

Order Form (01/2005)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Harry D. Leinenweber	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	09 C 2572	DATE	7/27/2010
CASE TITLE	Specht et al. vs. Google Inc.		

DOCKET ENTRY TEXT

Before the Court are Plaintiffs' motion for leave to file third amended complaint [217] and motion for disqualification [227]. For the reasons stated below, both motions are denied. Defendant's motion to strike the third amended complaint [221] is granted. The third amended complaint [216] is stricken.

■ [For further details see text below.]

*Mail AO 450 form.

STATEMENT

Motion to Disqualify. Plaintiffs filed a motion for leave to file an amended complaint on July 15, 2010 – fifteen days before oral discovery was set to close. In the amended complaint, Plaintiffs added four defendants, T-Mobile, Sprint Nextel, Verizon, and AT&T. The undersigned judge informed the parties that his wife serves on the board of AT&T and that he and his wife own stock in AT&T. It is undisputed that the cause of action against AT&T cannot proceed under this judge. *See* 28 U.S.C. §455(b). Plaintiffs move to entirely disqualify the judge from the case now before him because his decisions in this case could conceivably affect Plaintiffs' contemplated future suit against AT&T before another judge.

Google has stated, however, that it will indemnify AT&T in regard to this case. As this removes any financial liability for AT&T in this case, it resolves any conflict of interest. The motion to disqualify is therefore denied as moot. Even if Google had not offered to indemnify AT&T, the Court would have denied the motion to disqualify. As the Eighth Circuit has pointed out, there is no authority for the proposition that a judge's interest in a nonparty company in a separate case can create a conflict of interest mandating recusal. *In re Kansas Pub. Employees Ret. Sys.*, 85 F.3d 1353, 1362 (8th Cir. 1996).

Motion for Leave to Amend Complaint. Under Rule 15(a)(2), a party at this stage of litigation must have leave of court to amend a complaint. The Court should grant leave when justice requires. In this case, however, Plaintiffs have stated no compelling reason why they submitted their amended complaint adding four new defendants near the eve of the close of oral discovery and just before Google has leave to file a motion for summary judgment. Plaintiffs recently attempted, in fact, to justify their proposed postponements of depositions by the fact that they had just added new parties to their complaint. Plaintiffs allege that T-

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Mobile started selling infringing mobile phones as early as October 2008, that Sprint began as early as October 2009, and Verizon as early as November 2009. Plaintiffs claim that they did not know of these facts until they deposed a Google employee this month. This is difficult to believe because the companies in question do not make a secret of the products they sell. Plaintiffs could have easily learned of this information before they deposed the Google employee. This suggests that the last-minute motion to amend was filed merely for purposes of delaying Google's imminent motion for summary judgment. District courts have broad discretion to deny leave to amend where there is undue delay, dilatory motive, and undue prejudice to the defendants. *Hukic v. Aurora Loan Servs.*, 588 F.3d 420, 432 (7th Cir. 2009). The Court finds that all three exist in this case. For these reasons, the motion for leave to amend is denied.

Motion to Strike Third Amended Complaint. Because the third amended complaint was not filed with leave of court, Google's motion to strike is granted. The third amended complaint [216] is stricken.