IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

B&H MANUFACTURING COMPANY, INC., a California corporation doing business as "B&H Labeling Systems,"

Plaintiff, No. CIV S-07-2208 MCE EFB

vs.

SIDEL, INC., a Georgia Corporation,

Defendant. ORDER

_____/

AND RELATED COUNTERCLAIMS

_____/

This matter was before the court on February 4, 2009, for hearing on the motion of plaintiff B&H Manufacturing Company, Inc., to compel defendant Sidel, Inc., to provide further responses to their Interrogatory Nos. 1-5, 8, 12, and 15,[1] and additional documents responsive to plaintiff's Requests for Production Nos. 61 and 62. Attorneys Steven Levitan and Inchan Kwon appeared on behalf of the plaintiff. Attorney John Scherling appeared on behalf of the defendant.

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[1] Plaintiff also moved to compel further responses to Interrogatory No. 13, but the matter was neither briefing nor presented at oral argument, and is not addressed by this order.

For the reasons stated on the record, it is hereby ORDERED that:

1. Plaintiff's motion to compel further responses to Interrogatories Nos. 1-5, 12 and 15, is DENIED;

2. Plaintiff's motion to compel further supplemental responses to Interrogatory No. 8, and further documents responsive to Requests for Production Nos. 61 and 62, is GRANTED, and shall be provided no later than February 18, 2009; and,

3. On or before February 11, 2009, counsel for the parties shall submit for the court's consideration a proposed stipulation setting forth a schedule for the exchange of terms for which the parties will seek construction at the *Markman* hearing, which shall include an initial mutual exchange of terms in which each party identifies the terms associated with the legal theory for which it will bear the burden of proof. Specifically, plaintiff shall initially produce terms associated with its allegation of infringement, and defendant shall initially produce terms associated with its invalidity defense.

IT IS SO ORDERED.

DATED: February 5, 2009.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE