

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

LANTIQ DEUTSCHLAND GMBH,  
Plaintiff,  
v.  
RALINK TECHNOLOGY CORPORATION,  
ET AL.,  
Defendant.

Case No.: 5:11-CV-00234 EJD  
**ORDER GRANTING MOTION FOR  
LEAVE TO FILE PROPOSED  
SECOND AMENDED COMPLAINT**  
**(Re: Docket No. 106)**

Pending before the court is Plaintiff Lantiq Deutschland GMBH's ("Lantiq") motion for leave to file the proposed Second Amended Complaint ("SAC"). Defendant Ralink Technology Corporation, a California Corporation, and Defendant Ralink Technology Corporation, a Taiwanese Corporation, ("Ralink") oppose the motion. For the reasons discussed below Lantiq's motion is GRANTED.

I. BACKGROUND

On October 14, 2011, Lantiq and Ralink filed a joint case management statement stating, "Plaintiff Lantiq notes that, on October 1, 2011, Ralink Taiwan merged with MediaTek Inc., a Taiwanese corporation with its principal place of business at No. 1, Dusing Rd. 1, Hsinchu Science Park, Hsinchu, Taiwan, R.O.C. and that Ralink Taiwan is now a wholly owned subsidiary of MediaTek Inc. Ralink notes that Ralink Taiwan remains a separate corporation, that MediaTek, Inc. is not a party to this action, and that Ralink is unaware of any matters relating to MediaTek that are at issue in this action. Lantiq has

1 served discovery requests on Ralink regarding the merger and the purported resulting  
2 corporate structure.”

3 Joint Case Management Statement, Docket No. 65 at 2:3-9.

4 On October 24, 2011, the court issued a case management order stating that “the deadline  
5 for joinder of any additional parties, or other amendment to the pleadings is sixty days after entry  
6 of this order.” Docket No. 71. On December 23, 2011, Plaintiffs filed a Second Amended  
7 Complaint. See Docket No. 79. On February 1, 2012, the court struck that complaint because it was  
8 filed without leave of court. See Docket No. 94. On February 21, 2012, Lantiq filed this motion for  
9 leave to file the SAC. The SAC would make the following changes:

- 10 • “Names MediaTek Taiwan, MediaTek USA and MediaTek Wireless [“MediaTek”] as  
11 defendants.
- 12 • Asserts claims for infringement of the Födlmeier ‘799 and Preiss ‘904 patents—the two  
13 patents already asserted in the FAC against both MediaTek and Ralink—based on  
14 MediaTek’s sale of accused Ralink-branded products, as well as the sale of MediaTek  
15 products.
- 16 • Seeks damages jointly and severally against Ralink and MediaTek to the extent proven at  
17 trial.
- 18 • Adds claim 12 of the Födlmeier ‘799 Patent (claims 1-11 and 13 having previously been  
19 asserted) against Ralink and MediaTek, and generally updates the complaint to reflect facts  
20 learned during the course of discovery. Lantiq had asserted claim 12 in its preliminary  
21 infringement contentions.”

22 Lantiq’s Motion To File Amended Compl. at 8:23-9:4, Docket No. 106.

23 On March 6, 2012, Ralink filed its opposition to the motion. Ralink argues the motion to  
24 amend should be denied because Lantiq failed to request modification of the scheduling order,  
25 Lantiq’s lack of diligence in pursuing the amendment negates good cause, the amendment would  
26 cause delay which would prejudice Ralink, and joinder of MediaTech is improper under Fed. R.  
27 Civ. P. 20 and the America Invents Act. On March 13, 2012, Lantiq filed its reply. On March 27,  
28 2012, the court took the motion under submission without oral argument.

## II. LEGAL STANDARDS

Under Rule 15, after a responsive pleading is filed, “a party may amend its pleading only  
with the opposing party’s consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). “The court should

1 freely give leave when justice so requires.” Id. This leave policy is applied with “extreme  
2 liberality.” See Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003). A  
3 court considers five factors to determine whether to grant leave to amend: (1) bad faith; (2) undue  
4 delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) whether the plaintiff  
5 previously amended his complaint. See Nunes v. Ashcroft, 375 F.3d 805, 808 (9th Cir. 2004).  
6 Delay alone is insufficient to justify denial of leave to amend. Jones v. Bates, 127 F.3d 839, 847 n.  
7 8 (9th Cir. 1997). Of the factors, prejudice to the opposing party is the “touchstone of the inquiry  
8 under Rule 15(a)” and “carries the greatest weight.” See Eminence Capital, 316 F.3d at 1052.  
9 Absent prejudice or a strong showing on other factors, a presumption exists under Rule 15(a)  
10 favoring granting leave to amend. See id. The party opposing a motion to amend bears the burden  
11 of showing prejudice. DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 187 (9th Cir. 1987).

12 Nevertheless, motions to amend the pleadings filed after the date set in the court’s  
13 scheduling order must satisfy the more stringent “good cause” showing required under Rule 16.  
14 See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607–08 (9th Cir. 1992). “Unlike Rule  
15 15(a)’s liberal amendment policy which focuses on the bad faith of the party seeking to interpose  
16 an amendment and the prejudice to the opposing party, Rule 16(b)’s ‘good cause’ standard  
17 primarily considers the diligence of the party seeking the amendment.” Id. at 609.

18 In this case, Lantiq filed its motion on February 21, 2012, after the December 23, 2012  
19 deadline set in the court’s scheduling order. See Docket No. 71. Thus, the court examines the  
20 motion through the lens of the “good cause” standard and then turns to the Rule 15 analysis.

### 21 III. DISCUSSION

22 First, Ralink argues that Lantiq’s motion is procedurally defective because Lantiq failed to  
23 file a motion for leave to amend the scheduling order in addition to the motion for leave to amend  
24 the complaint. A court may deny as untimely a motion filed after the cut-off date in the scheduling  
25 order where no request to modify the order was made. See Johnson, 975 F.2d at 608. Lantiq has not  
26 captioned its motion as a motion to modify the scheduling order for good cause and does not  
27 mention Rule 16 in its motion. Although Lantiq’s motion is not in the form of a motion to modify  
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1 the scheduling order, it makes the substantive argument that there is good cause for the proposed  
2 amendment and cites to cases that analyze amendments under Rule 16. Thus, the court treats the  
3 motion as a motion to modify the scheduling order. See Johnson v. Country of Alameda, No. C.  
4 10-01437-RS, 2011 WL 2610138, at \*5-6 (N.D. Cal. July 1, 2011) (treating a motion for leave to  
5 amend the pleadings also as a motion to revise the scheduling order).

6 Ralink also argues that Lantiq did not pursue its amendment with diligence as required by  
7 Rule 16(b). On September 22, 2011, Lantiq served a request for production of documents seeking  
8 information about MediaTek's relationships with Ralink. See Docket No. 106-23. On October 14,  
9 2011, Lantiq represented to the court its belief that Ralink and MediaTek had merged, while Ralink  
10 merely asserted that Ralink remained a separate corporation and did not comment on the merger.  
11 See Docket 65 at 2. On December 23, 2011, Lantiq filed a Second Amended Complaint adding  
12 MediaTek as a defendant without obtaining leave of court. In opposition to Ralink's motion to  
13 strike that complaint, Lantiq argued that under the court's scheduling order it need not obtain leave  
14 of court to file any amended pleading until after the December 23, 2012 deadline. On January 31,  
15 2011, Lantiq filed proofs of service of MediaTek. On January 9, 2012, Ralink issued a press release  
16 that MediaTek would be releasing its first product since its merger with Ralink, and this product is  
17 identified with the same prefix that Ralink uses for its products. See Docket No. 106-6. On  
18 February 1, 2012, the court addressed the error in Lantiq's reading of the scheduling order and  
19 struck the complaint. See Docket No. 94. On February 21, 2012, Lantiq filed this motion to amend.  
20 Given this timeline, the court finds that Lantiq exhibited diligence in its handling of the facts that  
21 gave rise to the addition of MediaTek as a defendant and that good cause exists under Rule 16.

22 Ralink further argues that the amendment should not be permitted under Rule 15 because it  
23 will cause delay that will prejudice Ralink. Ralink argues that the proceeding will be delayed  
24 because MediaTek will need to engage in discovery that has already been conducted between the  
25 existing parties. As a result, Ralink's ability to pursue its claims against Lantiq for infringement of  
26 the '116 patent will be substantially delayed. The court notes that the discovery cut-off dates have  
27 not yet passed and the existing parties are actively engaged in the discovery process. "Having to  
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1 engage in activities now, rather than at an earlier time in the case, in and of itself, does not  
2 constitute prejudice to defendants.” Johnson, 2011 WL 2610138, at \*6. Ralink has not identified  
3 how its claims or defenses will be prejudiced by any resulting delay, and delay alone is insufficient  
4 to justify denial of leave to amend. Jones v. Bates, 127 F.3d 839, 847 n. 8 (9th Cir. 1997). The  
5 court therefore finds that under the liberal standard of Rule 15, leave to amend should be granted.

6 Finally, Ralink makes several arguments that joinder is improper under Fed. R. Civ. P. 20  
7 and the America Invents Act, 35 U.S.C. § 299. Under Rule 20, defendants may be joined in one  
8 action if the plaintiff is seeking joint, several, or alternative liability with respect to or arising out of  
9 the same transaction, occurrence, or series of transactions or occurrences and there are common  
10 questions of law or fact. Under Section 299 of the America Invents Act, those transactions or  
11 occurrences must relate to the making, using, importing into the United States, offering for sale, or  
12 selling of the same accused product or process. 35 U.S.C. § 299(a). Lantiq argues that joinder is  
13 appropriate because the SAC alleges that MediaTek sells Ralink’s infringing products. Ralink  
14 argues that there is insufficient evidence to show that MediaTek has offered Ralink’s products for  
15 sale, specifically discussing the content of MediaTek’s website. Although Ralink argues that  
16 Lantiq’s evidence is insufficient, Ralink has not argued that the allegations in the SAC regarding  
17 MediaTek’s sale of Ralink’s products fail to form a basis for joinder under Rule 20(a)(2) or the  
18 America Invents Act. Ralink also has not cited any authority that would require Lantiq to produce  
19 evidence to support those assertions in order to amend its complaint.

20 Accordingly,

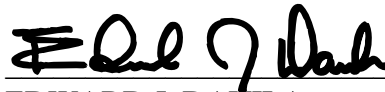
21 IT IS HEREBY ORDERED that Lantiq’s motion for leave to amend is GRANTED. Lantiq  
22 shall file its proposed SAC no later than May 4, 2012.

23 IT IS FURTHER ORDERED that, in light of the SAC, the parties shall appear for a further  
24 case management conference on May 18, 2012. The parties shall submit a joint case management  
25 conference statement no later than May 8, 2012. This statement may include any proposed  
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schedule modifications including any proposed separate schedule for the '116 patent claims.

Dated: April 30, 2012



EDWARD J. DAVILA  
United States District Judge