

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ZIONS BANCORPORATION, No. C 10-3481 CW
Plaintiff,
v.
U.S. ETHERNET INNOVATIONS, LLC,
Defendant.

U.S. ETHERNET INNOVATIONS, LLC, No. C 10-3724 CW
Plaintiff,

v.
ACER, INC.; ACER AMERICA CORPORATION; APPLE, INC.; ASUS COMPUTER INTERNATIONAL; ASUSTEK COMPUTER, INC.; DELL, INC.; FUJITSU, LTD.; FUJITSU AMERICA, INC.; GATEWAY, INC.; HEWLETT PACKARD CO.; SONY CORPORATION; SONY CORPORATION OF AMERICA; SONY ELECTRONICS INC.; TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; and TOSHIBA AMERICA INFORMATION SYSTEMS, INC.,
Defendants.

INTEL CORPORATION; NVIDIA CORPORATION; MARVELL SEMICONDUCTOR, INC.; Atheros COMMUNICATIONS, INC.; and BROADCOM CORPORATION,
Intervenors.

United States District Court
For the Northern District of California

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1 U.S. ETHERNET INNOVATIONS, LLC,,

No. C 10-5254 CW

2 Plaintiff,

ORDER GRANTING
DEFENDANTS ASUSTEK
COMPUTER INC. AND
ASUS COMPUTER

3 v.

INTERNATIONAL'S
MOTION FOR LEAVE
TO FILE A THIRD-
PARTY COMPLAINT
AGAINST SILICON
INTEGRATED SYSTEMS
CORP. (Docket No.
654 in 10-3724)

4 AT&T MOBILITY LLC; BARNES &
5 NOBLE, INC.; CLAIRE'S BOUTIQUES,
6 INC.; J. C. PENNEY COMPANY, INC.;
7 SALLY BEAUTY HOLDINGS, INC.; ANN
8 TAYLOR STORES CORPORATION; ANN
9 TAYLOR RETAIL, INC.; HARLEY-
10 DAVIDSON, INC.; HARLEY-DAVIDSON
11 MOTOR COMPANY, INC.; KIRKLAND'S
12 INC.; KIRKLAND'S STORES, INC.;
13 MACY'S, INC.; MACY'S RETAIL
14 HOLDINGS, INC.; MACY'S WEST
15 STORES, INC.; NEW YORK & COMPANY,
16 INC.; LERNER NEW YORK, INC.;
17 RADIOSHACK CORPORATION; RENT-A-
18 CENTER, INC.; and THE DRESS BARN,
19 INC.,

AND DENYING
DEFENDANTS SONY
CORPORATION, SONY
CORPORATION OF
AMERICA AND SONY
ELECTRONICS INC.'S
MOTION FOR LEAVE
TO FILE A MOTION
FOR
RECONSIDERATION
(Docket No. 672 in
10-3724)

20 Defendants.

21 _____/
22 AND ALL RELATED CLAIMS AND
23 COUNTERCLAIMS
24 _____/

25 Defendants ASUSTek Computer Inc. and ASUS Computer
26 International (collectively, ASUS) seek leave to file a third-
27 party complaint against Silicon Integrated System Corporation
28 (SiS). Defendants Sony Corporation, Sony Corporation of America
and Sony Electronics, Inc. (collectively, Sony) also move for
leave to file a motion for reconsideration of the October 6, 2011
order granting USEI leave to amend its infringement contentions
to, among other things, identify additional accused products,
which Sony contends were products containing network chips
supplied by Silicon Integrated Solutions, Inc.¹ Plaintiff U.S.

¹ Sony asserts that this is the same entity at issue in
ASUS's motion for leave. See Docket No. 672, 5. For the purposes
of this Order, the Court accepts this assertion as true.

1 Ethernet Innovations, Inc. (USEI) opposes both motions. Having
2 considered the papers filed by the parties, the Court GRANTS
3 ASUS's motion and DENIES Sony's motion.

4 I. ASUS's Motion for Leave to File a Third-Party Complaint

5 Pursuant to Federal Rule of Civil Procedure 14, a defendant
6 may "serve a summons and complaint on a nonparty who is or may be
7 liable to it for all or part of the claim against it," provided
8 that it first obtains leave of the court if it is more than
9 fourteen days after it served its original answer. Fed. R. Civ.
10 Pro. 14(a)(1). "The decision whether to implead a third-party
11 defendant is addressed to the sound discretion of the trial
12 court." Southwest Adm'rs, Inc. v. Rozay's Transfer, 791 F.2d 769,
13 777 (9th Cir. 1986). "In exercising this discretion, the court
14 typically considers several factors, including (1) prejudice to
15 the original plaintiff; (2) complication of issues at trial;
16 (3) likelihood of trial delay; and (4) timeliness of the motion to
17 implead." Joe Hand Prods. v. Davis, 2012 U.S. Dist. LEXIS 172299,
18 at *3 (N.D. Cal.) (internal quotation marks and citation omitted).
19 "The purpose of this rule is to promote judicial efficiency by
20 eliminating the necessity for the defendant to bring a separate
21 action against a third individual who may be secondarily or
22 derivatively liable to the defendant for all or part of the
23 plaintiff's original claim." Southwest Adm'rs, 791 F.2d at 777.

24 ASUS seeks to implead SiS. ASUS alleges that SiS sold it
25 products that ASUS then incorporated into its own goods and that
26 SiS's products provide the functionality in ASUS's goods that USEI
27 accuses of infringing its patents. ASUS contends that it entered
28 into an indemnity agreement with SiS that contractually obliges

1 SiS to defend and indemnify ASUS against any claims that products
2 supplied by SiS infringe the intellectual property rights of
3 another. ASUS's proposed third party complaint asserts claims
4 against SiS for breach of contract and breach of warranty of title
5 and warranty against infringement.

6 USEI opposes ASUS's motion on the grounds that the motion is
7 not timely and that permitting impleader would unnecessarily
8 complicate issues at trial. However, under the facts of the
9 instant case, it cannot be said that any delay by ASUS weighs
10 heavily against impleader because discovery has been largely
11 stayed pending claim construction and resolution of case
12 management issues upon reassignment. Further, permitting
13 impleader here would not delay trial or otherwise negatively
14 affect any deadlines already established in these cases, and USEI
15 does not contend that it would be prejudiced by impleader of SiS.
16 Finally, the indemnity claims that ASUS seeks to assert here,
17 which arise out of its relationship with its chip supplier, are
18 not "tangentially" related to the claims USEI has asserted against
19 ASUS and the other Defendants, as in the case cited by USEI, Zero
20 Tolerance Entm't, Inc. v. Ferguson, 254 F.R.D. 123, 126 (C.D. Cal.
21 2008), but rather are derivative of those claims and implicate
22 matters already at issue in these cases. Accordingly, the Court
23 GRANTS ASUS's motion (Docket No. 654 in 10-3724). ASUS shall file
24 its third-party complaint within three days of the date of this
25 Order and shall serve it upon SiS as soon as possible.

26 II. Sony's Motion for Leave to File a Motion for Reconsideration

27 Under Civil Local Rule 7-9, a party may ask a court to
28 reconsider an interlocutory order if it can specifically show,

1 among other things, that "at the time of the motion for leave, a
2 material difference in fact or law exists from that which was
3 presented to the Court before entry of the interlocutory order for
4 which reconsideration is sought." Civil L.R. 7-9(b)(1).

5 Sony seeks leave to file a motion for reconsideration of the
6 Court's October 6, 2011 order, in which it granted USEI permission
7 to amend its infringement contentions to identify products that
8 incorporated chips Sony obtained from SiS. On October 17, 2011,
9 shortly after the Court originally issued that order, Sony sought
10 leave to file a motion for reconsideration, making the same
11 arguments it raises here almost verbatim. Docket No. 567. On
12 October 19, 2011, the Court denied Sony's motion for leave,
13 stating that it was "not warranted at this time," and that, in
14 "granting Plaintiff leave to amend its Infringement contentions,
15 the Court explicitly found that Plaintiff had demonstrated good
16 cause." Docket No. 571, 2.

17 Sony has not offered any reason that the Court should
18 reconsider the October 19, 2011 order denying its first motion for
19 leave to file a motion for reconsideration and has not offered any
20 argument that was not before the Court at the time of that order.
21 Contrary to Sony's suggestion, the Court did not suggest that
22 reconsideration might be warranted in the future. Further, that
23 USEI opposed ASUS's motion for leave to file a third-party
24 complaint against SiS does not constitute a material difference in
25 fact that warrants reconsideration of the October 6, 2011 order.
26 That the Court has now granted ASUS permission to implead SiS,
27 thereby making it a party to these cases, substantially undermines
28 Sony's contention that USEI should not be permitted to accuse

1 products that incorporate a network chip obtained from a chip
2 supplier that is not party to the case.

3 Accordingly, Sony's motion for leave to file a motion for
4 reconsideration is DENIED (Docket No. 672 in 10-3724).

5 The parties in each of the above-captioned cases are reminded
6 that Civil Local Rule 7-9(c) mandates that parties may not file a
7 motion for leave to file a motion for reconsideration that repeats
8 oral or written arguments that it previously raised in connection
9 with an earlier order that it seeks to have reconsidered, and that
10 parties who file such repetitive motions in the future will be
11 subject to sanctions.

12 CONCLUSION

13 For the reasons set forth above, the Court GRANTS ASUS's
14 motion for leave to file a third-party complaint (Docket No. 654
15 in 10-3724) and DENIES Sony's motion for leave to file a motion
16 for reconsideration (Docket No. 672 in 10-3724). ASUS shall file
17 its third-party complaint within three days of the date of this
18 Order and shall serve it upon SiS as soon as possible.

19 IT IS SO ORDERED.

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21 Dated: 1/17/2013


22 CLAUDIA WILKEN
23 United States District Judge
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