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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SAN FRANCISCO TECHNOLOGY INC.,

Plaintiff,

vs.

MOSSWOOD ENTERPRISES, INC.,

Defendant.

Case No: C 10-5574 SBA

ORDER DISMISSING ACTION

Plaintiff San Francisco Technology Inc. (“SFT”) brings the instant action as a qui tam relator against Defendant Mosswood Enterprises, Inc. (“Mosswood”), for false marking under the Patent Act, 35 U.S.C. § 292. Dkt. 32. On August 12, 2011, Mosswood filed a motion to dismiss. In its response to the motion, SFT acknowledges that in light of the recent enactment of Leahy-Smith America Invents Act, Pub. L. No. 112–29, § 16(b)(4), 125 Stat. 329 (2011), it no longer has standing. Dkt. 36. As such, SFT states that it does not oppose dismissal of the action without prejudice. *Id.*

The Court construes SFT’s response as a request under Federal Rule of Civil Procedure 41(a)(2), which provides that: “[A]n action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” The only issue remaining is whether the Court should dismiss the action with or without prejudice. Where a dismissal is for lack of standing, dismissal without prejudice is appropriate. *See Fleck & Assocs., Inc. v. City of Phoenix*, 471 F.3d 1100, 1102 (9th Cir. 2006). Accordingly,

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IT IS HEREBY ORDERED THAT the instant action is DISMISSED without prejudice. The motion hearing scheduled for January 24, 2012 is VACATED. The Clerk shall close the file and terminate Docket 32.

IT IS SO ORDERED.

Dated: January 17, 2012


SAUNDRA BROWN ARMSTRONG
United States District Judge