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

On January 16, 2007, plaintiff filed a motion to compel discovery from defendant NU Technology, Inc. (dkt. 115). NU's response to this motion was due by noon on January 22, 2007. *See* preliminary pretrial conference order, dkt. 47, at 5. It is now January 24, and NU has not responded. This does not entitle plaintiff to have its motion granted automatically for lack of opposition, but it does mean that plaintiff's arguments stand unopposed in the record.

According to plaintiff, it served NU with its lengthy first set of requests for production on November 17, 2006, the day after this court granted plaintiff's motion for expedited discovery. On December 18, 2007, NU served a written response that did not include any actual documents. Instead, after providing long, boilerplate objections, NU promised to provide documents responsive to all but a few of the requests. *See* dkt. 113, Exh. F. Defendant, however, has yet to keep this promise: it has not produced any documents, even in the face of a followup request by plaintiff as recently as January 10, 2007. *See id.*, Exh. G.

There is no rational reason not to compel production and to shift costs to NU pursuant to Rule 37(a)(4). If NU remains disengaged and uncommunicative in this lawsuit, the penalties imposed by this court for such passive-aggressive languor will continue to rise.

The fast schedule in this case does not allow, and this court will not countenance, sharp litigation tactics of the sort sometimes attempted by parties and attorneys in lawsuits of this nature. Included in the court's definition of sharp litigation tactics are unreasonably slow or incomplete responses to discovery demands. Relatively large, sophisticated, multinational corporations represented by large, sophisticated, multinational law firms have the resources and the ability to exchange large amounts of complicated information quickly. From the court's perspective, there is no acceptable reason for this not to happen.

Therefore, I am ordering the parties hereafter to cooperate and to accommodate each other during discovery in order to allow the quick and complete exchange of relevant information. Discovery is not the adversarial phase of this lawsuit, and a party or attorney who treats it as such will be sanctioned. This court has no patience for obstructionist tactics and the court's definition of obstruction is very broad. There shall be no quibbling, flyspecking, contrariness, disingenuous claims of ignorance or lack of comprehension, or other sharp practices during discovery in this case. The parties shall promptly and completely provide documents requested for production. The parties shall promptly and completely answer interrogatories.

The parties shall not interpose unnecessary or ill-founded objections during depositions or in response to discovery requests, nor shall a party decline to answer a question or interrogatory unless there is a privilege against answering recognized by the rules. These requirements do not mean that a party has to acquiesce in palpably improper discovery demands, but if the demand is not palpably improper, the party had better provide a timely and complete response to it, or promptly file a motion for protection if a timely parley doesn't solve

the problem. A party that interferes with the orderly and timely exchange of information–or conversely, a party that tries to victimize its opponent with clearly improper discovery demands–shall be sanctioned.

As a result of this order, we have moved to Rule 37(b) sanctions for future discovery problems, should there be any. If the court determines that a party has not complied with its discovery obligations as defined by this court, no sanction is off limits. This court routinely strikes expert witnesses, claims and defenses, it dismisses lawsuits, shifts costs, and imposes monetary sanctions on offending parties and directly on their attorneys. Obviously, the best course of action is for the parties and their attorneys to find a way to resolve their differences without barraging the court with discovery motions. But if they must, they should do so quickly so that the parties do not fall behind because the summary judgment motion deadline and the trial date are firm.

Circling back to plaintiff's motion against NU, I will give NU until next Friday to comply 100% with plaintiff's request for production of documents. At this juncture, having failed to defend its inaction, NU has no valid basis to decline production of any requested document except attorney-client privilege or attorney work product. If NU claims either of these privileges, then it must provide its privilege log along with its document production.

ORDER

It is ORDERED that:

(1) Not later than February 2, 2007, defendant NU Technology, Inc. shall produce all documents requested for production by plaintiff, except those that actually qualify for the attorney-client privilege or the work product privilege.

(2) Defendant shall pay plaintiff the reasonable costs incurred in making its motion. Plaintiff may have until January 29, 2007 within which to file and serve an itemization of claimed costs. Defendant shall have until February 2, 2007 within which to challenge the reasonableness of the amount claimed.

Entered this 24th day of January, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge