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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SONUS NETWORKS, INC.,
Plaintiff,
v.
INVENTERGY, INC., *et al.*,
Defendants.

No. C-15-0322 EMC

**ORDER GRANTING PLAINTIFF’S
MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT
(Docket No. 40)**

Pending before the Court is Plaintiff Sonus Networks, Inc.’s (“Sonus”) Motion for Leave to File a Second Amended Complaint. Docket No. 40. The Court finds this matter suitable for resolution without oral argument and **VACATES** the May 14, 2015 hearing date. Fed. R. Civ. P. 78(b); Civ. L.R. 7-1(b). For the reasons discussed herein, Sonus’s motion for leave to amend its complaint is **GRANTED**.

I. FACTUAL AND PROCEDURAL BACKGROUND

This is a patent dispute. Sonus filed a complaint seeking declaratory judgment of non-infringement as to seven patents against Defendants Inventergy, Inc. and Inventergy Global, Inc. (Inventergy) on January 23, 2015. Sonus previously amended its complaint on March 10, 2014 as of right under Fed. R. Civ. P. 15(a)(1)(B). The first amendment mooted Inventergy’s initial motion to dismiss. Sonus’s First Amended Complaint added claims for unfair competition under

1 California Business and Professions Code Section 17200, Civil RICO (18 U.S.C. §§ 1961 *et seq.*),
2 and breach of contract.¹ Docket No. 26.

3 Sonus now seeks to file a Second Amended Complaint to add a handful of factual
4 allegations, including public statements that Inventergy made after Sonus filed its First Amended
5 Complaint. Sonus does not seek to add any new claims in its proposed Second Amended Complaint.
6 This action is at a relatively early stage. There has not been an initial case management conference
7 and no case management schedule has been set.

8 II. DISCUSSION

9 Federal Rule of Civil Procedure 15 provides that leave to amend should be freely given
10 where justice so requires. Fed. R. Civ. P. 15(a)(2). The Court applies Rule 15 with “extreme
11 liberality.” *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1154 (9th Cir. 2014) (quoting
12 *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir.1990)); *Eminence Capital,*
13 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003).

14 Grounds to deny leave to amend include “undue delay, bad faith or dilatory motive on the
15 part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue
16 prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of
17 amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). Of these considerations, prejudice is the
18 most important. *Eminence Capital*, 316 F.3d at 1052 (“As this circuit and others have held, it is the
19 consideration of prejudice to the opposing party that carries the greatest weight.”). “Absent
20 prejudice, or a strong showing of any of the remaining *Foman* factors, there exists a *presumption*
21 under Rule 15(a) in favor of granting leave to amend.” *Id.* (emphasis in original).

22 Inventergy bears the burden of showing prejudice. *DCD Programs, Ltd. v. Leighton*, 833
23 F.2d 183, 187 (9th Cir. 1987). The Court finds that Inventergy has not met that burden. The
24 proceedings are at an early stage. Amendment would not disrupt discovery or disturb any other case
25 deadlines. Moreover, the amendments sought would not add new theories that change the nature of
26

27 ¹ Inventergy moved to dismiss and moved to strike the First Amended Complaint. The
28 Court deferred hearing those motions in light of the pending motion to amend. *See* Docket No. 44.
In light of the holding herein, those motions are moot.

1 the case. *Cf. Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)
2 (finding no clear abuse of discretion in denying leave to amend where plaintiff sought to add
3 “tenuous” claims that would cause a “radical shift in direction” after a two-year delay).

4 Finding no prejudice, the Court further concludes that Inventergy’s arguments regarding bad
5 faith and futility do not overcome Rule 15(a)’s presumption in favor of granting leave to amend. *See*
6 *Eminence Capital*, 316 F.3d at 1052. Inventergy’s opposition primarily focuses on futility. The
7 Court concludes that it is more appropriate to address the sufficiency of the complaint as amended
8 under a Rule 12(b)(6) motion. This approach comports with the spirit of the Federal Rules of Civil
9 Procedure, under which leave should be freely given and a decision on the merits encouraged. *See*
10 *Foman*, 371 U.S. at 182; *DCD Programs*, 833 F.2d at 186 (“In exercising its discretion ‘a court must
11 be guided by the underlying purpose of Rule 15 – to facilitate decision on the merits rather than on
12 the pleadings or technicalities.’” (citation omitted)).²


13 **III. CONCLUSION**

14 For the foregoing reasons, the Court **GRANTS** Sonus’s motion for leave to file a Second
15 Amended Complaint.

16 This order disposes of Docket No. 40.

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18 **IT IS SO ORDERED.**

19
20 Dated: May 11, 2015

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23 EDWARD M. CHEN
24 United States District Judge

25 _____
26 ² If Sonus’s amended claims do not survive a motion to dismiss under Rule 12(b)(6), the
27 Court will consider the previous amendments granted in weighing whether to deny further leave to
28 amend. “A district court’s discretion to deny leave to amend is ‘particularly broad’ where the
plaintiff has previously amended.” *Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013)
cert. denied, 134 S. Ct. 1322, 188 L. Ed. 2d 306 (2014); *Ecological Rights Found. v. Pac. Gas &*
Elec. Co., 713 F.3d 502, 520 (9th Cir. 2013).