UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

DOW AGROSCIENCES LLC and THE DOW)	
CHEMICAL COMPANY,)	
Plaintiff,)	
)	
VS.)	1:10-cv-39-SEB-TAB
)	
COOPER INDUSTRIES, LLC, and COOPER)	
POWER SYSTEMS, INC.,)	
Defendant.)	

ENTRY GRANTING MOTION TO AMEND, DENYING MOTION TO DISMISS AND DENYING MOTION FOR LEAVE TO FILE SUPPLEMENTATION

This is a declaratory judgment action in which the Plaintiff is seeking a judgment declaring claims under ten patents held by Defendants to be invalid or inapplicable to Plaintiffs' production of a canola oil based dielectric fluid. Defendants claim that Plaintiffs have failed to plead a sufficiently concrete case to warrant the issuance of a declaratory judgment. There are three motions pending before the court: Defendants' Motion to Dismiss (Doc. #13), Defendants' Motion For Leave to File Supplemental Submission (Doc. #23) and Plaintiff's Motion For Leave to File Amended Complaint (Doc. #48).

The most recent of the three pending motions is Plaintiff's Motion to Amend. No opposition to that motion has been filed and the court notes that the proposed First Amended Complaint, submitted with the motion, provides significantly greater detail in areas of the initial pleading which lack such precision. Without passing judgment on the merits of the Motion to Dismiss which Defendants filed in response to the original Complaint, the Amended Complaint appears to sufficiently describe a controversy between the parties which is real and immediate in

nature and, without opposition, we find no reason to deny Plaintiffs request to file the amended pleading. Therefore, Plaintiffs' Motion For Leave to File Amended Complaint (Doc. #48) is GRANTED.

As indicated, Defendants' Motion to Dismiss alleged a lack of case and controversy based on an alleged failure of Plaintiffs' Complaint to set forth particularized facts that demonstrate that the parties had taken adverse positions with respect to their particular obligations or rights prior to the suit being filed. Admittedly, many of the details regarding the meetings, discussions and correspondence between the parties was missing from Plaintiffs' initial pleading. However, the First Amended Complaint, which now replaces and supercedes that initial pleading effort, provides much greater detail in that respect. We take Defendants' lack of opposition to the amended pleading to be at least a tacit recognition that much, if not all, of what they complained of as missing from the initial complaint has now been supplied.

Accordingly, while we will not deny Defendants an opportunity to reinvigorate their jurisdictional challenge by filing a motion to dismiss addressing the amended complaint for declaratory relief, we will deny the pending motion, as well as the subsequent request to allow supplementation, based upon what appears to be a facially sufficient request for declaratory relief in the First Amended Complaint.

Conclusion

Plaintiffs' Motion For Leave to File Amended Complaint (Doc. #48) is GRANTED.

Defendants' Motion to Dismiss (Doc. #13) and Defendants' Motion For Leave to File

Supplemental Submission (Doc. #23) are DENIED.

IT IS SO ORDERED.

Date: 03/22/2011

SARAH EVANS BARKER, JUDGE

SARAH EVANS BARKER, JUDGE United States District Court Southern District of Indiana

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