

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GODO KAISHA IP BRIDGE 1,)
)
Plaintiff,)
) C.A. No. 16-290-MN
v.)
) **JURY TRIAL DEMANDED**
OMNIVISION TECHNOLOGIES, INC.,)
)
Defendant.)

**OMNIVISION TECHNOLOGIES' RESPONSE TO
IP BRIDGE'S MOTION TO AMEND SCHEDULING ORDER**

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I. INTRODUCTION

Defendant OmniVision Technologies, Inc. (“OmniVision”) hereby files its response to Plaintiff Godo Kaisha IP Bridge 1’s (“IP Bridge’s”) Motion to Amend the Scheduling Order. IP Bridge has had ample opportunity to prosecute its case under the Court’s current scheduling order and its requested seven-month extension is not warranted. Discovery has been open for at least a year and IP Bridge has only now, at the end of fact discovery, chosen to seek an extension based on an incorrect description of the discovery that has occurred to date. OmniVision has diligently complied with its discovery obligations; it produced documents by the deadline for document production on October 8, 2018 and has provided fulsome answers to IP Bridge’s discovery requests. IP Bridge on the other hand, has made the strategic decision to prioritize litigating another case between the parties that is currently pending in the Northern District of California as Case no. 17-cv-00778-BLF while failing to diligently prosecute the case in this Court. IP Bridge did not even serve its first set of documents requests until September 6, 2018—almost 11 months after the scheduling order was entered in this case and close to the end of discovery. This lack of diligence is fatal to IP Bridge’s motion as its problem is of its own making. To the extent any legitimate concern with the current schedule exists, OmniVision proposes that it be addressed with a six-week discovery extension limited to depositions and in line with previous schedule modifications. This extension would provide sufficient time for the parties to finish taking depositions on their way to an orderly close of fact discovery. IP Bridge shouldn’t be rewarded with a seven-month extension to cure its lack of diligence.

II. LEGAL STANDARD

A party seeking to modify a Scheduling Order must show “good cause” for the change. Fed. R. Civ. P. 16(b)(4). To establish good cause, IP Bridge must show that “*despite its own*

diligent efforts, scheduling deadlines cannot be met.” *Macqueen v. Union Carbide* 2015 WL 167674, at *3 (D. Del. Jan. 8, 2015) (internal citations omitted) (emphasis added). In deciding whether to modify a scheduling order, the Court may consider any prejudice to the party opposing the modification. *Dow Chemical Canada Inc. v. HRD Corp.*, 287 F.R.D. 268 (D. Del 2012) (citation omitted). However, the good cause standard under Rule 16(b) hinges on the “diligence of the movant, and not on prejudice to the non-moving party.” *Macqueen v. Union Carbide* 2015 WL 167674, at *3. If this Court finds that IP Bridge was not diligent, then this inquiry should end.
Id.

III. IP BRIDGE FAILED TO DILIGENTLY PURSUE FACT DISCOVERY AND LITIGATE THIS CASE

A. IP Bridge Had Ample Time to Prepare for and Seek Discovery in This Case but Chose to Litigate Other Cases Instead

IP Bridge filed this case over two and a half years ago, on April 22, 2016. D.I. 1. The Court entered a scheduling order on October 19, 2017. D.I. 37. The deadline to complete document production was August 28, 2018 and the close of fact discovery was November 6, 2018. On June 22, 2018, the parties filed a stipulation extending the original document production deadline from August 28, 2018 to October 8, 2018 to accommodate IP Bridge’s request “due to conflicts of counsel for Plaintiff Godo Kaisha IP Bridge 1 in other matters, and due to its expert’s limited availability under the current schedule.” D.I. 72. Notwithstanding the extension, IP Bridge waited until September 6, 2018 to serve its first set of requests for production. Subsequently, IP Bridge served five additional sets of requests for production totaling 97 RFP’s, the latest set being served on October 5, 2018.

IP Bridge’s representation concerning OmniVision’s document production is incorrect. IP Bridge’s argument that OmniVision “had only produced 174 documents” when deposition discovery opened (D.I. 106 at 5) is based on the original deadline for document production. By

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