IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02640-REB

WYERS PRODUCTS GROUP, INC., a Colorado corporation,

Plaintiff,

v.

CEQUENT PERFORMANCE PRODUCTS, INC.,

Defendant.

MOTION TO CONVENE SCHEDULING CONFERENCE

Plaintiff Wyers Products Group, Inc. ("Wyers Products"), by and through undersigned counsel, respectfully submits this Motion to Convene Scheduling Conference and, in support, state as follows:

D.C.COLO.LCivR 7.1(A) Statement Regarding Conferral: Undersigned counsel met and conferred by email and telephone with counsel for defendant Cequent Performance Products, Inc. (“Cequent”) on a number of occasions between April 2013 and the date of this Motion regarding the relief requested herein. Based on statements of its counsel, Cequent intends to seek a stay of discovery in this case. Cequent’s proposed stay is inconsistent with the relief requested herein.

1. This patent infringement lawsuit commenced on October 5, 2012.

2. On October 9, 2012, District Judge Robert E. Blackburn issued an Order for Briefing on *Markman* Issues [Docket No. 5] ("*Markman* Briefing Order"). The

schedule for *Markman* briefing set forth therein has been extended by Minute Order [#30], and Cequent seeks a further extension with respect thereto [#35].

3. The *Markman* Briefing Order provides a schedule for briefing on claim construction issues, but does not address scheduling of discovery, disclosure and other pretrial matters.

4. Plaintiff submits that a prompt and efficient resolution of this action is most likely to be facilitated by a defined pretrial schedule. At this time, the parties disagree with respect to the timing of pretrial proceedings, including discovery and disclosure.

5. The parties conferred regarding a proposed scheduling order for this case. However, Cequent's position appears to be that all discovery and disclosure in this case should be stayed until after Cequent files a motion or motion(s) for summary judgment under Fed. R. Civ. P. 56(c). On the other hand, Wyers Products submits that discovery must proceed in the normal course, and in advance of any summary judgment briefing. Wyers Products made initial disclosures on May 1, 2013, pursuant to the timing required under Rule 26(a)(1)(C). Wyers Products served its first set of written discovery pursuant to Rules 33, 34 and 36 on April 17, 2013. As set forth in the attached proposed scheduling order, Wyers Products anticipates that fact discovery in this case can be completed by early February 2014, preparing the case for trial by summer 2014.

6. The attached proposed scheduling order sets forth the parties' respective positions with respect to scheduling pretrial proceedings, based on the conferral between counsel.

7. Given the need for a scheduling order to ensure timely resolution of this case and the parties' disagreement as to the case schedule, Wyers Products requests a scheduling conference to discuss the case plan and schedule, and to facilitate the Court's entry of a scheduling order.

8. Because the discovery plan for this action is presently in dispute, Wyers Products requests that the Court set such scheduling conference at the earliest time practicable for the Court and counsel for the parties, no later than June 5, 2013.

WHEREFORE, Wyers Products respectfully requests that the Court set a scheduling conference to occur before the assigned Magistrate Judge between as soon as Court's calendar permits and on a date available to counsel for the parties, no later than June 5, 2013.

Date: May 15, 2013.

Respectfully submitted,

LATHROP & GAGE LLP

s/ *Alexander C. Clayden*

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2013, I served the foregoing **MOTION TO CONVENE SCHEDULING CONFERENCE** via ECF which will send notification of such filing to the following:

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s/*Alexander C. Clayden*
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