

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

JOHN MEZZALINGUA ASSOCIATES,
INC., d/b/a PPC, INC.,

Plaintiff,

v.

ARRIS INTERNATIONAL, INC.,

Defendant.

ORDER

03-C-0353-C

One day after the deadline for amending the pleadings and four days after filing a motion to extend the amendment deadline, plaintiff PPC, Inc. filed a proposed amended complaint adding claims against an additional version of defendant's cable connector. Defendant Arris International, Inc. has opposed the motion to extend the deadline and has moved to strike the proposed amended complaint, arguing that the compressed period for trial preparation does not allow the parties sufficient time to litigate a second cable connector.

It is true that the trial schedule imposes severe constraints on counsel. However, plaintiff has a facially legitimate claim that the "T" connector is so similar to the "S"

connector that it infringes plaintiff's U.S. Patent No. 6,558,194 and violates the preliminary injunction that this court issued on July 25, 2003. If the new connector shares the infringing elements of the earlier one, defendant is violating the preliminary injunction by selling it. At some point in this case, it will be necessary to decide just how similar the two products are, either in the context of a contempt hearing or a trial. The advantages of making the decision following a trial are obvious. The court would have far more information and a greater understanding of the parties' legal arguments.

The pending suit in the District of Colorado is no reason to disallow plaintiff's amendment; the filing of that suit suggests an effort to make an end run around this court's ruling on the "S" connector. Trying both connectors in this court will avoid a potential complication of issues.

The parties have been engaged in discovery on the "T" connector since September 5, 2003, when the magistrate judge granted plaintiff's motion to compel discovery. This undercuts defendant's complaint that the parties would have less than two months to conduct discovery on this connector before the scheduled trial on November 17, 2003. However, I would be willing to continue the trial to any of the following dates if counsel believe that they cannot be ready by November 17, given the expansion of the case to include claims against the "T" connector: December 1; December 8; January 5, 2004; or February 2, 2004. If counsel agree to continue the trial to any one of these dates, they

should so advise the clerk's office. Otherwise, I will assume that the trial will go forward on November 17, as presently scheduled.

ORDER

IT IS ORDERED that plaintiff PPC, Inc.'s motion to file a first amended complaint is GRANTED; defendant Arris International's motion to strike the first amended complaint is DENIED.

Entered this 22nd day of September, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge