

Court Finds Motion to Amend Pleadings Untimely and Futile

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In 2018, True Chemical Solutions LLC (True Chem) filed suit against Performance Chemical Company (PCC) seeking declaratory judgment of noninfringement and invalidity of patents owned by PCC. As a background, in 2017, several PCC employees left PCC to form True Chem to directly compete with PCC. The employees who left PCC to work for True Chem were heavily involved with the background of the patents at issue, as early as 2012, before PCC filed for its first patent in 2017. In other words, the former employees were well aware of the patents at issue many years prior to the filing of the lawsuit.

After True Chem filed suit, PCC answered and filed amended counterclaims alleging True Chem infringed two of its patents in September 2018. True Chem filed an answer to PCC's amended counterclaims in January 2019, and the deadline to amend its complaint expired on January 8, 2019. Then, on May 15, 2020, more than two years after filing the lawsuit, True Chem filed leave to amend its complaint to add antitrust allegations and inequitable conduct claims against PCC, arguing one of True Chem's employees was an inventor of the patents and PCC failed to meet its duty of candor with respect to the PTO regarding its public use of its own prior art.

The Court found that because of the extensive history between the parties and knowledge of the underlying facts supporting the new causes of action, True Chem's amendment was untimely and without good cause. Specifically, True Chem could not establish that it only recently became aware of the underlying facts that gave rise to these claims and defenses. Indeed, True Chem knew of the information underlying the new causes of action long before filing suit against PCC through the True Chem employees' former employment with PCC. Moreover, True Chem's new antitrust claims could not pass Rule 9(b) scrutiny under *Exergen Corp. v. Walmart Stores, Inc.*, 575 F.3d 1312 (Fed. Cir. 2009).

The takeaway lesson for litigants in front of Judge Albright is to understand that Judge Albright will not allow amendments so far past the deadline without good cause. Here, it was clear that the plaintiff was well aware of the underlying facts even before filing the lawsuit, and the Court would not cut any slack for filing an amendment so late in the game.

True Chem. Sols. LLC v. Performance Chem. Co., Case No. 7:18-cv-78, June 24, 2020 (D.E. 134)

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