

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

SEED RESEARCH EQUIPMENT
SOLUTIONS, LLC, a Kansas Limited
Liability Company,

PLAINTIFF

vs.

GARY W. CLEM, INC. d/b/a ALMACO, An
Iowa Corporation,

DEFENDANT

Case No. 09-01282-EFM-KGG

MEMORANDUM AND ORDER

Plaintiff Seed Research Equipment Solutions, LLC (“SRES”) and Defendant Gary W. Clem, Inc., d/b/a AMALCO (“ALMACO”) are involved in a patent dispute that is in the claim construction phase. Plaintiff argues that it will suffer significant prejudice if it is not permitted to file a supplemental claim construction brief to include recently-released reexamination statements regarding the disputed patent (“the ‘124 patent”). Defendant does not respond on the issue.

Defendant filed its initial claim construction brief on April 22, 2011. In its responsive brief, Plaintiff placed the ‘124 patent’s prosecution history into evidence and argued that Defendant narrowed the scope of the ‘124 patent during prosecution. Defendant disagreed. A Request for Reexamination of the ‘124 patent was filed with the USPTO on September 25, 2011 (months after the briefs were exchanged and filed). The USPTO issued an Order Denying the Request for

Reexamination of the '124 patent on November 23, 2011. The Order contains the Examiner's statements relating to why the claims were allowed.

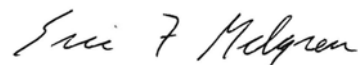
Reexamination statements are typically considered relevant prosecution history when interpreting claims.¹ Rule 15(d) of the Federal Rules of Civil Procedure permits the Court to "permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented."

Here, the occurrence that Plaintiff intends to include in its claim construction brief happened after the date of the brief and responsive pleadings. Because Defendant does not respond and the statements appear to be relevant and timely offered, the Court grants Plaintiff's motion.

IT IS ACCORDINGLY ORDERED that Plaintiff's Motion Requesting Leave to File a Supplemental Claim Construction Brief (Doc. 144) is hereby GRANTED.

IT IS SO ORDERED.

Dated this 13th day of January, 2012.



ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE

¹ *E.I. DuPont de Nemours & Co. v. Phillip Petroleum Co.*, 849 F.2d 1430, 1439 (Fed. Cir. 1988).