

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SCA TISSUE NORTH AMERICA, LLC,

Plaintiff,

V.

TARZANA ENTERPRISES, LLC,

Defendant.

ORDER

11-cv-316-bbc

In this patent infringement suit, plaintiff SCA Tissue North America, LLC contends that defendant Tarzana Enterprises, LLC is infringing two of plaintiff's patents related to folded napkins. On December 1, 2011, I denied defendant's motion for summary judgment on infringement, concluding that plaintiff had produced sufficient evidence to show a genuine factual dispute regarding whether defendant's napkin product infringes plaintiff's patents. Dkt. #85. As part of the summary judgment opinion, I construed "equal parts" as used in the asserted patent claims to mean "parts that are the same size, with allowance for variations resulting from standard manufacturing deviations." Id. at 16. However, I noted that the construction did not resolve all of the parties' disputes regarding the scope of the claims because neither party had submitted evidence regarding "the specific amount of

variation that one skilled in the art reading the patent would understand ‘standard manufacturing deviations’ to encompass.” Id. I explained that the parties would need to provide further evidence and argument on this issue in the context of a motion for summary judgment or in a motion in limine before trial. Id. at 17. (The summary judgment opinion stated inadvertently that the issue could be decided in the context of a motion for summary judgment filed by “defendant.” This was a typographical error; the opinion should have stated “a motion for summary judgment filed by plaintiff.” Defendant cannot file a successive motion for summary judgment on this issue without seeking leave of the court.)

Now before the court is defendant’s motion for clarification, in which it asks the court to clarify its construction of “equal,” to order plaintiff to provide defendant with its contentions and evidence relating to the construction of “equal” on an expedited basis and to direct the parties how they should proceed with the case. Dkt. #86.

I will deny defendant’s motion. The summary judgment opinion identifies a specific issue of claim construction on which the parties must produce evidence and argument. I cannot provide any further clarification of the scope of the patent claims without additional evidence on this issue. Further, the current scheduling order provides the parties with guidance in proceeding with discovery in this case and the deadlines for filing expert reports and dispositive motions. Defendant has not explained why the current deadlines are inadequate or what additional guidance it requires from the court.

Finally, I remind defendant that its arguments regarding its so-called “1/2 inch offset” napkin are irrelevant to the issues in this case. Plaintiff has not accused the “1/2 inch offset” napkin as infringing and defendant has not sought a declaratory judgment of noninfringement for that product. Thus, whether that napkin falls within the scope of the patent claims is not at issue in this case.

ORDER

IT IS ORDERED that defendant Tarzana Enterprises, LLC’s motion for clarification and motion to compel defendant SCA Tissue North America, LLC to provide expedited discovery, dkt. #86, is DENIED.

Entered this 31st day of January, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge