IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn

Civil Action No. 08-cv-02646-REB-MEH

B & R PLASTICS, INC., a Colorado corporation,

Plaintiff,

v.

KIKKERLAND DESIGN, INC., a New York domestic business corporation, et al.

Defendants.

ORDER LIFTING ADMINISTRATIVE CLOSURE

Blackburn, J.

The matter is before me on the following: (1) **Plaintiff's Motion To Dismiss** [#129][1] filed July 9, 2010; (2) **Kikkerland Design, Inc.'s Motion To Reopen Case** [#130] filed July 16, 2010; and (3) **Kikkerland Design, Inc.'s Motion for Leave To File Its Amended Counterclaims and Join Counterclaim Defendants** [#133] filed July 22, 2010. The parties filed responses and replies addressing the motion to dismiss and motion to file amended counterclaims. On the terms stated below, I grant all three motions.

The plaintiff's claims in this case are based on the plaintiff's allegations that the defendants have infringed a patent licensed to the plaintiffs. *Complaint* [#82]. The parties stipulated [#121] to administrative closure of this case pending resolution of an investigation by the United States International Trade Commission (ITC) concerning the patent. On January 7, 2010, I entered an order [#127] closing this case

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[1] "[#129]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

administratively. The ITC proceedings now are complete.

In its motion to dismiss its claims, the plaintiff states that the "facts discovered during the International Trade Commission investigation now make it impractical to prosecute the within cause of action." *Motion to dismiss* [#129], ¶ 9. On this basis, the plaintiff asks that its claims be dismissed with prejudice without costs to any party.

Defendant Kikkerland Design, Inc. does not object to the dismissal of the plaintiff's claims. However, in its response to the motion to dismiss and in its motion for leave to file its amended counterclaims and join counterclaim defendants, Kikkerland argues that it should be permitted to pursue its counterclaims, to amend those counterclaims, and to add counterclaim defendants. The requirements of FED. R. CIV. P. 41(a)(2) are applicable to Kikkerland's counterclaims and require that I permit Kikkerland's counterclaims to remain pending for independent adjudication.

Applying the standards of FED. R. CIV. P. 15, I conclude also that Kikkerland should be permitted to amend its counterclaims. Given these circumstances, I conclude that Kikkerland has shown good cause to reopen this case and, therefore, Kikkerland's motion to reopen [#130] is granted.

THEREFORE, IT IS ORDERED as follows:

1. That **Kikkerland Design, Inc.'s Motion To Reopen Case** [#130] filed July 16, 2010, is **GRANTED**;

2. That under **D.C.COLO.LCivR 41.2**, the clerk is **DIRECTED** to reopen this civil action;

3. That the **Plaintiff's Motion To Dismiss** [#129] filed July 9, 2010, is **GRANTED**;

4. That the claims asserted by the plaintiff in its **Amended Complaint and Jury**

Demand [#82] filed November 4, 2009, are **DISMISSED** with prejudice;

5. That **Kikkerland Design, Inc.'s Motion for Leave To File Its Amended Counterclaims and Join Counterclaim Defendants** [#133] filed July 22, 2010, is **GRANTED**;

6. That **Kikkerland Design, Inc.'s Amended Counterclaims**, tendered to the court as [#134], are **ACCEPTED** for filing;

7. That Kikkerland Design, Inc.'s proposed amended counterclaims [#134] were filed under seal as required by the order [#146] of this court and, absent valid objection, **Kikkerland Design, Inc.'s Amended Counterclaims SHALL REMAIN** under seal; and

8. That counsel for the parties are directed to contact the chambers of United States Magistrate Judge Michael E. Hegarty to set a scheduling conference to schedule deadlines as necessary for resolution of Kikkerland Design, Inc.'s counterclaims.

Dated March 22, 2011, at Denver, Colorado.

BY THE COURT:

Robert E. Blackburn
United States District Judge