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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Verco Decking, Inc.,
Plaintiff/Counterclaim-Defendant,
vs.
Consolidated Systems, Inc.,
Defendant/Counterclaim-Plaintiff.

No. CV-11-2516-PHX-GMS

ORDER

Pending before this Court are Plaintiff’s Motion to File Under Seal Plaintiff’s Unredacted Response (Doc. 71) and a Motion to File Surreply Claim Construction Brief (Doc. 79). These motions both relate to Defendant’s Motion for Claim Construction. (Doc. 65.) For the following reasons, ruling on the Motion to File Under Seal will be deferred until after Verco Decking makes the filing required by this order. The Motion to File a Surreply is granted.

I. File under Seal

Consolidated Systems, Inc. (“CSI”) filed its Motion for Claim Construction asking this Court to interpret the term “louver” as used in the claims of the patents-in-suit. (Doc. 65.) Verco Decking, Inc., (“Verco”) filed a redacted Response (Doc. 73), but also filed a Motion to Seal Document (Doc. 71) and lodged a sealed Proposed Unredacted Response (Doc. 72). CSI filed an Opposition to Plaintiff’s Motion to File under Seal (Doc. 76), and Verco filed a Reply. (Doc. 77).

1 Verco argues that its lodged motion should be sealed pursuant to the parties'
2 Stipulated Protection Order (Doc. 56). CSI agrees that “[t]he material sought to be
3 included under seal by [Verco] deserves protection as confidential and/or proprietary
4 information.” (Doc. 76 at 4.) However, CSI asks that the motion be denied because it
5 would be “futile,” or “pointless,” because the information contained is extrinsic evidence
6 and the Court should instead rely primarily on intrinsic evidence. (*Id.* at 2–3.) CSI further
7 state that “inclusion of this extrinsic material serves only to muddle the issues presented
8 to this Court.” (*Id.* at 4.)

9 The Court will not deny the Motion on those grounds. Verco is entitled to make its
10 arguments to the Court and the assertion that an argument will be unavailing does not
11 provide an adequate basis to strike or refuse to accept a lodged motion.

12 CSI’s second reason to oppose the filing is that it exercised its right to review the
13 deposition transcript that Verco quoted from, but was not given the 30 days to do so.
14 Here, the deposition in question took place on February 6 (Doc. 72-9), and Verco filed its
15 motions on February 14, 2014. (Docs. 71–73.) As a practical matter, Verco could not
16 provide 30 days for review before the motion deadline of February 14, which this Court
17 had already extended once. (Doc. 69.) However, the 30 day review period has now
18 passed, and CSI should have reviewed and made any changes to the deposition transcript.

19 The Court will allow the lodged Unredacted Motion to be docketed, but only after
20 it is informed of any changes or objections that CSI made to the deposition transcript that
21 Verco submitted. Within seven days, Verco shall file either an amended final transcript of
22 the deposition under seal or file an affidavit certifying that no changes were made by CSI
23 to the portions of the deposition that were previously submitted to the Court under seal.

24 **II. Surreply**

25 CSI filed no opposition to Verco’s Motion for Leave to File a Surreply, and it has
26 since filed a joint motion with this Court stating that the matter is ripe for decision (Doc.
27 86). The Court will grant CSI’s unopposed motion to file a Surreply.

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