

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MEDICINE STORE PHARMACY, INC.	§	
d/b/a/ RXPRESS PHARMACY,	§	
	§	3:14-cv-2255
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
AFGIN PHARMA LLC,	§	
	§	
<i>Defendant.</i>	§	

**ORDER GRANTING DEFENDANT’S
MOTION FOR LEAVE TO AMEND INFRINGEMENT CONTENTIONS**

Before the Court is Defendant’s Motion for Leave to Amend Infringement Contentions [Docket Entry #52]. The Motion is **GRANTED**.


Infringement contentions may be amended upon a showing of good cause. Am. Misc. Order 62, R. 3-7. Good cause may include newly discovered accused instrumentalities, newly discovered bases for claiming infringement, or newly discovered prior art references. *Id.* A party seeking amendment must state that the newly discovered accused instrumentalities, bases for claiming infringement, or prior art references were not known to that party prior to the motion despite diligence in seeking them. *Id.* In determining whether good cause exists, courts consider: (1) the reason for the delay and whether the party has been diligent; (2) the importance of what the court is excluding and the availability of lesser sanctions; (3) the danger of unfair prejudice; and (4) the availability of a continuance and the potential impact of a delay on judicial proceedings. *H-W Tech., L.C. v. Apple, Inc.*, 2012 WL 3650597, at *6 (N.D. Tex. Aug. 2, 2012) *report and recommendation adopted sub nom. H-W Tech., L.C. v. Amazon.com, Inc.*, 2012 WL 3656293 (N.D. Tex. Aug. 27, 2012).

Here, Defendant requested leave to amend based on what Defendant contends are newly discovered prescription pads, prescriptions, and instructions. The amendments to Defendant's infringement contentions are important, particularly to infringement and damages calculations, and Plaintiff will not be unfairly prejudiced because Plaintiff will have a fair opportunity to address the infringement contentions. Finally, the amendment should not delay judicial proceedings. Neither party argues that allowing Defendant to amend its infringement contentions will cause any delay in the case schedule. Def.'s Br. 8 [Docket Entry #52] ("AfGin does not anticipate any changes that would need to be made to the schedule and/or trial date as [a] result of the Court permitting these amendments."); Pl.'s Br. [Docket Entry #58] (making no argument that granting Defendant's Motion will delay the case schedule). For these reasons, Defendant's Motion is **GRANTED**.

In light of this Order, the Parties' deadline to file a Joint Submission of Claim Construction Chart is extended to August 27, 2015.

SO ORDERED.

August 21, 2015.


BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS