

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FUJITSU LIMITED, LG ELECTRONICS, INC.
and U.S. PHILIPS CORPORATION,

Plaintiffs,

v.

NETGEAR, INC.,

Defendant, Counter-claimant
and Third-Party Plaintiff,

v.

ATHEROS COMMUNICATIONS, INC.,
MARVELL SEMICONDUCTOR, INC.
and BROADCOM CORPORATION,

Third-Party Defendants.

Plaintiffs Fujitsu Limited, LG Electronics, Inc. and U.S. Philips Corporation filed a motion to strike defendant NETGEAR, Inc.'s third-party complaint. Plaintiffs state that defendant violated Fed. R. Civ. P. 14(a)(1) by failing to obtain leave of court to file its third-party complaint when the filing was done more than 10 days after defendant served its

original answer. Plaintiffs are correct in noting that defendant served its original answer (dkt. #15) on February 6, 2008 and did not file its third-party complaint (dkt. #39) until March 17, 2008, which is well over the 10 day limit set in Rule 14. However, under Fed. R. Civ. P. 16(d) the controlling deadline regarding amendments to pleadings, including filing third-party complaints, is found in this court's February 5, 2008, preliminary pretrial conference order (dkt. #16), not in Rule 14. Defendant's third-party complaint was correctly accepted without leave of court because the preliminary pretrial conference order did not require leave of court for "[a]mendments to the pleadings pursuant to Rules 13-15 and 20-21" filed on or before March 17, 2008. Therefore, plaintiffs' motion to strike defendant's third-party complaint will be denied. Furthermore, because this court routinely accepts amendments to pleadings filed within the deadline set in the preliminary pretrial conference order, I will accept defendant's third-party complaint.

Additionally, the addition of three new parties through defendant's third-party complaint has persuaded me to move back the trial date in this case. Although I do not have an exact date as of yet, I intend to move the trial back approximately six weeks, which would place the trial sometime in April 2009. With these additional six weeks, I find it reasonable to permit rescheduling of other pertinent deadlines. Therefore, all parties shall participate in a telephonic status and rescheduling conference with Magistrate Judge Crocker on April 23, 2008, at 2:00 p.m. and the parties are free to submit scheduling proposals for the court's

consideration by noon on April 21, 2008.

ORDER

IT IS ORDERED that:

(1) The motion to strike (dkt. #61) defendant NETGEAR Inc.'s third-party complaint filed by plaintiffs Fujitsu Limited, LG Electronics, Inc. and U.S. Philips Corporation is DENIED.

(2) Defendant NETGEAR Inc.'s third-party complaint (dkt. #39) is ACCEPTED.

(3) Plaintiffs Fujitsu Limited, LG Electronics, Inc. and U.S. Philips Corporation, defendant NETGEAR Inc. and third-party defendants Atheros Communication, Inc., Marvell Semiconductor, Inc. and Broadcom Corporation participate in a telephonic status and rescheduling conference with Magistrate Judge Crocker on April 23, 2008, at 2:00 p.m., with any rescheduling submissions due by noon on April 21, 2008.

Entered this 11th day of April, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge