

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

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4 LINEX TECHNOLOGIES, INC.,

No. C 13-159 CW

5 Plaintiff,

ORDER GRANTING
PLAINTIFF'S MOTION
FOR LEAVE TO AMEND
INFRINGEMENT

6 v.

CONTENTIONS
(Docket No. 198)
AND DENYING
DEFENDANTS' CROSS-
MOTION TO STRIKE
(Docket No. 203)

7 HEWLETT-PACKARD COMPANY; APPLE
8 COMPUTER, INC.; ARUBA NETWORKS,
9 INC.; MERU NETWORKS; and RUCKUS
WIRELESS,

10 Defendants.

11 _____/
12 AND ALL RELATED CLAIMS AND
COUNTER-CLAIMS

13 _____/
14 Plaintiff Linex Technologies, Inc. moves for leave to amend
15 its infringement contentions against Defendants Hewlett-Packard
16 Company (HP); Apple Computer, Inc.; Aruba Networks, Inc.; Meru
17 Networks; and Ruckus Wireless. Docket No. 198. Defendants oppose
18 the motion and cross-move to strike Linex's infringement
19 contentions. Docket No. 203. Having considered the papers
20 submitted by the parties, the Court GRANTS Linex's Motion to Amend
21 and DENIES Defendants' Cross-Motion to Strike.
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23 BACKGROUND

24 Linex owns United States Patent Nos. 6,757,322 (the '322
25 patent), RE42,219 (the '219 patent), and RE43,812 (the '812
26 patent). In May 2011 Linex filed this patent infringement suit,
27 contending that third-party Wi-Fi chipsets contained in
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1 Defendants' products infringe one or more claims. Docket No. 1.
2 On August 2, 2013, Linex filed a motion to amend its infringement
3 contentions. Docket No. 198. On August 16, 2013, Defendants
4 filed a cross-motion to strike Linex's infringement contentions on
5 the basis that they are deficient and unclear, and therefore fail
6 to offer reasonable notice of Linex's infringement theory, as
7 required by Patent L.R. 3-1.

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9 LEGAL STANDARDS

10 A party may amend its infringement contentions upon a showing
11 of good cause and by order of the Court. Patent L.R. 3-6.

12 Examples of good cause include

13 (a) a claim construction by the Court different from
14 that proposed by the party seeking amendment; (b) recent
15 discovery of material, prior art despite earlier
16 diligent search; and (c) recent discovery of nonpublic
17 information about the Accused Instrumentality which was
not discovered, despite diligent efforts, before the
service of the Infringement Contentions.

18 Patent L.R. 3-6. Patent L.R. 3-6 "serves to balance the parties'
19 rights to develop new information in discovery along with the need
20 for certainty in legal theories at the start of the case." Apple,
21 Inc. v. Samsung Elecs. Co., Ltd., 2012 WL 5632618, at *2 (N.D.
22 Cal.) (citing O2 Micro Int'l, Ltd. v. Monolithic Power Sys., Inc.,
23 467 F.3d 1355, 1366 (Fed. Cir. 2006)).

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25 The good cause inquiry considers first whether "the party
26 seeking leave to amend acted with diligence in promptly moving to
27 amend when new evidence [was] released." O2 Micro, 467 F.3d at
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1 1363. "In considering the party's diligence, the critical
2 question is whether the party 'could have discovered [the new
3 information] earlier had it acted with the requisite diligence.'" Apple, 2012 WL 5632618, at *6 (citing Google, Inc. v. Netlist,
4 2010 WL 1838693, at *2 (N.D. Cal.)). The burden is on the moving
5 party to show diligence. Id. If the court finds that the moving
6 party was not diligent in amending its infringement contentions,
7 it does not need to consider the question of prejudice to the non-
8 moving party. See 02 Micro, 467 F.3d at 1368 (affirming the
9 district court's decision refusing leave to amend upon finding the
10 moving party was not diligent, without considering the question of
11 prejudice to the non-moving party). However, even if the movant
12 was arguably not diligent, the court retains discretion to grant
13 leave to amend. Apple, 2012 WL 5632618, at *6 (granting leave to
14 amend infringement contentions, even though court found plaintiff
15 failed to establish diligence, because of lack of prejudice to
16 defendant).

20 DISCUSSION

21 I. Linex's Motion to Amend

22 Linex filed its initial infringement contentions on May 15,
23 2013. At that time, Linex asserts, it had not yet been given the
24 third-party chip suppliers' source code for inspection.
25 Subsequently, on May 31, 2013, Marvell permitted Linex's expert to
26 examine Marvell's source code. Linex accordingly incorporated
27 analyses of the Marvell source code and served its first amended
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1 infringement contentions on July 2, 2013. Similarly, on June 11
2 and 12, 2013, Qualcomm-Atheros allowed Linex's expert to examine
3 Qualcomm-Atheros' source code. Linex then amended its contentions
4 to incorporate analyses of the Qualcomm-Atheros source code.
5 Linex served these second amended contentions on July 17, 2013.

6 Linex has shown diligence sufficient to meet the good cause
7 standard. Courts typically grant leave to amend infringement
8 contentions after a patentee has been given the opportunity to
9 inspect relevant source code. See, e.g., Big Baboon Corp. v.
10 Dell, Inc., 723 F. Supp. 2d 1224, 1228 (C.D. Cal. 2010). Here,
11 the record demonstrates that Linex amended its infringement
12 contentions as it gained access to the relevant evidence from
13 Defendants. As third-party chip suppliers provided Linex with
14 access to documents and source code, Linex promptly amended its
15 contentions to include citations to that third-party evidence.
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18 Defendants also will not be prejudiced by Linex's proposed
19 changes. This case remains in its early stage. Trial is not set
20 until July 28, 2014. Defendants have sufficient time to review
21 Linex's amended infringement contentions. As Linex notes, its
22 proposed amendments to its infringement contentions do not add new
23 patent claims or new products. See Apple, 2012 WL 5632618, at *3
24 (noting that proposed amendment did not add new claims or theories
25 of infringement); see also Yodlee, Inc. v. CashEdge, Inc., 2007 WL
26 1454259 (N.D. Cal.), at *3 (finding no prejudice in permitting
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1 amended infringement contentions where there was still "ample
2 time" to conduct discovery).

3 II. Defendants' Motion to Strike

4 A. "Separating" Limitation

5 Linex offers two theories of infringement regarding the
6 "separating" limitation. Defendants initially contend that
7 Linex's first theory is deficient because Linex does not identify
8 specifically the codes, signals and data symbols present in the
9 accused products. Linex explains that the accused products detect
10 the HT-LTFs and P code portion of the signals and use the
11 circuitry of FFT and channel estimator blocks to do the
12 "separating." Linex identifies the OFDM packets as the different
13 signals, which contain HT-LTFs and P codes, as well as payload
14 data. Linex's specifications as to its first theory of
15 infringement are sufficient enough to comply with L.R. 3-1.
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18 Linex's second theory of infringement regarding the
19 "separating" limitation contends that the accused products use HT-
20 LTfs, P code, and pilot portions of the signal to separate the
21 signals and use the circuitry of the FFT and MIMO equalizer to do
22 the "separating." Defendants argue that Linex's second theory of
23 infringement is deficient because it does not adequately specify
24 the meaning of the terms. Linex has again adequately specified
25 the components necessary to comply with L.R. 3-1. Linex has
26 explained that the claimed "said different signals" are the entire
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1 OFDM packets; the codes are HT-LTFs, P codes and pilots; and the
2 circuitry is the MIMO equalizer and the RTL source code.

3 B. Combining Limitation

4 Linex offers two theories contending that the accused
5 products meet the "combining" limitation. First, during MIMO
6 equalization, the payload data portions received on different
7 receiving antennas are combined. Second, during MIMO
8 equalization, the HT-LTF and P code preamble portions of the
9 signals received on different receiving antennas are combined.
10 Defendants argue that Linex's two theories of combining are
11 deficient.
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13 Contrary to Defendants' charge of vagueness, Linex has
14 identified each of the components of the claim. Linex has
15 detailed how MIMO equalization performs the "combining" limitation
16 and has identified each component of the claim. Linex has
17 "forthrightly set forth the specifics of its infringement
18 contentions." Infineon Techs. v. Volterra Semiconductor, 2013 WL
19 322570 (N.D. Cal.), at *4.
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21 C. "Multiplexer" Limitation

22 Claims 97 and 101 in the '812 patent contain the limitation
23 of "a multiplexer for multiplexing data derived from said plural
24 streams of data symbols to form a single stream of data
25 corresponding to the data from said single source data."
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27 Defendants assert that Linex has not explained how the accused
28 circuitry implicates the claim language.

1 Linex's contentions comply with Patent L.R. 3-1. Linex has
2 identified the stream deparser and spatial combiner as the
3 multiplexer. Further, cases cited generally by Defendants do not
4 apply here. For instance, in Diagnostic Sys. Corp. v. Symantec
5 Corp., 2009 WL 1607717, at * 4-5 (C.D. Cal.) the court denied the
6 patentee's motion to amend on the basis that the infringement
7 contentions failed to identify how the source code of the accused
8 products infringed the claims. Here, Linex's contentions cite the
9 specific modules in the source code, and these modules demonstrate
10 that the multiplexer may infringe the claims.

12 D. Doctrine of Equivalents

13 Defendants argue that Linex's claims fail to comply with
14 Patent L.R. 3-1(e), which requires Linex to state "[w]hether each
15 limitation of each asserted claim is alleged to be literally
16 present or present under the doctrine of equivalents in the
17 Accused Instrumentality." L.R. 3-1(e). "[J]udges of this court
18 have rejected plaintiffs' attempts to assert claims under the
19 doctrine of equivalents with blanket statements." OptimumPath,
20 LLC v. Belkin Intern., Inc., 2011 WL 1399257 *8 (N.D. Cal.).
21 Here, Linex does not offer merely boilerplate language asserting
22 the doctrine of equivalents. Linex's contentions are sufficient
23 to comply with L.R. 3-1(e).
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26 CONCLUSION

27 For the reasons set forth above, this Court GRANTS Linex's
28 Motion to Amend and DENIES Defendants' Motion to Strike.

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This order terminates Docket Nos. 198 and 203.

IT IS SO ORDERED.

Dated: 11/5/2013



CLAUDIA WILKEN
United States District Judge