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28E-FILED on 09/11/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SCIENTIFIC SPECIALTIES, INC.,

Plaintiff,

v.

THERMO FISHER SCIENTIFIC, INC.,

Defendant.

AND RELATED COUNTERCLAIMS

No. C-08-05224 RMW

ORDER CONTINUING HEARING ON
CLAIM CONSTRUCTION AND
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

[Re Docket No. 45]

Plaintiff Scientific Specialties, Inc. ("Scientific Specialties") has sued defendant Thermo Fisher Scientific ("Thermo Fisher") in this action for infringement of United States Patent No. 5,722,553 (the "'553 Patent"), which is directed to an integral assembly of hollow tubes and seal caps. The parties' hearing on claim construction is presently scheduled for September 23, 2009, and the court directed at a Case Management Conference that summary judgment motions that turn on the court's construction of disputed claim terms would be heard concurrently on that day.


On August 28, 2009 Thermo Fisher moved for summary judgment of non-infringement as to claims 1, 15, and 17 of the '553 Patent. Scientific Specialties has moved to continue the summary judgment hearing because 1) the motion was filed 26 days before the noticed hearing date, which is

ORDER CONTINUING HEARING ON CLAIM CONSTRUCTION AND DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
—No. C-08-05224 RMW
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1 less than the 35 days normally required under Civil Local Rule 7-2(a); and 2) Scientific Specialties
2 has not had an opportunity to conduct any discovery. Scientific Specialties therefore seeks to
3 continue the hearing to allow it to conduct some written discovery and depose Thermo Fisher's
4 supporting declarant.

5 The court concludes that a continuance is warranted to allow Thermo Fisher's motion for
6 summary judgment to be briefed in accordance with the Local Rules. The court therefore continues
7 the hearing on claim construction and on Thermo Fisher's motion for summary judgment to
8 November 3, 2009 at 9:00 a.m.. Scientific Specialties' opposition to Thermo Fisher's motion for
9 summary judgment, and Thermo Fisher's reply, shall be filed as specified in Local Rule 7-4
10 according to the new hearing date. If Scientific cannot present facts sufficient to justify its
11 opposition to Thermo Fisher's motion for summary judgment, it may oppose summary judgment by
12 making a showing under Federal Rule of Civil Procedure 56(f) of the reasons why it cannot do so.

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16 DATED: 09/11/09



RONALD M. WHYTE
United States District Judge

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10 Counsel are responsible for distributing copies of this document to co-counsel that have not
11 registered for e-filing under the court's CM/ECF program.

12 **Dated:** 09/11/09

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Chambers of Judge Whyte