

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

RICOH COMPANY, LTD.,

Plaintiff,

v.

ASUSTEK COMPUTER, INC., *et al.*,

Defendants.

ORDER

06-C-462-C

This is a patent infringement suit concerning technology used by optical disc drives to read from and write data to optical discs such as CD-R/RW and DVD-R/RW discs. On January 24, 2007, I entered an order directing defendants Asustek Computer Inc. and ASUS Computer International (referred to collectively as “ASUS”) “forthwith” to provide complete responses to plaintiff Ricoh Company, Ltd.’s first set of requests for production of documents. Before the court is plaintiff’s second motion to compel that and other discovery from ASUS.

In the motion, which Ricoh filed on January 31, 2007, Ricoh contends that ASUS has failed to produce documents responsive to Ricoh’s First Request for Production of Documents and Things despite being court ordered to do so and has refused specifically to produce information pertaining to ASUS drives that ASUS maintains are covered by a license between Pioneer and Ricoh. Ricoh asks this court to order ASUS to produce all documents responsive to Ricoh’s discovery requests by a date certain and to grant leave for Ricoh to supplement its expert report once ASUS has done so. Although Ricoh also asked

the court to impose evidentiary sanctions on ASUS for its failure to provide information on licensed drives such as the DRW-0804P, Ricoh has now withdrawn that request in light of events that have transpired since it filed the motion.

I have considered the motion and ASUS's response to it. In an attempt to pin down the otherwise-moving target of the parties' dispute, I have also considered Ricoh's supplement to its motion and ASUS's response to that supplement.

Having considered those submissions, some facts are clear and others are not so clear. What is clear is that ASUS has produced or has agreed to produce information pertaining to optical disc drives that ASUS contends are subject to a licensing agreement between Pioneer and Ricoh, notwithstanding ASUS's firm belief that it is inappropriate for Ricoh to seek that information from ASUS.¹ Accordingly, an order directing ASUS to provide this information is unnecessary. What is not so clear is whether Ricoh should have to pay for bringing this motion because, as ASUS contends, it should have realized before it filed the motion that ASUS had agreed to produce the sought-after discovery. Although ASUS argues that the instant dispute could have been cleared up with a simple phone call, Ricoh insists that ASUS's answers to some of Ricoh's interrogatories, combined with earlier emails, led

¹As an aside, I note that my order directing the ASUS defendants to produce this information was not based upon any determination that the requests for production were proper. The ASUS defendants forfeited their right to object to the discovery requests when they failed to file a response to plaintiff's motion to compel. After I issued the order, the ASUS defendants informed the court that they did not intend to concede that the requests were proper but had miscalculated their deadline for responding to the motion to compel. Thus, plaintiff might have received an undeserved windfall when I ordered defendants to provide complete responses to the requests for production. Nonetheless, defendants did not seek reconsideration of the January 24, 2007 order.

Ricoh to believe that ASUS had drawn a line in the sand and that further efforts to resolve the matter informally would have been fruitless.

The facts cut in both directions. The documents attached to the parties' submissions show that at best, the parties simply talked past each other; at worst, their obtuseness was part of a calculated effort to avoid committing to any position they might wish to deny later. Because this latter scenario would be a direct violation of my January 24 order to avoid "sharp litigation tactics" and because I have no reason to believe that the parties are not complying with that order wholeheartedly, I will presume the former. Accordingly, I decline to pick sides and will order the parties to bear their own expenses in bringing and defending this motion.

Another fact that is clear from the parties' submissions is that ASUS has now produced 28,000 documents concerning licensed as well as non-licensed products. These documents were produced approximately one week after the court ordered ASUS to produce responsive documents "forthwith" and within the February 2 deadline imposed by Ricoh. Ricoh insists in its supplement to its motion that the documents produced by ASUS are neither complete nor in useable format. However, Ricoh's motion to compel was brought on the ground that ASUS had failed to produce documents at all, not on the ground that the document production was incomplete or otherwise improper. ASUS has not had a proper opportunity to respond to these new allegations; further, it is unclear from the existing record whether the parties have fully complied with their obligations to meet and confer on

these issues before bringing them to the court. Accordingly, I decline to impose sanctions on the basis of the alleged deficiencies in ASUS's document production.

That said, in the event discovery from ASUS is not yet complete, to keep things moving I will impose a deadline on ASUS for providing full, complete and accessible information in response to Ricoh's first request for production of documents and for supplementing its interrogatory responses. A firm deadline will give everyone a date to work towards and hopefully will help to avoid further misunderstandings like the one that gave rise to the instant dispute. That deadline is March 9, 2007. I realize this is only days away, but Ricoh propounded its first set of request for production back in November. Further, I presume that ASUS has been working diligently to complete its document production while this motion has been pending. If necessary, Ricoh may supplement its infringement contentions and expert report after it has received and had an opportunity to analyze the information provided by ASUS.

ORDER

Plaintiff's motion to compel defendant ASUS to provide discovery and for sanctions is GRANTED IN PART and DENIED IN PART. Defendant ASUS is ordered to provide full and complete responses to Ricoh's first request for production of documents and first set of interrogatories no later than March 9, 2007, in the event it has not already done so. If necessary, Ricoh may supplement its infringement contentions and expert report after it

has received and had an opportunity to analyze the information provided by ASUS.

Plaintiff's motion for sanctions is DENIED.

Each side shall bear its own costs incurred in bringing or opposing the motion.

Entered this 2nd day of March, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge