

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

SORRELL HOLDINGS, LLC

PLAINTIFF

vs.

Case No. 4:16-cv-04019

INFINITY HEADWEAR & APPAREL, LLC

DEFENDANT

**ORDER**

Plaintiff, Sorrell Holdings, LLC, ("Sorrell") filed a Motion to Strike Defendant's Supplemental Amended Invalidity Contentions. ECF No. 60. Defendant, Infinity Headwear & Apparel, LLC, ("Infinity") filed their response and Motion to Supplement Invalidity Contentions. ECF No. 61. The parties have consented to the jurisdiction of a United States Magistrate Judge to conduct any and all proceedings in this case, including conducting the trial, ordering the entry of a final judgment, and conducting all post-judgment proceedings. ECF No. 33. The Court having reviewed the pleadings finds as follows:

Infinity served Invalidity Contentions on August 19, 2016 and April 9, 2018. Infinity then served Amended Invalidity Contentions on November 1, 2018. Sorrell seeks to strike these Amended Invalidity Contentions because they were not necessitated by an unexpected claim construction ruling and also asks the Court to strike them under Rule 37(c)(1) because it would be unfairly prejudiced by Infinity's delay.

Local Patent Rule 3-6(b) allows a party to amend its Invalidity Contentions upon a showing of good cause. In determining if good cause exists, the can court consider the following factors: (1) the explanation for the party's failure to meet the deadline, (2) the importance of what the Court is

excluding, (3) the potential prejudice if the Court allows that thing that would be excluded, and (4) the availability of a continuance to cure such prejudice. *S&W Enterprises, L.L.C. v. SouthTrust Bank of Alabama, NA*, 315 F.3d 533, 536 (5th Cir. 2003).

In assessing these factors, Infinity has shown good cause for amending the Invalidity Contentions. Infinity has shown the Patent was discovered during a re-exam; is important to the defense; Sorrell will not be prejudiced and the trial date is still months away.

Based on these findings, Plaintiff's Motion to Strike Defendant's Supplemental Amended Invalidity Contentions (ECF No. 60) is **DENIED** and Defendant's Motion to Supplement Invalidity Contentions (ECF No. 61) is **GRANTED**.

**DATED this 21st day of January 2020.**

*/s/ Barry A. Bryant*  
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HON. BARRY A. BRYANT  
U.S. MAGISTRATE JUDGE