IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

S-LINE, LLC,	§	
Plaintiff,	§	
	§	
v.	§	**Civil No. 3:14-CV-2284-M**
	§	
B2B SUPPLY and	§	
JERRELL P. SQUYRES,	§	
Defendants.	§	

ORDER

Pursuant to the District Judge's *Order Referring Motion*, Doc. 102, the Court now considers Defendants' *Motion to Extend Time Deadline for Completing Factual Discovery and Motion to Compel Discovery.* Doc. 100. For the reasons that follow, the motion is **DENIED**.

I. BACKGROUND

Plaintiff filed this action on June 23, 2014, alleging that Defendant B2B Supply and Defendant Jerrell P. Squyres (hereinafter "Defendants") infringed on U.S. Patent No. 7,731,462. Doc. 1. In October 2014, the parties negotiated and submitted their *Joint Report Regarding Contents of a Scheduling Order*, Doc. 29, and a *Stipulated E-Discovery Order*, Doc. 37, which were subsequently entered by the Court, Doc. 40. The Court also issued its *Patent Scheduling Order* in February 2015, Doc. 56, which granted the pertinent fact discovery deadlines requested by the parties in the aforementioned *Joint Report Regarding Contents of a Scheduling Order*. Pursuant to that Order, the deadline for completion of fact discovery was September 10, 2015.[1]

[1] The Court ordered that "**30 days after the Claim Construction Order**, all **factual discovery** shall be completed." Doc. 56 at 6 (emphasis in original). The *Claim Construction Order* was entered on the docket on August 11, 2015, Doc. 96, making the fact discovery deadline September 10, 2015.

Defendants served on Plaintiff: (1) Defendants' First Set of Requests for Production, on October 4, 2014; and (2) Defendants' First Set of Interrogatories, on August 11, 2015. Plaintiff served its responses and objections on November 3, 2014 and September 10, 2015, respectively. Doc. 101-1 at 1, 17; Doc. 101-3 at 33, 44. On September 14, 2015, Defendants filed the motion *sub judice*, seeking an order from the Court extending the deadline by 50 days to complete fact discovery and compelling Plaintiff to produce all responsive documents, certify that its production is complete, produce witnesses for deposition, and answer Defendants' interrogatories. Doc. 100 at 3-4. In support, Defendants argue that an extension is necessary because Plaintiff has withheld documents from production and has otherwise failed to cooperate with discovery. Doc. 100 at 3-4, 8. Plaintiff counters that Defendants have failed to show good cause to modify the *Patent Scheduling Order*. Doc. 104 at 9. And while Plaintiff agrees to an extension of the discovery deadline only for timely-noticed depositions, Defendants demand an unqualified extension. Doc. 100 at 7; Doc. 104 at 4.

II. DISCUSSION

a. *Motion to Extend Time Deadline for Completing Factual Discovery*

Under Rule 16 of the Federal Rules of Civil Procedure, a scheduling order may only be modified for good cause and with the judge's consent. To determine whether the moving party has established good cause, the Court considers the following four factors: (1) the explanation for the failure to complete discovery prior to the deadline; (2) the importance of the requested discovery; (3) the potential prejudice if discovery is reopened; and (4) the availability of a continuance to cure such prejudice. *S&W Enter., L.L.C. v. Southtrust Bank of Alabama*, 315 F.3d 533, 536 (5th Cir. 2003).

i. Explanation for Failure to Complete Discovery

Defendants argue they were unable to complete discovery because Plaintiff withheld production, deficiently responded to discovery, and failed to certify that it had produced all responsive documents, which prevented Defendants from using the information to serve additional written discovery requests and third party subpoenas. Doc. 100 at 11. Plaintiff responds that it timely served its responses and objections to Defendants' discovery requests and that it has been diligent in searching for responsive documents. Doc. 104 at 11.

The Court finds Defendants' explanation unconvincing considering they had nine months to seek court intervention concerning Plaintiff's responses and objections to Defendants' First Set of Requests for Production, but failed to do so.[2] Doc. 101-2 at 8. Additionally, it was Defendants' decision to serve their First Set of Interrogatories a mere 30 days before the discovery deadline, leaving no time in the discovery period should a motion to compel become necessary. Doc. 101-3 at 43. Defendants likewise scheduled depositions for the last three days of the discovery period, leaving no room for timely objection. Under these facts, the Court finds that Defendants have been less than diligent in seeking discovery within the prescribed period and in failing to notify the Court of resulting issues. "The good cause standard requires the 'party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party needing the extension.' " *SW. Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 (5th Cir.2003) (citing *S & W Enters., LLC* 315 F.3d at 535 (5th Cir.2003)). Under the facts presented here, this factors weighs against the grant of an extension.

[2] Plaintiff served Defendants with their responses and objections to Defendants'' First Set of Requests for Production on November 3, 2014. Doc. 101-2 at 8.

ii. Importance of the Requested Discovery

Although Defendants initially asserted, in conclusory fashion, that without the extension they "will be deprived of a fair opportunity to conduct discovery to defend themselves against [Plaintiff's] claims of patent infringement," Doc. 100 at 12, in their reply, they specify the importance of the discovery sought. Doc. 107 at 5-10. Upon review, the Court concludes that Defendants have sufficiently shown the importance of the discovery requested. Accordingly, this factor favors granting the extension.

iii. Potential Prejudice to the Other Party

Defendants aver that Plaintiff will not be prejudice by an extension of the deadline. Doc. 100 at 12. While Defendants concede that Plaintiff will have to produce additional documents, make witnesses available for deposition, and answer interrogatories, they contend that such actions are required of litigants by the Federal Rules and cannot be viewed as "prejudice" in this context. Doc. 100 at 12. Plaintiff argues that it will suffer significant prejudice if the deadline for fact discovery is extended because such will open the gates for Defendant to propound new discovery requests and notice depositions that were not previously timely served. Doc. 104 at 15, 17.

The Court finds that Plaintiff will suffer significant prejudice if the deadline for fact discovery is extended. Apparently assuming that the Court would grant its motion, Defendants have already served Plaintiff with their First Set of Email Production on September 15, 2015, five days after the close of discovery. Doc. 105-3 at 2. However, the E-Discovery Order was entered on October 22, 2014, Doc. 40, giving Defendants over a year to serve such requests. The Court assumes by the belated request for an extension, Defendants' intend to make additional

discovery requests, including noticing depositions. Thus, this factor weighs against granting an extension.

iv. Availability of a Continuance to Remedy any Prejudice

Defendants argue that there remains adequate room in the Patent Scheduling Order to cure any potential prejudice and that the extension would not impact any of the other deadlines. Doc. 100 at 13. Plaintiff responds that a continuance will not cure the prejudice, but will only result in additional delay. Doc. 104 at 17. Plaintiff also contends that any extension will burden the parties on the upcoming deadlines and will result in more extensions and possibly more motions to compel. Doc. 104 at 18.

While it is possible that a continuance could cure any potential prejudice, the integrity of the Court's scheduling order and the importance of deterring such dilatory behavior weigh against granting an extension. *Hernandez v. Marion's Auto Sales, Inc.*, 617 F. Supp 2d 488, 496 (S.D. Tex. 2009). The Court made clear that it would only reset the trial date "under truly extraordinary circumstances." Doc. 56 at 10. An extension now would simply result in additional delay and the possibility of protracted litigation assuming, based on the history of this case, that additional discovery disputes would arise in the extended discovery period. *See Geiserman v. MacDonald*, 893 F.2d 787, 792 (5th Cir. 1990).

Defendants have failed to show that good cause exists under the four-factor balancing test to grant an extension of the discovery deadline. The additional discovery may be of some importance to Defendants' case, and the Court's denial of their requested extension may cause them minimal prejudice; however, these factors are outweighed by Defendants' dilatory conduct and the Court's interest in maintaining the integrity of the scheduling order.

Having balanced the equities and finding no good cause to extend the scheduling order, Defendants Motion to Extend is **DENIED**.

b. ***Motion to Compel Discovery***

Defendants request the Court to enter an order that compels Plaintiff to: 1) produce all documents responsive to Defendants' requests for production; 2) certify that its production is complete; 3) make its witnesses available for deposition; 4) and answer Defendants' interrogatories. Doc. 100 at 3-4. Plaintiff responds that Defendants' motion to compel should be denied as untimely. Doc. 104 at 18.

Courts consider a number of factors in determining whether a motion to compel filed after the discovery deadline should be permitted, including (1) the length of time since the expiration of the deadline, (2) the length of time that the moving party has known about the subject matter of the motion, (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. *Days Inn Worldwide, Inc. v. Sonia Invs.*, 237 F.R.D. 395, 397 (N.D. Tex. July 17, 2006).

Here, the District Court entered a scheduling order establishing a discovery deadline of September 10, 2015. Doc. 56 at 6. On September 14, 2015, Defendants filed their Motion to Compel. Doc. 100.

While Defendants filed their motion only four days after the discovery deadline, they waited more than ten months to seek the Court's resolution of issues with Plaintiff's responses and objections to Defendants' First Set of Requests for Production, Doc. 101-1 at 17, of which they were well aware during the interim. Defendant's lack of diligence does not end there.

Regarding Defendants' interrogatories, the discovery period began on September 17, 2014, the day after the parties' Rule 26(f) conference. *See* FED. R. CIV. P. 26 (d)(1); Doc. 29 at 1. However, Defendants elected not to serve its First Set of Interrogatories on Plaintiffs until August 11, 2015, thirty days before the close of discovery. Doc. 101-3 at 33. Plaintiff's responses and objections served on September 10, 2015, the discovery deadline, were thus timely. Doc. 101-3 at 44. Regarding the three depositions Defendants noticed to occur on the last days of discovery, Defendants have known the identities of two of the proposed deponents since Plaintiff served its Rule 26 initial disclosures on October 14, 2014. Doc. 101-3 at 29. Plaintiff has presented a persuasive argument that the third person noticed was deposed by Defendants in April, 2015, regarding the corporate veil issue,[3] thus also not a surprise. Doc. 104 at 18. In absence of a reasonable explanation for the delays, the Court is not inclined to grant Defendants relief from this situation of their own making.

At this point, the parties have been engaged in discovery for over a year. Again, the Court made clear at the outset that it was averse to an extension, except under "truly extraordinary circumstances." Doc. 56 at 10. No doubt that any extension at this juncture would be disruptive to the Court's calendar. The Court notes that the deadline for filing dispositive motions is December 7, 2015. Doc. 56 at 2. And, as discussed above, the Court finds Defendants' explanation for delay unconvincing. Moreover, the Court agrees that Plaintiff will be prejudiced by the costs in time and expense of complying with Defendant's additional discovery requests. Upon balance of all the factors, the Court concludes that permitting

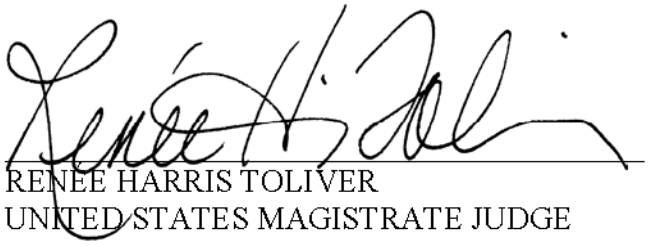
[3] Defendant Jerrell P. Squyres unsuccessfully moved for partial summary judgment that Plaintiff could not, as a matter of law, pierce the corporate veil of Defendant B2B to hold Defendant Squyres individually liable for the alleged patent infringement. Doc. 97 at 1.

Defendant to proceed with its untimely motion is not justified and, accordingly, Defendants' motion is **DENIED**.

III. CONCLUSION

For the foregoing reasons, Defendants' *Motion to Extend Time Deadline for Completing Factual Discovery and Motion to Compel Discovery*, Doc. 100, is **DENIED**.

SIGNED December 4, 2015.



RENÉE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE