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

SPORTSCASTR INC. (d/b/a PANDA INTERACTIVE), Plaintiff, v. SPORTRADAR GROUP, AG, and SPORTRADAR AG, Defendants.	Civil Action No. 2:23-cv-00472-JRG JURY TRIAL DEMANDED

PLAINTIFF'S CORRECTED MOTION FOR LEAVE TO AMEND INFRINGEMENT CONTENTIONS

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Plaintiff SportsCastr Inc. d/b/a PANDA Interactive ("PANDA") respectfully requests leave to amend its infringement contentions for two reasons as set forth below. Defendants Sportradar Group AG and Sportradar AG (collectively, "Defendants") oppose this motion on both grounds.

First, PANDA seeks leave to address a clerical error that resulted in PANDA's initial infringement contentions ("Initial Contentions") not being served on-time. PANDA prepared its Initial Contentions and believed it had timely served Defendants with those contentions via an FTP site. However, the wrong email addresses were inadvertently entered into the FTP site—specifically, PANDA entered the email addresses for counsel in the co-pending related case (*SportsCastr Inc. v. Genius Sports Ltd*., EDTX-2-23-cv-00471). Defendants did not ask where the infringement contentions were, even though they realized they did not receive them within days. Instead, they made the strategic decision to sit on this information for months to try and manufacture prejudice when PANDA could have fixed it immediately. While this mistake was regrettable, it is also easily remedied given the early stage of this litigation and the lack of prejudice to Defendants. And the importance of granting leave cannot be overstated; denial would result in the elimination of ***117*** asserted claims from the case because of a simple clerical error.

Defendants' opposition to this motion—more than 7 months before the close of fact discovery—is the culmination of a deliberate strategy to manufacture prejudice in pursuit of a substantive windfall in this case. Rather than notifying PANDA the next day that they had not received the Initial Contentions, Defendants remained silent for ***two months***. When they did speak, Defendants obfuscated their complaints in ambiguous discovery objections or buried them in a footnote in their thousands of pages of invalidity contentions. When PANDA finally realized that Defendants had not received the Initial Contentions ***at all***, it immediately served them. PANDA also offered to accommodate any request for additional time Defendants needed to address the

Initial Contentions, including time to serve amended invalidity contentions.

Defendants had no interest in finding a solution. Instead, when asked during a meet and confer why they had not spoken up sooner, Defendants' counsel stated, "It is not our job to police your mistakes." Maybe so. But it would also be unfair to permit Defendants to lay behind the log and knowingly manufacture prejudice (to the extent there is any), and then benefit from that same prejudice. The Court should reject Defendants' gambit, allow PANDA to serve its Initial Contentions, and permit this case to be litigated on the merits.

Second, PANDA also seeks leave to amend its infringement contentions based on Defendants' non-public information (including source code and technical documents) produced during discovery ("Amended Contentions"). This information was produced after PANDA's Initial Contentions were due and therefore could not have been included therein. Amendments based on information learned in discovery are routine, particularly in software cases like this one where the source code for the Accused Products is not publicly available. The Amended Contentions address each of the 117 additional claims and the full set of Accused Products set forth in the Initial Contentions. They are also being served expeditiously—about two months from when PANDA first received access to Defendants' source code. Therefore, regardless of whether the Court denies leave to serve the Initial Contentions, PANDA respectfully requests that the Court permit the Amended Contentions that are based on this non-public information, including asserting each of the claims PANDA found were infringed by each of the Accused Products.

I. Background

A. PANDA Mistakenly Believed It Timely Served Its March 11 Initial Infringement Contentions (Exs. 6-17, 20)

The deadline for PANDA to serve its infringement contentions was March 11, 2024. Dkt. 14. On that day, PANDA uploaded the Initial Contentions onto an FTP website for service.

However, due to an inadvertent clerical error, access instructions to download the infringement contentions from the FTP website were not emailed to counsel for the Sportradar Defendants—they were sent to counsel for the defendants in the co-pending Genius case (*SportsCastr Inc. v. Genius Sports Ltd*. EDTX-2-23-cv-00471). *See* Ex. 1; Patrick Lafferty Declaration at ¶¶2-3. Timestamps available on the FTP website (in the red box in the image below) confirm that the Initial Contentions were uploaded on—and have remained unchanged since—March 11, 2024.

Exs. 2; *see also* Exs. 6-17, 20.

On March 12—the day after the Initial Contentions were due—Defendants did not contact PANDA and ask why the contentions had not been served. In fact, during a recent meet and confer, Defendants' counsel explained that they thought it was "strange" that they had not received the contentions, but simply decided that they would treat the Rule 11 claim charts attached to the ***First Amended Complaint*** as PANDA's infringement contentions. *See* Matthew Wood Declaration ¶4. Of course, any clear communication—an email, phone call, or other communication—at any point asking why the Initial Contentions were not served would have alerted PANDA of the issue so that it could have easily remedied the situation.

Indeed, Defendants appear to have gone out of their way to avoid directly addressing this

issue with PANDA. For example, PANDA has repeatedly emailed Defendants asking them to make certain discovery available—including source code. Defendants never raised PANDA's lack of infringement contentions as an impediment in these email communications. Likewise, the parties had several meet and confers regarding discovery that would necessarily implicate PANDA's infringement contentions—such as PANDA requesting discovery on multiple Accused Products—yet Defendants did not mention that they did not have PANDA's contentions.

Instead, Defendants waited until May 6, 2024—nearly ***two months*** later—before making any reference to the Initial Contentions at all. Ex. 3. But this reference comprised a footnote in a standard (boilerplate) section of their Invalidity Contentions entitled "Background Information, General Introduction, and Reservation of Rights." This footnote—and the import of it—went unnoticed to PANDA since the invalidity contentions also contained over ten thousand pages of materials, including: a cover document with 63 additional pages of substance, *Id.*; ***112*** claim charts asserting invalidity based on 28 separate prior art references, *id*. at 48-49; and four additional claim charts alleging invalidity based on Section 101. *Id*. at 64.

The next time Defendants allege they notified PANDA that they did not receive the Initial Contentions was not until another month later—on June 7, 2024—in unrelated discovery responses. Ex. 4. But there, among dozens of other objections, Defendants simply included objections that "Plaintiff has not properly served infringement contentions in this case" before proceeding to answer various interrogatories. And while in some instances, Defendants stated a shorter version that "Plaintiff has not served infringement contentions in this case," in context, PANDA did not appreciate the import of those objections, particularly since Defendants proceeded to answer interrogatories. And of course, Defendants objections here contradict their position that they somehow believed PANDA's Rule 11 claim charts attached to the Amended Complaint were

intended to be infringement contentions.

That PANDA was not actually aware of the clerical error cannot be reasonably disputed. On July 8, 2024, PANDA sent an email to Defendants notifying them that Defendants had not produced technical documents for many features of the Accused Products. That email identified page numbers from the Initial Contentions that contained references to those features. Ex. 5 at 2. The parties then had a meet and confer concerning the documents, and PANDA followed-up on July 16 stating: "the below citations are to the initial infringement contentions ***served March 11, 2024***." *Id*. at 2.

It was at this point that, for the first time on July 19, 2024 in a correspondence, Defendants stated that "PANDA never served separate infringement contentions as required under the local rules." *Id*. at 1. But Defendants continued the charade that they believed the Rule 11 charts were PANDA's infringement contentions, stating that: "Assuming you are referring to the exhibits attached to Plaintiff's First Amended Complaint, your page identifications do not make sense." *Id*.

On July 22, PANDA responded with bewilderment, explaining that (1) "[PANDA] served Plaintiffs' Disclosure of Asserted Claims and Preliminary Infringement Contentions on March 11, 2024"; (2) "The references in the prior email correspond to the attachments thereto"; and (3) "This was separate and apart from the First Amended Complaint and attachments filed with the Court on March 8." *Id*. It was at this point that PANDA realized that something was amiss. PANDA then investigated the March 11 service of the Initial Contentions and realized that the wrong email addresses were included in the FTP site. Lafferty Declaration at ¶¶5-6. It then corrected the error and served the Initial Contentions on that very same day. *Id.*

The parties then exchanged correspondences on the Initial Contentions and the Amended Contentions discussed below and met and conferred on August 2, but could not resolve the dispute.

B. Plaintiff Diligently Worked To Amend Its Contentions Based on Discovery

PANDA's Amended Contentions, Exs. 6-17 and 20, incorporate the non-public source code and technical documents that Defendants produced during this litigation. PANDA seeks leave for this amendment just over two months after first receiving access to this source code.

Patent Rule 3-4(a) requires that "[w]ith the 'Invalidity Contentions,' the party opposing a claim of patent infringement must produce … Source code … sufficient to show the operation of any aspects or elements of an Accused Instrumentality …." Thus, Defendants were required to produce its source code on May 6, 2024. Dkt. 14. They failed to do so. After repeated requests from PANDA, Defendants finally made their source code available to PANDA on May 29. Ex. 18.

Despite Defendants' delays, PANDA worked diligently to examine the source code and internal technical documents that Defendants provided to update its Initial Contentions (which PANDA still believed to be in Defendants' possession). PANDA's experts traveled to St. Louis to inspect Defendants' source code over several weeks, beginning on May 29 (the first day Defendants made their code available). Following this review, PANDA prepared the Amended Contentions (Exs. 21-33), which cite source code for each limitation, including dependent claims.

C. Defendants' Position

On July 22, one business day after being informed that Defendants had not received its Initial Contentions, PANDA corrected the issue with its FTP website and informed Defendants as such. On July 29, PANDA also informed Defendants that it intended to serve Amended Infringement Contentions to address new information learned in discovery, including from Defendants' source code. Ex. 19 at 2. On August 2, Defendants informed PANDA that it considered PANDA's infringement contentions untimely and took the position that PANDA should be bound by the Rule 11 Claim Charts that were attached to its March 8 First Amended Complaint, which address only exemplary claims of each Asserted Patent. Matthew Wood Declaration ¶6.

II. Legal Standard

"P.R. 3-6(b) allows a party to supplement its infringement contentions 'by order of the Court, which shall be entered only upon a showing of good cause.'" *Greenthread, LLC v. OmniVision Techs., Inc.*, 2024 WL 1913130, at *3 (E.D. Tex. May 1, 2024) (quoting P.R. 3-6(b)). "The Court considers four factors when determining good cause: (1) the explanation for the failure to meet the deadline; (2) the importance of the thing that would be excluded if the proposed amendment is not allowed; (3) potential prejudice in allowing the thing that would be excluded; and (4) the availability of a continuance to cure such prejudice." *Id.* (quotation omitted).

III. Argument

A. The Court Should Grant Leave For the March 11 Initial Contentions

PANDA should be granted leave to serve, and be permitted to rely on, its March 11 Initial Contentions. Exs. 6-17, 20. These contentions are central to the case and cover ***117*** additional infringed claims not in the First Amended Complaint that Defendants seek to exclude from the case. PANDA attempted to serve them on Defendants on the day they were due and believed it had done so. And once PANDA became aware of the clerical error in the email addresses entered on the FTP site, it immediately corrected the issue. This case is still early in the process, with the first claim construction exchanges still two months away, fact discovery continuing for seven more months, and trial a year away. Any alleged prejudice to Defendants can be readily addressed.

Furthermore, Defendants did nothing to mitigate that prejudice, but instead lay behind the proverbial log for months. Defendants were well-aware that they did not receive the Initial Contentions on March 11 and yet intentionally said nothing for months—and when they finally did say something, buried those statements in the hopes the issue would continue unnoticed. Defendants succeeded, at least for a while—turning an obvious error that could have been corrected in minutes into an orchestrated and artificial months-long delay. Defendants should not

obtain any benefit from its gamesmanship.

1. There is a Good Explanation for the Failure To Meet the Deadline

The first factor, explanation for failure to meet the deadline, counsels in favor of allowing PANDA's Initial Infringement Contentions. "Courts have allowed amendments when the movant made an honest mistake, the request to amend did not appear to be motivated by gamesmanship, or where there was still ample time left in discovery." *Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. CV 12-630 LHK, 2012 WL 5632618, at *5 (N.D. Cal. Nov. 15, 2012). In this case, all three apply.

a. PANDA believed it had complied with the March 11 deadline

PANDA's failure to serve the contentions was an honest mistake, not an act of gamesmanship. On the deadline to serve the Initial Contentions, PANDA uploaded them to an FTP website (where they have remained unchanged to this day) and believed that access instructions had been transmitted to Defendants. Ex. 2; Lafferty Declaration at ¶¶2-4. The wrong emails addresses—corresponding to counsel in the co-pending and related case—were inadvertently entered into the FTP site. *Id*. There can be no dispute that PANDA believed that it had successfully served its contentions—in emails up until July 22, PANDA continued to operate as if they had been served. On that day, PANDA responded in a discovery exchange that: "We served Plaintiffs' Disclosure of Asserted Claims and Preliminary Infringement Contentions on March 11, 2024." Ex. 5 at 1. And when PANDA finally realized—on July 22—that Defendants had not received the Initial Contentions ***at all***, PANDA immediately corrected the issue by serving them unchanged. Lafferty Declaration at ¶¶5-6.

There was also a good reason for why the clerical error was not discovered sooner. When PANDA received Defendants' invalidity contentions and discovery responses, PANDA reviewed those documents for Defendants' substantive responses and positions. It did not comb through

Defendants' introductory boilerplate in the expectation that Defendants had hidden serious issues requiring immediate attention among otherwise innocuous legalese. While in hindsight, Defendants' breadcrumbs placed in footnotes and amongst various objections may indicate an issue with the Initial Contentions, it was not unreasonable to overlook such statements in these circumstances.[1] And of course, this entire issue could have been easily resolved with a short email to PANDA on March 12th (the day after contentions were due) informing PANDA that the Defendants did not receive the contentions pursuant to the local rule.

The facts here bear a strong resemblance to those in *Apple v. Samsung*, 2012 WL 5632618. There, Apple attempted to serve its infringement contentions on June 15 but left out several claim charts. *Id.* at *5. Samsung notified Apple on August 7 that certain charts were missing. Despite this attempted notice, Apple did not realize the charts were missing until October 3. *Id.* Still, the Court allowed Apple to rely upon the claim charts, noting that "[t]he omission, though careless, does not appear to be motivated by gamesmanship" and "[p]recluding Apple from bringing these claims because of an administrative mistake would be an unnecessarily harsh result." *Id.* The same is true here. While PANDA regrets its error, an administrative mistake does not justify precluding PANDA from bringing the claims contained in the Initial Contentions.

Likewise, this Court has allowed parties to rely upon contentions that "would have been served … but for an unintended clerical error" where the charts were served "in advance of [the] claim construction deadlines." *Thomas Swan & Co. Ltd. v. Finisar Corp.*, No. 2:13-cv-178-JRG, 2014 WL 12599218, at *1-2 (E.D. Tex. Apr. 29, 2014).

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[1] Even if PANDA had not been diligent, which it has, Courts have still permitted amendments based on the other factors. *See Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 2008 WL 624771, at *3 (N.D. Cal. Mar. 4, 2008) (elevating substance over form and allowing amendment despite arguable lack of diligence).

b. Defendants Did Not Act Reasonably to Mitigate The Issue.

While PANDA accepts the responsibility for the clerical error here, Defendants are not without fault. To the contrary, it appears that Defendants intentionally acted to increase their alleged prejudice, rather than mitigate it. Such gamesmanship should not be condoned.

Unlike most litigants, Defendants did not simply ask why it had not received the contentions on the day after they were due. Instead, it waited ***two months***—until May 6—before saying anything. And even then, their statement was buried in a footnote amongst thousands of pages of invalidity contention materials. Ex. 3. Defendants then remained silent for another month, before inserting veiled objections in their discovery responses (Ex. 4) while also ***answering*** those interrogatories. The parties continued to exchange numerous other discovery correspondences and conduct discovery meet and confers. During those meet and confers, PANDA specifically asked about certain discovery objections asserted by Defendants that necessarily implicated the full scope of the Initial Contentions, including the production of technical documents for certain Accused Products and features. Defendants said nothing and made no mention of the fact that they did not actually receive PANDA's Initial Contentions.

Defendants' other actions confirm their strategy. First, Defendants justified continuing with the case (including answering interrogatories, producing source code, and engaging in meet and confers) because they allegedly thought PANDA was intending to rely on the Rule 11 infringement charts attached to its First Amended Complaint as its infringement contentions. This is facially implausible. Defendants admit that they knew those charts "failed to include certain additional information required by Rule 3-1." Ex. 19 at 1. Those Rule 11 Charts are not even labeled "infringement contentions." It makes no sense to not receive infringement contentions, and then arbitrarily—and unilaterally—assume that the example charts attached to the First Amended

Complaint for a handful of claims were intended to be substantive infringement contentions.

Second, Defendants admitted during the meet and confer process that they chose not to simply notify PANDA they had not received the contentions because, "It is not our job to police your mistakes." Matthew Wood Declaration. Indeed, Defendants admitted that they conferred internally on the issue when they did not receive the contentions on March 11 and ***deliberately chose not to inform PANDA*** of this issue at that time. *Id*. Defendants were not confused as to whether the Rule 11 claim charts attached to the First Amended Complaint were intended to serve as PANDA's Initial Contentions—they were executing a deliberate strategy designed to manufacture prejudice.

In short, Defendants were not operating in a way intended to provide clear notice so the problem could be resolved. They were attempting to delay discovery of the issue while planting breadcrumbs in the record for the purpose of opposing this very motion. If there was any gamesmanship, it was by Defendants.

2. PANDA's March 11 Initial Contentions are integral to this case.

The second factor, the importance of the thing that would be excluded, counsels in favor of allowing PANDA's Initial Contentions. The importance cannot be overstated. The infringement contentions form the basis of PANDA's infringement claims against Defendants, including the assertion of ***117*** additional patent claims. Defendants contend that PANDA should be forced to rely instead on the Rule 11 claim charts attached to its First Amended Complaint. Those charts are for exemplary claims for each Asserted Patent and were prepared without any discovery. *Compare* Dkt. 17-5 through 17-16 *with* Exs. 6-17, 20. In such circumstances, where amendments would provide the sole basis for proving infringement of certain claims, this Court has stated that it "cannot imagine a higher level of importance." *See Intellectual Ventures I LLC v. T-Mobile USA,*

Inc., No. 2-17-cv-00577, slip op., at 5 (Dkt. 109) (E.D. Tex. Aug. 9, 2017).

Requiring PANDA to rely upon only the exemplary claims in the Rule 11 claim charts set forth in its First Amended Complaint would hamstring PANDA's infringement claims. For example, such a ruling would force PANDA to rely solely upon the system claims charted along with its First Amended Complaint without being able to pursue corresponding method claims. PANDA would also be forced into a narrow subset of claims selected without the benefit of knowing how Defendants' validity contentions or the Court's claim construction may impact the validity or infringement of those claims. Perhaps most importantly, PANDA would be locked into theories of infringement without the benefit of any discovery.

Excluding PANDA's Initial Infringement Contentions would eliminate more than just the vast majority of PANDA's Asserted Claims. Rule 3-1 Disclosures are required to, among other things, disclose the claimed priority date of each patent and whether the patentee's own products practice the patents. P.R. 3-1(e), (f). This information was included in the Initial Contentions and remains unchanged. Ex. 20. Yet, Defendants seek to preclude that information from this case as well. Therefore, denying leave to amend would effectively prelude PANDA from using this evidence and could substantively impact both validity of the patents, as well as the type and amount of damages PANDA is able to prove it is entitled to even if it prevails on its infringement claims.

3. Defendants Have Not Suffered Any Prejudice

The third factor, potential prejudice in allowing the thing that would be excluded, counsels in favor of allowing PANDA's Initial Contentions. As an initial matter, this case is still in the early stages. The first Markman P.R. 4-1 exchanges are not due for almost two months (September 30, 2024), the fact discovery deadline is still more than seven months away (March 17, 2025), and trial is still a year away (August 4, 2025). Dkt. 26. There have been ***zero*** depositions taken and

Defendants have not served any discovery. There is plenty of time to address any fact or legal issues created by any of the additional claims included in PANDA's Initial Contentions. *See Straight Path IP Group, Inc. v. BlackBerry Limited*, No. 6-13-cv-00604, slip op., at 8 (Dkt. 137) (E.D. Tex. Aug. 23, 2013) ("Prejudice is less likely to result where, as here, significant discovery and a Markman hearing have not yet occurred and trial is still more than a year away.").

Not surprisingly given the early state of the litigation, the only alleged prejudice Defendants identified is that they already served their invalidity contentions and would have to conduct additional prior art searching because of the additional asserted claims. But this is not prejudice—that is all work that would have had to be done regardless.

And, as noted above, PANDA expressly offered to provide Defendants with time to amend their invalidity contentions to address those claims. And even if this was considered a prejudice, it would be minimal at best. As Defendants acknowledge, they have been in possession of PANDA's Rule 11 claim charts, which detail infringement of exemplary claims, since the beginning of this case. Dkt. 17. PANDA's theory of infringement has not changed. The Initial Contentions merely set forth its contentions for additional related claims of the Asserted Patents in a way that does not depart from the core theories set forth in PANDA's complaint.

In any event, to the extent there is any prejudice, Defendants bear some responsibility here. As Judge Davis explained nearly two decades ago:

> While the Patent Rules place [a] heavy burden on plaintiffs to communicate their case to defendants so that both parties may adequately prepare for claim construction and trial, defendants also have a responsibility to make sure they fully understand the nature of plaintiffs' allegations. A defendant cannot lay behind the log until late in the case and then claim it lacks notice as to the scope of the case or the infringement contentions.

Orion IP, LLC v. Staples, Inc., 407 F. Supp. 2d 815, 817-18 (E.D. Tex. 2006).

Here, Defendants were well aware that they did not receive PANDA's Initial Contentions

on March 11 as required. Defendants were also well aware that—despite reliance on the Rule 11 Charts—that they did not "understand the nature of plaintiffs' allegations," including as to alleged priority date and practicing products. *Id.*; *see also* P.R. 3-1(e), (f); Ex. 3 at 2 n.1 (explaining that Defendants lacked this information). Yet, Defendants were content to sit silently for months. PANDA for its part had no reason to believe that Defendants had not received the disclosures it attempted to serve on March 11, particularly given Defendants' silence. But as PANDA's quick resolution once the issue was finally disclosed demonstrates, if Defendants had simply sent an email on March 12 stating, "we did not receive your P.R. 3-1 disclosures yesterday," this issue could have been corrected by the next day. While PANDA regrets its error, the fact that it went uncorrected for months is the result of a calculated tactical decision by Defendants to try and manufacture prejudice. Defendants should not be rewarded for sitting in silence in the hopes that its prejudice would continue to accrue. *See Orion IP*, 407 F. Supp. 2d at 817-18.

Defendants also should be aware that PANDA asserts that it practices its own patents—PANDA marks its products on its website—and that those patents are entitled to the priority date of the applications recited on their face. Thus, there is no prejudice to Defendants for the additional information contained in the P.R. 3-1 disclosures either.

4. A continuance is possible but unnecessary

A continuance of any deadlines is not required because this case is still in its early stages. There are still nearly two full months before the parties must begin claim construction discovery—proposed claim terms will be exchanged September 30. Dkt. 26. Defendants' claim construction brief is not due until January 6. *Id.* Fact discovery does not close until March 17—over seven months away. This is plenty of time for Defendants to evaluate PANDA's contentions. *See Thomas*, 2014 WL 12599218, at *1-2 (allowing contentions and finding "a continuance is unnecessary"

where the contentions were served "in advance of its claim construction deadlines").

In any event, to the extent Defendants identifies any deadlines that it believes have been impacted by its strategic decisions not to clearly inform PANDA that it did not receive the Initial Contentions, PANDA is amendable to a reasonable extension of those deadlines.

B. The Court Should Grant Leave to Serve the Amended Contentions Based on Source Code and Technical Documents (Exs. 21-33)

The Court should also grant leave for PANDA to serve its Amended Contentions. Exs. 21-33. This supplement adds additional references to source code and technical documents that Defendants only recently produced in discovery—after the March 11 due date for PANDA's Initial Contentions. PANDA did not delay in analyzing and incorporating this discovery as soon as it was made available—in about two months. Defendants have not argued to the contrary.

The only basis Defendants provided for opposing this motion for leave on the Amended Contentions is for the additional ***117*** claims that were not included in PANDA's Rule 11 Charts attached to the Amended Complaint—*i.e.*, the claims that are included in the Initial Contentions noted above. Therefore, for the same reasons noted above, the Court should grant leave to amend.

Separately and independently, this request for leave to amend should be granted, because it incorporates newly produced source code and technical documents, including those that show infringement of the ***117*** additional claims at issue. Indeed, amendments to add claims based on new discovery are routinely allowed. *See Harris Corp. v. Huawei Device USA, Inc.*, No. 2:18-cv-439-JRG, 2019 WL 4247067, at *3 (E.D. Tex. Sept. 6, 2019) ("It is expected that during the course of discovery, infringement contentions may be clarified or refined.").

* * * * *

For the reasons above, PANDA respectfully requests the Court grant leave to amend its contentions with its Initial Contentions (Exs. 6-17, 20) and Amended Contentions (Exs. 21-33).

Dated: August 8, 2024

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record as being served with a copy of the foregoing documents via electronic email on August 28, 2024.

/s/ Christopher C. Campbell
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CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I hereby certify under Local Rule CV-5(a)(7)(B) that the foregoing documents are authorized to be filed under seal pursuant to Paragraph 16 of the Protective Order (Dkt. 29) because they contain Designated Material as defined in the Protective Order.

/s/ Matthew D. Wood
Matthew D. Wood

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for PANDA has complied with the meet and confer requirement in Local Rule CV-7(h). On August 2, 2024, counsel for PANDA met and conferred with counsel for Defendants regarding the relief sought herein. The parties reached an impasse, and counsel for Defendants indicated that Defendants opposed the relief sought herein.

/s/ Matthew D. Wood
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