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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUCKUS WIRELESS, INC.,

Plaintiff,

v.

NETGEAR, INC.,

Defendant.

No. C 08-2310 PJH

**ORDER DENYING MOTION FOR
LEAVE TO AMEND COMPLAINT**

United States District Court
For the Northern District of California

Plaintiff's motion for leave to amend the complaint came on for hearing before this court on July 24, 2013. Plaintiff Ruckus Wireless, Inc. ("plaintiff" or "Ruckus") appeared through its counsel, Colby Springer. Defendant Netgear, Inc. ("defendant" or "Netgear") appeared through its counsel, Nina Wang and Mary Sooter. Having read the papers filed in conjunction with the motion and carefully considered the arguments and the relevant legal authority, and good cause appearing, the court hereby DENIES plaintiff's motion as follows.

Ruckus seeks leave to file an amended complaint with two new causes of action, for breach of contract and misappropriation of trade secrets. As an initial matter, the court notes that Ruckus has taken inconsistent positions regarding the factual basis of its proposed breach of contract claim. In its opening motion, Ruckus alleges that "Netgear agreed to pay Ruckus a per unit royalty rate for every wireless router sold as part of the WPN824 product line," and by failing to pay royalties for version 3 of its router, Netgear breached the licensing contract between the parties. Dkt. 114 at 7. However, in its reply, Ruckus argues that its breach of contract claim is not based solely on a license agreement allowing Netgear to use the asserted patents. Instead, the reply asserts that Netgear also breached the contract when it "improperly shared Ruckus' proprietary and confidential

1 technologies with one or more third parties in violation of the parties' agreement."¹ Dkt. 118
2 at 11-12. The reply also (confusingly) states that "Ruckus has expressly alleged that
3 Netgear was not licensed to practice the asserted patent claims in making, using, selling,
4 and offering to sell the accused product (Version 3)," and that "Netgear did not have a
5 license to practice the claimed invention." Id. at 12. At the hearing, counsel for Ruckus
6 reaffirmed this apparent clarification of its breach of contract theory, explaining that Ruckus
7 no longer contends that version 3 of the router was covered by any license agreement, and
8 instead, its proposed breach of contract claim is based on Netgear's alleged disclosure of
9 confidential information. Thus, based on its representations in reply and at the hearing, the
10 court treats Ruckus' proposed breach of contract claim as arising only out of Netgear's
11 alleged disclosure of confidential information. Ruckus' most recent representations are
12 also consistent with its original complaint, which stated that "[t]here is no contractual
13 obligation or license by and between Ruckus and Netgear (or any proxy thereof, including
14 but not limited to Rayspan) that permits the incorporation of any Ruckus intellectual
15 property in any Netgear WPN product other than the 824v1 and 824v2." Dkt. 1 at 6. Thus,
16 both the proposed breach of contract claim and the proposed trade secret claim are based
17 on the same alleged conduct by Netgear - the improper disclosure of Ruckus' confidential
18 and proprietary information.

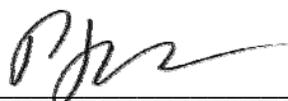
19 Ruckus concedes that it "suspect[ed]" Netgear's improper disclosure of confidential
20 information at least as early as September 11, 2008, when it filed its first case management
21 statement. Dkt. 34 at 5. However, Ruckus did not formally seek to amend its complaint
22 until June 10, 2013 (and even its since-stricken amended complaint was not filed until
23 March 13, 2013). The applicable limitations period for a breach of contract claim is four
24 years, and the limitations period for a trade secret misappropriation claim is three years.

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26 ¹Ruckus also argues that Netgear is contractually liable for Ruckus's attorneys' fees and
27 costs, but that provision provides for such fees and costs to be paid to "the prevailing party."
28 Because there is not yet a prevailing party, Ruckus cannot yet bring a breach of contract claim
based on that provision.

1 Thus, Ruckus' breach of contract claim was time-barred as of September 11, 2012, and its
2 trade secret claim was time-barred as of September 11, 2011. At the hearing, Ruckus
3 attempted to justify its delay by arguing that it was not able to confirm Netgear's improper
4 disclosure until March 5, 2013. Even if the court ignores the fact that Ruckus did not raise
5 this argument in its motion nor in its reply, Ruckus' argument is still unavailing. The statute
6 of limitations clock starts to run when a party "at least suspects, or has reason to suspect, a
7 factual basis for its elements." Norgart v. Upjohn Co., 21 Cal.4th 383, 389 (1999). As
8 stated above, on September 11, 2008, Ruckus expressly represented that it "suspects that
9 Netgear intentionally and/or negligently disclosed certain proprietary information." Dkt. 36
10 at 5 (emphasis added). Moreover, Ruckus argues that Netgear had adequate notice of its
11 proposed claims (for evidence preservation purposes) in 2008, and thus cannot show any
12 prejudice that would result from amendment. Ruckus cannot have it both ways -
13 simultaneously arguing that Netgear had sufficient notice of Ruckus' claims such that it
14 cannot now claim prejudice, and that Ruckus itself did not have an adequate basis for its
15 claims until March 5, 2013. Finally, Ruckus argues that its proposed claims should relate
16 back to the date of its original complaint, but the original complaint alleges only that
17 Netgear infringed the patents-in-suit, and does not allege that Netgear improperly disclosed
18 any of Ruckus' confidential information. For these reasons, the court finds that Ruckus'
19 proposed breach of contract and trade secret misappropriation claims are time-barred, and
20 thus DENIES Ruckus' motion for leave to file an amended complaint, because amendment
21 would be futile.

22 **IT IS SO ORDERED.**

23 Dated: July 29, 2013

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26 PHYLLIS J. HAMILTON
27 United States District Judge
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