

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

TAURUS IP, LLP,

Plaintiff,

v.

TOYOTA MOTOR NORTH AMERICA
INC., TOYOTA MOTOR SALES USA, INC.,
DAIMLERCHRYSLER CORPORATION and
MERCEDES-BENZ USA, INC.,

Defendants.

ORDER

07-C-158-C

MERCEDES-BENZ USA, LLC,

Third Party Plaintiff,

v.

ORION IP, LCC, PLUTUS IP, CONSTELLATION
IP, LLC and ERICH SPANGENBERG,

Third Party Defendants.

DAIMLERCHRYSLER COMPANY, LLC,

Third Party Plaintiff,

v.

ORION IP, LCC, PLUTUS IP, CONSTELLATION
IP, LLC and ERICH SPANGENBERG,

Third Party Defendants.

TOYOTA MOTOR SALES USA, INC.,

Third Party Plaintiff,

v.

ORION IP, LCC, PLUTUS IP, CONSTELLATION
IP, LLC and ERICH SPANGENBERG,

Third Party Defendants.

Not surprisingly, given the size of the caption in this lawsuit, this civil action for alleged patent infringement is barely off the ground and already more than twenty-five motions are pending in the case. Soon after the parties had been served in this action, defendants and third party plaintiffs Toyota Motor Sales USA, Inc., DaimlerChrysler Corporation and Mercedes-Benz USA, Inc filed counterclaims and third party complaints

directed against plaintiff and third party defendants Erich Spangenberg, Orion IP, LLC, Plutus IP, LLC and Constellation IP, LLC. These parties responded immediately by filing motions to dismiss the third party complaints and counterclaims filed against them. Dkt. ## 58, 61, 64, 67, 70, 73, 76-82.

However, before the court could rule on the motions to dismiss, Toyota Motor Sales USA, DaimlerChrysler and Mercedes-Benz each amended its counterclaims and third party complaints. Dkt. ## 90-93, 112-13. Each did so before expiration of the deadline for filing amended pleadings without prior leave of court. Dkt. #102.

Generally, the filing of an amended complaint renders moot any pending motion to dismiss. See, e.g., Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir. 2002) (“If anything, Pure Country’s motion to amend the complaint rendered moot Sigma Chi’s motion to dismiss the original complaint.”); Lim v. Central DuPage Hosp., 972 F.2d 758, 762 (7th Cir. 1992) (noting without comment trial judge’s denial of pending motion to dismiss as moot in light of amended complaint); Standard Chlorine of Delaware, Inc. v. Sinibaldi, 821 F. Supp. 232, 239-40 (D. Del. 1992) (holding that the plaintiff’s filing of an amended complaint rendered the defendants’ motion to dismiss the original complaint moot). Understanding this rule, third party defendants and plaintiff filed renewed motions to dismiss the amended counterclaims and third party complaints filed by Toyota Motor Sales USA, DaimlerChrysler and Mercedes-Benz. Those motions, dkt. ## 103-105, 109,

118, 123-127 and 131, are presently being briefed and will be addressed on their merits when they are ripe for decision. In the meantime, the earlier-filed motions to dismiss will be denied as moot.

ORDER

IT IS ORDERED that the following motions are DENIED as moot in light of the filing of the amended counterclaims and third party complaints of Toyota Motor Sales USA, DaimlerChrysler and Mercedes-Benz:

1) Dkt. #58, plaintiff's motion to dismiss the breach of contract, conspiracy and fraud counterclaims of defendants DaimlerChrysler and Mercedes-Benz;

2) Dkt. #61, plaintiff's motion to dismiss the breach of contract, conspiracy and fraud claims and counterclaims of defendant Toyota Motor Sales, Inc.;

3) Dkt #64, third party defendant Erich Spangenberg's motion to dismiss the third party complaint of defendant Toyota Motor Sales;

4) Dkt. #67, third party defendant Spangenberg's motion to dismiss the complaint of third party plaintiff Mercedes-Benz;

5) Dkt. #70, motion by third party defendants Orion, Plutus and Spangenberg to dismiss the third party complaints of third party plaintiffs Mercedes-Benz USA, DaimlerChrysler Company and Toyota Motor Sales for lack of personal jurisdiction;

6) Dkt. #73, third party defendant Spangenberg's motion to dismiss counts II-V of third party plaintiff DaimlerChrysler's Complaint;

7) Dkt. #76, third party defendant Orion's motion to dismiss the complaint of third party plaintiff Toyota Motor Sales;

8) Dkt. #77, third party defendant Orion's motion to dismiss the complaint of third party plaintiff Mercedes-Benz;

9) Dkt. #78, third party defendant Orion's motion to dismiss third party plaintiff DaimlerChrysler's complaint;

10) Dkt. #79, third party defendant Constellation's motion to dismiss third party plaintiff DaimlerChrysler's complaint;

11) Dkt. #80, third party defendant Constellation's motion to dismiss the complaint of third party plaintiff Toyota Motor Sales;

12) Dkt. #81, third party defendant Constellation's motion to dismiss the complaint of third party plaintiff Mercedes-Benz; and

13) Dkt. #82, third party defendant Plutus's motion to dismiss the complaint

of third party plaintiff Toyota Motor Sales.

Entered this 25th day of July, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge