UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

PARKERVISION, INC.,

Plaintiff,

v. Case No. 3:15-cv-1477-J-39JRK

APPLE INC. and QUALCOMM INCORPORATED,

Defendants.
_____/

ORDER

THIS CAUSE is before the Court on Plaintiff's Objections to the June 5, 2019 Order on its Motion for Leave to File Third Amended Complaint (Doc. 142; Objections). Plaintiff requests that the Court modify the June 5, 2019 Order (Doc. 141; Order) and grant Plaintiff's Motion for Leave to file the Third Amended Complaint (Doc. 131; Motion to Amend). Upon review of the Objections, a response from Defendants is unnecessary.

To prevail on its Objections, Plaintiff must establish that the conclusions in the Order to which it objects are clearly erroneous or contrary to law. See Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A); see also Merritt v. Int'l Bhd. of Boilermakers, 649 F.2d 1013, 1016-17 (5th Cir. Unit A June 1981);[1] NAACP v. Fla. Dep't of Corr., 122 F. Supp. 2d 1335, 1337 (M.D. Fla. 2000); Williams v. Wright, No. 3:09-cv-055, 2009 WL 4891825, at *1 (S.D. Ga. Dec.16, 2009) ("A district court reviewing a magistrate judge's decision on

[1] In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

a nondispositive issue 'must consider . . . objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.'") (quoting Fed. R. Civ. P. 72(a)). The standard of review for clear error is highly deferential. Holton v. City of Thomasville Sch. Dist., 425 F.3d 1325, 1350 (11th Cir. 2005) (citation omitted). "[A] finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Id. (internal citations and quotations omitted). A magistrate judge's order "is contrary to law 'when it fails to apply or misapplies relevant statutes, case law, or rules of procedure.'" Botta v. Barnhart, 475 F. Supp. 2d 174, 185 (E.D.N.Y. 2007) (quoting Catskill Dev., L.L.C. v. Park Place Entm't Corp., 206 F.R.D. 78, 86 (S.D.N.Y. 2002)); see also Lanard Toys Ltd. v. Toys "R" Us-Delaware, Inc., No. 3:15-CV-849-J-34PDB, 2017 WL 2992059, at *1 (M.D. Fla. July 14, 2017) (Howard, J.) (citation omitted); Pigott v. Sanibel Dev., LLC, No. 07-0083-WS-C, 2008 WL 2937804, at *5 (S.D. Ala. July 23, 2008) (citation omitted).

Plaintiff makes the following arguments in its Objections: 1) it established good cause for the amendment and made the request without undue delay; 2) Defendants would not be prejudiced by the third amendment; and 3) Defendant Apple's Motion for Summary Judgment (Doc. 109) confirms that contributory infringement and inducement claims are in this case with or without the third amendment. See Obj. at 5–11. Plaintiff contends that the Order misapprehends the purpose of Plaintiff's Motion to Amend, "which explicitly was **not** to plead contributory infringement and inducement **for the first time**, but rather to respond to and render moot Qualcomm's November 2018 objections." Id. at 6 (citing Motion to Amend at 1). Plaintiff argues that the Amended Complaint (Doc. 3) and the operative Second Amended Complaint (Doc. 121) "indisputably explicitly

already requested a judgment that 'Defendants have infringed, **contributorily infringed**, and/or **induced infringement of** one or more claims of the . . . '528 Patent.'" Id. at 6 (quoting Amended Complaint at 26 (emphasis added); Second Amended Complaint at 6).

Plaintiff fails to satisfy its burden of demonstrating that the Order is clearly erroneous or contrary to law. The Magistrate Judge properly applied the law and specifically considered that amendment should be freely given when justice so requires. See Order at 2–4. The Magistrate Judge found that a third amended version of the Complaint was not warranted considering that the Complaint was originally filed on December 14, 2015 and was twice amended. See id. at 3. The Magistrate Judge considered Plaintiff's argument in its Motion to Amend that "it has already properly alleged indirect infringement with respect to the '528 Patent in prior versions of the complaint, including the operative Second Amended Complaint . . . ." See id. (citing the Motion to Amend at 4, 7); see also Obj. at 6 ("[T]he amended complaints indisputably explicitly already requested a judgment that 'Defendants have infringed, **contributorily infringed**, and/or **induced infringement of** one or more claims of the . . . '528 Patent.'" (quoting Amended Complaint at 26 (emphasis added); Second Amended Complaint at 6)). Plaintiff argues on one hand that it has "indisputably explicitly" alleged indirect infringement and inducement in the Amended and Second Amended Complaints, and on the other hand requests leave to amend to allege these claims. In light of Plaintiff's arguments and the procedural posture of this case, the Court finds that the Magistrate Judge properly denied the Motion to Amend.

Moreover, on August 31, 2018, the Court held a Technology Tutorial and Markman Claim Construction Hearing. (Docs. 104, 113). Considering possible new information raised during the hearing relating to the proposed claim constructions, the Court ordered the parties to meet and confer to determine whether they may agree on proposed constructions. See (Doc. 112). In response, the parties represented that they met and conferred on two occasions but were unable to reach an agreement. See (Doc. 125). Considering that the Court already held a Markman hearing and provided the parties with ample opportunity to meet and confer, the Magistrate Judge properly denied the Motion to Amend finding that a third "amendment at this stage of the litigation would prejudice Defendants, who have been proceeding on a theory of direct infringement of the patent at issue for almost the entire (if not the entire) course of this litigation." See Order at 4.

After an independent review of the record, the Order, the Objections, the Court finds no error in the Order. The Court also finds that the Order is not contrary to law. For the foregoing reasons, and the reasons provided in the Order, Plaintiffs' Objections are due to be overruled and the Order affirmed.

Accordingly, after due consideration, it is

ORDERED:

1. Plaintiff's Objections to the June 5, 2019 Order (Doc. 141) on its Motion for Leave to File Third Amended Complaint (Doc. 142) are **OVERRULED**.

2. The Magistrate Judge's Order (Doc. 141) is **AFFIRMED**.

DONE and **ORDERED** in Jacksonville, Florida this 21st day of June, 2019.

BRIAN J. DAVIS
United States District Judge

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Copies furnished to:

The Honorable James R. Klindt
United States Magistrate Judge

Counsel of Record