

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DELPHIX CORP.,

Case No. C 13-4613 RS

Plaintiff,

v.

**ORDER GRANTING MOTION FOR
LEAVE TO AMEND AND DENYING
MOTION TO DISMISS AS MOOT**

ACTIFO, INC.,

Defendant.

_____ /

Plaintiff Delphix Corp. seeks leave to file a Second Amended Complaint, incorporating “additional factual averments to support its existing willful patent infringement and indirect infringement claims.” Pursuant to Civil Local Rule 7-1(b), the motion is suitable for disposition without oral argument and the hearing set for February 6, 2014 is hereby vacated. Defendant Actifo, Inc. does not oppose the motion *per se*, or offer any reason why leave to amend should not be granted under the liberal standard of Rule 15 of the Federal Rules of Civil Procedure. *See U.S. v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981) (“Rule 15’s policy of favoring amendments to pleadings should be applied with ‘extreme liberality.’”) (quoting *Rosenberg Brothers & Co. v. Arnold*, 283 F.2d 406).

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Actifo refused to stipulate to the amendment, however, unless Delphix agreed that if a motion to dismiss the Second Amended Complaint were successful, the ruling would be with prejudice. Actifo’s response to the motion for leave to amend consists primarily of arguments that leave to file a *third* amended complaint should not be granted if the claims of the Second Amended Complaint are dismissed. Actifo may make those arguments in any motion it brings to dismiss the Second Amended Complaint. The motion for leave to amend is granted.

Without prejudice to Actifo’s right to argue that the Second Amended Complaint does not cure the alleged deficiencies set out in the pending motion to dismiss, that motion is denied as moot, as is the parties’ stipulated request for an extension of the briefing schedule.

IT IS SO ORDERED.

Dated: 1/15/14



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE