

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MINERVA INDUSTRIES, INC.,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. 2-07CV-229-TJW
v.)	
)	Jury Trial Demanded
MOTOROLA, INC., ET AL.,)	
)	
Defendants.)	

**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE
FIRST AMENDED ANSWER AND COUNTERCLAIM**

Defendants HTC America, Inc.; Kyocera Wireless Corp.; LG Electronics MobileComm U.S.A., Inc.; Motorola, Inc.; Nokia Inc.; Samsung Telecommunications America LLC; Alltel Communications, Inc.; AT&T Mobility, LLC; Dobson Cellular Systems, Inc.; HELIO LLC; MetroPCS Wireless, Inc.; T-Mobile USA, Inc.; TracFone Wireless, Inc.; and Virgin Mobile USA, LP (collectively "Defendants") request leave of Court, under Federal Rule of Civil Procedure 15(a), to file Defendants' First Amended Answer and Counterclaim, which is attached hereto as Exhibit A. Plaintiff Minerva Industries, Inc., does not oppose this Motion.

ARGUMENT

Defendants must obtain leave of Court to amend their answer. But Federal Rule of Civil Procedure 15(a) states that "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a); *see also Herrmann Holdings, Ltd. v. Lucent Techs., Inc.*, 302 F.3d 552, 566 (5th Cir. 2002) (Rule 15(a) "evinces a bias in favor of granting leave to amend.") (citation omitted). The circumstances in which Rule 15(a) "permits denial of leave to amend are limited". *Ynclan v. Dep't of Air Force*, 943 F.2d 1388, 1391 (5th Cir. 1991). Unless an opposing party can show

prejudice, bad faith, or undue delay, a court should grant leave to file an amended pleading. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Defendants request leave of Court to add an additional affirmative defense because none of those extraordinary circumstances are present here. First, Defendants' First Amended Answer and Counterclaim is not brought in bad faith. Defendants seek to amend their answer to add the affirmative defense of inequitable conduct. Defendants only recently discovered material facts supporting the inequitable conduct defense. Defendants have thereafter diligently moved to amend their answer after gathering material facts in support of the inequitable conduct defense and conferring with Plaintiff's counsel. Plaintiff does not oppose Defendants' request for leave to amend their answer.

Second, Defendants' amendment will not cause delay or prejudice Plaintiff. Defendants filed their Original Answer and Counterclaim on January 7, 2008. Since that time, no scheduling order has been entered in this case, and the parties have not begun discovery. Because this case is in its early stages, no delay or prejudice will result from Defendants' amended answer.

CONCLUSION

For all these reasons, Defendants request that the Court grant Defendants' Motion for Leave and allow Defendants to file their First Amended Answer and Counterclaim.

Dated: March 27, 2008

Respectfully submitted,

s/ Fred I. Williams

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with Minerva's counsel, Mark Fenster, in person on March 18, 2008, concerning the relief sought in Defendants' Motion for Leave to File First Amended Answer and Counterclaim. Minerva is unopposed to the relief sought in Defendants' Motion.

s/ Fred I. Williams

Fred I. Williams

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically on the 27th day of March, 2008, in compliance with Local Rule CV-5(a) and has been served on all counsel who have consented to electronic service and all other counsel by U.S. First Class Mail.

s/ Fred I. Williams

Fred I. Williams