

CASREF, MEDIATION–MPT, Multi–Media Docs, PATENT  
**U.S. District Court**  
**District of Delaware (Wilmington)**  
**CIVIL DOCKET FOR CASE #: 1:19–cv–01642–RGA–CJB**

Systemex Corporation et al v. Beckman Coulter, Inc.  
Assigned to: Judge Richard G. Andrews  
Referred to: Judge Christopher J. Burke  
Cause: 35:271 Patent Infringement

Date Filed: 09/03/2019  
Jury Demand: Plaintiff  
Nature of Suit: 830 Patent  
Jurisdiction: Federal Question

Date Filed	#	Docket Text
06/01/2021	296	<p>ORAL ORDER: The Court, having considered Defendant's motion for leave to amend ("Motion"), (D.I. 238), in which Defendant seeks leave to amend its Answer and Counterclaims to include (1) the affirmative defense of unclean hands, (2) a claim for breach of contract, and (3) a claim for Plaintiffs' violation of the Defend Trade Secrets Act (together, the "proposed new claims"), having reviewed the parties' letter briefs relating thereto, (D.I. 236; D.I. 254; D.I. 256), and having heard argument on May 25, 2021, hereby ORDERS that the Motion is DENIED. For reasons set out by Plaintiffs, (D.I. 254 at 2), the Court thinks it is very possible that Defendant, had it exercised diligence, could have moved to amend its counterclaims prior to the October 1, 2020 deadline for amendment set out in the Scheduling Order, (D.I. 118 at 1). Were that so, there would surely not be "good cause" to permit a post–Scheduling Order–deadline amendment here. But separate and apart from the question of whether the "good cause" standard could be satisfied, the Court concludes that pursuant to Federal Rule of Civil Procedure 15, Defendant's Motion should be denied because Defendant otherwise unduly delayed in waiting to file the Motion until April 10, 2021. See Paoli v. Stetser, Civil Action No. 12–66–GMS–CJB, 2013 WL 2154393, at *3 (D. Del. May 16, 2013) (noting that in considering a motion to amend filed after the relevant deadline in the scheduling order, even if the good cause standard is met, if a party has nevertheless unduly delayed in presenting the amendment pursuant to Rule 15(a), the motion should be denied); see also Collectis S.A. v. Precision Biosciences, 883 F. Supp. 2d 526, 532 (D. Del. 2012) (noting that for Rule 15 purposes, delay is undue when an unwarranted burden is placed on the court or when the requesting party has had previous opportunities to amend). The Court comes to this conclusion for the following reasons: (1) The Motion was filed nearly six and a half months after the deadline for amendments, and just over four months in advance of the filing date for summary judgment motions.; (2) Even if one accepts at face value Defendant's argument that it had no reason to suspect that Mr. Horie may have improperly accessed confidential information from the Illinois Action until October 27, 2020 (when Plaintiffs sought to have Mr. Horie review Defendant's source code in this case), Defendant unduly drug its feet from there in getting the Motion filed. After all, it waited another eight weeks, until December 22, 2020, to request Mr. Horie's deposition. (D.I. 254 at 3–4) And from there, Defendant knowing that the initial February 2021 discovery cut off came and went, and that the case dispositive filing deadline was only months away, waited another 15 weeks, until April 10, 2021, to get its Motion on file. It simply waited too long. See Lipocine Inc. v. Clarus Therapeutics, Inc., C.A. No. 19–622 (WCB), 2020 WL 4794576, at *4 (D. Del. Aug. 18, 2020) ("[C]ourts in this district have found delay to be undue when the motion to amend was filed after the deadline for amending and the period of delay was three months or more from the time defendant obtained critical information relating to [the claim] to the date the motion to amend was filed."); and (3) Were the claims permitted, the case schedule would be adversely affected. The proposed new claims involve alleged trade secrets, and trade secret discovery can be complicated. Those claims also implicate some complex issues involving attorney–client privilege. Both sides will need discovery, and Defendant never cogently explains how that could occur within the constraints of the current schedule. (D.I. 254 at 5); see also Asahi Glass Co. v. Guardian Indus. Corp., 276 F.R.D. 417, 42021 (D. Del. 2011). Ordered by Judge Christopher J. Burke on 6/1/2021. (dlb) (Entered: 06/01/2021)</p>