

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

CHARGE FUSION TECHNOLOGIES,	)	
LLC,	)	
	)	
Plaintiff,	)	
	)	Civil No. 1:22-CV-00488-RP
v.	)	
	)	
TESLA, INC.,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	
	)	

**PLAINTIFF CHARGE FUSION TECHNOLOGIES, LLC’S MOTION FOR LEAVE
TO AMEND COMPLAINT**

INTRODUCTION

The Amended Complaint proposed by Plaintiff Charge Fusion Technologies, LLC (“Charge Fusion” or “Plaintiff”) and attached as Exhibit A, seeks to assert three additional patents: U.S. Patent No. 11,575,275 (“’275 Patent”) issued February 7, 2023; U.S. Patent No. 11,563,338 (“’338 Patent”) issued January 24, 2023; and U.S. Patent No. 11,990,788 (“’788 Patent”) (collectively “Newly Asserted Patents”). The Newly Asserted Patents were all issued after the October 2022 filing of Plaintiff’s original complaint. (Dkt. 1). The Newly Asserted Patents were issued over the prior art relied upon by Tesla in the current litigation and the related IPR proceedings. The parties chose not to engage in claim construction discovery and although the claim construction briefing was completed days before the stay, the Court has yet to conduct a *Markman* hearing. The Newly Asserted Patents raise few (if any) new claim construction issues and are asserted against the same accused products charged in Plaintiff’s Original Complaint.

Charge Fusion’s proposed Amended Complaint is timely and will not prejudice defendant Tesla. This case has been stayed since February 2023 during the pendency of the IPR proceedings related to the original three asserted patents – two of which Charge Fusion prevailed before the PTAB and the third of which relates to the ’488 patent that is no longer asserted in the Amended Complaint. There is no trial date or discovery deadline and the Amended Complaint states viable causes of action for infringement concerning the same accused Tesla vehicles.

As Tesla cannot establish any bad faith, prejudice or futility stemming from the amendment, the Court should grant Charge Fusion’s motion and enter the attached proposed Amended Complaint.

I. BACKGROUND

A. The District Court Proceedings

Plaintiff Charge Fusion filed its Original Complaint in this action in the U.S. District Court for the Western District of Texas on October 15, 2021, alleging infringement of the claims of three United States Patents U.S. Patent Nos. 9,853,488 (“488 Patent”), United States Patent No. 10,819,135 (“135 Patent”) and United States Patent No. 10,998,753 (“753 Patent”) (collectively “Originally Asserted Patents). The accused products include four Tesla cars: Tesla Model 3; Tesla Model X; Tesla Model Y; and Tesla Model S and any substantially similar Tesla car, such as the Tesla CyberTruck (“Accused Cars”).

On January 7, 2022, Telsa filed a Motion to Dismiss Complaint Pursuant to Rule 12(b)(6) for Failure to State a Claim for Indirect Infringement and For Injunctive Relief (Dkt. 28). On January 21, 2023, plaintiff Charge Fusion filed its response in opposition to Tesla’s Motion to Dismiss (Dkt. 30). On January 28, 2022 Telsa filed its Reply in support of its Motion to Dismiss (Dkt. 32).¹

On January 21, 2022, Charge Fusion served its preliminary infringement contentions, and on April 1, 2022, Tesla served its preliminary invalidity contentions and produced technical documents. On February 14, 2022, the Court issued a scheduling order (Dkt. 35), setting July 22, 2022 for the *Markman* hearing and July 24, 2023 for trial.

On May 11, 2022, the case was transferred by agreement from Waco to Austin. Dkt. 39. In accordance with the parties’ Joint Motion to Transfer, “all dates set forth in the current Scheduling Order (Dkt. 35) are hereby VACATED.”

Shortly after the transfer of this case to Austin, Tesla filed its first of three petitions for *inter partes review* (“IPRs”) challenging each of the Originally Asserted Patents. Specifically, on

¹ On January 20, 2023, the Court denied Tesla’s Motion to Dismiss Plaintiff’s Complaint (Dkt. 63).

July 22, 2022, Tesla filed IPR2022-01217 (“’753 IPR”), which challenged each claim of the ’753 patent. Thereafter, on October 21, 2022 Tesla filed two additional IPR’s - IPR2023-00062 challenging all claims of the ’488 Patent (“’488 IPR”) and IPR2023-00063 challenging all claims of the ’135 Patent (“’135 IPR”).

Although the Court’s Scheduling Order (Dkt. 47) allowed for claim construction discovery to be completed by November 30, 2022, the parties agreed that such discovery was not necessary, and none was conducted. Thereafter, on January 9, 2023, in accordance with the Scheduling Order (Dkt. 47), Tesla filed its opening claim construction brief. (Dkt. 61). On January 9, 2023, Charge Fusion filed its responsive claim construction brief (Dkt. 60).

On February 1, 2023, the PTAB instituted review on the first-filed IPR, i.e., the ’753 IPR. Two days later, Tesla asked Charge Fusion if plaintiff would agree to a stay of the proceedings regarding all of the Originally Asserted Patents despite the fact that the PTAB had yet to render institution decisions concerning the two later-filed IPR’s – the ’488 IPR and the ’135 IPR.

On February 6, 2023, the parties filed their respective Claim Construction Reply Briefs (Dkts. 66 & 67). On February 8, 2023, Charge Fusion advised Tesla that it opposed the entry of any stay. Charge Fusion further indicated that it wanted to add two new patents, U.S. Patent No. 11,575,275 (“’275 Patent”) and U.S. Patent No. 11,563,338 (“’338 Patent”), which were issued on February 7, 2023 and January 24, 2023, respectively.²

On February 10, 2023, (Dkt. 68) while claim construction briefing was ongoing, Tesla filed its opposed motion to stay the case pending resolution of three IPR petitions, IPR2022-01217, IPR2023-00062 and IPR2023-00063 (Dkt. 68). On February 2, 2023, after Charge Fusion submitted its brief in opposition to the motion to stay (Dkt. 71), the parties filed a Joint Motion to

² Those two patents are now part of the proposed Amended Complaint along with a third patent which was issued on May 21, 2024.

Stay. (Dkt. 72). In response to the Joint Motion to Stay, this Court ordered the action stayed pending Tesla's petitions for Inter Partes Review (Dkt. 73). The case has been stayed since that time and on May 11, 2023, the PTAB instituted IPR's on the two remaining petitions.

B. Tesla Failed to Prevail in Two of its Three IPR Petitions

On January 17, 2024, the PTAB issued a Final Written Decision on institution upholding all challenged claims of the '753 Patent and finding that Tesla had not proven that the claims were unpatentable. On March 19, 2024, Tesla filed a timely Notice of Appeal of the PTAB Final Written Decision concerning the '753 Patent to the United States Court of Appeals for the Federal Circuit ("CAFC").

On April 16, 2024 the PTAB issued its Final Written Decision in IPR2023-00062 regarding the '488 Patent and held that challenged claims 1-15 of the '488 Patent were proven unpatentable. Charge Fusion has not appealed that decision to the CAFC. In addition, the '488 Patent is not included in the proposed Amended Complaint.

On May 2, 2024, the PTAB issued its Final Written Decision in IPR2023-00063, the '135 IPR. In its decision, the PTAB upheld all challenged claims of the '135 Patent and found that Tesla had failed to prove those claims were unpatentable.

II. JUSTICE REQUIRES THAT CHARGE FUSION'S MOTION FOR LEAVE BE GRANTED

A. Amendments Are to be Liberally Allowed and Charge Fusion Acted Without Delay

Federal Rule of Civil Procedure 15(a) states that "[t]he court should freely give leave [to amend] when justice so requires." Under Rule 15, the Court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). Rule 15 thus "evinces a bias in favor of granting leave to amend, and a district court must possess a substantial reason to deny a request." *SGIC Strategic Glob. Inv. Capital, Inc. v. Burger King Europe GmbH*, 839 F.3d 422, 428 (5th Cir. 2016)

(internal quotation marks omitted). In deciding a motion to amend, the Court considers five factors: (1) undue delay; (2) bad faith or dilatory motive; (3) repeated failure to cure deficiencies by previous amendments; (4) undue prejudice to the opposing party; and (5) futility of the amendment. *See Froman v. Davis*, 371 U.S. 178, 182 (1962). All five factors support granting Charge Fusion leave to amend here.

Charge Fusion seeks leave to amend its complaint – for the first time – to add the Newly Asserted Patents to this action after the issuance of PTAB’s Final Written Decisions concerning patentability for the Originally Asserted Patents. In addition to the Newly Asserted Patents, Charge Fusion continues to assert the ‘135 and ‘753 Patents – both of which were upheld over Tesla’s IPR challenges. The case is currently stayed and no claim construction hearing has occurred.

Moreover, the addition of the Newly Asserted Patents will avoid the unnecessary duplication of Charge Fusion filing another patent infringement case against Tesla, which would result in multiple cases concerning the same patent family asserted against the same accused products. Thus, by allowing the addition of the Newly Asserted Patents alongside the Originally Asserted Patents, the Court will avoid the need for multiple trials and streamline the underlying claim construction, invalidity and infringement arguments.

Tesla cannot demonstrate any “bad faith or dilatory motive” especially when Charge Fusion previously agreed to a stay pending the Final Written Decisions of the IPRs. *Froman*, 371 U.S. at 182. This motion is both prompt and timely, and Charge Fusion seeks amendment prior to any substantive discovery or related motion practice. Moreover, because the newly issued patents are ““substantially similar to the patents contained in the original complaint, it would be economically beneficial to the parties to resolve all the issues in a single proceeding.” *TruePosition*,

Inc. v. Allen Telecom, Inc., No. CIV.A.01-823 GMS, 2002 WL 1558531, at *2 (D. Del. July 16, 2002).

B. Tesla Will Not Be Prejudiced By Charge Fusion's Amendment

Tesla will not suffer any prejudice from the addition of the Newly Asserted Patents to this action. “[U]ndue prejudice is a lofty threshold . . . [that] requires more than a likelihood of incurring additional expense and delay.” *Zirnis v. Huntsville City Bd. of Educ.*, No. 5:18-CV-01673-AKK, 2019 WL 2501956, at *2 (N.D. Ala. June 17, 2019) (granting a motion for leave to amend the pleadings that added counterclaims and was filed four months before the close of discovery). The case has been pending for some time. Discovery has not started as it is stayed until after the Markman Hearing. Dkt. 37 at 3. Therefore, Tesla will have ample time to adequately respond to allegations of infringement based on the [newly issued] patent[s].” *Tendler Cellular of Texas, LLC v. Mercedes-Benz USA, LLC*, Civil Action No. 6:11-CV-178, 2012 WL 12905979, at *1 (E.D. Tex. Apr. 3, 2012). There are no circumstances present here sufficient to support a finding of undue prejudice that would prevent amendment. To the extent Tesla argues that it is prejudiced based on the minimal delay caused by “the need to conduct additional discovery and patent analysis,” courts have rejected that argument as “completely unavailing.” *See Ziptronix, Inc. v. Omnivision Techs., Inc.*, No. C 10-05525 SBA, 2012 WL 3155554, at *3-4 (N.D. Cal. Aug. 2, 2012). Also, discovery in this action had not started and is stayed until after the Markman hearing.

As in *Est. of Murphree*, Charge Fusion's Proposed Amended Complaint drops one patent and adds three additional patents, all of which have the same specification; stem from the original application; and all of which were issued by the USPTO over all of the art of record asserted by Tesla in the IPR's. Although over 2 ½ years old, because of the stay, this case is at much earlier stage than when leave was granted in other cases. *See Leo as Tr. for Est. of Murphree v. Alfa Mut.*

Ins. Co., No. 1:13-CV-1826-VEH, 2015 WL 13859434, at *20 (N.D. Ala. June 25, 2015) (allowing an amended complaint filed the day before expert disclosures were due where the plaintiff sought “merely to add ‘detail and specificity . . . to [p]laintiff’s previously asserted causes of action”).

Given the similarity of the Newly Asserted Patents and the accused products, coupled with the fact that the case is still in its early stages, Tesla will not be prejudiced by Charge Fusion’s Proposed Amended Complaint. This factor weighs in favor of granting leave.

C. Charge Fusion’s Proposed Amendment is Motivated by Efficiency and There Has Been No Undue Delay in Seeking It

This case has been stayed since February 2023. As such, Charge Fusion was not in a position to move to amend its complaint. The last of the PTAB Final Written Decisions issued on May 2, 2024 – a little over a month ago. Further, because all deadlines were previously VACATED (Dkt. 35), there is no deadline for amended pleadings. As such, Charge Fusion’s motion is timely and not a product of “undue delay.” Accordingly, this factor weighs in favor of granting Charge Fusion’s motion for leave.

D. Charge Fusion’s Amendment Would Not Be Futile

Charge Fusion’s Proposed Amended Complaint sufficiently pleads its claims against Tesla. See Ex. A. That is, the Proposed Amended Complaint sets forth detailed allegations regarding at least one Tesla car, the Model Y. These allegations are consistent with the infringement contentions served on Tesla in January 2023. “[L]eave to amend should be denied on the ground of futility only if the proposed amendment is clearly insufficient or frivolous on its face” *ZP No. 314, LLC v. ILM Cap., LLC*, No. CV 16-00521-B, 2017 WL 11444383, at *2 (S.D. Ala. Mar. 30, 2017) (internal alternations and quotations omitted).

The changes made by the Proposed Amended Complaint remove one patent (the ‘488 Patent) and add three additional related patents that recently issued. The straight-forward and

clearly delineated nature of Charge Fusion's claims compel a finding that Charge Fusion's proposed complaint would not be futile. *See, e.g., ZP No. 314*, 2017 WL 11444383, at *2 (holding amendment would not be futile because the relevant claim "appear[ed] to require a complex factual inquiry" and collecting cases holding the same where complex factual inquiries or arguments were involved). Patent infringement claims are a quintessential example of complex litigation, and the Court itself has previously acknowledged "the complex nature of this case." Dkt. 97.

Charge Fusion's Proposed Amended Complaint is consistent with the earlier infringement theories asserted against Telsa and, more importantly, the Newly Asserted Patents were issued by the USPTO over the art cited by Tesla during the IPR's. Thus, there is no reason to believe that Charge Fusion's proposed complaint would be futile, especially considering the similar technology and number of patents involved. Charge Fusion's motion for leave should be granted.³

III. In the Alternative, Amendment is allowed via Supplementation under FRCP 15(d)

Finally, and in the alternative, Charge Fusion should be allowed to supplement its Complaint under Federal Rule of Civil Procedure 15(d). Rule 15(d) provides that the Court may "permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." Fed. R. Civ. P. 15(d). Supplemental pleadings under Rule 15(d) "are generally favored because they promote judicial economy and convenience by permitting courts to dispose of related claims and issues in one matter." *Ziptronix*, 2012 WL 3155554, at *3. Tesla's infringement of the Newly Asserted Patents postdates Charge Fusion's original pleading and may properly be added as a Rule 15(d)

³ Although bad faith is another factor that might justify denying leave to amend, that factor typically considers a potential dilatory motive relative to "the timing and circumstances of the motion [for leave to amend]" and the movant's proffered reason for amending. *See Federated Ins. Co. v. Avans Mach. & Tool*, No. CV-08-S-0770-NE, 2009 WL 10688466, at *3 (N.D. Ala. Oct. 13, 2009). Here, however, there is simply no indication that Charge Fusion seeks leave to amend for the purposes of delay or any other improper motive.

supplemental pleading. Motions under Rule 15(d), moreover, are governed by the same legal standard as Rule 15(a). *See Lewis v. Knutson*, 699 F.2d 230, 239 (5th Cir. 1983). As established above, Tesla cannot establish any undue delay, bad faith, prejudice, or futility in this amendment. On the contrary, Charge Fusion has diligently and in good faith sought the addition of the Newly Asserted Patents to this action.

IV. CONCLUSION

WHEREFORE, Plaintiff Charge Fusion respectfully requests its Motion for Leave to File an Amended Complaint be granted.

Dated: June 5, 2024

Respectfully submitted,

/s/ Bradley D. Liddle

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ATTORNEYS FOR PLAINTIFF CHARGE
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CERTIFICATE OF CONFERENCE

The undersigned certifies that counsel Charge Fusion Technologies conferred telephonically with counsel for Tesla on May 29, 2024, regarding the relief sought in this motion. Defendant opposes the motion.

/s/ Bradley D. Liddle
Bradley D. Liddle

CERTIFICATE OF SERVICE

The undersigned certifies that on June 5, 2024, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court by using the CM/ECF system, which shall send notification of such filing to all counsel of record at their email addresses on file with the Court.

/s/ Bradley D. Liddle
Bradley D. Liddle