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

VALTRUS INNOVATIONS LTD. and KEY PATENT INNOVATIONS LTD., ***Plaintiffs*,** **v.** **SAP AMERICA, INC. and SAP SE,** ***Defendants*.**	**Civil Action No. 2:24-cv-21** **JURY TRIAL DEMANDED** [redacted]

SAP AMERICA, INC. AND SAP SE'S MOTION TO RECONSIDER PARTIAL DENIAL OF SAP'S MOTION TO DISMISS AND GRANT OF VALTRUS'S MOTION FOR LEAVE TO AMEND COMPLAINT (ECF 83)

TABLE OF CONTENTS

Page

I. BACKGROUND 2

A. In 2021, Valtrus Loses All Exclusionary Rights to the Asserted Patents 2

B. Jurisdictional Problems Arise in Valtrus I and SAP I 3

C. Valtrus Responds, and the Court Issues Its Memorandum and Opinion 5

D. SAP Seeks Jurisdictionally Relevant Documents 5

II. LEGAL STANDARD 6

III. ARGUMENT 6

A. A Bald Authorization to File Suit Does Not Confer Standing 6

B. Valtrus Did Not Prove that It Had Article III Standing by a Preponderance of the Evidence 8

1. Appellate courts routinely refuse to assume facts to find standing exists. 9

2. To find that standing exists, the Court must make factual inferences that are impermissibly speculative. 10

3. Valtrus should not be allowed to supplement the record. 11

C. Good Cause Did Not Exist to Join KPI as a Party 11

1. Valtrus was solely responsible for any delays. 12

2. The Court misapplied Rule 19 when it found that joinder was important. 12

3. Joinder will cause SAP to suffer undue prejudice. 13

4. A continuance did not—and will not—cure any prejudice. 15

IV. CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Cases

Associated Builders & Contractors W. Pa. v. Cmty. Coll. of Allegheny Cnty.,
81 F.4th 279 (3d Cir. 2023) 10

AVX Corp. v. Presidio Components, Inc.,
823 F.3d 1357 (Fed. Cir. 2019).....9

Basinkeeper v. Bostick,
663 F. App'x 291 (5th Cir. 2016) 6

In re Cirba Inc.,
2021 WL 4302979 (Fed. Cir. Sept. 22, 2021) 6

Citizens for Const. Integrity v. Census Bureau,
115 F.4th 618 (D.C. Cir. 2024).....10, 11

Ctr. for Biological Diversity v. United States EPA,
937 F.3d 533 (5th Cir. 2019) 10

Deere & Co. v. Kinze Mfg. Inc.,
683 F. Supp. 3d 904 (S.D. Iowa 2023) 6, 8

Demahy v. Schwarz Pharma, Inc.,
702 F.3d 177 (5th Cir. 2012) 6

E.T. v. Paxton,
41 F.4th 709 (5th Cir. 2022) 6, 11

Enhanced Sec. Rsch., LLC v. Juniper Networks, Inc.,
2010 WL 2898298 (D. Del. July 20, 2010) 8

Fahim v. Marriott Hotel Servs.,
551 F.3d 344 (5th Cir. 2008) 12

Filgueira v. US Bank Nat'l Ass'n,
734 F.3d 420 (5th Cir. 2013) 12

Fleet Connect Sols. LLC v. Waste Connections US, Inc.,
2022 WL 2805132 (E.D. Tex. June 29, 2022).....15

Gen. Elec. Co. v. United Techs. Corp.,
928 F.3d 1349 (Fed. Cir. 2019).....9

Intell. Tech LLC v. Zebra Techs. Corp.,
101 F.4th 807 (Fed. Cir. 2024), *cert. denied*, No. 24-114, 2024 WL 4805903 (U.S. Nov. 18, 2024) 6, 10

JTEKT Corp. v. GKN Auto. Ltd.,
898 F.3d 1217 (Fed. Cir. 2018) 9

L.M. v. Town of Middleborough,
103 F.4th 854 (1st Cir. 2024) 10

Lone Star Silicon Innovations LLC v. Nanya Tech. Corp.,
925 F.3d 1225 (Fed. Cir. 2019) 13, 14

Lowe v. ShieldMark, Inc.,
2022 WL 3647773 (N.D. Ohio Aug. 23, 2022), *appeal pending*, No. 23-1871 (Fed. Cir. May 10, 2023) 8

Missouri v. Biden,
2024 WL 4664015 (5th Cir. Nov. 4, 2024) 9, 10

Morrow v. Microsoft Corp.,
499 F.3d 1332 (Fed. Cir. 2007) 1, 7, 8

Murthy v. Missouri,
603 U.S. 43 (2024) 9, 11

Ortho Pharm. Corp. v. Genetics Inst., Inc.,
52 F.3d 1026 (Fed. Cir. 1995) 13, 14

Owner-Operator Indep. Drivers Ass'n v. Nuclear Info. & Res. Serv. v. NRC,
457 F.3d 941 (9th Cir. 2006) 10, 11

Phigenix v. ImmunoGen, Inc.,
845 F.3d 1168 (Fed. Cir. 2017) 9

Shepherd v. Int'l Paper Co.,
372 F.3d 326 (5th Cir. 2004) 6

Sicom Sys., Ltd. v. Agilent Techs., Inc.,
427 F.3d 971 (Fed. Cir. 2005) 8

Statutes

35 U.S.C. § 281 5

35 U.S.C. § 286 14

Delaware Consumer Fraud Act 3

SAP - Exhibit 1111
SAP v. Valtrus et al. - IPR2025-00419
Page 4 of 22

Other Authorities

Fed. R. Civ. P. 12(b)(6).....12

Fed. R. Civ. P. 16(b)(4).....12, 14

Fed. R. Civ. P. 19.....13, 14

Fed. R. Civ. P. 59(e).....6

Fed. R. Civ. P. 60(b).....6

L.R. CV-7(a)(4).....6

U.S. Const., art. III..... *passim*

SAP asks the Court to reconsider two rulings: (1) that Valtrus has Article III standing and (2) that Key Patent Innovations Ltd. ("KPI") should and must be joined. The Court's November 8, 2024 opinion (ECF 83) denying-in-part SAP's Motion to Dismiss and granting Valtrus's Motion for Leave to Amend rests on three clear errors.

First, the Court erroneously conflated the right to sue with an exclusionary right. In *Morrow v. Microsoft Corp.*, 499 F.3d 1332 (Fed. Cir. 2007), the Federal Circuit rejected this proposition. There, the plaintiff had *even more* rights than Valtrus has here, and it *still* lacked an exclusionary right for standing purposes. *See id.* at 1341. The greater necessarily includes the lesser. So, if the *Morrow* plaintiff lacked standing, so does Valtrus. Valtrus neither has nor holds *any* exclusionary rights because those rights remain with KPI. Valtrus cannot take any action concerning the Asserted Patents without KPI's prior instruction. Specifically, Valtrus, acting on its own, cannot make, use, sell, license, sub-license, grant the right to sublicense, transfer, forgive activities that are prohibited under the patent statutes, or file suit against a party (like SAP). And even if KPI were to authorize Valtrus to file suit, *Morrow* makes clear that the right to sue does not amount to the necessary exclusionary right under Federal Circuit law.

Second, the Court, without holding an evidentiary hearing, erroneously found that Angela Quinlan's declaration satisfied Valtrus's evidentiary burden to prove standing. But the bald assertion that authority was granted to Valtrus from Ms. Quinlan (which is the sole grounds for the Court's finding) left necessary questions of corporate governance unanswered. Plaintiffs have not produced any documentary evidence from which the Court could answer:

- Did a quorum convene at *both* the Valtrus and KPI meetings related to the claimed authorization?
- Were sufficient votes cast at these meetings?
- Were these meetings held before *Valtrus I* was filed?
- Are there contemporaneous meeting minutes to indicate that these events happened (as Ms. Quinlan testified would exist during her deposition)?

By implicitly answering these questions in Valtrus's favor, the Court made factual findings without any evidentiary support. But the law is clear: Valtrus bears the burden to prove it has standing. The Court must hold Valtrus to it. It cannot backfill the gaps for Valtrus's benefit.

Third, the Court erred in its joinder analysis. The Court appeared to blame SAP for a three-month delay in identifying KPI as the proper plaintiff. *Id.* at 14. But SAP could not have acted any earlier. Valtrus did not disclose critical facts about KPI (including that it, not Valtrus, has exclusive control of all rights in the patents) until May 2024—1.5 months *after* the Court's deadline to join additional parties lapsed. Likewise, the Court erred when it said Federal Circuit precedent required KPI's joinder. The Federal Circuit's precedent mandates joinder only *if* Valtrus were an exclusive licensee. It is not. These twin errors, when considered with the incurable prejudice that SAP would suffer, warrant reconsideration of the Court's good cause and joinder analysis. Finally, joining KPI to this case under these circumstances is against public policy, as it rewards Valtrus for concealing the patentee's identity from SAP and the Court and falsely pleading that it held all right, title, and interest in the patents. This deceptive conduct should not stand, much less benefit the deceiver.

I. BACKGROUND

There are four related lawsuits among the parties:

Date Filed	Caption	Cause No.	Jurisdiction	Shorthand
Jan. 15, 2024	*Valtrus v. SAP*	No. 2:24-cv-21	E.D. Texas	*Valtrus I*
Jan. 15, 2024	*SAP v. Valtrus*	No. 1:24-cv-54	D. Delaware	*SAP I* (dismissed)
June 26, 2024	*SAP v. Valtrus*	No. 1:24-cv-756	D. Delaware	*SAP II*
Jul. 12, 2024	*Valtrus v. SAP*	No. 2:24-cv-533	E.D. Texas	*Valtrus II*

A. In 2021, Valtrus Loses All Exclusionary Rights to the Asserted Patents

In January 2021, Valtrus executed a Declaration of Trust (the "Trust"), [redacted]

[redacted] And yet, Valtrus withheld these facts during pre-suit discussions, and falsely claimed (and pled) that it owned all patent rights during litigation until SAP filed its Motion to Dismiss. Ex. A; Ex. B; ECF 1 ¶¶ 43, 51, 62; Ex. C ¶¶ 22–23.

B. Jurisdictional Problems Arise in *Valtrus I* and *SAP I*

After pre-suit discussions fell through, Valtrus filed *Valtrus I*. ECF 1. Its original complaint did not name KPI as a co-plaintiff or divulge the Trust's existence. *Id.* Rather, the original complaint falsely claimed that "Valtrus is the assignee and owns all right and title to" the Asserted Patents. *Id.* ¶ 5. SAP had no reason to believe that KPI (and not Valtrus) was the only party with any rights in the Asserted Patents.

Nearly contemporaneous to the minute with the filing of *Valtrus I*, SAP filed *SAP I*, a declaratory judgment action of non-infringement against Valtrus in the District of Delaware, including claims for violating the Delaware Consumer Fraud Act against Valtrus and Patent Platform Services, LLC ("PPS"). *See SAP I*, ECF 1. Valtrus and PPS moved to dismiss *SAP I* for lack of personal jurisdiction. *SAP I*, ECF 14. Before ruling on the motion, the District of Delaware

granted SAP's request for jurisdictional discovery, which allowed SAP to investigate personal jurisdiction issues raised by Valtrus and PPS. *SAP I*, ECF 20, ECF 28; Ex. D. SAP requested all documents, including meeting minutes, related to the acquisition, transfer, and enforcement of the Asserted Patents against Delaware or Delaware entities. Ex. E at 9–10. In response, Valtrus produced the Trust's formation papers on May 16, 2024. ECF 51-2; Ex. F. Three weeks later, on June 6, 2024, SAP deposed Ms. Quinlan, who conceded that Valtrus always acts under KPI's direction. ECF 51-17 at 73:17–20. Ms. Quinlan also explained the protocol for Valtrus to file a lawsuit. *Id.* at 72:3–21. According to Ms. Quinlan, [redacted] But Valtrus has never produced KPI's or Valtrus's meeting minutes demonstrating these meetings took place at all, much less that KPI validly authorized Valtrus to file *Valtrus I*.

During jurisdictional discovery, only *after* Valtrus produced the Trust and *after* Ms. Quinlan's June 6 deposition, did it first become apparent that Valtrus lacked all exclusionary rights in the Asserted Patents. *See* ECF 51-2, Sch. 1 § 3.1; ECF 83 at 8–9. Valtrus's disclosure occurred more than *two years* after it initiated licensing discussions, four months after it filed *Valtrus I*, and six weeks after this Court's deadline to join additional parties. But conspicuously missing from its production were any documents showing that KPI authorized Valtrus to file *Valtrus I* or any licensing agreements between KPI and Valtrus. Therefore, on June 27, 2024, only 21 days after learning Valtrus lacked exclusionary rights, SAP moved to dismiss this case, arguing that Valtrus lacked Article III standing and Valtrus was not a patentee who could sue under 35 U.S.C. § 281. ECF 51.

C. Valtrus Responds, and the Court Issues Its Memorandum and Opinion

Valtrus filed its Response and tried to cure its Article III defect by submitting a declaration from Ms. Quinlan, which contained a single, self-serving sentence to support Valtrus's standing arguments: "In my capacity for Key Patent, I authorized Valtrus's lawsuit against SAP in this action before Valtrus filed it on January 15, 2024." ECF 55-1 ¶ 5. On its face, the statement runs counter to the corporate governance requirements of board action Ms. Quinlan described in the testimony recited above. But even more striking is that any critical detail surrounding KPI's purported authorization were missing: When did KPI's and Valtrus's boards meet? Was a quorum present? Were enough votes cast? Valtrus also moved for leave to file an identical complaint, which only sought to add KPI as a co-plaintiff. ECF 56. But this request came four months after the Court's deadline to join additional parties. ECF 32 at 5; ECF 56. Without holding an evidentiary hearing, the Court issued its Order on November 8, 2024. ECF 83 at 16.

D. SAP Seeks Jurisdictionally Relevant Documents

On November 15, 2024, a week after the Court's Order, SAP served Valtrus and KPI a letter, which requested documents relating to the purported authorization of Valtrus to file this case. The letter also asserted that Valtrus and KPI waived attorney-client privilege as to any such documents. Ex. G. On November 26, 2024, the parties met and conferred, and Valtrus and KPI represented that they would search for and produce non-privileged documents relating to SAP's request. Clark Decl. ¶ 11. To date, Valtrus and KPI have only produced their company constitutions. Ex. H, I. Their inability to furnish more signals that they either (1) continue to withhold discovery more than *six months* after SAP repeatedly requested *Valtrus I* authorization documents or (2) confirms that no documentary evidence exists to support Ms. Quinlan's bald statement in her declaration.

II. LEGAL STANDARD

The Court assesses motions for reconsideration under Rule 59(e) or Rule 60(b)—depending on when the motion is filed. *Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 328 n.1 (5th Cir. 2004); L.R. CV-7(a)(4). Where, as here, the movant seeks reconsideration within 28 days of the ruling at issue, the request is assessed under Rule 59(e). *Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 182 n.2 (5th Cir. 2012). Rule 59(e) motions "serve the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." *Basinkeeper v. Bostick*, 663 F. App'x 291, 294 (5th Cir. 2016). If Article III standing is implicated, a court must fully the consider arguments against it:

> [T]he *plaintiffs* bear the burden of demonstrating that they have standing. That means arguments *in favor* of standing, like all arguments in favor of jurisdiction, can be forfeited or waived. But the same cannot be said for arguments *against* jurisdiction: Our Court, like every federal court, has a continuing obligation to assure itself of its own jurisdiction, *sua sponte* if necessary.

E.T. v. Paxton, 41 F.4th 709, 718 n.2 (5th Cir. 2022).

III. ARGUMENT

A. A Bald Authorization to File Suit Does Not Confer Standing

The Court legally erred when it found Valtrus had Article III standing based on KPI's authorization to file suit. To establish injury-in-fact for Article III standing, Valtrus must have an exclusionary right.[1] *Intell. Tech LLC v. Zebra Techs. Corp.*, 101 F.4th 807, 813 (Fed. Cir. 2024),

[1] The Court noted that since Valtrus had an exclusionary right in the Asserted Patents, "the Court need not address whether Article III requires a plaintiff to hold *any* exclusionary rights in the asserted patents." ECF 83 at 8. But the Federal Circuit has answered this question, "[T]he question for the injury-in-fact threshold is whether a party has *an* exclusionary right." *Intell. Tech*, 101 F.4th 807 at 814; *Deere & Co. v. Kinze Mfg. Inc.*, 683 F. Supp. 3d 904, 913–14 (S.D. Iowa 2023) ("Recent Federal Circuit precedent has emphasized that the possession of exclusionary rights is necessary for constitutional standing in a patent infringement suit." (citing *In re Cirba Inc.*, 2021 WL 4302979, at *3 (Fed. Cir. Sept. 22, 2021)).

cert. denied, No. 24-114, 2024 WL 4805903 (U.S. Nov. 18, 2024). "Exclusionary rights" in a patent are defined as the rights to exclude others from making, using, selling, offering to sell, importing, or otherwise practicing the patent. *Morrow v. Microsoft Corp.*, 499 F.3d 1332, 1339 (Fed. Cir. 2007).

In *Morrow*, the Federal Circuit held that there was no Article III standing when a plaintiff had the right to sue without "the underlying legally protected interests created by the patent statutes—the right to exclude." *Id.* at 1342. There, a bankruptcy liquidation plan divided a patent owner's assets into three trusts. *Id.* at 1335. One of the trusts, GUCLT, had the unfettered right to sue anyone other than certain shareholders. *Id.* at 1338. But GUCLT did not have "the right to make, use, or sell" the claimed invention of the asserted patent, the right to grant licenses or sublicenses, or the right to collect any licensing royalties. *Id.* Instead, the right to make, use, or sell was provided to another trust, which wielded the right to settle patent litigation, license to third parties, and collect royalties. *Id.* On these facts, the Federal Circuit held that for any suit brought by GUCLT, GUCLT's "grievance [was] that the exclusionary interests held by [the other trust were] being violated." *Id.* at 1342. Thus, the panel held Article III standing did not exist.

Morrow is dispositive here. Valtrus has even *fewer* rights than GUCLT did in *Morrow*, and GUCLT's rights were insufficient to establish Article III standing. KPI retains all rights to sue and to exclude.[2] ECF 51-2 at Sch. 1 § 1.5. Even if the Trust permitted KPI to authorize Valtrus to file

[2] The Trust [redacted]. Valtrus being "authorized" to act, or taking action with KPI's consent, is contradictory because consent requires an independent actor to seek approval, whereas direction means that Valtrus acts as an extension of KPI, executing KPI's will directly. ECF 51-2 § 2.1(c). Valtrus can act [redacted]

this case (as KPI claims), a right to sue untethered from an exclusionary right is insufficient for Article III standing under *Morrow* and its progeny. *Morrow*, 499 F.3d at 1342; *Deere*, 683 F. Supp. 3d at 921 (observing *Morrow* held "the right to initiate a patent enforcement action is not an exclusionary right supportive of constitutional standing"); *id.* at 920 (finding the right "associated with the initiation or control of patent infringement litigation do not constitute exclusionary rights"); *Lowe v. ShieldMark, Inc.*, 2022 WL 3647773, at *4 (N.D. Ohio Aug. 23, 2022), *appeal pending*, No. 23-1871 (Fed. Cir. May 10, 2023) ("Plaintiff Lowe no longer has standing for this lawsuit. In the Lowe-InSite North Carolina agreement, Lowe gave up his entire interest in the '664 Patent, including all causes of action."); *Enhanced Sec. Rsch., LLC v. Juniper Networks, Inc.*, 2010 WL 2898298, at *4 (D. Del. July 20, 2010) (Farnan, J.) (finding the purchase agreement gave an entity the exclusionary rights and the plaintiff accordingly lacked constitutional standing because the agreement prohibited the plaintiff "from making any decision with respect to the assertion of its patent rights, the conduct of litigation relating to the patents-in-suit, or the settlement or resolution of such litigation without the prior written consent" of the entity). This makes sense. The right to sue is merely "the means by which the patentee exercises 'the right to exclude others from making, using, and selling the claimed invention.'" *Sicom Sys., Ltd. v. Agilent Techs., Inc.*, 427 F.3d 971, 979 (Fed. Cir. 2005). Even assuming that KPI's board validly authorized Valtrus to file this suit, a fact belied by the record, such a right is not equivalent to an exclusionary right for standing purposes. The Court's erred in ruling otherwise.

B. Valtrus Did Not Prove that It Had Article III Standing by a Preponderance of the Evidence

Valtrus's failure to provide evidence beyond Ms. Quinlan's sole, self-serving sentence prevents it from carrying its burden to prove Article III standing. This failure fatally undercuts this Court's previous finding. Missing from this record is evidence that, under Federal Circuit

precedent, would put the required "meat" on the bare "bone" of Ms. Quinlan's statement of her personally authorizing Valtrus, such as board minutes, proof of a quorum, or holding a board meeting of any entity at all in compliance with bylaws, corporate governance requirements, and Ms. Quinlan's own testimony about how authorization works for KPI. The plaintiff bears the burden of establishing standing at the time it filed suit. *Murthy v. Missouri*, 603 U.S. 43, 58 (2024). If standing hinges on a third party's actions (KPI), the Supreme Court has directed district courts to be "reluctant" to engage in "guesswork" on how that third party acted. *Murthy,* 603 U.S. at 57.

1. Appellate courts routinely refuse to assume facts to find standing exists.

Appellate courts regularly hold—and the Fifth Circuit recently reiterated—that a declaration will not prove standing if the court must assume a "speculative chain of possibilities" to backfill factual gaps. *Missouri v. Biden*, 2024 WL 4664015, at *4 (5th Cir. Nov. 4, 2024). For instance, the Federal Circuit dismissed an appeal where two declarations said the appellant would be injured by increased economic competition. *Phigenix v. ImmunoGen, Inc.*, 845 F.3d 1168, 1174–75 (Fed. Cir. 2017).[3] But the declarations lacked sufficient specificity, such as facts about existing licensing agreements and details about revenue generation. *Id.* Thus, through *Phigenix*, the Federal Circuit reaffirmed an unremarkable proposition: If a plaintiff wants to show it has standing, it must prove standing with specifics. A single general statement will not suffice. This precedent has even more force where, as here, board action of a third party, rather than a decision by a sole officer, is required to validly transfer a right to sue.

[3] *Phigenix* is not an outlier case. The Federal Circuit has dismissed at least three other appeals where a declarant failed to supply specifics. *See Gen. Elec. Co. v. United Techs. Corp.*, 928 F.3d 1349, 1354 (Fed. Cir. 2019); *AVX Corp. v. Presidio Components, Inc.*, 823 F.3d 1357, 1365 (Fed. Cir. 2019); *JTEKT Corp. v. GKN Auto. Ltd.*, 898 F.3d 1217, 1221 (Fed. Cir. 2018).

Likewise, the Fifth Circuit recently held that a plaintiff did not prove Article III standing because a declaration did not provide detail as to factual matters. *See Missouri*, 2024 WL 4664015, at *4. In another case, the Fifth Circuit held the plaintiffs failed to establish standing because their declarants did not identify, precisely, where they would suffer their environmental injury. *See Ctr. for Biological Diversity v. United States EPA*, 937 F.3d 533, 537–42 (5th Cir. 2019). Other appellate courts regularly hold that no standing exists based on an inadequately specific sworn declaration.[4] Although these cases arise in many contexts, the plaintiffs' evidence was sorely lacking in each case. To overcome these factual gaps and find standing, the courts of appeals would have had to fill in the gaps for the plaintiffs' benefit, and they rightly declined to do so.

2. To find that standing exists, the Court must make factual inferences that are impermissibly speculative.

In light of Ms. Quinlan's deposition, her conclusory declaration cannot prove that Valtrus had standing when it filed this lawsuit. To have Article III standing in this case, Valtrus had to possess at least one exclusionary right in the Asserted Patents. *Intell. Tech.*, 101 F.4th at 814. But in 2021, Valtrus transferred all its exclusionary rights when it executed the Trust with KPI. *See* ECF 51-2. Even if Valtrus could file suit with KPI's authorization (*id.* at Sch. 1 § 3.1), Valtrus has not—and cannot—prove that KPI legally authorized Valtrus to bring this lawsuit.

Ms. Quinlan's declaration lacks important details, surrounding her single statement that she "authorized" *Valtrus I*. ECF 55-1 ¶ 5. Ms. Quinlan does not have the power to unilaterally authorize a lawsuit. ECF 51-17 at 72:10–21. At a minimum, Valtrus's and KPI's board of directors must meet with a quorum of at least two board members *and* vote. *Id.*; ECF 51-30 ¶ 1; ECF 51-31

[4] *See L.M. v. Town of Middleborough*, 103 F.4th 854, 884 (1st Cir. 2024); *Associated Builders & Contractors W. Pa. v. Cmty. Coll. of Allegheny Cnty.*, 81 F.4th 279, 290–91 (3d Cir. 2023); *Owner-Operator Indep. Drivers Ass'n v. Nuclear Info. & Res. Serv. v. NRC*, 457 F.3d 941, 953–55 (9th Cir. 2006); *Citizens for Const. Integrity v. Census Bureau*, 115 F.4th 618, 628–29 (D.C. Cir. 2024).

¶ 1; Ex. H § 34(d); Ex. I § 34(d). Yet, Ms. Quinlan's declaration (and indeed the record overall) is utterly silent on these factual questions. The following questions remain unanswered:

- Did a quorum convene at *both* the Valtrus and KPI meetings?
- Were sufficient votes cast at these meetings?
- Were these meetings held before *Valtrus I* was filed?
- Are there contemporaneous meeting minutes to confirm these events happened?

These details matter. The Court is prohibited from engaging in "guesswork," especially when doing so requires speculating on what another person or entity did. *Murthy*, 603 U.S. at 57. Here, Valtrus has asked the Court to indulge "in the conceivable," even though Valtrus has deprived the Court (and SAP) of "the entire story." *Owner-Operator*, 878 F.3d at 1102; *Citizens*, 115 F.4th at 629. Because Valtrus's evidence is legally insufficient, the Court should reconsider its ruling and dismiss this action for lack of subject matter jurisdiction.

3. Valtrus should not be allowed to supplement the record.

At this point, Valtrus has had *three* opportunities to provide evidence of standing: (1) when it filed its response to SAP's Motion to Dismiss, (2) when it filed its sur-reply, and (3) when SAP asked it to produce relevant documents on November 15, 2024. Valtrus's failure to provide SAP or this Court with the relevant facts constitutes waiver and forfeiture of any "new" information that Valtrus may attach in support of its response brief, which should be ignored. *See E.T.*, 41 F.4th at 718 n.2 (explaining arguments in favor of standing can be forfeited or waived).

C. Good Cause Did Not Exist to Join KPI as a Party

Even if the Court finds that Valtrus had Article III standing, it should still dismiss this case under Rule 12(b)(6) because there was no good cause to modify the Court's scheduling order, and, in turn, join KPI. ECF 83 at 15–16. To modify a scheduling order after a deadline has passed, the movant must show good cause. *See* Fed. R. Civ. P. 16(b)(4). The movant must show that the

deadline could not "reasonably be met despite the diligence of the party needing the extension." *Fahim v. Marriott Hotel Servs.*, 551 F.3d 344, 348 (5th Cir. 2008).

1. Valtrus was solely responsible for any delays.

The Court faulted both parties for contributing to the delay in Valtrus's Motion for Leave and weighed this factor neutrally. ECF 83 at 14. This ruling erroneously characterized the record. The delay was solely precipitated by Valtrus. As SAP has explained, Valtrus repeatedly failed to timely disclose critical information Valtrus's possession on who possessed exclusionary and substantial rights over the Asserted Patents. Given the timing, SAP moved to dismiss this case as soon as reasonably practicable (within three weeks) *after* Valtrus produced the Trust on May 16, 2024, and Ms. Quinlan's deposition on June 6, 2024. Valtrus and KPI concealed this information for more than two years. SAP could not have moved for dismissal any sooner, and the Court erred when it suggested otherwise. *See id.*

As the movant, Valtrus has the burden to show why the Court's deadline should be modified. It did not meet its burden. Valtrus did not disclose the Trust or that it lacked rights in the Asserted Patents during pre-suit negotiations or in its initial document productions in this case. Instead, it falsely claimed the opposite, even in its original complaint. Valtrus could have, but did not join KPI as a co-plaintiff at this lawsuit's inception. Rather, Valtrus waited until SAP got jurisdictional discovery in *SAP I* and moved to dismiss. *Id.* at 14 (noting that "Valtrus should have joined KPI sooner"). This factor should have weighed against Valtrus.

2. The Court misapplied Rule 19 when it found that joinder was important.

The Court found the second Rule 19 factor strongly weighed in Valtrus's favor, explaining that "the Federal Circuit has interpreted Rule 19 . . . *as directing courts to join patentees along with licensees who otherwise have standing*." ECF 83 at 14. But this rule was misapplied. Rule 19 only applies to *exclusive licensees*. There is no proof that Valtrus is an exclusive licensee. Because

the Court had no evidentiary basis to make this factual finding, it erred when it ruled joinder was required under Rule 19.

If a patent owner executes an exclusive license, the owner incurs an "obligation" "to protect all lawful exclusive licensees and sublicensees against infringers." *Lone Star Silicon Innovations LLC v. Nanya Tech. Corp.*, 925 F.3d 1225, 1236 (Fed. Cir. 2019). This obligation underpins the mandatory joinder rule. *Id.* If an exclusive licensee could not forcibly join the patent owner, licensees would wield exclusionary rights without a remedy. *Id.* The mandatory joinder rule corrects this wrong and allows exclusive licensees to "secure justice." *Id.* Critically, this mandatory joinder rule does not exist for nonexclusive licensees. *See Ortho Pharm. Corp. v. Genetics Inst., Inc.*, 52 F.3d 1026, 1031 (Fed. Cir. 1995).

Here, the record is devoid of any evidence that Valtrus is a licensee—exclusive or non-exclusive. During jurisdictional discovery in *SAP I*, Valtrus did not produce any documents showing that KPI granted Valtrus a license to the Asserted Patents. Nor did Valtrus produce any such documents when it moved for leave to amend its complaint. Because Valtrus is not an exclusive licensee, Federal Circuit precedent did not require joinder under Rule 19. *See Lone Star*, 925 F.3d at 1236. And even if Valtrus were a nonexclusive licensee, it is not entitled to sue with or without KPI. *See Ortho Pharm.*, 52 F.3d at 1031. Valtrus cannot join KPI under Rule 19 or 20, and this factor should have weighed against Valtrus.

3. <u>Joinder will cause SAP to suffer undue prejudice.</u>

Likewise, the Court erred in its prejudice assessment. SAP previously explained that four of the seven Asserted Patents expired years ago. ECF 70 at 7 & n.7. Because these patents expired, the pre-suit damages available to KPI hinges on whether *Valtrus I*'s filing date controls. *See* 35 U.S.C. § 286 (limiting damages to six years before the complaint was filed). SAP argued that Valtrus's procedural ploy for joinder would prejudice SAP. ECF 70 at 7. The Court rejected this

argument, noting that SAP cited no authority that recognized increased exposure to damages was "a legitimate source of prejudice" under Rule 16(b)(4). ECF 83 at 15.

Yet now, contrary to their prior representations, Valtrus and KPI have asked to maintain and consolidate *Valtrus II* solely to dodge the effects of 35 U.S.C. § 286 and preserve damages—thus, the benefit to Valtrus, and conversely, the prejudice to SAP, is the damages (which SAP already argued). *See* ECF 89 at 1–2. If there were no prejudice, Valtrus would simply drop its now admittedly deficient *Valtrus I* case and instead proceed with the "corrected" *Valtrus II*. But tellingly, even Plaintiffs doubt *Valtrus I*'s viability. *See* ECF 85 at 3. And so, Plaintiffs continue to hedge their bets that either (1) the Court is correct that *Valtrus I* has Article III standing, and *Valtrus II* should be dismissed as duplicative or (2) the Court is incorrect that *Valtrus I* has Article III standing, and *Valtrus II* should proceed. But *Valtrus II* is nothing more than a procedural ploy to insulate Article III defects that must have existed at the outset of *Valtrus I* in violation of the duplicative-litigation doctrine. *Valtrus II*, ECF 5.

The Federal Circuit recognizes that litigation gimmicks to improperly preserve damages is a legitimate form of prejudice. *Lone Star*, 925 F.3d at 1229 (acknowledging that the district court declined to join AMD because doing so would "reward Lone Star for its litigation gimmick and unfairly prejudice defendants" by allowing AMD to "enjoy earlier filing dates for [its] claims than defendants would for any counterclaims for purposes of recovering damages.") (citing 35 U.S.C. § 286); *id.* at 1239 (vacating dismissal but leaving district court's decision refusing to join AMD intact). Valtrus should not be rewarded for its litigation gimmick here.

Also, Valtrus's conduct throughout this case has severely prejudiced SAP. Valtrus concealed the Trust for nearly two years. During that time, Valtrus misrepresented that it "is the assignee and owns all right and title to" the Asserted Patents. ECF 1 ¶ 5. But for jurisdictional discovery in *SAP I* unrelated to standing, the Trust would have never been produced in this case,

allowing Valtrus (without KPI) to proceed with this case under false pretenses.[5] These misrepresentations and lack of candor contribute to the prejudice that SAP continues to endure. And they confirm that joining KPI would contravene public policy, since joinder would reward this deceptive behavior. This factor should have weighed heavily against Valtrus.

4. A continuance did not—and will not—cure any prejudice.

Here, a continuance would not cure any prejudice to SAP. Joining KPI is not required. Plus, granting a continuance would impose additional costs on SAP, as it must defend against an expanded damages window. This factor should have weighed in SAP's favor.

IV. CONCLUSION

Based on the foregoing, SAP asks that the Court grant SAP's Motion and reconsider the Court's prior rulings. The Court should find that Valtrus lacked Article III standing when it filed this lawsuit and dismiss this case. Alternatively, the Court should find good cause did not support KPI's joinder and dismiss this case.

[5] It is likely that SAP would not have obtained the Trust through discovery in this case without first making a good-faith challenge to Valtrus's standing, which would not have been possible without the Trust. *See, e.g.*, *Fleet Connect Sols. LLC v. Waste Connections US, Inc.*, 2022 WL 2805132, at *3 (E.D. Tex. June 29, 2022) (Gilstrap, C.J.) (denying the defendant's motion to compel litigation funding agreements to determine ownership of the asserted patents prior to the defendant making a good-faith challenge to standing).

Dated: December 6, 2024

Respectfully submitted,

/s/ Thomas M. Melsheimer

Thomas M. Melsheimer
State Bar No. 13922550
tmelsheimer@winston.com
M. Brett Johnson
mbjohnson@winston.com
State Bar No. 790975
Michael Bittner
State Bar No. 24064905
mbittner@winston.com
Patrick Clark
State Bar No. 24115706
pclark@winston.com
Samuel Riebe
State Bar No. 24136101
sriebe@winston.com
Thanh D. Nguyen
State Bar No. 24126931
tdnguyen@winston.com
WINSTON & STRAWN LLP
2121 N. Pearl St., 9th Floor
Dallas, TX 75201
Tel: (214) 453-6500

ATTORNEYS FOR SAP AMERICA, INC. and SAP SE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by email on all counsel of record on December 6, 2024.

/s/ *Thomas M. Melsheimer*
Thomas M. Melsheimer

[redacted]

[redacted]