

IN THE UNITED STATES DISTRICT COURT
IN THE DISTRICT OF DELAWARE

CISCO SYSTEMS, INC.,)
)
 Plaintiff,)
)
 v.) Civ. No. 09-232-SLR
)
 TELES AG)
 INFORMATIONSTECHNOLOGIEN,)
)
 Defendant.)

TELES AG)
 INFORMATIONSTECHNOLOGIEN,)
)
 Plaintiff,)
)
 v.) Civ. No. 09-072-SLR
)
 CISCO SYSTEMS, INC.,)
)
 Defendant.)

MEMORANDUM ORDER

At Wilmington this 16th day of October, 2009, having reviewed the papers submitted in connection with motions to amend filed by Cisco Systems, Inc. ("Cisco") and motions for judgment on the pleadings filed by Teles AG Informationstechnologien ("Teles AG") in the above captioned actions;

IT IS ORDERED that Cisco's motions to amend (Civ. No. 09-232, D.I. 148; Civ. No. 09-072, D.I. 64) are granted and Teles AG's motion for judgment on the pleadings

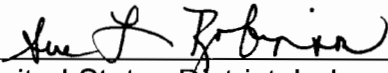
(Civ. No. 09-232, D.I. 131; Civ. No. 09-072, D.I. 47) are denied, for the reasons that follow:

1. The United States Court of Appeals for the Federal Circuit has announced that, in order to

plead the “circumstances” of inequitable conduct with the requisite “particularity” under Rule 9(b), the pleading must identify the specific who, what, when, where, and how of the material misrepresentation or omission committed before the PTO. Moreover, although “knowledge” and “intent” may be averred generally, a pleading of inequitable conduct under Rule 9(b) must include sufficient allegations of underlying facts from which a court may reasonably infer that a specific individual (1) knew of the withheld material information or of the falsity of the material misrepresentation, and (2) withheld or misrepresented this information with a specific intent to deceive the PTO.

Exergen Corp. v. Wal-Mart Stores, Inc., 575 F.3d 1312, 1328-29 (Fed. Cir. 2009).

2. Cisco’s amended claims of inequitable conduct pass muster under this rigorous standard and, therefore, leave to amend should be freely given under Rule 15(a).¹ Given this conclusion, Teles AG’s motions for judgment on the pleadings are denied.


United States District Judge

¹This early in the litigation, there can be no undue prejudice to Teles AG.