendment. Plaintiff sufficiently explained the confusion it experienced based on discrepancies in Ericsson's naming conventions. Further, Defendants have been sufficiently on notice of this theory which mitigates any potential prejudice. The Court thus **GRANTS** leave for this amendment.

The final category relates to new theories for the '813 patent. The Court agrees with Plaintiff that its proposed amendment clarifies rather than adds a new theory about the structures it is accusing. Accordingly, the Court **GRANTS** leave for this amendment.

Therefore, it is **ORDERED** that Plaintiff has leave to amend its infringement contentions to the extent the amendments comport with this Order.

It is **FURTHER ORDERED** that within 60 days of this Order, Defendants have leave to amend their invalidity contentions to the extent the amendments are responsive to Plaintiff's amendments.

SIGNED this 19th day of May, 2025.


ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE