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

BEDROCK COMPUTER FECHNOLOGIES LLC,
Plaintiff,
ν.
SOFTLAYER TECHNOLOGIES, INC., et al.
Defendants.

CASE NO. 6:09-cv-269

Jury Trial Demanded

PLAINTIFF BEDROCK COMPUTER TECHNOLOGIES LLC'S MOTION FOR LEAVE TO FILE ITS FIRST AMENDED COMPLAINT

Pursuant to Fed. R. Civ. P.15(a), Plaintiff Bedrock Computer Technologies LLC ("Bedrock") respectfully requests leave to file its First Amended Complaint. Bedrock's proposed First Amended Complaint is attached as Exhibit 1.

INTRODUCTION

On June 16th, 2009, Bedrock filed a Complaint with the Court alleging patent infringement against ten defendants. *See* Dkt No. 1. Match.com Inc. was one of those ten defendants. On September 9th, 2009, Match.com LLC filed an answer and counterclaims to the Complaint, informing Bedrock and the Court that Match.com LLC was "incorrectly sued as Match.com, Inc." *See* Dkt. No. 68. Bedrock's proposed amendment seeks only to change Match.com Inc. to Match.com LLC. Because the proposed change is simply a correction to the Match.com LLC's name, and because Match.com LLC has proceeded litigating this matter as if Bedrock had not misidentified its legal name, *see, e.g.*, Dkt Nos. 68, 69 and 85, no delay or hardship would be created by correctly identifying Match.com LLC in the suit as an alleged infringer.

ARGUMENT

Fed. R. Civ. P. 15(a) states that leave to amend "shall be freely given when justice so requires." This rule "evinces a bias in favor of granting leave to amend." *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 597 (5th Cir. 1981); *see Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 286 (5th Cir. 2002). Determining whether to grant leave rests within the sound discretion of the trial court. *See Southmark Corp. v. Schulte Roth & Zabel (In re Southmark Corp.)*, 88 F.3d 311, 314 (5th Cir.1996). However, this discretion should not permit denial of leave if the district court lacks a "substantial reason." *Jamieson v. Shaw*, 772 F.2d 1205, 1208 (5th Cir. 1985). In considering whether to grant leave to amend, a court may consider such factors as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment. *See Foman v. Davis*, 371 U.S. 178, 182 (1962).

There is no undue delay, bad faith, or dilatory motive on Bedrock's part. The parties have not yet submitted their joint Docket Control or Discovery Orders, and the trial date is more than a year away. *See* September 14th, 2009 Order (Dkt. No. 78).

CONCLUSION

For the reasons set forth above, Bedrock respectfully requests that the Court grant its motion for leave to amend.

2

Respectfully submitted,

McKOOL SMITH, P.C.

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ATTORNEYS FOR PLAINTIFF BEDROCK COMPUTER TECHNOLOGIES LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service on this, the 30th day of October, 2009. Local Rule CV-53(a)(3)(A).

CERTIFICATE OF CONFERENCE

On October 27th, 2009, Bedrock asked the Defendants who have filed an answer in this case whether they would oppose Bedrock's Motion for Leave to File its First Amended Complaint. Defendants Softlayer Technologies Inc., Yahoo! Inc, MySpace Inc. Amazon.com Inc., PayPal Inc., AOL LLC, and CME Group Inc. indicated that they would not oppose. As of the time of filing this motion, Bedrock has not heard from Defendants Google Inc. and Match.com LLC. Bedrock assumes, therefore, that Google Inc. and Match.com LLC oppose this Motion.

/s/ Austin Curry Austin Curry