

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

1, 4 GROUP, INC., an Idaho Corporation,)

Plaintiff,)

v.)

JMC VENTILATION REFRIGERATION)

LLC, JMC ENTERPRISES, INC., and Joel)

MICKA,)

Defendants.)

_____))
JMC VENTILATION REFRIGERATION,)

LLC, a Washington Limited Liability)

Company, and JMC ENTERPRISES, INC.,)

a Washington Corporation,)

Counterclaimants,)

v.)

1, 4 GROUP, INC., an Idaho Corporation,)

Counterdefendants.)

_____))

Case No. CV-07-354-S-BLW

**MEMORANDUM
DECISION AND ORDER**

INTRODUCTION

The Court's staff held a telephone conference with all counsel to discuss various issues that prevent this case, and the case of *Balivi v. JMC*, CV-07-353-S-

BLW, from moving forward. Counsel expressed a desire for the Court to rule on the pending motion to amend, and discussed their differences concerning the Scheduling Order in the *Balivi* case.

For the reasons expressed below, the Court will (1) grant the motion to amend in both this case and the *Balivi* case, (2) adopt the schedule proposed by plaintiffs in *Balivi* and enter a Scheduling Order in *Balivi*, (3) hold a prompt hearing when requested by counsel on all discovery issues; and (4) await counsel's stipulation on a schedule for this case after they evaluate the schedule imposed in *Balivi*.

ANALYSIS

1. Motion to Amend

Balivi and 1,4 Group have filed timely motions to amend to add JMC Leasing, LLC as a defendant. The plaintiffs originally sued Joel Micka along with JMC Enterprises and JMC Ventilation for induced and contributory infringement. Discovery revealed that Micka is also President of JMC Leasing, LLC, and that it sells chemicals to companies, including JMC Enterprises, for application to stored potatoes.

On the basis of this discovery, plaintiffs seek to add JMC Leasing as a defendant, alleging that there is induced and/or contributory infringement among

the three JMC businesses owned by defendant Micka, and among others.

Defendants recognize the liberality of Rule 15, but allege the amendment would be futile because it alleges nothing more than that JMC Leasing sold CIPC. The Court disagrees. The amendment alleges that JMC Leasing sold CIPC “for use in a method which infringes [the patents].” *See Amended Complaint* at ¶ 49. This allegation goes beyond alleging merely that JMC Leasing sold CIPC, and is sufficient for pleading purposes under the liberal standards of Rule 15.

Defendants also argue that the proposed amendment fails to allege facts supporting a specific intent on JMC Leasing’s part to cause infringement. Once again, the Court disagrees. The proposed amendment alleges that the defendants had prior knowledge of the patents before committing the infringing acts and that the infringing acts were willful and deliberate.

For all of these reasons, the Court will grant the motion to amend in both the *Balivi* case and the *1,4 Group* case, as it is similar in both cases.

2. Discovery Issues

The decision on the motion to amend makes relevant the JMC Leasing documents, and the Court understands those will now be turned over. If further discovery disputes remain, counsel should contact Law Clerk Dave Metcalf (334-9025) to set up a hearing with the Court within the next two weeks or so where all

discovery disputes may be raised, and will be resolved by the Court.

3. Balivi Schedule

The parties were unable to agree on a schedule for *Balivi*, and have provided separate proposals are a little more than a month apart on most crucial deadlines – the defendants want each of those deadlines to fall about 45 days sooner than those proposed by plaintiffs.

Because additional discovery will be needed due to the Court's decision to add JMC Leasing as a defendant, the Court will adopt plaintiffs' schedule. The Court will set those dates in a separate Scheduling Order.

4. 1,4 Group Schedule

The Court understands that the parties will stipulate to a schedule in the *1,4 Group* case once they evaluate the schedule in *Balivi*. The schedule in this case shall – like the schedule in *Balivi* leading up to the *Markman* hearing – be based on the Local Patent Rules in the Northern District of California that can be found at: <http://www.cand.uscourts.gov/CAND/LocalRul.nsf/b4c36f968c6e10ac882569ec00746821/5e313c0b7e4cd680882573e20062dbcf?OpenDocument>

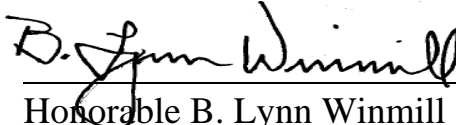
ORDER

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the motion to amend
(Docket No. 52) is GRANTED.



DATED: **August 12, 2008**


Honorable B. Lynn Winmill
Chief U. S. District Judge