

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KERRY S. WELLS,)	
)	
Plaintiff,)	
)	
vs.)	No. 4:17-cv-02709-AGF
)	
KESSLER CORPORATION,)	
CHARLES C. MCCLOSKEY,)	
LINCOLN CORPORATION,)	
DAVID MARK ALLEN,)	
PAL G. CONKEY, and)	
UNKNOWN NAMED DEFENDANTS,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on review of the record. On January 3, 2018, pro se Plaintiff Kerry Wells filed an amended complaint removing some Defendants, naming new Defendants, and amending his claims and allegations. The same day, Plaintiff filed a “Request for Judge/Court to Subpoena United States Patent and Trademark Office” (ECF No. 16), in which Plaintiff asks the Court for assistance in issuing subpoenas for testimony and documents from various witnesses.

Under Federal Rule of Civil Procedure 15(a)(1), a party may amend his pleading once as a matter of course within 21 days after serving it, or as relevant here, within 21 days after service of a motion under Rule 12(b), whichever is earlier. Fed. R. Civ. P. 15(a)(1). In all other cases, a party may amend its pleadings only with the opposing party’s written consent or the Court’s leave. Fed. R. Civ. P. 15(a)(2).

Because more than 21 days have passed since Plaintiff was served with Defendant Charles C. McCloskey's motion to dismiss under Rule 12(b)(6) (ECF No. 6), and the record does not indicate Defendants' written consent to amendment, Plaintiff needs the Court's leave to amend his complaint. Accordingly, the Court will treat the amended complaint as a "proposed" amended complaint and will ask Plaintiff to file a properly supported motion for leave to amend his complaint. Plaintiff's motion for leave must set forth the nature of the amendment, including any change in parties, legal claims, or factual allegations, and must explain the reasons therefore.¹

Moreover, Plaintiff's request for the Court's assistance in issuing subpoenas is premature, as the Court has not yet scheduled initial case management conference under Federal Rule of Civil Procedure 16, and the parties have not yet met and conferred regarding a plan and schedule for discovery.² *See* Fed. R. Civ. P. 26(d)(1).

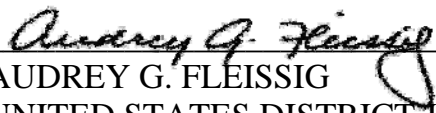
Accordingly,

¹ Plaintiff filed a "motion for leave to file an amended complaint" (ECF No. 18) on January 4, 2018 that merely contained the motion's title with no explanation of the amendment sought or argument as to why amendment was appropriate. The Court will deny this motion but will permit Plaintiff to file a properly supported motion as set forth above.

² After the Court holds a Rule 16 case management conference, if appropriate, and sets a schedule for discovery, Plaintiff may submit discovery requests to any other party in this case in accordance with the Federal Rules of Civil Procedure, without the need for a subpoena. To the extent Plaintiff seeks discovery from non-parties, in accordance with Local Rule 45-2.06(C)(1), the Court may require Plaintiff to file a written request for the issuance of any subpoena, setting forth the name and address of each witness for whom a subpoena is sought, along with a brief summary of the witness's anticipated testimony, or if the subpoena is for documents, a brief summary of the specific documents sought. In making such a request, Plaintiff must note the requirements of Federal Rule of Civil Procedure 45, including the geographical limits of Rule 45(c).

IT IS HEREBY ORDERED that Plaintiff's "Motion for Leave to File Amended Complaint" is **DENIED**. ECF No. 18. On or before **January 18, 2018**, Plaintiff shall file a properly supported motion for leave to amend his complaint, setting forth the nature of the amendment, including any change in parties, legal claims, or factual allegations, and explaining the reasons therefore. Failure to comply with this Order will result in the Court striking the Proposed Amended Complaint (ECF No. 17).

IT IS FURTHER ORDERED that Plaintiff's pro se motion for subpoenas is **DENIED**. ECF No. 16.



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 4th day of January, 2018