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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FACETEC, INC., a Delaware Corporation Plaintiff, v. JUMIO CORPORATION, a Delaware Corporation Defendant.	Case No. 3:24-cv-03623-RFL Noticed For: October 22, 2024, at 10:00 a.m. **iPROOV LTD.'S NOTICE OF MOTION AND OPPOSED MOTION TO INTERVENE** Assigned Judge: Rita F. Lin

TABLE OF CONTENTS

NOTICE OF MOTION **1**

I. INTRODUCTION **2**

II. ARGUMENT **3**

A. iProov is Entitled To Intervention of Right Under Fed. R. Civ. P. 24(a)(2) **3**

1. iProov's Application for Intervention is Timely 3

2. iProov Has a "Significantly Protectable" Interest Relating to the Property or Transaction that is the Subject of the Action 5

3. The Disposition of this Action May Impair or Impede iProov's Ability to Protect its Interest 8

4. iProov's Interest is Not Adequately Represented by the Existing Parties 9

B. iProov is, Alternatively, Entitled to Permissive Intervention Pursuant to Fed. R. Civ. P. 24(b) **11**

III. CONCLUSION **12**

TABLE OF AUTHORITIES

Cases

Akina v. Hawaii,
835 F.3d 1003 (9th Cir. 2016) 8

Beckman Indus. v. Int'l Ins. Co.,
966 F.2d 470 (9th Cir. 1992) 11

Dilks v. Aloha Airlines, Inc.,
642 F.2d 1155 (9th Cir. 1981) 3

Freedom from Religion Found., Inc. v. Geithner,
644 F.3d 836 (9th Cir. 2011) 11

HBB Ltd. Pshp. v. Ford Motor Co.,
No. 92-C-3287, 1992 U.S. Dist. LEXIS 17543 (N.D. Ill. Oct. 2, 1992) 11, 12

Honeywell Int'l Inc. v. Audiovox Communs. Corp.,
2005 U.S. Dist. LEXIS 22933 (D. Del. May 18, 2005) 4, 7, 9, 10

LG Elecs., Inc. v. Q-Lity Comput., Inc. v. Asustek Comput., Inc.,
211 F.R.D. 360 (N.D. Cal. 2002) 4, 6, 10, 12

Nazomi Communs., Inc. v. Nokia Corp.,
2010 U.S. Dist. LEXIS 148819 (C.D. Cal. June 21, 2010) 7, 9, 10

Northwest Forest Resource Council ("*NFRC*") *v. Glickman*,
82 F.3d 825 (9th Cir. 1996) 3, 10

Sagebrush Rebellion, Inc. v. Watt,
713 F.2d 525 (9th Cir. 1983) 9

SEC v. United States Realty & Improvement Co.,
310 U.S. 434 (1940) 11

Select Retrieval, LLC v. ABT Elecs., No. 11 C 03752,
2013 U.S. Dist. LEXIS 174442 (N.D. Ill. Dec. 13, 2013) 9

Smith v. L.A. Unified Sch. Dist.,
830 F.3d 843 (9th Cir. 2016) 3, 4

Stauffer v. Brooks Bros.,
619 F.3d 1321 (Fed. Cir. 2010)..... 3

Sw. Ctr. for Biological Diversity v. Berg,
268 F.3d 810 (9th Cir. 2001) ..... passim

Team Worldwide Corp. v. Wal-Mart Stores, Inc.,
2017 U.S. Dist. LEXIS 201769 (E.D. Tex. Dec. 7, 2017)..... 7, 10

U.S. Ethernet Innovations, LLC v. Acer, Inc.,
2010 U.S. Dist. LEXIS 150649 (E.D. Tex. May 10, 2010)..... 7

U.S. Ethernet Innovations, LLC v. Acer, Inc.,
2010 U.S. Dist. LEXIS 145889 (N.D. Cal. Dec. 21, 2010)..... 6, 7

United States v. Alisal Water Corp.,
370 F.3d 915 (9th Cir. 2004) 3

United States v. Blue Lake Power,
215 F. Supp. 3d 838 (N.D. Cal. 2016) 4

United States v. City of Los Angeles,
288 F.3d 391 (9th Cir. 2002) 3, 5

United States v. Oregon,
745 F.2d 550 (9th Cir. 1984) 4

United States v. Oregon,
839 F.2d 635 (9th Cir. 1988) 9

Wilderness Soc'y v. United States Forest Serv.,
630 F.3d 1173 (9th Cir. 2011) 3

Rules

Fed. R. Civ. P. 24..... 6, 11, 13

Treatises

7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane,
Federal Practice and Procedure § 1908.2 (3d ed. 2007) 11

NOTICE OF MOTION

TO THE COURT, ALL INTERESTED PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on October 22, 2024 at 10:00 a.m. Proposed Intervenor iProov Ltd. ("iProov") will appear before the Court and present its Motion to Intervene, set forth herein.

iProov hereby respectfully moves the Court for an order granting iProov leave to intervene in the above-captioned case filed against iProov's customer Jumio Corporation ("Jumio") as of right pursuant to Fed. R. Civ. P. 24(a)(2) or, alternatively, with permission of the Court under Fed. R. Civ. P. 24(b)(1)(B). The Court should grant iProov's motion to intervene as the application is timely, iProov has a "significantly protectable" interest in its liveness detection technology, which Plaintiff FaceTec, Inc. ("FaceTec") alleges infringes and uses as a basis for its infringement contentions, the disposition of this action in the absence of iProov will impair its ability to protect that interest, and iProov's interest is not adequately protected by the existing parties. Alternatively, the Court should grant iProov's motion for permissive intervention because the application is timely and iProov's defense shares many common questions of law and fact with the main action. iProov moves based on this notice, the memorandum of points and authorities set forth below, the Court's files and existing docket, information of which the Court may take judicial notice, and all further argument or evidence as may be presented prior to or after the filing of the motion. iProov has attached its proposed Answer as Exhibit 1 hereto. Jumio does not oppose this Motion, but FaceTec has indicated it opposes.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is FaceTec's second action asserting patent infringement regarding the accused technology. In the first, pending in the District of Nevada, FaceTec accuses iProov directly of infringement of two of the four patents at issue in this litigation. The parties are currently in discovery, and claim construction is fully briefed.

Seeking to gain the upper hand and disturb iProov's relationships with its customers, FaceTec filed this suit asserting infringement by iProov's customer, Jumio. But at bottom, FaceTec's allegations of patent infringement clearly accuse iProov and its technology of infringement. At this moment in time, based upon FaceTec's deficient infringement allegations, FaceTec's claims against Jumio are indistinct from its claims against iProov (apart from the assertion of two new patents). FaceTec's claims stem from Jumio's relationship with iProov and Jumio's use of iProov's technology. Indeed, FaceTec's infringement allegations depend heavily on iProov's technology and accompanying documentation. Given these accusations against it, iProov seeks to intervene at this early stage shortly after Jumio's Answer is filed.

iProov has a right to intervene to protect its interest in its products accused of infringement as well as its interest in defending its customers from allegations of infringement. iProov should not have to suffer as its product is accused of infringement in another forum and risk that its interest is not adequately protected by a customer who is also accused of infringement via a laundry list of other yet-to-be-identified "accused instrumentalities." The only means for iProov to protect its interests is to intervene, and as such, it may do so as of right.

In the alternative, iProov requests this Court to grant it permission to intervene in this action. There are common issues of law and fact between iProov's and Jumio's defenses – namely, the noninfringement and invalidity of the asserted patents and accompanying factual and legal determinations. Accordingly, iProov should be granted permission to intervene.

II. ARGUMENT

A. iProov is Entitled To Intervention of Right Under Fed. R. Civ. P. 24(a)(2)

Federal Rule of Civil Procedure 24(a) provides that a court must permit anyone to intervene who makes a timely motion satisfying the required elements for intervention. Fed. R. Civ. P. 24(a). In making this determination, the law of the regional circuit controls. *See Stauffer v. Brooks Bros.*, 619 F.3d 1321, 1328 (Fed. Cir. 2010) (reviewing denial of intervention under regional circuit law). One who seeks to intervene as of right must satisfy four requirements:

> (1) the application for intervention must be timely; (2) the applicant must have a "significantly protectable" interest relating to the property or transaction that is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and (4) the applicant's interest must not be adequately represented by the existing parties in the lawsuit.

Sw. Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 817 (9th Cir. 2001) (*citing Northwest Forest Resource Council* ("*NFRC*") *v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996)). "In evaluating whether Rule 24(a)(2)'s requirements are met, [courts] normally follow 'practical and equitable considerations' and construe the Rule 'broadly in favor of proposed intervenors.'" *Wilderness Soc'y v. United States Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (*quoting United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002)).

1. iProov's Application for Intervention is Timely

"Timeliness is determined by the totality of the circumstances facing would-be intervenors, with a focus on three primary factors: '(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay.'" *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (*quoting United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004). "Timeliness is a flexible concept [and] [t]he district court has considerable discretion to assess timeliness." *Dilks v. Aloha Airlines, Inc.*, 642 F.2d 1155, 1156 (9th Cir. 1981) (internal citation omitted).

iProov is seeking to intervene at the earliest stage in this litigation and any delay in its motion is minimal and justified. The Complaint was filed on June 14, 2024, Dkt. 1. Courts have routinely granted motions to intervene at much later stages of litigation. *See Smith*, 830 F.3d at

864 (reversing denial of motion to intervene filed twenty years after commencement of suit due to changes circumstances); *United States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984) (finding intervention timely sixteen years into lawsuit, noting that "[m]ere lapse of time alone is not determinative"). Jumio filed its Answer to the Complaint very recently, on August 23. Dkt. 14. The only possible delay would be the minimal delay due to the consideration of this Motion because iProov has prepared and attached hereto its proposed Answer to the operative Complaint. *See* Exhibit 1 hereto. Further, the parties have not established a case schedule, filed any dispositive motions, or engaged in any discovery or claim construction. *See United States v. Blue Lake Power*, 215 F. Supp. 3d 838, 842 (N.D. Cal. 2016) (intervention timely when filed "before the complaint had been answered, the proposed consent decree had been entered, or substantive proceedings had occurred."); *Honeywell Int'l Inc. v. Audiovox Communs. Corp.,* Civil Action No. 04-1337-KAJ, 04-1338-KAJ, 04-1536-KAJ, 2005 U.S. Dist. LEXIS 22933, at *12 (D. Del. May 18, 2005) (motion to intervene timely because "discovery has not even begun in the case and case management issues are only now being addressed.").

Further, FaceTec will not be prejudiced by iProov's motion. While prejudice is "'the most important consideration in deciding whether a motion for intervention is untimely' ... the only 'prejudice' that is relevant under this factor is that which flows from a prospective intervenor's failure to intervene after he knew, or reasonably should have known, that his interests were not being adequately represented—and not from the fact that including another party in the case might make resolution more 'difficult[].'" *Smith*, 830 F.3d at 857 *quoting Oregon*, 745 F.2d at 552-53. No such prejudice can result, as iProov has requested intervention as soon as it was made aware of its interest in this case. As discussed in more detail below, iProov's products are accused of infringement, and iProov is seeking intervention immediately after becoming aware of this fact. *See LG Elecs., Inc. v. Q-Lity Comput., Inc. v. Asustek Comput.*, Inc., 211 F.R.D. 360, 364 (N.D. Cal. 2002) (finding motion to intervene timely because applicant sought intervention shortly after learning plaintiff was seeking to add applicant's products to its infringement contentions).

This factor supports granting iProov's motion.

2. iProov Has a "Significantly Protectable" Interest Relating to the Property or Transaction that is the Subject of the Action

"[W]hether an applicant for intervention demonstrates sufficient interest in an action is a practical, threshold inquiry. No specific legal or equitable interest need be established. It is generally enough that the interest [asserted] is protectable under some law, and that there is a relationship between the legally protected interest and the claims at issue." *Sw. Ctr. for Biological Diversity*, 268 F.3d at 818 (internal quotations and citations omitted). "The 'interest' test is not a clear-cut or bright-line rule, because no specific legal or equitable interest need be established. Instead, the interest test directs courts to make a practical, threshold inquiry, and is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *City of L.A.*, 288 F.3d at 398 (internal quotation marks and citations omitted). "The relationship requirement is met if the resolution of the plaintiff's claims actually will affect the applicant." *Id.* (internal quotation marks and citation omitted). iProov has a protectable interest in its products, and it is clear from the Complaint that FaceTec's claims will affect iProov.

FaceTec identifies iProov and its products as allegedly infringing the Patents-in-Suit on the face of its Complaint. Dkt. 1 at ¶ 28(a) (identifying as "Accused Instrumentalities" "[a]ll Jumio products and services that include or use technology of the kind ***referred to by Jumio or its vendor iProov Ltd. as 'Liveness Assurance,' 'Basic Face Verifier,' or 'Express Liveness.'"***) (emphases added). FaceTec also asserts that, after Jumio "broke" its contract with FaceTec, Jumio "contracted with another FaceTec competitor, iProov Ltd., ***which thereafter deployed for Jumio a liveness detection technology that infringes on FaceTec's patent rights***." *Id.* at ¶ 31 (emphases added). FaceTec also repeatedly refers to iProov's technology as "infringing":

> Jumio has persisted, however, in using ***iProov's infringing technology***. Jumio has also recently introduced Jumio-branded liveness detection technologies that ***either constitute or incorporate iProov's infringing liveness detection technology or are highly similar to iProov's infringing liveness detection technology***. Like ***iProov's infringing liveness detection technology*** — and for similar reasons — Jumio's own-branded liveness detection technologies include multiple aspects that are copied directly from FaceTec and that infringe the FaceTec Patents-in-Suit ...

Id. at ¶ 32 (emphases added).

The allegations in the claim charts attached to FaceTec's Complaint also demonstrate that iProov's technology is accused of infringement. FaceTec has attached four claim charts to its Complaint, each asserting infringement of one independent claim. *See* Dkt. 1-5 (Ex. E); Dkt. 1-6 (Ex. F); Dkt. 1-7 (Ex. G); Dkt. 1-8 (Ex. H). Again, FaceTec includes multiple pieces of iProov technology in its definition of "Jumio Accused Instrumentalities." Dkt. 1-5 (Ex. E) at n. 1 (identifying "Liveness Assurance," "Basic Face Verifier," and "Express Liveness"); Dkt. 1-6 (Ex. F) at n. 1; Dkt. 1-7 (Ex. G) at n. 1; Dkt. 1-8 (Ex. H) at n. 1. The allegations of infringement in all four of the attached claim charts make only generalized references to the "Jumio Accused Instrumentalities" as allegedly containing the relevant claim limitations. *See e.g.,* Dkt. 1-5 (Ex. E) at p. 2 ("The Jumio Accused Instrumentalities use images of a user's face captured using a camera equipped computing device (e.g., a camera-equipped smartphone, computer, or tablet) to attempt to verify one or more expected user characteristics and thereby verify the physical presence of the user."). FaceTec also repeatedly references iProov's Liveness Assurance technology in its claim charts, citing often to iProov's website and technical documentation. *See e.g.*, Dkt. 1-5 (Ex. E) at p. 2 (citing to "www.iproov.com/iproov-system/technology/liveness-assurance") and p. 19 (citing to "docs.iproov.com/docs/Content/Overview/biometric-assurance.htm"). Further, at one point, FaceTec appears to conflate Jumio and iProov for purposes of its infringement contentions while also alleging that FaceTec's infringement contentions are all based on iProov's Liveness Assurance technology. Dkt. 1-5 (Ex. E) at p. 19, n. 2 ("iProov and Jumio now appear to refer to 'Liveness Assurance' as 'Express Liveness.' Despite the name change, 'Express Liveness' appears to be unchanged from 'Liveness Assurance' as far as infringement of the FaceTec Patents-in-Suit is concerned. Indeed, ***all of the Jumio Accused Instrumentalities operate in the same infringing manner.***") (emphases added).

"As [iProov] sells the [software] that [FaceTec] alleges infringe its patents, there can be no question that [iProov] has a legally protectable interest in the products that [FaceTec] seeks to place at issue in this patent infringement action." *LG Elecs.*, 211 F.R.D. at 365; *see also U.S. Ethernet Innovations, LLC v. Acer, Inc.*, No. C 10-03724 JW, 2010 U.S. Dist. LEXIS 145889, at

*22 (N.D. Cal. Dec. 21, 2010) ("Broadcom has a significant interest relating to the property at issue in this case because Plaintiff has accused certain Broadcom ethernet controllers of satisfying claim elements of the Patents-in-Suit."); *Nazomi Communs., Inc. v. Nokia Corp.*, No. SACV 10-151 DOC (RNBx), 2010 U.S. Dist. LEXIS 148819, at *12 (C.D. Cal. June 21, 2010) (finding significant protectable interest because Complaint put intervenor's products at issue via allegations of infringement); *Honeywell Int'l*, 2005 U.S. Dist. LEXIS 22933, at *12 (granting intervention as of right, finding manufacturer of relevant component product to have a "compelling interest"). FaceTec has already sued iProov for infringement of two of the Patents-in-Suit in the United States District Court for the District of Nevada based on these same allegations. Dkt. 1 at ¶ 31; *see also FaceTec Inc. v. iProov Ltd.,* Case No. 2:21-cv-02252-ART-BNW.

Further, "[iProov] also has an economic interest in defending its customers from infringement allegations." *U.S. Ethernet Innovations*, 2010 U.S. Dist. LEXIS 145889, at *22. The implications of FaceTec's infringement allegations extend far beyond iProov and Jumio, potentially impacting iProov's business with the remainder of its customer base. *See U.S. Ethernet Innovations, LLC v. Acer, Inc.*, No. 6:09-cv-448-JDL, 2010 U.S. Dist. LEXIS 150649, at *13 (E.D. Tex. May 10, 2010) ("[A] manufacturer such as Intel faces the loss of its customer base and reputation as a result of patent infringement allegations."); *See also Team Worldwide Corp. v. Wal-Mart Stores, Inc.*, No. 2:17-CV-00235-JRG, 2017 U.S. Dist. LEXIS 201769, at *12 (E.D. Tex. Dec. 7, 2017) (granting motion to intervene where proposed intervenor's products would be the focus of the litigation and ongoing sale and distribution of relevant product would be put at risk by Plaintiff's allegations of infringement.).

The resolution of this action will affect iProov because FaceTec's allegations are so intimately tied to iProov's liveness detection technology. Any decision concerning whether Jumio infringes the Patents-in-Suit would necessarily include a determination of whether

iProov's liveness detection technology infringes.[1] Allowing this action to move forward without affording iProov the opportunity to defend its own technology against FaceTec's allegations would put iProov's business in jeopardy, especially given that Facetec seeks orders "temporarily, preliminarily, and permanently enjoining Jumio, its agents, servants, and ***any and all parties acting in concert with them***, from directly or indirectly infringing in any manner any claim of the FaceTec Patents-in-Suit." Dkt. 1 at Prayer for Relief (emphases added); *Sw. Ctr. for Biological Diversity*, 268 F.3d at 818 ("An applicant demonstrates a significantly protectable interest when the injunctive relief sought by the plaintiffs will have direct, immediate, and harmful effects upon a third party's legally protectable interests.") (internal quotation and citation omitted).

Accordingly, iProov has demonstrated a significantly protectable interest and this factor favors granting its motion.

3. The Disposition of this Action May Impair or Impede iProov's Ability to Protect its Interest

"The question of whether protectable interests will be impaired by litigation 'must be put in practical terms rather than in legal terms.'" *Akina v. Hawaii*, 835 F.3d 1003, 1011-12 (9th Cir. 2016) (*quoting* 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1908.2 (3d ed. 2007). iProov's interest in its products, as well as its interest in protecting its customers, are placed directly at risk via this action. A finding of patent infringement in this action would effectively be a finding of infringement by iProov and any other existing customers. That iProov's interest would be impaired is self-evident:

> [Intervenor-Manufacturer]'s interests will be affected by a disposition in Nazomi's favor. A judicial finding in Nazomi's favor has the potential to frustrate [Intervenor-Manufacturer]'s customer relationships, [Intervenor-Manufacturer]'s foothold in the marketplace, and the integrity of [Intervenor-Manufacturer]'s designs. This is not a mere

[1] The parties could potentially stipulate that iProov's technology infringes for the purposes of limiting this action to the issue of whether Jumio infringes the Patents-in-Suit, even though iProov vehemently maintains otherwise. But this would be damaging to iProov, which maintains that its technology does not infringe any valid claim, leaving iProov's interest inadequately protected because, as discussed herein, iProov has a significant interest in protecting its business and customers from the implications of a judgment that Jumio infringes—something that would not be adequately protected by the parties stipulating to infringement. *See* § 2(A)(4) *infra.*

> "economic interest in the outcome of the lawsuit," but is a concrete and fundamental interest in the issues in this litigation.

Nazomi Communs., 2010 U.S. Dist. LEXIS 148819, at *13.

This is especially true given the pending Nevada litigation, because iProov, by itself and through its customers, "would be subject to potentially inconsistent judgments regarding whether its technology infringes the patent. Without intervening in this case, [iProov]'s ability to defend its technology could be compromised." *Select Retrieval, LLC v. ABT Elecs.*, No. 11 C 03752, 2013 U.S. Dist. LEXIS 174442, at *8 (N.D. Ill. Dec. 13, 2013). *See also Honeywell Int'l* 2005 U.S. Dist. LEXIS 22933, at *12 (finding manufacturer could "rightly claim" its interest would be impaired); *Sw. Ctr. for Biological Diversity*, 268 F.3d at 822 ("[I]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.") (*citing* Fed. R. Civ. P. 24 advisory committee's notes). Resolution of this action would also result in factual and legal determinations concerning the accused technology which will overlap with the currently pending District of Nevada litigation as well as any future litigation, including, but not limited to, claim construction, noninfringement, invalidity, and whether iProov's customers, including Jumio, infringe the Patents-in-Suit by using the accused liveness detection technology. *See United States v. Oregon*, 839 F.2d 635, 639 (9th Cir. 1988) (finding interest will be impaired due to longstanding tendency of courts of "recognizing practical limitations on the ability of intervention applicants to protect interests in the subject of litigation after court-ordered equitable remedies are in place"). This factor also favors granting iProov's Motion.

4. iProov's Interest is Not Adequately Represented by the Existing Parties

The Ninth Circuit "has consistently [held] that the requirement of inadequacy of representation is satisfied if the applicant shows that representation of its interests 'may be' inadequate and that the burden of making this showing is minimal." *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983) (internal citation omitted). In making this determination, Courts consider:

> (1) whether the interest of a present party is such that it will undoubtedly make all the intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether the would-be intervenor would offer any necessary elements to the proceedings that other parties would neglect.

Sw. Ctr. for Biological Diversity, 268 F.3d at 822 (*citing Glickman*, 82 F.3d 825 at 838).

While Jumio and iProov may have overlapping interests, those interests are not the same. Jumio is a customer of iProov, and the accused liveness detection technology is but one of many embedded technologies in Jumio's suite of product offerings. Moreover, the manner in which Jumio uses the accused technology may be different than iProov. As noted above, it is unclear to what extent FaceTec is accusing Jumio of infringement independent of its use of iProov's Liveness Assurance technology, and whether the claims in this case may ultimately hinge on a finding of indirect infringement by Jumio. Such an argument could potentially include a stipulation to infringement, which would be detrimental to iProov and warrant intervention in and of itself. *Nazomi Communs.*, 2010 U.S. Dist. LEXIS 148819, at *14 ("Moreover, as ARM argues, the defendants may seek to settle this lawsuit and stipulate to a finding of infringement, even though ARM may stand to lose valuable market share from such a stipulation."). Thus, Jumio cannot be expected to undoubtedly make the same arguments as iProov. *Id. See also Sw. Ctr. for Biological Diversity*, 268 F.3d at 823 (finding adequate representation factor satisfied despite parties potential sharing the same "ultimate objective" because the parties being differently situated meant their interest "might diverge"); *Team Worldwide Corp.*, 2017 U.S. Dist. LEXIS 201769, at *17 (granting intervention of right for three manufacturers of accused products, noting all that is required is that the parties' interest "may diverge").

Moreover, iProov would bring deep expertise concerning the operation of its liveness detection technology, which would be crucial to determining whether the technology infringes the Patents-in-Suit. Indeed, iProov is better situated than Jumio to make such arguments as Jumio embeds the iProov technology into its own applications. Because iProov develops the core liveness detection technology, it maintains the technical documentation and source code related to its operation and employs the engineers responsible for its development and operation. *LG Elecs.*, 211 F.R.D. at 365 ("Accordingly, Quanta may not have the same knowledge that Apple has about the design of the Apple products, and thus may not be able to adequately represent

Apple's interests in this litigation."); *Honeywell Int'l*, 2005 U.S. Dist. LEXIS 22933, at *13 ("Finally, because [intervenor] is uniquely situated to understand and defend its own product, its interests are not adequately represented by existing parties to the litigation.").

Accordingly, this factor also favors iProov. Having satisfied all factors, iProov should be allowed to intervene as of right.

B. iProov is, Alternatively, Entitled to Permissive Intervention Pursuant to Fed. R. Civ. P. 24(b)

Federal Rule of Civil Procedure 24(b) provides that court may, upon a timely motion, permit a party to intervene who "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Thus, "[p]ermissive intervention to litigate a claim on the merits under Rule 24(b) requires (1) an independent ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the movant's claim or defense and the main action." *Beckman Indus. v. Int'l Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992). Rule 24(b) "plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation." *SEC v. United States Realty & Improvement Co.*, 310 U.S. 434, 459 (1940). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

Permissive intervention in a situation similar to this case has long been supported by courts. *See HBB Ltd. Pshp. v. Ford Motor Co.*, No. 92-C-3287, 1992 U.S. Dist. LEXIS 17543, at *4 (N.D. Ill. Oct. 2, 1992) ("Permitting the intervention by a manufacturer in a patent infringement case against its customers is well supported by case law.") (collecting cases). Although unnecessary to grant iProov's motion for permissive intervention, the Court independently has jurisdiction over the dispute between iProov and FaceTec because FaceTec alleges that iProov's liveness detection technology infringes the Patents-in-Suit. *See Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011) ("We therefore clarify that the independent jurisdictional grounds requirement does not apply to proposed intervenors

in federal-question cases when the proposed intervenor is not raising new claims."). And, as discussed above, iProov's motion is timely.

Moreover, there exist many common questions of law and fact between iProov's defenses and the main action, including, but not limited to, claim construction, noninfringement, invalidity, and whether iProov's customers, including Jumio, infringe the Patents-in-Suit by using the accused liveness detection technology, which may subject iProov to discovery and, as discussed above, result in a judgment that would affect iProov. *See HBB Ltd. Pshp.*, 1992 U.S. Dist. LEXIS 17543, at *4; *see also LG Elecs.*, 211 F.R.D. at 366 (granting permissive intervention where intervenor sought to intervene when its products would be added to infringement contentions, and holding that "Apple's desire to prevent LGE from amending its infringement allegations to include Apple products obviously has a question of law and fact in common with LGE's request to include those products in its infringement contentions.").

Further, as discussed above, there is no risk of prejudice or undue delay, and iProov's involvement in this suit will only serve to enhance the efficiency of the proceedings. On the contrary, should its Motion be denied, iProov will experience certain prejudice in the form of being unable to defend its product and customer against claims of infringement. Accordingly, iProov should be permitted to intervene and its motion granted.

III. CONCLUSION

iProov respectfully requests this Court grant its Motion to Intervene as of Right, or, in the alternative, its Motion for Permissive Intervention.

Dated: September 16, 2024 By: /s/ *Ryan E. Hatch*

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