

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

PPC BROADBAND, INC.,
d/b/a PPC,

Plaintiff,

**5:11-cv-761
(GLS/DEP)**

v.

CORNING GILBERT INC.,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

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Gary L. Sharpe
Chief Judge

SUMMARY ORDER

Plaintiff PPC Broadband, Inc., doing business as PPC, commenced this action against defendant Corning Gilbert Inc. for alleged infringement of two of PPC's coaxial cable connector patents. (See Compl., Dkt. No. 1.) Pending is PPC's motion for partial summary judgment. (See Dkt. No. 49.) For the reasons that follow, the motion is denied as premature.

In short, PPC's motion asserts that Corning Gilbert should be collaterally estopped from challenging the validity of the '194 Patent because, among other reasons, it unsuccessfully did so in previous litigation between the parties. (See *generally* Dkt. No. 49, Attach. 24.) Corning Gilbert does not deny this assertion; instead, it argues that the prevailing consideration of judicial efficiency will not be served by applying collateral estoppel based on the relation between PPC's patents. (See Dkt. No. 56 at 6-8); see also *S.E.C. v. Monarch Funding Corp.*, 192 F.3d 295, 304 (2d Cir. 1999) ("When the efficiency rationale for collateral estoppel fails, however, courts have understandably declined to apply the doctrine.").

At this juncture, Corning's Gilbert's argument, particularly with respect to the streamlining of discovery, is persuasive. (See Dkt. No. 56 at 7.) Since this is a case of "offensive collateral estoppel," *Monarch Funding*

Corp., 192 F.3d at 303, and the '194 and '940 Patents “are ‘not patently distinct,’” (Dkt. No. 60 at 2), PPC’s motion could unfairly hinder Corning Gilbert’s right to challenge the validity of the '940 Patent, which was not included in the prior litigation, (*see id.* at 1-2). Indeed, PPC admitted as much in its reply when it noted that a decision in its favor would “eliminate[] validity as an issue.” (*Id.* at 2.) As this case is in the early stages of discovery, a decision of this importance is premature. However, this by no means forecloses PPC from reasserting collateral estoppel at a later stage of the proceedings. Thus, because it would be unjust and inefficient to apply collateral estoppel at this juncture, PPC’s motion for partial summary judgment is denied as premature.

ACCORDINGLY, it is hereby

ORDERED that PPC’s motion for partial summary judgment (Dkt. No. 49) is **DENIED** as premature; and it is further

ORDERED that the Clerk provide a copy of this Summary Order to the parties.

IT IS SO ORDERED.

December 11, 2012
Albany, New York



Gary L. Sharpe
Chief Judge
U.S. District Court