IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WILLIAMS-PYRO, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 4:12-cv-546-O**
	§	
WARREN WATTS TECHNOLOGY, LLC,	§	
	§	
Defendant.	§	

ORDER

Before the Court is Defendant's Motion for Reconsideration and/or Clarification of the Construction of "Explosive Menas," to Compel the Production of Discoverable Documents, and for Expedited Briefing, and Brief and Appendix in Support (ECF Nos. 168–69), filed July 27, 2015. The Court ordered expedited briefing on the Motion to Compel portion only. Thus, also before the Court are Plaintiff's Response to Defendant's Motion to Compel and Appendix in Support (ECF Nos. 177–79), filed July 31, 2015; and Defendant's Reply in Support of its Motion to Compel and Appendix in Support (ECF Nos. 181–82), filed August 4, 2015. Having considered the Motion to Compel, related briefing, and applicable law, the Court finds that the Motion to Compel should be and is hereby **DENIED**.

I. BACKGROUND

This is a patent infringement action. In the Claim Construction Order, United States District Judge Terry R. Means determined that the ordinary and customary meaning of the "explosive means" term is "explosive, explosive charge, or explosive substance." Order Claim Construction 10, Mar.

10, 2014, ECF No. 55. The Claim Construction Order does not use the term "black powder" or "black powder substitute." *See generally id.*

According to Judge Means' Order Granting Second Motion to Amend Initial Scheduling Order, the parties were directed to "cease all discovery activity under the Federal Rules of Civil Procedure on: August 13, 2014, by 4:00 p.m." Order, June 11, 2014, ECF No. 65. Approximately one year later and on the eve of trial, Defendant seeks to discover allegedly withheld Williams-Pyro patent applications that contain the phrase: "Alternate, matter may be used for or in the initiator charge, such as black powder substitute." *See* Def.'s Mot. Compel, ECF No. 168. According to Defendant, this phrase tends to show that Williams-Pyro considers black powder to be an explosive and is relevant to the Court's construction of "explosive means." *See id.* at 2–3. According to Plaintiff, the documents at issue are not responsive to Defendant's discovery requests because the documents do not contain the term "explosive means" and they were filed by different inventors twenty years after the patents at issue were filed. *See* Pl.'s Resp., ECF No. 177. Plaintiff further argues that the documents are irrelevant because the Court's Claim Construction Order did not discuss "black powder" or "black powder substitute." *See id.* The motion has been fully briefed and is ripe for adjudication.

II. LEGAL STANDARD

"Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense. . . . For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). The burden to justify a party's objections to the production of discovery is on

the party resisting discovery. *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004). In order to satisfy this burden, the objecting party must make a specific, detailed showing of how a request is burdensome; "[a] mere statement that a request is 'overly broad and unduly burdensome' is not adequate to voice a successful objection." *SEC v. Brady*, 238 F.R.D. 429, 437 (N.D. Tex. 2006) (Ramirez, Magis. J.).

Motions to compel are untimely if filed after the deadline for completion of discovery. *See Days Inn Worldwide, Inc. v. Sonia Invs.*, 237 F.R.D. 395, 396–98 (N.D. Tex. 2006) (Ramirez, Magis. J.). Although Plaintiff's motion was untimely, a court should not enforce its scheduling order deadlines rigidly without regard to underlying facts and circumstances. *See Blackboard, Inc. v. Desire2learn, Inc.*, No. 9:06-CV-155, 2007 WL 3389968, *3 (E.D. Tex. Nov. 14, 2007). In determining whether to allow a motion to compel filed after the discovery deadline, courts have considered the following factors: (1) the length of time since the expiration of the discovery deadline; (2) the length of time that the moving party has known about the discovery; (3) whether the discovery deadline has been extended; (4) the explanation for the tardiness or delay; (5) whether dispositive motions have been scheduled or filed; (6) the age of the case; (7) any prejudice to the party from whom late discovery was sought; and (8) disruption of the court's schedule. *See Days Inn Worldwide*, 237 F.R.D. at 398–99.

III. ANALYSIS

The Court concludes that the Motion to Compel is untimely. Re-opening discovery approximately one year after the close of discovery and on the eve of trial would cause disruption of the Court's schedule. This case was originally filed approximately three years ago, on August 3, 2012. *See* Compl., ECF No. 1. The discovery deadline has been extended twice. *See* Order, June 11,

2014, ECF No. 65. The only factor identified in *Days Inn* that weighs in favor of compelling discovery is the moving party's assertion that it only learned of these documents as of July 2015. *See* Def.'s Mot. Compel 7, ECF No. 168. However, this factor is not sufficient to overcome the other factors.

The Court also notes that the parties dispute whether the document at issue is relevant or responsive to the discovery requests. Because, for instance, the documents at issue do not contain the term "explosive means," the documents are not smoking guns which would necessarily dispose of the case or even the construction of "explosive means." Instead, they relate to whether black powder substitute is an explosive — an issue not explicitly mentioned in the Claim Construction Order.

The Fifth Circuit has held that it was not an abuse of discretion to deny a motion to compel discovery that was filed on the discovery deadline after an extensive discovery period. *Grey v. Dall. Indep. Sch. Dist.*, 265 F. App'x 342, 348 (5th Cir. 2008). Additionally, even when the documents at issue are potentially dispositive of the case and the discovery deadline has not yet passed, the district court maintains the discretion to deny a request to conduct discovery on the basis of an imminent trial. *See Turnage v. Gen. Elec. Co.*, 953 F.2d 206, 209 (5th Cir.1992) (holding that the district court did not abuse its discretion when it denied plaintiff's request to conduct potentially dispositive discovery, "given (i) the imminence of trial, (ii) the impending discovery deadline, and (iii) [plaintiff's] failure to request an inspection earlier"). Accordingly, the Court concludes that the Motion to Compel is untimely.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Compel the Production of Discoverable Documents (ECF No. 168) is **DENIED**. The Court will address Defendant's Motion for Re-Consideration of Claim Construction (ECF No. 168) separately.

SO ORDERED on this **6th day** of **August, 2015**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE