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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JENS ERIK SORENSEN, as Trustee of
SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

Plaintiff,

v.

DMS HOLDINGS, INC dba MABIS
HEALTHCARE and DURO-MED
INDUSTRIES, a Delaware Corporation;
and DOES 1-100,

Defendant.

Case No. 08cv559-BTM-CAB

**ORDER RE MOTION FOR
EXCEPTION TO STAY TO NAME
AND SERVE DOE 1**

Plaintiff moves for an exception to stay for leave to add Becton, Dickinson and Company (“Becton Dickinson”) as a defendant in this case. For the reasons discussed below, Plaintiff’s motion is **DENIED**.

I. BACKGROUND

Plaintiff brings a patent infringement action against DMS Holdings (“DMS”), alleging infringement in the following products: Relion Digital Thermometer and the BD Rapid Flex Digital Thermometer. (Compl. ¶ 11.) The Relion Digital Thermometer is sold by DMS and the BD Rapid Flex Thermometer is sold by Becton Dickinson. (Opp. at 1.) Both products are manufactured by an offshore manufacturing company, Actherm, that is not a party in the instant case. (Reply at 2.)

1 On June 24, 2010, Defendant sought to remove from the accused product list two
2 models of the BD Rapid Flex Thermometer on the ground that these products “have no
3 relation to DMS” and that they “are products of Becton Dickinson.” (Mem. at 2.) Plaintiff
4 asserts that this June 24, 2010 communication put Plaintiff “on notice that DMS is claiming
5 no connection to BD thermometers” and on this ground, seeks to add Becton Dickinson to
6 the lawsuit. (Mem. at 4.)

7 8 **II. DISCUSSION**

9 Under Fed. R. Civ. P. 20(a)(2), persons may be joined as a defendant in an action if:
10 “(A) any right to relief is asserted against them jointly, severally, or in the alternative with
11 respect to or arising out of the same transaction, occurrence, or series of transactions or
12 occurrences; and (B) any question of law or fact common to all defendants will arise in the
13 action.” This rule “is to be construed liberally in order to promote trial convenience and to
14 expedite the final determination of disputes, thereby preventing multiple lawsuits.” *League*
15 *to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 558 F.2d 914, 917 (9th Cir. 1977).

16 Rule 20(a)(2)’s first requirement cannot be met in this case. Plaintiff argues that
17 because the challenged products are manufactured by the same company, Achterm, there
18 is a “sufficient nexus for the products (and those entities who imported, sold, or offered for
19 sale those products) to be combined in the same case.” (Reply at 2.) However, alleging a
20 common manufacturer and infringement of the same patent is not enough to support joinder
21 where defendants are unrelated companies, selling different products. *C.f. N.J. Machine*
22 *Inc. v. Alford Indus., Inc.*, No. 89-1879(JCL), 1991 WL 340196, at *1 (D.N.J. Oct. 7, 1991)
23 (“Infringement of the same patent by different machines and parties does not constitute the
24 same transaction or occurrence to justify joinder.”); *Phillips Elec. N. Am. v. Contec Corp.*, 220
25 F.R.D. 415, 418 (D. Del. 2004) (“[T]he only connection between [defendants proposed to be
26 joined] is that they may have infringed the same patents owned by [plaintiff], which is an
27 insufficient basis to join unrelated parties as defendants in the same lawsuit.”).

28 Plaintiff does not point to any legal or business relationship between DMS and Becton

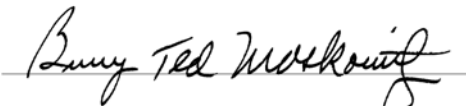
1 Dickinson and does not cite to any legal authority about how such unrelated companies may
2 be liable for acts of the other. See *Philips Elec. N. Am.*, 220 F.R.D. at 417-18 (D. Del. 2004).
3 Moreover, distinct and unrelated questions may arise at trial regarding the nature of each
4 product's infringement. Thus, notwithstanding a liberal construction of Rule 20, here, joinder
5 may result in jury confusion, instead of "trial convenience" or "expedit[ious] . . . final
6 determination of disputes." *League to Save Lake Tahoe*, 558 F.2d at 917.

7
8 **III. CONCLUSION**

9 For these reasons, the Court **DENIES** Plaintiff's motion for leave to seek joinder.
10 However, if Plaintiff files a separate action against Becton Dickinson, the Court would be
11 amenable to consolidating the cases for the purpose of discovery and claim construction.

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13 **IT IS SO ORDERED.**

14 DATED: November 24, 2010

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16 Honorable Barry Ted Moskowitz
17 United States District Judge
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