

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IMPROVED SEARCH LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

**1:16CV650****MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff Improved Search LLC's ("Improved") request for an order of dismissal of Count II of the Complaint filed in this action alleging infringement of U.S. Patent No. 7,516,154 ("the '154 Patent"). [D.I. 95](#). It seeks a dismissal with prejudice of all claims of infringement that it raised or could have raised in this action with respect to the '154 Patent. Further, it requests that all of the defendant's claims, defenses, or counterclaims as to the '154 Patent be dismissed without prejudice, with each party to bear its own attorneys' fees and costs.

On August 22, 2018, the Court issued its Memorandum and Order construing the claims of the two Patents-in-Suit ("claim construction order"). [D.I. 76](#). Following the entry of the claim construction order, the parties discussed the best manner of going forward with the prosecution of this action in light of the claim construction. Those discussions are referred to in joint status reports filed by the parties in this case. [D.I. 77](#) and [79](#). The first Joint Supplemental Status Report, filed on September 4, 2019, states that the parties had reached a tentative agreement to dismiss the claims alleging infringement of '154 Patent and states that the parties "will present a Joint Stipulation and Proposed Order for Dismissal" to the Court. [D.I. 78](#). In a Joint Status Report

submitted on September 25, 2018, Microsoft again reported that the parties were “preparing a Joint Stipulation and Proposed Order of Dismissal” with respect to the ’154 patent (D.I. 79). The record shows the parties were unable to reach agreement on terms that would result in a stipulated dismissal and Improved now seeks a Court-ordered dismissal pursuant to Fed. R. Civ. P. 41(a)(2).

Improved has shown that the parties agreed to the dismissal of Improved’s claims of infringement with prejudice. D.I. 101, Declaration of Robert Yorio at 2. Later, a point of disagreement arose on the terms of a covenant not to sue. *Id.* Microsoft opposes the motion and requests that the Court delay its decision on Improved’s motion to dismiss its claims under Rule 41 until after it decides Microsoft’s motion for summary judgment, which was filed after the parties represented to the Court that they had agreed to the dismissal of infringement claims as to the ’154 patent. Microsoft argues that it and its customers could be prejudiced by the dismissal “because it might allow Plaintiff to improperly attempt to continue to assert the indefinite claims of the ’154 Patent, potentially against Microsoft’s customers or against future Microsoft products.” D.I. 99, Brief at 3 (emphasis added). The Court finds Microsoft’s concerns are speculative and the “with prejudice” dismissal of Improved’s infringement claims with respect to the ’154 patent will adequately protect its interests.

Because Improved has shown that Microsoft previously agreed to an order for dismissal and the parties represented as much to the Court, the Court finds that the motion should be granted. Accordingly,

IT IS ORDERED that:

1. Improved Search LLC's ("Improved") request for an order of dismissal of Count II of the Complaint filed in this action alleging infringement of U.S. Patent No. 7,516,154 (D.I. 95) is granted.
2. Count II of Improved Search's Complaint (D.I. 1) against Microsoft Corporation, alleging infringement of the U.S. Patent No. 7,516,154, is dismissed with prejudice.
3. All claims, defenses, or counterclaims that Defendant raised with respect to the '154 Patent are dismissed without prejudice.
4. Each party shall bear its own attorneys' fees and costs.
5. A judgment of dismissal will issue this date.

DATED this 28th day of May, 2019.

BY THE COURT:

s/ Joseph F. Bataillon  
Senior United States District Judge