

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IMAGINEAR, INC. and IMAGINE AR,	)	
INC.,	)	
	)	
Plaintiffs,	)	C.A. No. 24-1252-JDW
	)	
v.	)	
	)	
NIANTIC, INC.,	)	
	)	
Defendant.	)	

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE A SECOND AMENDED
AND SUPPLEMENTAL COMPLAINT**

I. INTRODUCTION

Pursuant to Federal Rules of Civil Procedure 15(a) and 15(d), D. Del. Local Rule 15.1, and the Scheduling Order in this case (D.I. 88), Plaintiffs ImagineAR, Inc. and Imagine AR, Inc. (collectively, “ImagineAR” or “Plaintiffs”) hereby request that the Court grant Plaintiffs leave to file a Second Amended Complaint (“SAC”) against Defendant Niantic, Inc. (“Defendant”).¹ The Court should grant Plaintiffs leave to amend because: (i) leave to amend should be freely given under the Federal Rules of Civil Procedure; (ii) Plaintiffs have not unduly delayed in seeking leave to amend; (iii) Plaintiffs’ SAC will not unduly prejudice Defendant; (iv) Plaintiffs’ SAC is not made in bad faith or for an improper purpose; and (v) Plaintiffs’ SAC is not futile.

II. BACKGROUND

Plaintiffs filed their original complaint on November 13, 2024, asserting infringement of, *inter alia*, U.S. Patent Nos. 10,946,284 (the “284 patent”), 11,484,797 (the “797 patent”),

¹ Pursuant to D. Del. Local Rule 15.1, a copy of Plaintiffs’ proposed SAC and a blackline comparison to Plaintiffs’ First Amended Complaint (“FAC”) are attached hereto as **Exhibits A** and **B**, respectively.

11,666,827 (the “’827 patent”), and 12,070,691 (the “’691 patent”) (collectively, the “Patents-in-Suit”) against Defendant’s Pokemon Go, Monster Hunter Now, Pikmin Bloom, Harry Potter: Wizards Unite, Skatrix, and Peridot location-based, mobile AR games (collectively, the “Accused Products”). (D.I. 1.) Plaintiffs filed their FAC on February 26, 2025, to add allegations relating to Defendant’s knowledge of the Patents-in-Suit and its infringement thereof. (D.I. 21.)

On October 8, 2025, the Court entered a Scheduling Order that allows the parties until November 7, 2025, to seek leave to amend their pleadings. (D.I. 88.) The Scheduling Order also provides for fact discovery at least through April 3, 2026. (*Id.*) Although the parties have engaged in fact discovery relating to the Accused Products, the parties have not scheduled or taken any depositions.

Plaintiffs’ proposed SAC seeks to: (i) add claims that Defendant’s Monster Hunter Now, Pikmin Bloom, and Harry Potter: Wizards Unite mobile games infringe U.S. Patent Nos. 10,997,761 (the “’761 patent”) and 12,056,194 (the “’194 patent”); (ii) add factual information regarding Defendant’s knowledge of the Patents-in-Suit²; (iii) drop Plaintiffs’ infringement allegations against the Skatrix and Peridot mobile games; and (iv) remove patents that are no longer in the case. (*See* SAC, **Ex. A.**)

III. LEGAL STANDARDS

Under Federal Rule of Civil Procedure 15(a), “[t]he court should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a). The “Third Circuit has adopted a liberal policy favoring the amendment of pleadings to ensure that claims are decided on the merits rather than on technicalities.” *WebXchange Inc. v. Dell Inc.*, 2010 WL 256547, at *2 (D. Del. Jan. 20,

² On October 3, 2025, Defendant produced communications from 2018-2019 and from 2023 showing that Defendant had prior knowledge of the Patents-in-Suit and that Defendant was twice approached with an opportunity to purchase, license, or acquire rights in the Patents-in-Suit.

2010) (citing *Dole v. Arco Chem. Co.*, 921 F.2d 484, 487 (3d Cir. 1990)). Amendments should be freely granted absent a showing of “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). “[T]he burden is on the party opposing the amendment to show prejudice, bad faith, undue delay, or futility.” *Chancellor v. Pottsgrove Sch. Dist.*, 501 F. Supp. 2d 695, 700 (E.D. Pa. 2007).

IV. ARGUMENT

The Court should grant Plaintiffs leave to file their SAC.

A. Plaintiffs Have Not Unduly Delayed In Seeking Leave To Amend.

Plaintiffs have not unduly delayed in seeking leave to amend because Plaintiffs have moved for leave to amend within the deadline set by the Court. In the Third Circuit, “delay, in and of itself, is an insufficient basis for denial of a motion to amend.” *Procter & Gamble Co. v. Nabisco Brands, Inc.*, 125 F.R.D. 405, 408 (D. Del. 1987). To justify denial of a motion to amend or supplement, the delay must be “undue.” *See Adams v. Gould Inc.*, 739 F.2d 858, 868 (3d Cir. 1984). Moreover, when a motion for leave to amend the pleadings is filed within the time set by the parties or the court, such an amendment was not untimely. *See Invensas Corp. v. Renesas Elecs. Corp.*, C.A. No. 11-448-GMS-CJB, 2013 WL 1776112, at *3 (D. Del. Apr. 24, 2013); *see also, e.g., Boston Sci. Corp. v. Edwards Lifesciences Corp.*, 2017 WL 781046, at *2 (D. Del. Feb. 28, 2017) (explaining how amending pleadings within the deadline “generally precludes a finding of undue delay”). Here, the Court’s Scheduling Order permits the parties to seek leave to amend their pleadings by November 7, 2025. (D.I. 88.) Plaintiffs have filed their motion for leave to amend within the time set by the Court’s Scheduling Order. Accordingly, Plaintiffs’ SAC is timely filed and Plaintiffs have not unduly delayed in seeking leave to amend.

B. Plaintiffs' SAC Will Not Unduly Prejudice Defendant.

Plaintiffs' SAC will not unduly prejudice Defendant because: (i) Plaintiffs' new patent infringement claims accuse the same Monster Hunter Now, Pikmin Bloom, and Harry Potter: Wizards Unite products that are already at issue in the case; (ii) Plaintiffs' SAC drops allegations against two accused products (*i.e.*, Skatrix and Peridot); and (iii) Plaintiffs' SAC drops allegations relating to the patents that are no longer in the case, thereby narrowing the case. There is no prejudice where supplementing or amending allegations "would not dramatically expand the scope of this case." *Home Semiconductor Corp. v. Samsung Elecs. Co.*, 2019 WL 2135858, at *6 (D. Del. May 16, 2019). Amending a complaint is also not unduly prejudicial when the new claims involve the same product. *Centerforce Techs., Inc. v. Austin Logistics Inc.*, 2000 WL 652943, at *6 (D. Del. Mar. 10, 2000) (finding no undue prejudice for claims "involv[ing] the same product").

Here, Plaintiffs' SAC does not dramatically expand the scope of the case, as this case already involves Defendant's Monster Hunter Now, Pikmin Bloom, and Harry Potter: Wizards Unite mobile games. (*See, e.g.*, FAC at ¶¶ 56-57, 61, 70-71, 75, 84-85, 89, 98-99, and 103.) Moreover, Defendant has already engaged in discovery efforts relating to Plaintiffs' existing patent infringement claims involving Defendant's Monster Hunter Now, Pikmin Bloom, and Harry Potter: Wizards Unite mobile games. At the same time, Plaintiffs' SAC actually helps narrow the case because Defendant will not need to expend resources defending against claims involving the Peridot and Skatrix mobile games. Plaintiffs' SAC also will not unduly prejudice Defendant because no depositions have been taken in this case, the close of fact discovery is six months away, and expert discovery has not yet begun. (D.I. 88.) To the extent Plaintiffs' SAC requires the discovery of any additional facts or evidence, Defendant has plenty of time to prepare its case through further written discovery, as well as depositions and expert discovery, neither of which have yet taken place.

Granting Plaintiffs leave to amend will enhance judicial economy. “Where the additional patents ... involve similar technology, it is clearly in the interest of judicial economy to dispose of all of the claims between the parties in one proceeding.” See *Trueposition, Inc. v. Allen Telecom, Inc.*, No. CIV.A.01-823 GMS, 2002 WL 1558531, at *2 (D. Del. July 16, 2002). Because the accused products are the same, the technology is similar (*i.e.*, location-based, AR gaming), and the parties remain the same, the facts and issues will substantially overlap. Granting Plaintiffs leave to amend will therefore enable the Court to address related issues simultaneously. Conversely, if leave to amend was denied, Plaintiffs would be forced to bring a second action against Defendant for infringement of the additional patents. Simply put, judicial economy far outweighs any alleged prejudice to Defendant.

C. Plaintiffs’ SAC Is Brought In Good Faith.

Plaintiffs’ SAC is brought in good faith and not for an improper purpose. The proposed amendment would require very few changes, if any, to the existing case schedule, and Plaintiffs’ SAC includes allegations relating to newly discovered evidence. Bad faith or dilatory motive does not exist when “there is no need to change the current schedule [and] very little, if any additional discovery would be necessitated by the additional claims.” *Centerforce*, 2000 WL 652943, at *7. Bad faith also does not exist when a party’s amendment “include[s] factual information that was not available to him at the time the initial complaint was filed.” *United States v. Children's Advoc. Ctr. of Delaware*, 230 F. Supp. 3d 354, 356 (D. Del. 2017).

Here, the SAC will not require any major change to the Scheduling Order because the SAC accuses the same three mobile games of infringement that are already at issue. Moreover, Plaintiffs are seeking leave to amend *within weeks* of Plaintiffs’ receipt of documents showing that Defendant’s senior officers had knowledge of certain of the Patents-in-Suit nearly seven years ago.

Plaintiffs have diligently sought leave to amend within the time set by the Court so as to have minimal impact on the case schedule.

D. Plaintiffs' SAC Is Not Futile.

Plaintiffs' SAC is not futile because the allegations in Plaintiffs' SAC easily satisfy the pleading requirements of Rule 12. An amendment is futile only if it fails to adequately state a claim under Rule 12(b)(6). *See In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997). Here, Plaintiffs' SAC includes six total claims of patent infringement, two of which are new claims of infringement for the '761 and '194 patents, as well as more detailed allegations relating to Defendant's prior knowledge of the Patents-in-Suit. and its infringement thereof. Plaintiffs' SAC adequately pleads claims for patent infringement under Rule 12. Accordingly, Plaintiffs' SAC is not futile.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant them leave to file its SAC.

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CERTIFICATION PURSUANT TO D. DEL. LOCAL RULE 7.1.1

Counsel for Plaintiffs certify that a reasonable effort has been made to reach agreement with counsel for Defendant on matters set forth in the foregoing motion. Counsel for Defendant has informed counsel for Plaintiffs that it will oppose the motion.

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