

Judge Albright Grants Leave to Amend Infringement Contentions Late in Fact Discovery and Encourages Parties to Raise Discovery Disputes Early

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Defendant (and patent owner) Performance Chemical Company served Amended Infringement Contentions (AICs) approximately six months into fact discovery and over two months after the Court's deadline to serve Amended Infringement Contentions. The AICs identified new accused products and provided Defendant's infringement allegations as to these new products.

For over a year, the parties had disputed the sufficiency of Defendant's original infringement contentions, as well as the sufficiency of Plaintiff (and accused infringer) True Chemical Solutions' disclosures surrounding the list of accused products.

After serving its AICs, Defendant filed its motion for leave to amend its infringement contentions, arguing that the amendments were necessitated by a late-stage inspection of Plaintiff's accused products that Plaintiff agreed to only a month after the deadline to amend the Infringement Contentions.

Plaintiff contended that, in amending its contentions, Defendant had not been diligent in investigating publicly known information regarding the accused products and thus the AICs were not based on new information.

The Court granted Defendant leave to amend its infringement contentions for sufficient good cause, finding that even if Plaintiff was right that information regarding the accused products was publicly available, it was reasonable for Defendant to seek and obtain physical inspection of the accused products to learn how Plaintiff assembled the publicly available components into the accused products.

The Court encouraged bringing discovery disputes to the Court's attention so that they can be resolved quickly and in a timely manner, and voiced concern that the parties had not done so sooner.

True Chemical Solutions, LLC v. Performance Chemical Co., 7-18-cv-00078-117, (June 9, 2020)

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