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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FOX FACTORY, INC.,
Plaintiff,
v.
SRAM, LLC,
Defendant.

Case No. [3:16-cv-03716-WHO](#)

**ORDER GRANTING LEAVE TO
AMEND COMPLAINT**

Re: Dkt. No. 60

On July 21, 2017, FOX Factory, Inc. (“FOX”) filed a motion for leave to amend its complaint under Federal Rule of Civil Procedure 15(a). Dkt. No. 60. It seeks to file an amended complaint to “(1) identif[y] additional SRAM rear air shocks released after the filing of the Original Complaint as accused rear air shocks; (2) add[] as a second named defendant SRAM’s wholly-owned subsidiary in Taiwan, which FOX understands manufactures and sells the accused SRAM rear air shocks; and (3) adds a claim for willful infringement based on information provided by SRAM in the course of discovery.” *Id.* It does not seek to add new patent claims or infringement theories, but the proposed amendments will conform its pleading with previously amended infringement contentions. *Id.*; *see* Dkt. No. 34. SRAM has not filed an opposition. I find this matter appropriate for resolution without oral argument and VACATE the August 30, 2017 hearing. Civ. L. R. 7-1(b).

Leave to amend should be granted freely “when justice so requires.” Fed. R. Civ. P. 15(a)(2); *see also Sonoma Cty. Ass'n of Retired Employees v. Sonoma Cty.*, 708 F.3d 1109, 1117 (9th Cir. 2013). The five factors for courts to consider in determining whether to grant leave to amend are: “(1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment; and (5) whether plaintiff has previously amended his complaint.” *Allen v. City of*

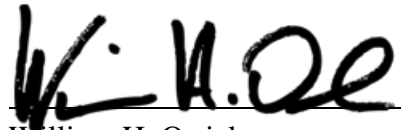
1 *Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990). “Not all of the factors merit equal weight[,]”
2 rather, “it is the consideration of prejudice to the opposing party that carries the greatest weight.”
3 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

4 FOX has not previously amended its complaint, and there is no evidence of bad faith or
5 undue delay.¹ The proposed amendments do not appear to be futile, and SRAM has offered no
6 arguments that they are. *See Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir.
7 2017)(“An amendment is futile when “no set of facts can be proved under the amendment to the
8 pleadings that would constitute a valid and sufficient claim or defense.”). Further, there is no
9 prejudice to SRAM because the proposed amendments do not include new theories of
10 infringement, SRAM is aware of its complete corporate structure and knows that its model year 17
11 rear air shocks have substantially the same structure as previously accused products. McCauley
12 Decl. ¶¶ 7, 8 (Dkt. No. 60-2). The factors support granting leave to amend.

13 FOX’s motion for leave to file an amended complaint is GRANTED.

14 **IT IS SO ORDERED.**

15 Dated: August 23, 2017

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18 William H. Orrick
19 United States District Judge

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27 ¹ There is no evidence of undue delay, even though FOX filed its motion on the deadline to amend
28 pleadings. *See Core Optical Techs., LLC v. Ciena Corp.*, 2013 WL 12140166, at *1 (C.D. Cal.
July 8, 2013)(finding no evidence of undue delay even though motion filed on same day as
deadline to amend).