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VIA CM/ECF

Hon. David E. Peebles
United States Magistrate Judge
U.S. District Court for the
Northern District of New York
100 South Clinton Street
Syracuse, NY 13261

Re: PPC Broadband, Inc. v. Corning Optical Communications RF LLC,
No. 5:16-cv-162-GLS-DEP

Dear Judge Peebles:

We represent defendant, Corning Optical Communications RF LLC (“Corning”) in the above identified matter. We write to request leave to file a motion to amend Corning’s Local Patent Rule 4.3 disclosures and in response to the letter to you from John Cook, on behalf of plaintiff, dated Nov. 17, 2016.

As the Court is aware from handling multiple *Markman* proceedings in the various related cases, the technology in these cases is not especially complicated. As a result, Corning generally has not filed expert reports in support of its proposed claim construction positions. That was Corning’s intention when it filed its Rule 4.3 disclosures in this case.

However, in the course of actually writing the brief, we came to conclude that the construction of the term “engagement fingers” in US Patent No. 8,075,338 would benefit from expert testimony as to how one skilled in the art would understand the patent, file history, and a related patent as they relates to that claim term. Hence, we included a copy of a declaration from an experienced electrical engineer, Les Baxter, when we filed Corning’s opening *Markman* Brief. We note that PPC likewise included a declaration from a witness, Mr. Montena, who was not disclosed in the PPC Rule 4.3 disclosures.



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Several weeks after the opening claim construction briefs were filed, we were contacted by PPC who objected to the declaration of Mr. Baxter because it was not disclosed in the Rule 4.3 disclosures. We told PPC we would seek leave to amend those disclosures and asked if they wanted to join the motion, as their Montena declaration also appeared to violate the rule. PPC indicated that they would oppose such a motion.

As a result, we seek leave to file a motion to amend Corning's Rule 4.3 disclosures. Without arguing the entire motion, Corning believes it has good ground to amend. First of all, the declaration materially strengthens Corning's construction of the "engagement fingers" term by explaining how one skilled in the art would understand the intrinsic evidence pertinent to the construction of that term.

Second, Corning can establish that it had no intention to "hide" or delay disclosure of the Baxter testimony. At the time Corning filed its Rule 4.3 disclosures, it had no intention to use expert testimony. The decision to use the expert testimony was made late in the drafting process.

Third, we submit there is no prejudice to PPC from this amendment. The subject matters on which Mr. Baxter opines are parts of the intrinsic record and are well known to PPC. PPC has had the declaration for several weeks, and will have ample time to respond to it. If PPC feels it needs additional time to respond, we have no objection to granting them further time, and if PPC wishes to file a responsive expert report, we have no objection to that. If the Court feels any other relief is appropriate, such additional briefing, there is ample time to accommodate that request, as the *Markman* hearing was moved to January 2017 to accommodate PPC.

We look forward to discussing this matter with the Court at the hearing scheduled for Monday, Nov. 21, 2016.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Joseph P. Lavelle', with a long horizontal line extending to the right.

Joseph P. Lavelle

Counsel for Corning Optical
Communications RF LLC