ORAL ORDER: The Court, having reviewed the parties' joint motion regarding a discovery dispute raised by Plaintiff, (D.I. 601), the briefing related thereto, (D.I. 600; D.I. 602), and having heard argument on June 1, 2021, hereby ORDERS as follows with regard to Plaintiff's requests relating to "post-discovery inspection[,]" (D.I. 600 at 3): (1) With regard to Plaintiff's request to strike portions of Dr. Glancey's report on the ground that in them, Dr. Glancey reports on his visual inspection of the accused machines, it is DENIED. There is no violation of the Federal Rules here, as Dr. Glancey was surely able, pursuant to the Rules, to visually inspect those machines and incorporate that inspection into his report. Plaintiff's request is really a stealth motion to reopen the period for fact discovery to permit their own inspection of the machines. (Id.) But Plaintiff does not demonstrate good cause to amend the Scheduling Order in this way, as it could have (but did not) diligently sought to inspect the machines during the relevant discovery period. Even if we focus only on the period of fact discovery that took place while the case was in this Court, while the fact of COVID-19 might have delayed such an inspection for a time, or might have required that some conditions be placed on the inspection, it would not have made such an inspection impossible. And so, contrary to Plaintiff's position during argument, the fact of the pandemic does not excuse Plaintiff's failure to seek such discovery earlier.; and (2) With regard to Plaintiff's request to strike the portion of Dr. Glancey's report in which he asserts that the accused machines do not satisfy the claimed function of "provid[ing] a plurality of bottles," (D.I. 600, ex. A at para. 33), it is GRANTED. Plaintiff demonstrated that Defendants did not argue in their Final Infringement Contentions that this limitation was not satisfied due to the accused machines' failure to perform this function. Instead, it appears that in their Final Infringement Contentions, as to this limitation, Defendants focused on an asserted lack of claimed structure as to the "pushing element[.]" (Id. at 3 & ex. 14 at 3-6) And in their briefing, Defendants had no answer as to why such a new contention was timely or should otherwise be permitted here. (D.I. 602). Ordered by Judge Christopher J. Burke on 6/3/2021. (dlb) (Entered: 06/03/2021)

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