

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

BUERGOFOL GMBH, Plaintiff, vs. OMEGA LINER COMPANY, INC., Defendant.	4:22-CV-04112-KES ORDER GRANTING MOTION TO EXTEND AND AMENDED SCHEDULING ORDER
--	---

Plaintiff, Buergofol GmbH, moves to extend the deadline for the parties to serve infringement, non-infringement, invalidity, and validity contentions by three months. Docket 141. Defendant, Omega Linter Company, Inc., opposes an extension of just the contention deadlines absent an extension of all deadlines in the court's scheduling order. Docket 159 at 1. Buergofol does not object to a three-month extension of all deadlines. *Id.* at 2; Docket 160 ¶ 3; Docket 160-1 at 3. Good cause appearing, it is

ORDERED that the following deadlines will apply:

1. The parties will have until February 19, 2024, to move to join additional parties and to amend the pleadings.
2. All discovery, including expert discovery, will be commenced in time to be completed by August 20, 2024.
3. The identity of and reports from retained experts under Rule 26(a)(2) will be due from the party with the burden of proof by April 19, 2024, and rebuttal expert disclosures (by the party without the burden of proof) by

May 23, 2024; any supplementations thereto under Rule 26(e) will be due twenty days prior to trial. Disclosures and reports under Rule 26(a)(2) are not filed with the clerk. Any expert not so designated will not be permitted to testify at trial.

4. Disclosure of Infringement Contentions: By October 23, 2023, Buergofol shall serve on Omega “Infringement Contentions” containing the following information: (a) each claim of each patent it alleges is being infringed, (b) for each claim, each product, device, process, act, or method it alleges infringes (“Accused Product”), a chart identifying where specifically each element of each asserted claim listed is found in each product, device, process, act, or method, (d) the priority date to which each asserted claim allegedly is entitled, and (e) whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents. If Buergofol asserts that any element of any claim is present under the doctrine of equivalents, it must explain each function, way, and result that is equivalent and why any differences are not substantial.
5. Disclosure of Non-Infringement Contentions: By November 13, 2023, Omega shall serve on Buergofol “Non-Infringement Contentions” which shall contain a chart, responsive to the chart in Buergofol’s Infringement Contentions, that separately indicates, for each identified element in each asserted claim, to the extent then known by Omega, whether such element is present literally or under the doctrine of equivalents in each

Accused Instrumentality and, if not, each reason for such denial and the relevant distinctions. Conclusory denials are not permitted.

6. Disclosure of Invalidity Contentions: By November 27, 2023, Omega shall serve on Buergofol “Invalidity Contentions” listing for each alleged invalid claim (a) the identity of each item of prior art that allegedly anticipates or renders obvious the claim, (b) whether each item of prior art anticipates each alleged claim or renders it obvious (if a combination of items of prior art makes a claim obvious, each such combination, and the motivation to combine such terms, must be identified), (c) a chart identifying where specifically in each alleged item of prior art each element of each claim is found, and (d) a detailed explanation of the factual basis for any other claims of invalidity.
7. Disclosure of Validity Contentions: By December 15, 2023, Buergofol shall serve on Omega “Validity Contentions” which shall contain a chart, responsive to the chart in Omega’s Invalidity Contentions, that states as to each identified element in each asserted claim, to the extent then known, whether Buergofol admits to the identity of elements in the prior art and, if not, the reason for such denial.
8. The parties shall file the joint proposed claim construction chart, as described in Part III of this order, by February 12, 2024.
9. All motions, other than motions in limine, together with supporting briefs, will be filed and served on or before September 17, 2024. Opposing parties will file and serve answering materials and briefs within 21 days. Reply

briefs will be filed and served within 14 days. If, after reviewing the parties' briefing on dispositive motions, the court believes a claim construction hearing is necessary, the court will reach out to the parties to schedule a hearing.

10. All other provisions of the court's scheduling order (Docket 136) remain in effect unless specifically changed herein.

Dated July 12, 2023.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE