

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KERR CORPORATION,

Plaintiff,

ORDER

v.

3M COMPANY and DENTSPLY
INTERNATIONAL INC.,

06-C-423-C

Defendants.

3M COMPANY and 3M INNOVATIVE
PROPERTIES COMPANY

Counter-plaintiffs

v.

KERR CORPORATION,

Counter-defendant.

Before the court is plaintiff/counter-defendant Kerr's motion for a stay of specified discovery until the court decides Kerr's motion to dismiss counter-plaintiffs' (3M's) fifth counterclaim. *See* dkt. 33. 3M oppose the motion. *See* dkt. 36. This court rarely stays discovery in civil lawsuits and nothing in Kerr's motion suggests that this case should be an exception to the rule.

Having read the dueling submissions, I will note only a few points. First, this court has put this patent lawsuit on the usual tight schedule. Staying even a portion of the discovery runs the risk of delaying proceedings, a risk that this court is not inclined to take.

Second, the requested discovery will not be rendered pointless in the event the court grants Kerr's motion to dismiss. The fifth counterclaim still will be litigated, just not as part of this case. Therefore, the burden this discovery imposes on Kerr is ineluctable; only its timing is in flux. Third, this is a big lawsuit involving big companies and big law firms that can, if they choose, commit the resources to providing this discovery now rather than later.

Fourth, although one might surmise that Kerr would be willing to forfeit timely responses to *its* discovery demands on 3M regarding the fifth counterclaim, Kerr did not volunteer such forbearance in its motion. This allows 3M to argue that Kerr is seeking an unfair tactical edge. I doubt that Kerr was expecting to obtain a one-sided stay, but now it is clear to the court that Kerr is equally interested in uncovering and obtaining information on this topic. As between full brakes or full throttle during discovery, this court will put the pedal to the metal in all but the most extraordinary circumstances. As already noted, Kerr has not established any extraordinary circumstances.

It is ORDERED that Kerr Corporation's motion for protection is DENIED. Kerr may have until December 15, 2006 within which to provide its responses to 3M's discovery demands. To ameliorate 3M's reluctance to "go first," it may wait until December 15, 2006 to provide responses to Kerr's discovery demands related to the fifth counterclaim.

Entered this 1st day of December, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER

Magistrate Judge