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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 UNIVERSITY OF BRITISH COLUMBIA,

16 Plaintiff/Counterclaim-  
17 Defendant,

18 v.

19 CAPTION HEALTH, INC.; GE  
20 HEALTHCARE TECHNOLOGIES INC.,

21 Defendant/Counterclaim-  
22 Plaintiff.

Case No. 5:24-cv-03200-EKL

**PLAINTIFF UBC’S MOTION FOR  
LEAVE TO AMEND INFRINGEMENT  
CONTENTIONS REGARDING U.S.  
PATENT NOS. 11,129,591 AND 10,751,029**

Hearing Date: June 17 2025

Time: 10:00 a.m.

Judge: Hon. Susan van Keulen

Location: Courtroom 6, 4th Floor

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1 specifically to optimizing the quality of echocardiographic images (images of the heart). The '029  
2 patent applies similar techniques to other types of ultrasound images such as obstetrical, pulmonary,  
3 ocular, and renal.

4 The Complaint was filed on May 28, 2024, alleging Defendants' infringement of the '591  
5 Patent. On December 20, 2024, UBC amended its Complaint to add a claim of infringement of the  
6 '029 patent. (Dkt. No. 46). The parties then jointly moved to modify the case schedule to align the  
7 deadlines for both Asserted Patents. The Court granted the Proposed Scheduling Order, extending  
8 the deadlines for infringement and invalidity contentions to February 7, 2025, and March 28, 2025,  
9 respectively. (Dkt. No. 49). UBC first filed its infringement contentions for the '029 Patent on  
10 February 7, 2025. Those contentions alleged that Defendants infringed the '029 Patent based on  
11 their sale of ultrasound equipment with Caption Guidance software for optimizing  
12 echocardiographic images (also accused of infringing the '591 Patent). Al-Salam Decl., ¶ 3. After  
13 the service of those contentions, UBC became aware that Defendant GE Healthcare is selling  
14 another product, called Voluson, that also uses neural networks to optimize the quality of fetal  
15 ultrasound imaging. Id., ¶ 4. UBC promptly told Defendants that it considered the Voluson  
16 products to infringe the '029 Patent. In particular, on February 20, 2025, UBC served discovery  
17 requests seeking information on the Voluson product and referring to it as an "Accused Product."  
18 Id. Further, in mediation briefing preceding the March 13, 2025 mediation between the parties,  
19 UBC identified the Voluson product as an infringing product. Id. After the mediation was  
20 unsuccessful, UBC began working on infringement contentions for the Voluson product, sent  
21 Defendants a draft of those contentions on April 10, 2025, and asked if Defendants objected to the  
22 amendment. Id., ¶ 5. On April 22, 2025, Defendants said they objected to the amendment, thereby  
23 necessitating this motion.

24 In sum, UBC informed Defendants that it planned to accuse the Voluson product within two  
25 weeks of when its infringement contentions were first due for the '029 patent, and provided a set  
26 of amended contentions within nine weeks of the due date. Under these circumstances, the  
27 amendment should be allowed.

28

## 1 II. UBC SHOULD BE ALLOWED TO AMEND ITS CONTENTIONS

2 Defendants oppose UBC's amended contentions for the Asserted Patents because they cite  
3 documents that have been publicly available. But UBC acted diligently to collect the information  
4 needed for these amendments and sought leave promptly thereafter. The Court should grant UBC  
5 leave to amend and reject Defendants' arguments for at least the reasons below.

### 6 A. Amendments are Allowed if There is Diligence and No Prejudice

7 Under Patent Local Rule 3-6, a party may amend its infringement contentions for good  
8 cause absent undue prejudice to the non-moving party. This Rule "balance[s] the parties' rights to  
9 develop new information in discovery along with the need for certainty in legal theories at the start  
10 of the case." *Brandywine Commc'ns Techs., LLC v. AT&T Corp.*, No. 12-cv-2494 CW, 2014 WL  
11 1569544, at \*15 (N.D. Cal. Apr. 18, 2014) (citation omitted). Good cause requires the party to  
12 show it "acted with diligence in promptly moving to amend when new evidence is revealed in  
13 discovery." *O2 Micro Int'l, Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1363 (Fed. Cir.  
14 2006). Diligence has two prongs: "(1) diligence in discovering the basis for amendment; and (2)  
15 diligence in seeking amendment once the basis for amendment has been discovered."  
16 *XpertUniverse, Inc. v. Cisco Sys., Inc.*, No. 17-cv-03848, 2019 WL 3413287, at \*2 (N.D. Cal. July  
17 29, 2019). Additionally, Patent Local Rule 3-6 provides examples of good cause, including "recent  
18 discovery of nonpublic information about the accused product that, despite diligent efforts, was not  
19 discovered before service of infringement contentions." "If the court finds that the moving party  
20 has acted with diligence, it then must determine whether the non-moving party would suffer  
21 prejudice if the motion to amend were granted." *Apple Inc. v. Samsung Elecs. Co.*, No. 12-cv-  
22 0630-LHK (PSG), 2013 WL 3246094, at \*1 (N.D. Cal. June 26, 2013) (internal quotation marks  
23 and citation omitted). Prejudice can be shown when amending contentions will "disrupt the case  
24 schedule or other court orders" and when a party changes its infringement theories or requires its  
25 opposition to prepare additional defenses. *Synchronoss Techs., Inc. v. Dropbox Inc.*, No.  
26 416CV00119HSGKAW, 2018 WL 5619743, at \*5 (N.D. Cal. Oct. 29, 2018); *Apple Inc. v.*  
27 *Samsung Elecs. Co.*, No. CV 12-00630 LHK, 2012 WL 5632618, at \*3 (N.D. Cal. Nov. 15, 2012).  
28 However, "extra work alone does not support a finding of prejudice." *Impinj, Inc. v. NXP USA,*

1 *Inc.*, No. 19-CV-03161-YGR, 2022 WL 2125133, at \*2 (N.D. Cal. Mar. 4, 2022).

2 **B. UBC Has Good Cause to Amend its Infringement Contentions**

3 Good cause exists to grant UBC leave to amend its infringement contentions. Courts in the  
4 Northern District of California consistently allow amendment where, as here, the amendments do  
5 not include any new theories of infringement. UBC’s proposed amendments to its infringement  
6 contentions merely add a single product line—the Voluson Expert, Signature, and SWIFT series—  
7 to the list of accused products.

8 UBC initially accused the Venue and Vscan ultrasound systems of infringement in its May  
9 28, 2024 Complaint as the ’591 patent pertains to echocardiographic imaging. On December 20,  
10 2024, UBC filed its First Amended Complaint to add the ’029 Patent, which applies to a wide range  
11 of ultrasound imaging such as obstetrical, pulmonary, ocular, and renal. (Dkt. No. 46). The parties  
12 then jointly moved to modify the case schedule to align the deadlines for both Asserted Patents.  
13 The Court granted the Proposed Scheduling Order, which extended the deadlines for the ’029  
14 infringement contentions to February 7, 2025. (Dkt. No. 49). In its ’029 infringement contentions,  
15 UBC accused the Venue and Vscan ultrasound systems of infringement due to their AI-enabled  
16 Caption Guidance software which analyzes a variety of acquired ultrasound images including  
17 echocardiographic images, which UBC earlier accused of infringing the ’591 Patent. Al-Salam  
18 Decl., ¶ 3.

19 Intelligent Ultrasound Limited (IUL) is an ultrasound AI software and simulation company  
20 based in Cardiff, Wales. At the time UBC served its ’029 infringement contentions, it remained  
21 unclear to UBC whether GE Healthcare had independent commercial sales of Voluson in the United  
22 States. First, though the parties discussed a proposed sale in July 2024, GE Healthcare did not  
23 complete its acquisition of IUL’s clinical AI business until October 01, 2024. *See*  
24 [https://radiologybusiness.com/topics/artificial-intelligence/ge-healthcare-completes-53m-](https://radiologybusiness.com/topics/artificial-intelligence/ge-healthcare-completes-53m-acquisition-ai-ultrasound-business)  
25 [acquisition-ai-ultrasound-business](https://radiologybusiness.com/topics/artificial-intelligence/ge-healthcare-completes-53m-acquisition-ai-ultrasound-business). Second, GE’s own website suggested that Voluson products  
26 were not for sale to US customers. *See* <https://gehealthcare-ultrasound.com/en/voluson-family/>  
27 (English language website showing notice “It looks like you are located in United States. You are  
28 trying to view a page from a different country or region. Please visit the website in your country.

1 \*Not all products and services may be available in your country or region.”). UBC promptly  
2 investigated IUL’s corporate status and whether the Voluson products, which include guidance  
3 technology known as SonoLyst AI, infringe the Asserted Patents. UBC then became aware that  
4 GE Healthcare’s nearly six-year relationship with IUL resulted in sales of infringing products in  
5 the United States.

6 Having now determined that the Voluson products do infringe—in roughly the same manner  
7 as the already accused Venue and Vscan ultrasound systems—UBC promptly told Defendants that  
8 it considered the Voluson products to infringe the Asserted Patents. In particular, on February 20,  
9 2025—two weeks after serving its infringement contentions—UBC served discovery requests  
10 adding Voluson to the list of “Accused Products” and seeking marketing, financial, and acquisition-  
11 related information. *Id.*, ¶ 4. UBC then included Voluson in the list of “Accused Products” in its  
12 March 3, 2025 mediation brief to notify Defendants of its intention to include it in the scope of the  
13 dispute. *Id.* After the parties’ unsuccessful mediation on March 13, 2025, UBC began drafting  
14 amended infringement contentions for the Voluson products. UBC sent Defendants a draft of its  
15 infringement contentions on April 10, 2025 and asked Defendants if they would object to UBC’s  
16 efforts to amend. *Id.*, ¶ 5. On April 22, 2025, Defendants replied that they object to UBC’s  
17 amendment. *Id.*, ¶ 6.

18 UBC has shown good cause because it only seeks to amend its contentions to map the  
19 Voluson product line to the asserted claims. UBC’s third amended contentions do not involve any  
20 re-reading of the claims and instead rely on the same underlying theories of infringement, including  
21 the DOE theories for both patents. Thus, “[UBC]’s amendment does not seek to add new claims  
22 or theories of infringement, but merely adds another device that has the same accused functionality”  
23 as the previously accused devices. *Apple Inc. v. Samsung Elecs. Co.*, No. CV 12-00630 LHK, 2012  
24 WL 5632618, at \*3 (N.D. Cal. Nov. 15, 2012); *see also Wisk Aero LLC v. Archer Aviation Inc.*,  
25 No. 21-CV-02450-WHO, 2022 WL 5007912, at \*4 (N.D. Cal. Oct. 4, 2022); *R.N Nehushtan Tr.*  
26 *Ltd. v. Apple Inc.*, No. 22-CV-01832-WHO, 2023 WL 10364531, at \*2 (N.D. Cal. May 19, 2023).

27 Further, this court has granted a motion for leave to amend in a similar case. *See Nuance*  
28 *Comm’ns, Inc. v. ABBYY Software House*, No. C 08-02912 JSW MEJ, 2012 WL 2427160, at \*2

1 (N.D. Cal. June 26, 2012). There, Nuance sought to amend its infringement contentions to include  
2 three products that were acquired by Lexmark “within the past few months.” *Id.* Like *Lexmark*,  
3 Defendants in this case suggest that UBC must have been aware of the Voluson products for some  
4 time simply because the proposed amendment cite to documents that have been publicly available  
5 for years. However, even if UBC did know about these products, it did not know if they could be  
6 included in its infringement contentions if they were not owned by GE Healthcare. *Nuance*  
7 *Comm ’ns*, 2012 WL 2427160, at \*2. Once UBC learned that GE Healthcare had acquired IUL and  
8 was selling infringing products within the United States, it moved to amend its contentions so that  
9 the Voluson series would be included as accused products. *See Synchronoss Techs.*, 2018 WL  
10 5619743, at \*5 (finding diligence where “[t]he trigger for amending [the plaintiff’s] [c]ontentions”  
11 was “undoubtedly” the later-received information).

12 UBC informed Defendants of its intention to accuse the Voluson products on February 20,  
13 2025, two weeks after serving its ’029 infringement contentions on February 7, 2025, then provided  
14 a set of amended contentions seven weeks later on April 10, 2025. UBC’s interval between the  
15 deadline for infringement contentions and seeking leave to amend is reasonable, especially given  
16 that UBC notified Defendants before filing this motion. Courts in this District have found time  
17 periods of this length (or longer) to be reasonable for leave to add additional products to  
18 infringement contentions. *See Nuance Comm ’ns*, 2012 WL 2427160, at \*2 (N.D. Cal. June 26,  
19 2012) (finding sufficient diligence where plaintiff waited a “few months” after learning that  
20 defendant acquired accused products and thus plaintiff “could not include them in its infringement  
21 contentions”); *Vasudevan Software, Inc. v. Int’l Bus. Machines Corp.*, No. C09-05897 RS HRL,  
22 2011 WL 940263, at \*3-4 (N.D. Cal. Feb. 18, 2011) (finding four months to be diligent).

### 23 C. Defendants Will Not Be Prejudiced by UBC’s Proposed Amendments

24 UBC’s amended infringement contentions will not cause any undue prejudice to  
25 Defendants. While UBC’s amendment adds the Voluson series as an accused product, UBC’s  
26 infringement theories concerning the neural network algorithms to determine a quality assessment  
27 value are essentially the same as for the previously-accused Venue and Vscan products. Al-Salam  
28 Decl., Ex. 1, 2. In this circumstance, Defendants will suffer no prejudice because any defenses will

1 be the same. *See Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. CV 12-00630 LHK, 2012 WL  
2 5632618, at \*3 (N.D. Cal., Nov. 15, 2012) (finding that six months of fact discovery did not  
3 prejudice the opposing party because it had ample time to investigate and prepare defenses);  
4 *XpertUniverse v. Cisco Sys., Inc.*, No. 17-cv-03848-RS (JSC), 2019 WL 3413287, at \*5 (finding  
5 no prejudice when plaintiff’s amended infringement contentions add a product and plaintiff intends  
6 to rely on substantially the same theories set forth in its original contentions). Further, judicial  
7 resources will be preserved if UBC’s amendment is granted because UBC’s infringement theories  
8 concerning Voluson mirror its theories for Venue and Vscan. *See Potter Voice Techs., LLC v.*  
9 *Apple Inc.*, No. C 13-1710 CW, 2015 WL 13404106, at \*2 (N.D. Cal. Mar. 20, 2015) (finding that  
10 including additional products would not prejudice Apple because “the infringement theories for  
11 these new products are the same” and the amendment would “promote judicial efficiency” by  
12 avoiding “piecemeal litigation”); *Bd. of Trs. of Leland Stanford Junior Univ. v. Roche Molecular*  
13 *Sys., Inc.*, No. C 05-04158 MHP, 2008 WL 624771, at \*4 (N.D. Cal. Mar. 4, 2008) (finding that  
14 allowing plaintiff to amend its infringement contentions to add defendant’s newly released product  
15 would preserve judicial resources given that the product’s technology had already been addressed  
16 and that, in the event the amendment wasn’t allowed, plaintiff was likely to bring a new suit with  
17 respect to the newly released product). Moreover, ample time remains in the case as the Court has  
18 not yet set a trial date, fact discovery is ongoing, and expert discovery has not yet begun.

### 19 **III. CONCLUSION**

20 For the foregoing reasons, UBC respectfully requests that the Court grant its motion to  
21 amend its infringement contentions to include the Voluson products with respect to the Asserted  
22 Patents.

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1 Dated: May 9, 2025

**PERKINS COIE LLP**

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