

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
Atlanta Division**

CANON, INC.,)
)
 Plaintiff,)
)
 v.)
)
 COLOR IMAGING, INC. and)
 GENERAL PLASTIC)
 INDUSTRIAL CO., LTD.,)
 Defendants.)
)
 _____)

CASE NO. 1:11-cv-03855-RLV

**DEFENDANT GENERAL PLASTIC INDUSTRIAL CO., LTD.’S
INVALIDITY CONTENTIONS
PURSUANT TO LOCAL PATENT RULE 4.3**

I. INTRODUCTION

Pursuant to Rule 4.3 of the Local Patent Rules of the Northern District of Georgia, and the Court’s Order dated April 20, 12 (Dkt. No. 78), Defendant General Plastic Industrial Co., LTD., (“Defendant” or “General Plastic”) hereby provides its Invalidity Contentions with respect to the claims identified by Plaintiff Canon, Inc. (“Plaintiff”) in Plaintiff’s Disclosure of Asserted Claims and Infringement Contentions to the Defendant. The Asserted Claims are claims 1-5, 8, 10, 23-27, and 30 (the “Asserted Claims”) of U.S. Patent No. 7,647,012 (“the ’012 patent” or “the Patent-In-Suit”).

With respect to each asserted claim and based upon its investigation to date, Defendant hereby: (a) identifies each currently known item of prior art that either anticipates or renders obvious each asserted claim; (b) specifies whether each such item of prior art (or a combination of several of the same) anticipates each asserted claim and/or renders it obvious; (c) for each combination of items of prior art, identifies the motivation to combine such items; (d) submits a chart identifying where each element in each asserted claim is disclosed, described, or taught in the prior art, and the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and (e) identifies the grounds for invalidating the Asserted Claims based upon indefiniteness under 35 U.S.C. § 112 ¶ 2 and 6, and enablement or written description under 35 U.S.C. § 112 ¶ 1. In addition, pursuant to Patent L.R. 4.3(b) and based upon its investigation to date, Defendant is producing documents under Patent L.R. 4.3(b) required to accompany these Invalidity Contentions.

Defendant further reserves the right to rely on any documents produced, and invalidity contentions made, by defendants in the other past, pending or future litigations brought involving the '012 patent.

II. RESERVATIONS

The information and documents that Defendant produces are provisional and subject to further revision as follows: Defendant expressly reserves the right to amend the disclosures and document production herein should Plaintiff provide any information that it failed to provide in its Patent L.R. 4.1 disclosures or should Plaintiff amend its Patent L.R. 4.1 disclosures in any way. Furthermore, because limited discovery has only recently begun and because Defendant has not yet completed its search for and analysis of relevant prior art, Defendant reserves the right to revise, amend, and/or supplement the information provided herein, including identifying, charting, and relying on additional references, should Defendant's further search and analysis yield additional information or references, consistent with the Patent Rules and the Federal Rules of Civil Procedure. Moreover, Defendant reserves the right to revise its ultimate contentions concerning the invalidity of the Asserted Claims, which may change depending upon the Court's construction of the Asserted Claims, any findings as to the priority date of the Asserted Claims, and/or positions that Plaintiff or expert witness(es) may take concerning claim construction, infringement, and/or invalidity issues. Consistent with Patent L.R. 4.5, Defendant reserves the right to amend these Invalidity Contentions after a claim construction order in this case.

Moreover, Plaintiff's disclosures under Patent L.R. 4.1 are deficient in numerous respects. For example, Plaintiff has failed to show where or how Defendant's accused toner bottle products meet each and every limitation of the '012 patent. Further, Plaintiff has not complied with the Local Patent Rules by, at a minimum, failing to provide a "chart identifying where each element of each asserted claim (i.e., claims 1-5, 8, 10, 23-27 and 30) is found within each Accused Instrumentality..." Patent L.R. 4.1. Because such deficiencies may lead to further grounds for invalidity, Defendant specifically reserves the right to modify, amend, or supplement its contentions as Plaintiff modifies, amends, or supplements its disclosures under Patent L.R. 4.1 and/or 4.5 and/or produces the required documents and any other documents responsive to Defendant's discovery requests. In particular, Plaintiff has not produced any documents from any past or current related litigations, should they exist, including, but not limited to, prior art, invalidity contentions, expert reports, infringement contentions, claim construction documents, relevant correspondence, deposition transcripts and exhibits, dispositive motions, interrogatory responses, etc. Defendant incorporates by reference any such document in Plaintiff's possession, custody, or control, and reserves the right to amend its contentions after Plaintiff produces these

documents. Defendant also reserves the right to amend or supplement its invalidity contentions following the Court's construction of any disputed claim limitations.

Defendant further reserves the right to rely upon applicable industry standards and prior art cited in the file history and possible re-examination history of the '012 patent and related U.S. and foreign patent applications as invalidating references or to show the state of the art. Prior art not included in these Invalidity Contentions, whether known or unknown to Defendant, may become relevant. In particular, Defendant is currently unaware of the extent, if any, to which Plaintiff will contend that limitations of the Asserted Claims are not disclosed in the prior art identified by Defendant. To the extent that such an issue arises, Defendant reserves the right to identify other references that would anticipate or render obvious the allegedly missing limitation(s) of the disclosed system or method.

Defendant further intends to rely on inventor admissions concerning the scope of the prior art relevant to the asserted patents found in, *inter alia*: the patent prosecution history for the asserted patents and related patents and/or patent applications; any deposition testimony of the named inventors on the asserted patents; and the papers filed and any evidence submitted by Plaintiff in connection with this litigation or other of its past, current or future litigations concerning or relating to the Patent-In-Suit.

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