

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BROOK + WHITTLE LTD,

Plaintiff,

v.

NESTLÉ USA, INC., ET AL.,

Defendants.

Case No. 2:24-CV-00735-JRG-RSP

**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO
SUPPLEMENT INVALIDITY CONTENTIONS UNDER P.R. 3-6(b)**

Defendants Nestlé USA, Inc. and Fuji Seal International, Inc. (collectively, “Defendants”) respectfully move for leave to supplement their Invalidity Contentions pursuant to P.R. 3-6(b) to add two prior art product labels that Defendants contend render claims 1–19 (the “Asserted Claims”) of U.S. Patent No. 11,961,422 (“the ’422 Patent” or “Asserted Patent”) invalid under 35 U.S.C. §§ 102 and/or 103.

Specifically, Defendants seek to add new invalidity contentions, including new claim charts, based on Multi-Color Corporation’s prior art Gatorade product label and its prior art Febreze product label (the “Prior Art Labels”).¹ Defendants first learned about the existence and relevance of the Prior Art Labels after Multi-Color Corporation publicly filed expert declarations

¹ Attached as Exhibit A is a tracked changes version of the cover document to Defendants’ Invalidity Contentions showing the proposed additions in redline form; attached as Exhibit B is a new invalidity claim chart based on Multi-Color Corporation’s prior art Gatorade Label, and attached as Exhibit C is a new invalidity claim chart based on Multi-Color Corporation’s prior art Febreze Label.

and other documents describing the Prior Art Labels with the Patent Trial and Appeal Board on January 16, 2025 in support of its petition for post-grant review (“PGR”) of the ’422 Patent.

Good cause exists for the Court to permit Defendants to supplement their invalidity contentions at this early stage of the case. *First*, Defendants’ proposed supplementation to their invalidity contentions to include the Prior Art Labels will not cause a delay or otherwise affect any upcoming litigation deadlines or judicial proceedings in this case. The parties have not yet started the claim construction process in this case. *Second*, it was impossible for Defendants to include the Prior Art Labels in their original Invalidity Contentions, which were served on January 2, 2025, because they did not learn of the existence or significance of these materials until on or about January 16, 2025, after seeing Multi-Color Corporation’s publicly-filed petition for PGR. *Third*, counsel for Defendants did not delay in conferring with counsel for Plaintiff Brook+Whittle LTD (“B+W”) regarding Defendants’ proposed supplementation. Counsel for Defendants first contacted counsel for B+W on January 28, 2025, after completing a preliminary analysis of the Prior Art Labels and determining that it would be necessary to supplement Defendants’ invalidity contentions. *Fourth*, Defendants’ new invalidity contentions under 35 U.S.C. §§ 102 and/or 103 based on the Prior Art Labels are important to be considered because they are strong defenses, and they should be considered by both sides at this stage of the litigation before the claim construction process begins. *Fifth*, because Defendants’ proposed supplementation will not delay or otherwise affect the proceedings, there is no danger that B+W will be unfairly prejudiced by the supplementation.

Therefore, because good cause exists to allow Defendants to supplement their invalidity contentions based on the Prior Art Labels, Defendants ask that this Motion be granted. B+W does not oppose this Motion.

Dated: February 19, 2025

Respectfully submitted,

/s/ Amy E. LaValle

Amy E. LaValle (State Bar No. 24040529)

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*Attorneys for Defendants Nestlé USA, Inc.
and Fuji Seal International, Inc.*

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for Defendants, Amy E. LaValle, conferred with counsel for Plaintiff, Jeffrey M. Jacobsen, regarding the relief requested in this Motion. Additionally, on February 18, 2025, Ms. LaValle provided a draft copy of this Motion, including the attached Exhibits, to all counsel of record for Plaintiff, and, on February 19, 2025, Mr. Jacobsen confirmed that Plaintiff is not opposed to the relief requested in this Motion

Dated: February 19, 2025

/s/ Amy E. LaValle

Amy E. LaValle

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document, DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO SUPPLEMENT INVALIDITY CONTENTIONS UNDER P.R. 3-6(b), via the Court's CM/ECF system per Local Rule CV-5(a)(3).

Dated: February 19, 2025

/s/ Amy E. LaValle

Amy E. LaValle

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