

## Motion to Amend Final Infringement Contentions Granted

MAY 20, 2020

Finding the amendment to plaintiff MV3's final infringement contentions "important because it allows MV3 to fully present its infringement contentions," the court granted MV3's motion to amend its final infringement contentions.

The court applied the Fifth Circuit's four-factor test to determine whether there is good cause to modify the scheduling order articulated in *S & W Enters., L.L.C. v. Southtrust Bank of Ala., NA*, 315 F.3d 533, 536 (5th Cir. 2003): (1) the explanation for the failure to meet the deadline; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice.

Responding to MV3's position that it was diligent in pursuing the late-produced discovery that occasioned its Amendment, the Court referred to the "cat-and-mouse games played during discovery," finding that "MV3 was unable to fully articulate its infringement theory by the original deadline." The court concluded that MV3 "was sufficiently diligent although there was room for improvement." Turning to the second factor, the court found that the amendment was "important because it allows MV3 to fully present its infringement theory." As to factor three, the court noted that "[b]ecause of the importance of th[e] amendment, MV3 will suffer significant prejudice." Concluding that MV3 would suffer more prejudice if the court denied its motion than Roku would suffer if the court granted it, the court found that this factor favored allowing the amendment. For the last factor, the court observed that "[t]o the extent there is any prejudice, the Court believes that a very short continuance—if needed—would cure that prejudice." Though the court agreed that Roku might need additional time to understand third-party implementation, the court rejected Roku's argument that allowing the amendment would make it necessary for Roku to conduct another prior art search.

On the last two factors, the court noted that because "Roku delayed producing relevant documents, it partially created any ultimate prejudice it may suffer." The court further explained that "it is not unreasonable to expect that Roku should have taken steps to prepare its defense for that accused feature as it became more and more obvious that MV3 intended to accuse DIAL. Because Roku failed to take steps at the time to reduce any prejudice it might suffer in the future, its inaction weighs against it when the Court evaluates the prejudice in allowing this amendment."

*MV3 Partners LLC v. Roku Inc.*, 6:18-CV-00308-ADA (Order Granting Plaintiff's Motion for Leave to Amend Final Infringement Contentions)

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