

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:10cv023580-Civ-RNS

MOTOROLA MOBILITY, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

APPLE INC.,

Counterclaim Plaintiff,

v.

MOTOROLA, INC. and
MOTOROLA MOBILITY, INC.,

Counterclaim Defendants.

ORDER ALLOWING MOTOROLA TO SUPPLEMENT INVALIDITY CONTENTIONS

THIS MATTER is before the Court upon the Motion to Amend the Procedural Schedule to Serve Supplemental Invalidity Contentions [ECF No. 211], filed by Motorola Mobility, Inc. and Motorola Solutions, Inc. (“Motorola”). Apple, Inc. (“Apple”) opposes this Motion. The Court heard argument from both parties on March 9, 2012. Upon careful consideration of the parties’ written submissions and oral arguments, the Court concludes that Motorola should be permitted to supplement its invalidity contentions.

This Court has “broad discretion” to allow amendments to invalidity contentions. *Alexsam, Inc. v. IDT Corp.*, 2011 WL 108725, at *1 (E.D. Tex. Jan. 12, 2011). In considering whether to permit supplementation, the Court considers the following factors, among others:

(1) the explanation for the party’s failure to meet the deadline, (2) the importance of what the Court is excluding, (3) the potential prejudice if the Court allows the thing that would be excluded, and (4) the availability of a continuance to cure such prejudice.

See id.


Upon consideration of these and other relevant factors, the Court finds that the prejudice to Motorola if not allowed to supplement would be too great, and may preclude a fair determination of this case on its merits. *See, e.g., Reckitt Benckiser Inc. v. Tris Pharma, Inc.*, 2011 WL 4962221, at *8 (D.N.J. Oct. 18, 2011) (“precluding [supplemental discovery response] would result in more substantial prejudice accruing to Plaintiffs by preventing a complete adjudication of this matter on the merits”).

The Court, however, does not take lightly Apple’s concerns regarding adequate time for discovery, preparation of dispositive motions, and preparation for trial under the current schedule. Therefore, in order to ensure fairness to both parties, the Court is willing to adjust case deadlines, including the trial date, as may be necessary. If the Court’s ruling herein in fact implicates the deadlines presently in place (*e.g.*, by necessitating extensive discovery), the parties should meet, confer, and agree upon alterations to the schedule, and present them to the Court. The Court will accept the parties’ reasonable proposal, if agreed upon. If the parties are unable to agree, they are of course free to motion the Court independently. The Court will grant the relief requested, if reasonable, and adjust the schedule as required. This is not one of those Courts that is wedded to its schedule above all else.

In sum, the Court believes that this ruling strikes the appropriate balance of interests, is fairest to both sides, and will ensure that this matter is decided on the merits rather than on the basis of procedural technicalities. *See Golden Hour Data Sys., Inc. v. Health Servs. Integ., Inc.*, 2008 WL 2622794, at *4 (N.D. Cal. July 1, 2008) (“as the prior art appears to be relevant to the merits of the case, it would be unjust for such information ‘to be avoided on the basis of . . . mere technicalities,’” and “[m]oreover, ‘[t]he Federal Rules . . . accept the principle that the purpose of pleading is to facilitate a proper decision on the merits’”) (citations omitted); *see also Graphic Packaging Int’l, Inc. v. C.W. Zumbiel Co.*, 2011 WL 5357833, at *5 (M.D. Fla. Nov. 3, 2011).

Accordingly, it is hereby **ORDERED and ADJUDGED** that Motorola’s Motion to Amend the Procedural Schedule to Serve Supplemental Invalidity Contentions [ECF No. 211] is **GRANTED**, as set forth above.

DONE and ORDERED in chambers at Miami, Florida on March 9, 2012.



ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE