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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

UNIVERSITY OF BRITISH COLUMBIA,

Plaintiff/Counterclaim-
 Defendant,

v.

CAPTION HEALTH, INC.
 GE HEALTHCARE TECHNOLOGIES INC.

Defendants/Counterclaim-
 Plaintiffs.

Case No. 5:24-cv-3200-EKL

**DEFENDANTS'
 MEMORANDUM IN
 OPPOSITION TO PLAINTIFF'S
 MOTION FOR LEAVE TO
 AMEND INFRINGEMENT
 CONTENTIONS**

Hearing Date: June 17, 2025
 Time: 10:00 a.m.
 Judge: Hon. Susan van Keulen
 Location: Courtroom 6, 4th Floor

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INTRODUCTION

After almost a year of litigating the present case against Defendants Caption Health, Inc. (“Caption Health”) and GE HealthCare Technologies Inc. (“GE HealthCare”) (collectively, “Defendants”), Plaintiff University of British Columbia (“UBC”) seeks leave to amend its infringement contentions to add an entirely different product line—Voluson—running an entirely different software—SonoLyst—developed by a non-party—Intelligent Ultrasound Limited. As an initial matter, UBC’s proposed amendments are beyond the scope of the allegations in its First Amended Complaint, such that UBC must first seek leave to amend its complaint before it can amend its infringement contentions. It has not done so. This alone is reason enough to deny UBC’s motion.

In any event, UBC also does not have good cause to amend its contentions. It could have and should have learned all of the facts needed for its proposed amendments before it even filed its operative complaint and served its initial infringement contentions. But it has not been diligent in investigating these facts. In addition, the amendments would be prejudicial to Defendants, as they would open up an entirely new revenue stream to a claim of damages by UBC, greatly expand the scope of discovery, and disrupt nearly every facet of this case, requiring the Court to reset numerous deadlines. As such, the Court should deny UBC’s motion.

FACTUAL BACKGROUND

Defendant GE HealthCare began a commercial relationship with non-party Intelligent Ultrasound Limited (“IUL”) in 2019. (See <https://www.intelligentultrasound.com/wp-content/uploads/2021/01/MED-GE-Launch-30.09.20.pdf> (CEO of IUL stating, in September 2020, that “[i]t has been a pleasure to work with GE over the last year to bring this new AI technology to market”).) At that time, GE HealthCare already had an existing Voluson line of products for fetal imaging. (See *id.*) Today, this product line includes Voluson Expert, Signature, and SWIFT series (collectively, “Voluson”), accused in UBC’s motion. GE HealthCare wanted to add IUL’s AI-enabled software—SonoLyst—to Voluson. (See *id.*)

On October 11, 2020, Voluson SWIFT with SonoLyst received FDA clearance for sale in the United States. (See https://www.accessdata.fda.gov/cdrh_docs/pdf20/K201828.pdf.)

1 In 2022, GE HealthCare began selling SonoLyst on Voluson in the United States. Using a
 2 simple Google search, one can easily find evidence of such sales—a July 21, 2022 press release
 3 announcing that “GE Healthcare today unveiled its most advanced ultrasound yet, the next-
 4 generation Voluson™ Expert 22.” (See
 5 [https://www.businesswire.com/news/home/20220721005708/en/GE-Healthcare-Unveils-Latest-](https://www.businesswire.com/news/home/20220721005708/en/GE-Healthcare-Unveils-Latest-Ultra-Premium-Ultrasound-in-Womens-Health-Portfolio)
 6 [Ultra-Premium-Ultrasound-in-Womens-Health-Portfolio](https://www.businesswire.com/news/home/20220721005708/en/GE-Healthcare-Unveils-Latest-Ultra-Premium-Ultrasound-in-Womens-Health-Portfolio).) The press release includes testimonials
 7 from GE HealthCare “customers,” including “Dr. Lawrence Platt, MD, an Obstetrician-gynecologist
 8 at the Center for Fetal Medicine in Los Angeles, USA,” who talked about using the AI tools
 9 available on Voluson. (*Id.*) Those “AI-powered tools include SonoLyst.” (*Id.*)

10 On July 18, 2024, GE HealthCare publicly announced that it had entered into an agreement
 11 to acquire IUL’s clinical AI software business. (See
 12 [https://www.gehealthcare.com/about/newsroom/press-releases/ge-healthcare-announces-](https://www.gehealthcare.com/about/newsroom/press-releases/ge-healthcare-announces-agreement-to-acquire-clinical-artificial-intelligence-business-from-intelligent-ultrasound?srsltid=AfmBOorbfo_S-v8dUG3BHTiLfBiXpxxA0Dk8-D0JaidPHmByvpzhUxRS)
 13 [agreement-to-acquire-clinical-artificial-intelligence-business-from-intelligent-](https://www.gehealthcare.com/about/newsroom/press-releases/ge-healthcare-announces-agreement-to-acquire-clinical-artificial-intelligence-business-from-intelligent-ultrasound?srsltid=AfmBOorbfo_S-v8dUG3BHTiLfBiXpxxA0Dk8-D0JaidPHmByvpzhUxRS)
 14 [ultrasound?srsltid=AfmBOorbfo_S-v8dUG3BHTiLfBiXpxxA0Dk8-D0JaidPHmByvpzhUxRS](https://www.gehealthcare.com/about/newsroom/press-releases/ge-healthcare-announces-agreement-to-acquire-clinical-artificial-intelligence-business-from-intelligent-ultrasound?srsltid=AfmBOorbfo_S-v8dUG3BHTiLfBiXpxxA0Dk8-D0JaidPHmByvpzhUxRS).)
 15 Following the acquisition, GE HealthCare continued to sell SonoLyst for use on Voluson, as it had
 16 prior to the acquisition.

17 UBC suggests that GE HealthCare’s website is somehow misleading with regard to whether
 18 SonoLyst for use on Voluson is offered for sale in the United States. GE HealthCare, however,
 19 maintains different websites for different regions, and SonoLyst and Voluson are heavily featured
 20 and promoted on the U.S. version of the website, including in an April 2024 press release
 21 announcing the launch of Voluson Signature 20 and 18 with SonoLyst. (See
 22 [https://www.gehealthcare.com/about/newsroom/press-releases/ge-healthcare-introduces-ai-](https://www.gehealthcare.com/about/newsroom/press-releases/ge-healthcare-introduces-ai-enhanced-voluson-signature-20-and-18-ultrasound-systems-to-advance-womens-health-imaging?srsltid=AfmBOorxwlqetC3IaRr8iWFAy4O6BpNYWtNx9QmW6MgzU7W8QCMgcv7L)
 23 [enhanced-voluson-signature-20-and-18-ultrasound-systems-to-advance-womens-health-](https://www.gehealthcare.com/about/newsroom/press-releases/ge-healthcare-introduces-ai-enhanced-voluson-signature-20-and-18-ultrasound-systems-to-advance-womens-health-imaging?srsltid=AfmBOorxwlqetC3IaRr8iWFAy4O6BpNYWtNx9QmW6MgzU7W8QCMgcv7L)
 24 [imaging?srsltid=AfmBOorxwlqetC3IaRr8iWFAy4O6BpNYWtNx9QmW6MgzU7W8QCMgcv7L](https://www.gehealthcare.com/about/newsroom/press-releases/ge-healthcare-introduces-ai-enhanced-voluson-signature-20-and-18-ultrasound-systems-to-advance-womens-health-imaging?srsltid=AfmBOorxwlqetC3IaRr8iWFAy4O6BpNYWtNx9QmW6MgzU7W8QCMgcv7L)
 25 .)

26 PROCEDURAL HISTORY

27 UBC filed suit against Caption Health and GE HealthCare almost exactly a year ago on May
 28 28, 2024, asserting a single claim for infringement of U.S. Patent No. 11,129,591 (“the ’591

1 patent”). (*See generally* ECF No. 1.) In its Complaint, UBC described how, “[i]n early 2022, not
 2 long after the ’591 patent issued, UBC and the inventors [of the ’591 patent] discovered that Caption
 3 Health was marketing its AI-based cardiac ultrasound software that [allegedly] practiced the claims
 4 of the ’591 patent.” (*Id.* at ¶ 25.) UBC sent Caption Health a letter, leading to communications back
 5 and forth from May to November 2022. (*Id.* at ¶¶ 26–33.) Notably, at the same time that UBC was
 6 discovering and investigating Caption AI’s allegedly infringing software in 2022, GE HealthCare
 7 was publicly announcing U.S. sales of its allegedly infringing SonoLyst for use on Voluson, as
 8 discussed above. Then, in February 2023, GE HealthCare acquired Caption Health (*id.* at ¶ 34) and
 9 incorporated Caption Health’s allegedly “infringing scan guidance technology”—called “‘Caption
 10 Guidance,’ ‘Caption AI,’ or ‘Caption AI Guidance’”—into GE HealthCare’s existing products—
 11 the Venue Family (“Venue”) and Vscan Air SL (“Vscan”). (*Id.* at ¶ 40.) The Complaint refers to
 12 Caption AI as used on Venue and Vscan as “Defendants’ Infringing Products.” (*Id.* at p. 12.) In
 13 alleging the elements of infringement, the Complaint makes clear that it is focused on these
 14 particular products and instrumentalities, stating: “Defendants infringe at least claims 1 and 15 of
 15 the ’591 patent by making, using, selling, importing, offering for sale its ‘Venue Family’ products
 16 and Vscan Air SL products that incorporate Caption Guidance or Caption AI (the ‘Accused
 17 Products’).” (*Id.* at ¶ 55.) The Complaint makes no mention of Voluson, SonoLyst, or IUL.

18 On October 23, 2024, UBC served infringement contentions for the ’591 patent directed to
 19 the use of Caption AI on Venue and Vscan. These infringement contentions made no mention of
 20 Voluson, SonoLyst, or IUL. Following a deficiency letter from Defendants, on November 22, 2024,
 21 UBC served its first supplemental infringement contentions, again directed only to Caption AI on
 22 Venue and Vscan.

23 On December 20, 2024—the last day to amend pleadings without leave of court (*see* ECF
 24 No. 45)—UBC filed its First Amended Complaint, adding a second patent—U.S. Patent No.
 25 10,751,029 (“the ’029 patent”). (*See generally* ECF No. 46.) As in the initial Complaint, UBC again
 26 expressly identified Caption AI as used on Venue and Vscan as “Defendants’ Infringing Products”
 27 and as the “Accused Products.” (*Id.* at ¶¶ 52, 67.) Again, the First Amended Complaint made no
 28 reference to Voluson, SonoLyst, or IUL.

1 On February 7, 2025, UBC served its second supplemental infringement contentions,
2 addressing not only the newly-added '029 patent but also the previously-asserted '591 patent. As
3 with the previous infringement contentions, these contentions accused only Caption AI on Venue
4 and Vscan.

5 On February 20, 2025, UBC served discovery requests that added—without any
6 explanation—a number of different products to UBC's existing definition of "Accused Products,"
7 including SonoLyst, Voluson, "Butterfly iQ+ device with Butterfly iQ app, and Terason uSmart
8 3200T Plus." This was the first time that UBC suggested to Defendants that it was accusing these
9 additional products of infringement. UBC still has not served infringement claim charts for any of
10 these additional products other than SonoLyst and Voluson. It is not clear whether it intends to do
11 so at some point in the future.

12 On March 19, 2025, the parties filed a Joint Statement Regarding Discovery Dispute Over
13 Plaintiff's Amended Infringement Contentions. (ECF No. 59-3.) There, Defendants showed that
14 UBC had improperly amended its infringement contentions for the '591 patent without first seeking
15 leave of court, and Defendants requested that the Court strike the amended claim charts for the '591
16 patent. (*Id.* at 1.) That filing remains unresolved.

17 Now, two months later, UBC seeks leave to amend its infringement contentions a third
18 time—to add an entirely different software, running on an entirely different line of products, neither
19 of which are within the scope of the allegations in UBC's complaints. UBC has served on
20 Defendants proposed claim charts for this change, as Patent Local Rule 3-6(c) requires, but has not
21 provided the additional information required under Patent Local Rule 3-6(a), (d), (e), (h), and (i).
22 Thus, the full scope of UBC's proposed amendments is not even entirely clear.

23 STANDARD

24 Patent Local Rule 3-6 provides in relevant part that "[a]mendment of the Infringement
25 Contentions . . . may be made only by order of the Court upon a timely showing of good cause." As
26 the Federal Circuit has recognized, this rule is "designed specifically to require parties to crystallize
27 their theories of the case early in the litigation so as to prevent the shifting sands approach to claim
28 construction." *O2 Micro Int'l, Ltd. v. Monolithic Power Sys.*, 467 F.3d 1355, 1364 (Fed. Cir. 2006)

(internal quotation marks omitted). “In contrast to the more liberal policy for amending pleadings, the philosophy behind amending claim charts is decidedly conservative.” *Verinata Health, Inc. v. Ariosa Diagnostics, Inc.*, 236 F. Supp. 3d 1110, 1113 (N.D. Cal. 2017) (internal quotation marks and citation omitted).

“The moving party has the burden of demonstrating good cause.” *Karl Storz Endoscopy-Am. v. Stryker Corp.*, No. 14-0876-RS (JSC), 2016 U.S. Dist. LEXIS 176876, at *7 (N.D. Cal. Dec. 21, 2016). “Good cause exists where the moving party has acted diligently and the opposing party will not be prejudiced.” *Verinata*, 236 F. Supp. 3d at 1113. The moving party must first establish diligence. *O2 Micro*, 467 F.3d at 1355 (“The burden is on the movant to establish diligence rather than on the opposing party to establish lack of diligence.”). Diligence consists of both: “(1) diligence in discovering the basis for amendment; and (2) diligence in seeking amendment once the basis for amendment has been discovered.” *Monolithic Power Sys., Inc. v. Silergy Corp.*, No. 14-1745-VC (KAW), 2015 U.S. Dist. LEXIS 123825, at *6 (N.D. Cal. Sept. 15, 2015) (internal quotation marks and citation omitted). “In considering the party’s diligence, the critical question is whether the party could have discovered the new information earlier had it acted with the requisite diligence.” *Radware*, 2014 U.S. Dist. LEXIS 103215, at *8–9 (internal quotation marks and citation omitted).

“If the court finds that the moving party has acted with diligence, it must then determine whether the nonmoving party would suffer prejudice if the motion to amend were granted.” *Apple Inc. v. Samsung Elecs. Co. Ltd.*, No. 12-0630-LHK (PSG), 2013 U.S. Dist. LEXIS 91450, at *30 (N.D. Cal. June 26, 2013) (internal quotation marks and citation omitted). “Prejudice is typically found when amending contentions stand to disrupt the case schedule or other court orders.” *Karl Storz Endoscopy-Am.*, 2016 U.S. Dist. LEXIS 176876, at *8. However, when the moving party is unable to show diligence, there is “no need to consider the question of prejudice.” *O2 Micro*, 467 F.3d at 1368.

ARGUMENT**I. UBC Cannot Add SonoLyst and Voluson to This Case Without First Moving for Leave to Amend its Complaint, Which It Has Not Done.**

It is axiomatic that “[t]he complaint defines the scope of the case.” *Karimi v. Golden Gate Sch. of Law*, No. 17-cv-05702-JCS, 2018 U.S. Dist. LEXIS 69088, at *44 (N.D. Cal. Apr. 23, 2018). Further, “[t]he purpose of the complaint is to provide notice to the defendants of the nature of the claim, the facts that support the claim and the relief sought.” *Harrison v. Hill*, No. 1:06-cv-00313-OWW-GSA-(PC), 2007 U.S. Dist. LEXIS 83105, at *3 (E.D. Cal. Oct. 29, 2007).

UBC’s First Amended Complaint defines the scope of this case as follows: Defendants Caption Health and GE HealthCare allegedly infringe UBC’s ’591 and ’029 patents by making, using, offering to sell, and/or selling Caption AI software for use on Venue and Vscan. UBC’s accusations against SonoLyst and Voluson do not fit within this scope.

First, SonoLyst and Voluson are not within the scope of the “Accused Products” as that term is defined in the First Amended Complaint. To state the obvious, Voluson is not Venue or Vscan, and SonoLyst is not Caption AI. Caption AI on Venue and Vscan is intended for imaging adult hearts, whereas SonoLyst on Voluson is intended for fetal imaging.

Second, there is no allegation that Caption Health makes, uses, offers for sale, or sells SonoLyst or Voluson. Indeed, UBC’s infringement claim charts for SonoLyst and Voluson do not mention Caption Health at all. (*See generally* ECF No. 65-6.) Further, UBC’s allegations introduce an entirely new entity—IUL—which is not mentioned in the First Amended Complaint.

Because UBC’s accusations are well outside the scope of the First Amended Complaint, that pleading also does not provide notice to Defendant GE HealthCare that it is accused of infringing UBC’s ’591 and ’029 patents by selling SonoLyst for use on Voluson. Thus, to add SonoLyst and Voluson to this case, UBC would first need to amend its complaint. Because the deadline for amending without leave of court has long since passed, UBC would need to move for leave to amend. It has failed to do so. As such, the Court should deny the present motion.

II. The Court Should Deny UBC's Motion Under Patent Local Rule 3-6.

UBC's motion also fails under Patent Local Rule 3-6. UBC has not carried its burden of showing that it acted diligently and that Defendants will not be prejudiced.

A. UBC Has Failed to Establish that it Was Diligent in Discovering the Basis for its Proposed Amendments.

UBC has not shown that it acted diligently in discovering SonoLyst and Voluson and determining whether they infringe the asserted patents, including whether GE HealthCare sold them in the United States. As an initial matter, UBC does not disclose when exactly it first learned of the existence of SonoLyst and Voluson or began investigating them. UBC's motion suggests that it was already aware of Voluson "[a]t the time UBC served its '029 infringement contentions" on February 7, 2025, but "it remained unclear to UBC whether GE HealthCare had independent commercial sales of Voluson in the United States." (ECF No. 65 at 4.)

In any event, information about SonoLyst and Voluson is publicly available. Indeed, UBC's claim charts for SonoLyst and Voluson are based entirely on public information, and all but two sources—one of which is an Instagram post—were available online in September 2024 or earlier. (*See generally* ECF No. 65-6.) That is before UBC served its initial infringement contentions and before it filed its First Amended Complaint. Many of UBC's sources for these claim charts date to 2020. In its motion, UBC concedes that "the proposed amendment cite [sic] to documents that have been publicly available for years." (ECF No. 65 at 6.) As such, UBC could have learned about and begun investigating SonoLyst and Voluson years ago—long before it even filed suit in May 2024—had it acted with greater diligence. *See Radware*, 2014 U.S. Dist. LEXIS 103215, at *8–9 ("In considering the party's diligence, the critical question is whether the party could have discovered the new information earlier had it acted with the requisite diligence." (internal quotation marks and citation omitted)); *Cellspin Soft, Inc. v. Nike, Inc.*, No. 17-cv-05931-YGR (KAW), 2021 U.S. Dist. LEXIS 270338, at *4 (N.D. Cal. Aug. 3, 2021) (finding lack of diligence where "[t]he product was readily discoverable as of January 2019, and it is not clear what efforts (if any) Plaintiff made to search for new products").

1 Nevertheless, UBC claims that the crux of its investigation was determining whether GE
 2 HealthCare had sold and/or was selling Voluson in the United States, which UBC states that it did
 3 not learn until sometime between February 7 and 20, 2025. (ECF No. 65 at 2.) UBC, however, does
 4 not state how it actually learned this, including when it began investigating to find U.S. sales, what
 5 steps it took to search for U.S. sales, and whether it learned of U.S. sales from public sources.
 6 Without providing this information, UBC cannot possibly show that it was diligent in learning
 7 whether GE HealthCare sells SonoLyst and Voluson in the United States. In any event, GE
 8 HealthCare received FDA clearance to begin selling Sonolyst software on Voluson in the United
 9 States in October 2020, which is a publicly-available fact (*see*
 10 https://www.accessdata.fda.gov/cdrh_docs/pdf20/K201828.pdf), and by 2022 GE HealthCare had
 11 begun to make sales in the United States—also a publicly-available fact. (*See*
 12 [https://www.businesswire.com/news/home/20220721005708/en/GE-Healthcare-Unveils-Latest-](https://www.businesswire.com/news/home/20220721005708/en/GE-Healthcare-Unveils-Latest-Ultra-Premium-Ultrasound-in-Womens-Health-Portfolio)
 13 [Ultra-Premium-Ultrasound-in-Womens-Health-Portfolio](https://www.businesswire.com/news/home/20220721005708/en/GE-Healthcare-Unveils-Latest-Ultra-Premium-Ultrasound-in-Womens-Health-Portfolio).) There is no reason that UBC could not
 14 have discovered the existence of U.S. sales in 2022, long before February 2025.

15 UBC suggests that, for purposes of determining its diligence, the Court should consider the
 16 fact that “GE Healthcare did not complete its acquisition of IUL’s clinical AI business until October
 17 01, 2024.” (ECF No. 65 at 4.) UBC argues that, “even if UBC did know about [Voluson] products,
 18 it did not know if they could be included in its infringement contentions if they were not owned by
 19 GE Healthcare.” (*Id.* at 6 (citing *Nuance Comm’s*, 2012 WL 2427160, at *2).) Thus, UBC
 20 supposedly had to wait until it had “learned that GE Healthcare had acquired IUL.” (*Id.*) But,
 21 regardless of when GE HealthCare acquired IUL, it is undisputed that GE HealthCare has owned
 22 the Voluson product line since at least 2019 and publicly sold SonoLyst on Voluson since 2022.
 23 This is not a situation, as in the case that UBC cites (*Nuance Communications*), where the accused
 24 infringer could only be sued based on a particular product after it had acquired ownership of the
 25 product and, presumably, began selling it for the first time. Nor is this case like *Board of Trustees*
 26 *v. Roche Molecular Systems, Inc.*, where the product that the plaintiff sought to add to its
 27 infringement contentions had only just recently been approved by the FDA for sale in the United
 28 States. No. C 05-04158 MHP, 2008 U.S. Dist. LEXIS 16556, at *4, 7 (N.D. Cal. Mar. 4, 2008).

1 For all these reasons, UBC was not diligent in discovering the basis for its proposed third
2 set of amendments to its infringement contentions, and its motion should be denied.

3 **B. UBC's Proposed Amendments Are Prejudicial to Defendants.**

4 UBC's proposed amendments are also prejudicial to Defendants. This Court has found
5 prejudice to accused infringers where the patent holder proposes adding new products that "have a
6 different revenue stream," thereby expanding the scope of recoverable damages. *Oyster Optics, LLC*
7 *v. Ciena Corp.*, No. 20-cv-02354-JSW(LB), 2022 U.S. Dist. LEXIS 34598, at *9 (N.D. Cal. Feb.
8 24, 2022). Such is undoubtedly the case here, where Caption AI on Venue and Vscan is designed to
9 image adult hearts and SonoLyst on Voluson is intended for fetal imaging.

10 This Court has also held that "[p]rejudice is typically found when amending contentions
11 stand to disrupt the case schedule or other court orders." *Karl Storz Endoscopy-Am.*, 2016 U.S. Dist.
12 LEXIS 176876, at *8. And this Court has found prejudice where adding a new product "would
13 expand the scope of the case," requiring discovery of different documents, source code, and
14 witnesses. If UBC is permitted to make the amendments that it now proposes, this will be incredibly
15 disruptive to the case, including the case schedule, and will greatly expand the scope of discovery.

16 First, UBC will need to seek leave to amend its complaint. Assuming that UBC is permitted
17 to add entirely new software and devices at this point in the litigation, the Defendants will then need
18 to answer UBC's Second Amended Complaint with GE HealthCare asserting any new defenses
19 unique to SonoLyst and Voluson and to GE HealthCare's relationship with IUL.

20 Defendants will then need to supplement their initial disclosures to identify witnesses,
21 documents, and insurance particular to SonoLyst and Voluson.

22 For its part, UBC will need to provide the additional infringement contention information
23 not found in its proposed claim charts and required under Patent Local Rule 3-6(a), (d), (e), (h), and
24 (i), such as identifying the timing of the point of first infringement involving SonoLyst and Voluson
25 and the circumstances, if any, that support a claim for willful infringement with regard to SonoLyst
26 and Voluson.

27 UBC's amendments will affect Defendants' invalidity contentions. Defendants have already
28 prepared and served their invalidity contentions based on the scope of the claims apparent from

1 UBC's initial infringement contentions. Defendants will likely want to amend their invalidity
2 contentions based on UBC's new allegations of infringement. *See Oyster*, 2022 U.S. Dist. LEXIS
3 34598, at *10 (finding prejudice where the patentee sought to add products to its infringement
4 contentions and the accused infringer's "invalidity contentions were based only on the charted . . .
5 product" in the initial infringement contentions). In particular, Defendants may add IUL's
6 WO2016189313A1 patent application as prior art. The deadline for Defendants to serve invalidity
7 contentions has passed, so a new deadline will need to be adopted.

8 Defendants will also need to produce all of the documents required by Patent Local Rule 3-
9 4 for SonoLyst and Voluson, and it will need to provide the SonoLyst source code for inspection at
10 counsel's Cleveland office (just as Defendants allowed an earlier inspection of the Caption AI
11 software). A new deadline will need to be set for this production and inspection.

12 In addition, UBC has served damages contentions relating to Caption AI as used on Venue
13 and Vscan. It will undoubtedly want to amend these to include SonoLyst as used on Voluson. A
14 deadline will need to be set for this amendment. Further, as a result of the amendment, Defendants
15 will need additional time for their responsive damages contentions, which are currently due on June
16 13, 2025.

17 Further, UBC has served written discovery requests that are focused on SonoLyst and
18 Voluson. Defendants have thus far refused to produce documents and information based on, among
19 other things, relevance. But, if UBC's proposed amendments are allowed, Defendants will need to
20 amend or supplement their written responses and produce responsive documents.

21 Based on all of the foregoing activity, the parties may well decide that they want to identify
22 additional or different claim terms for construction, and they may propose new constructions. If so,
23 then the entire claim construction schedule set by the Court will need to be extended. (*See* ECF No.
24 49.)

25 In an attempt to minimize the perception of prejudice to Defendants, UBC claims repeatedly
26 that "the amendments do not include any new theories of infringement." (ECF No. 65 at 4.) UBC,
27 however, never provides any citation to evidence or even any explanation for this statement. Further,
28

1 UBC has not yet provided all of the information it is required to produce under Patent Local Rule
2 3-6 and, as such, has not fully disclosed its theories of infringement.

3 In any event, there are vast differences between the accused products, how they operate, and
4 how UBC shows alleged infringement. First, Caption AI and SonoLyst were developed by two
5 separate, unrelated companies, both of which were acquired by GE HealthCare *after* the products
6 were already developed. As such, they were not developed by the same team or even by the same
7 company.

8 Second, the products use completely different AI algorithms. Caption AI uses Echo GPS,
9 and SonoLyst uses SonoLyst AI. (*Compare* ECF Nos. 64-2 to 64-5 (claim charts for Caption AI on
10 Venue and Vscan), *with* ECF No. 65-6 (claim charts for SonoLyst on Voluson).)

11 Third, SonoLyst and Voluson are specific to ultrasounds of fetal anatomy. Caption AI is not.
12 As a result, these products do not even use the same standard view categories when imaging. Caption
13 AI uses standard cardiac views, while SonoLyst uses different views. (*Id.*)

14 Fourth and finally, the documents that UBC cites in its proposed claim charts are completely
15 different than the documents cited in the earlier claim charts directed to Caption AI on Venue and
16 Vscan. (*Id.*) Thus, UBC would be relying on completely different evidence to prove infringement.

17 These facts highlight how different the factual situation in the present case is from the
18 situations in the cases that UBC cites. In many of those cases, the court permitted parties to amend
19 their infringement contentions merely to add the latest version, or an alternative version, of a
20 product that was already accused. For instance, in *Apple Inc. v. Samsung Elecs. Co.*, this Court
21 allowed Samsung to add the iPhone 5 where it had already accused the iPhone 4. No. CV 12-00630
22 LHK, 2012 U.S. Dist. LEXIS 163739 at *12–14 (N.D. Cal. Nov. 15, 2012); *see also Potter Voice*
23 *Techs., LLC v. Apple Inc.*, No. C 13-1710 CW, 2015 U.S. Dist. LEXIS 189954, at *5 (N.D. Cal.
24 Mar. 20, 2015) (same as *Apple Inc. v. Samsung Elecs. Co.*, *supra*); *Wisk Aero LLC v. Archer*
25 *Aviation Inc.*, No. 3:21-cv-02450-WHO, 2022 U.S. Dist. LEXIS 181809, at *6–8 (N.D. Cal. Oct.
26 4, 2022) (allowing Wisk Aero LLC to clarify that its infringement contentions, which only
27 identified one accused drone by name (the “Maker”) while generally showing infringement by all
28 of the defendant’s drones, accused another drone (the “Midnight”) that included the same

components as the Maker); *R.N Nehushtan Tr. Ltd.. v. Apple Inc.*, No. 22-cv-01832-WHO, 2023 U.S. Dist. LEXIS 236232, at *3–6 (N.D. Cal. May 19, 2023) (allowing the plaintiff to add the latest iPad products released during the litigation when previous versions were already accused). None of these cases apply to the present situation, where UBC is seeking to add an entirely different product that runs an entirely different software developed by a non-party.

UBC’s proposed amendments are highly prejudicial to Defendants. As such, the Court should deny UBC’s motion.

CONCLUSION

For all of the foregoing reasons, the Court should deny UBC’s Motion for Leave to Amend Infringement Contentions.

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