

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

In re Application by Rhodianyl S.A.S and  
Rhodia Operations S.A.S. for Order for  
Discovery Pursuant to 28 U.S.C. § 1782

Case No. 11-1026-JTM

MEMORANDUM AND ORDER

Following the court's initial Scheduling Order, the parties by agreement provided for a hearing on February 11, 2011. This matter is before the court on the Invista Respondents' Motion for Extension of Time. Citing the decision of the International Arbitration Panel's decision to postpone the final evidentiary hearing until June 27, 2011, Invista seeks delay in the time for responding to the Application for Subpoena. Invista suggests that the court require Invista's Response to be submitted by February 18, and the Reply of the Applicant Rhodia on February 28. The court would then hold a hearing on the Application in "mid-March or after." (Dkt. 13, at 4).

In their Response to the Motion for Extension, the Rhodia Applicants argue that the extension of the Tribunal's final evidentiary hearing is irrelevant, stating that they

were fully aware that it was likely that the Arbitral Tribunal might reschedule the hearing date when it filed the Application, (*see* Application, at 11, n. 12), and, thus, any urgency in the Application was not predicated on March 14, 2011 as being the firm start of the evidentiary hearing.

(Dkt. 17, at 3-4).

In fact, the March hearing date played an important role in the Application. The Application does twice acknowledge, in identical footnotes, the *possibility* — not the *likelihood* — that the

March hearing date might be changed, stating that there would be “a procedural hearing” on January 12, 2011 and that Invista “has proposed to discuss adjustments to the dates of the final evidentiary hearing, currently scheduled to commence on March 14, 2011.” (Dkt. 2, at 4 n. 7, 11 n. 12).

Otherwise, however, the Application admits no ambiguity in the date of the hearing, stating that “[a] final hearing will be held in the first ICC arbitration in March 2011.” (*Id.* at 4). And this date played a direct role in the urgent nature of the Application, which stated that “[u]nless compelled to produce the documents, the Invista parties will continue to ignore the Tribunal’s orders and Rhodia will be deprived the use of these critical documents at the March hearing.” (*Id.*) Similarly, in the context of its argument that the Tribunal has approved the used of local subpoena power, the Applicants stress that “the Arbitral Tribunal in the First ICC Arbitration has noted that if Applicants seek appropriate relief from a competent judicial authority to compel production of the requested documents, they shall do so no later than 15 days before the start of the evidentiary hearing starting on March 14, 2011.” (*Id.* at 19).

Both parties stress the number and complexity of the documents in question — Invista, in the context of arguing that it needs to review the documents for potential trade secrets, (at issue are “nearly 8,500 technical documents,” which are of “staggering” complexity, Dkt. 13, at 2), and Rhodia, in arguing that it needs sufficient time to “undertake a time consuming technical review” of any documents produced by subpoena in time for use in the arbitration. (Dkt. 17, at 3).

Considering all of the circumstances present in the case, the court hereby grants the Motion to Extend. The extension will supply time for both parties to review and utilize the documents in question for the purposes intended. While this may not supply all the time Rhodia may wish for its review after (any) production, the court notes that the result more than triples the amount of preparation time over that to which Rhodia previously agreed (four weeks from February 11 to

March 14, against fourteen weeks from March 18 to June 27).

IT IS ACCORDINGLY ORDERED this 28th day of January, 2011, that the Respondents' Motion to Extend (Dkt. No. 13) is hereby granted. Respondents shall file any Response to the Application on or before February 18, 2011, and Rhodia its reply on or before February 28. The court will conduct a hearing on the Application on March 18, 2011, at 9:00 a.m.

s/J. Thomas Marten  
J. THOMAS MARTEN, JUDGE