IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

In re Application by Rhodianyl S.A.S.
and Rhodia Opérations, S.A.S. for   Case No. 11-1026-JTM
Order for Discovery Pursuant to 28
U.S.C. § 1782

MEMORANDUM AND ORDER

This matter is before the court on the Applicants' Motion for Extension of Time (Dkt. 32), which is premised on the size ("a 52 page brief and 879 pages of attachments") and timing of Invista's February 18, 2011 Response, and particularly the fact that no contemporaneous electronic notice of that response was sent to Applicants, who then learned of its filing only when they happened to "check the docket ... and discovered that the [Response] had been filed." (Dkt. 32, ¶¶ 3, 4).

The court finds that the size of the Response cannot have been unexpected, given the nature of the case. More importantly, February 18 was explicitly set forth in the court's Jan. 28 Order (Dkt. 19) as the deadline for Applicants' Response. In other words, the Response was filed precisely when one might expect it to be filed. Primary responsibility for any failure to immediately learn of the timely Response belongs to the Applicants.

While the Applicant's Motion to Extend is presented with the statement that "Invista

does not oppose" the extension, the parties cannot by agreement modify an explicit Order

of the court. This is especially true of a Scheduling Order which was carefully calculated

to balance all relevant considerations, including the ability of the court to prepare for the

scheduled hearing and to issue a prompt ruling.

Accordingly, the Applicant's Motion to Extend is granted in part only. Applicants

may file their Reply at any time on or before March 4, 2011. The hearing on the Application

shall be rescheduled to another date prior to the end of March, 2011. The court shall

designate that hearing date after the Reply is filed, following additional consultation with

the parties.

IT IS SO ORDERED this 25th day of February, 2011.

s/ J. Thomas Marten

J. THOMAS MARTEN, JUDGE