

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FITBIT, INC.,
Plaintiff,
v.
ALIPHCOM, et al.,
Defendants.

Case No.15-cv-04073-EJD (HRL)

**ORDER GRANTING PLAINTIFF'S
UNOPPOSED MOTION FOR LEAVE
TO SUPPLEMENT INFRINGEMENT
CONTENTIONS**

Re: Dkt. No. 111

Pending before the court is plaintiff Fitbit, Inc.'s ("Fitbit") motion for leave to supplement its infringement contentions. Dkt. No. 111. The motion is unopposed, and the court deems this matter suitable for determination without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons explained below, the court grants Fitbit's motion for leave to supplement its infringement contentions.

BACKGROUND

Fitbit asserts that it served its initial infringement contentions on defendant AliphCom d/b/a Jawbone ("Jawbone") in February. Dkt. No. 111. In addition to this action, the litigants are engaged in various other proceedings, including investigations before the International Trade Commission ("ITC"). Dkt. No. 111, Chung Decl., at ¶ 3. As part of the ITC proceedings, Fitbit inspected sections of Jawbone's source code that form the basis of Fitbit's proposed supplements to its infringement contentions here. *Id.* Fitbit, however, was bound by the protective order it entered into as part of the ITC proceeding, and initially could not use the confidential information discovered before that body in this case. *Id.* In August 2016, however, the parties entered into a cross-use agreement that, among other things, allows them to use confidential information discovered through the ITC proceeding here. *Id.*; *id.*, at Ex. 19. Within one month after entering into this agreement, Fitbit noticed inspection of Jawbone's source code, *id.* at ¶ 5, and Fitbit

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1 moved to supplement its infringement contentions in light of that review approximately two
2 months later. Fitbit asserts that Jawbone does not oppose the motion to supplement, *id.* at ¶ 2, and,
3 indeed, no opposition has been filed.

4 DISCUSSION

5 Patent Local Rule 3.6 governs the amendment of infringement contentions. It states that
6 amendments “may be made only by order of the Court upon a timely showing of good cause.”
7 Patent L.R. 3-6. Courts evaluating requests for leave to amend apply a two-step analysis to
8 determine if good cause exists: “first the court must determine whether the moving party was
9 diligent in amending its contentions; second[,] the court must determine whether the non-moving
10 party would suffer undue prejudice if the motion to amend were granted.” *DCG Sys.*, 2012 WL
11 1309161, at *3. In establishing good cause, the burden is on the moving party to show diligence.
12 *Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. CV 12-00630 LHK, 2012 WL 5632618, at *2 (N.D.
13 Cal., Nov. 15, 2012). Patent Local Rule 3-6(c) specifically provides that a finding of good cause
14 may be supported by the “[r]ecent discovery of nonpublic information about the Accused
15 Instrumentality which was not discovered, despite diligent efforts, before the service of the
16 Infringement Contentions.”

17 The court is persuaded that good cause exists to allow Fitbit to supplement its infringement
18 contentions. Though Fitbit discovered the relevant source code through the ITC investigations at
19 an earlier date, this information was effectively unavailable to Fitbit until August 8, 2016, when
20 the parties entered into a cross-use agreement. After the barrier to Fitbit’s use of Jawbone’s
21 source code was removed, Fitbit acted diligently to re-discover the non-public information and to
22 file this motion. Additionally, as Jawbone has not opposed Fitbit’s motion, the court is persuaded
23 that granting leave to supplement Fitbit’s infringement contentions would not cause the defendant
24 to suffer undue prejudice.


25 CONCLUSION

26 The court therefore grants Fitbit’s motion for leave to supplement its infringement
27 contentions.

28 **IT IS SO ORDERED.**

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Dated: 1/5/2017



HOWARD R. LLOYD
United States Magistrate Judge