

DIVX, LLC v Harman Intl. Indus., Inc.

2026 NY Slip Op 31390(U)

April 6, 2026

Supreme Court, New York County

Docket Number: Index No. 656816/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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DIVX, LLC,

Plaintiff,

- v -

HARMAN INTERNATIONAL INDUSTRIES, INC.,

Defendant.

INDEX NO. 656816/2021

MOTION DATE 10/24/2025

MOTION SEQ. NO. 037

**DECISION + ORDER ON
MOTION**

-----X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 037) 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, Harman International Industries, Inc. (**Harman**)’s motion (Mtn. Seq. No. 037) for leave to file a Second Amended Answer pursuant to CPLR § 3025(b) is DENIED.

This case is trial ready and has been for some time. Years ago the parties litigated the applicable statute of limitations and on June 8, 2023 (almost three years ago), the Court held based on the submissions of the parties at that time, that the statute of limitations cut off contract claims which accrued prior to the fourth quarter of 2015 (NYSCEF Doc. No. 149 at 1). Harman did not successfully appeal that decision. They did not move to reargue. They have not moved to renew based on information that was not available to them at that time. As such, and for the reasons set forth below, their motion is DENIED.

It is well settled that CPLR § 3025(b) permits parties to amend their pleading at any time by leave of court or by stipulation of all parties, and that leave shall be freely given upon such terms as may be just and that denial should only occur “if there is prejudice or surprise resulting directly from the delay, or if the proposed amendment is palpably improper or insufficient as a matter of law” (*LDIR, LLC v DB Structured Products, Inc.*, 172 AD3d 1, 4 [1st Dept 2019]). Harman is just wrong that this many years into the case a new theory as to when the statute of limitations accrued does not substantially prejudice DivX in this case at this time.

Reference is made to a prior Decision and Order of this Court (the **Prior Decision**; NYSCEF Doc. No. 149), dated June 8, 2023, pursuant to which the Court permitted Harman to file an amended answer and assert a statute of limitations defense. In its moving papers, Harman argued that the applicable statute of limitations was *New York*’s six-year period for contract claims pursuant to CPLR § 213(2) (NYSCEF Doc. No. 92 at 5). However, the Court rejected Harman’s position that DivX LLC (**DivX**)’s claims were entirely time-barred and held that Harman “may file an amended answer asserting a statute of limitations defense as it relates to damages predicated on sales which predate the fourth quarter of 2015” (*id.* at 1). Harman now seeks to amend its answer and now argue that under California law (not New York law) and pursuant to the borrowing statute that the applicable statute of limitations cuts off claims as of December 6, 2017.

The doctrine of the law of the case seeks to prevent relitigation of issues of law that have already been determined at an earlier stage of the proceeding (*Aspen Specialty Ins. Co. v RLI Ins. Co., Inc.*, 194 AD3d 206, 212 [1st Dept 2021]). As discussed above, the Court has already held that

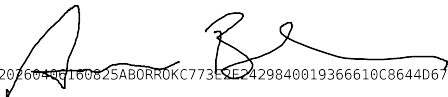
Harman's statute of limitations defense is limited to damages predicated on sales which predate the fourth quarter of 2015. That determination constitutes the law of the case. As Harman identifies no change in the law or new evidence, its motion is precluded on that basis (*see Brownrigg v New York City Hous. Auth.*, 29 AD3d 721, 722 [2d Dept 2006] ["The doctrine may be ignored in extraordinary circumstances such as a change in law or a showing of new evidence"]).

Judicial estoppel "precludes a party from taking a position in one legal proceeding which is contrary to that which it took in a prior proceeding, simply because its interests have changed" (*Pereira v Meisenberg*, 183 AD3d 768, 770 [2d Dept 2020]). It also precludes a party from "inequitably adopting a position directly contrary to or inconsistent with an earlier assumed position in the same proceeding" (*Matter of Hartsdale Fire Dist. v Eastland Constr., Inc.*, 65 AD3d 1345, 1346 [2d Dept 2009]). As discussed above, Harman previously argued that New York's six-year statute of limitations governed. It now seeks to invoke California's four-year limitations period pursuant to CPLR § 202. Having taken a contrary position to obtain its earlier amendment, Harman is estopped from advancing this new theory.

In any event, the proposed amendment is improper at this stage. New York's borrowing statute requires that "[a]ll the extensions and tolls applied in the foreign state must be imported with the foreign statutory period" (*Norex Petroleum Ltd. v Blavatnik*, 23 NY3d 665, 676 [2014]). Thus, Harman can not rely on California's four-year limitations period in isolation, but must also import California's tolling principles, including the discovery rule. Pursuant to California law, the discovery rule postpones accrual of a cause of action until the plaintiff discovers, or through

reasonable diligence could have discovered, the facts constituting the cause of action (*Norgart v Upjohn Co.*, 21 Cal 4th 383, 389 [1999]; *Angeles Chem. Co. v Spencer & Jones*, 44 Cal App 4th 112, 119-120 [1996]). This inquiry is inherently fact-intensive and turns on when DivX knew or should have known of the alleged breach. This discovery as to this date did not occur and discovery in this case has long closed. Trial has been set. The motions in limine decided. Although Harman disputes the prejudice, it is clear. As such, under these circumstances, the proposed amendment is improper and the motion is DENIED.

Accordingly, it is hereby ORDERED that Harman’s motion for leave to file a Second Amended Answer pursuant to CPLR § 3025(b) is DENIED.



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<u>4/6/2026</u> DATE					<u>ANDREW BORROK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART		
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER		
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE	