

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

SANDISK CORP.,

Plaintiff,

ORDER

v.

PHISON ELECTRONICS CORP., *et al.*,

3:07-cv-605-bbc

Defendants.

On December 28, 2007, plaintiff filed motions asking the court to compel the defendants to participate in a case management conference on January 3, 2008 in this case (but not in the related "607" case). *See* *dk.* 101. On January 2 – 4, 2008, some of the defendants filed angry objections to this motion, *see* *dkts.* 107, 114 - 116, and 120. On January 4, 2008, plaintiff filed an unbidden supplemental brief, *see* *dk.* 117, in which plaintiff reported that although "a Rule 26(f) conference was scheduled" for January 3, 2008, the defendants, "apparently in a concerted mutually agreed action, did not attend." This promptly led to defense motions to strike the supplement, *see* *dkts.* 118, 119 and 121, for each of which the court's brand-new CM/ECF system provided plaintiff seven days to reply, the latest reply deadline being January 14, 2008. I countermanded the computer on January 8, 2008, setting a consolidated response deadline of January 11, 2008. *See* *dk.* 123. Plaintiff responded on January 10, 2008, observing that no rule or order forbade supplements to submissions. *See* *dk.* 132.

I am denying plaintiff's request for an early case management conference. This decision does not depend on whether I consider plaintiff's supplement; I *have* considered it because it does provide a fact update: plaintiff's suggested conference date passed while its motion was

being briefed, and defendants boycotted the conference. Because the defendants had not agreed to participate in the case management conference, and because the court-ordered case management conference has not yet been scheduled, the boycott is not sanctionable, although it would have been more courteous for each defendant to RSVP its regrets.

Understanding why plaintiff wants to jumpstart this huge lawsuit, this is a situation in which more speed is not necessarily more efficient. Pending before the court are defendants' motions to consolidate this case with plaintiff's "607" lawsuit, which is stayed as a result of ITC proceedings. There is no reason to require dozens of attorneys in this "605" lawsuit to cross-reference their busy schedules until the court has ruled on the motions to consolidate and stay. If we default to the court's usual calendaring for Rule 26(f) conferences, it is that much more likely that the court will have ruled on these motions.

Defendants' answers or other responses to plaintiff's complaint are due next Tuesday, January 22, 2008. Thereafter clerk of court will schedule a telephonic preliminary pretrial conference in the ordinary course of events and will set a deadline by which the parties must meet, confer and report. In this case, the usual Rule 26(f) practice will suffice.

This set of motions presents an opportunity to fine-tune procedures for defendants to join each other's motions in this case. Obviously, any group of defendants can file one motion which they all submit jointly. Indeed, the court appreciates and prefers this. What concerns the court is the proliferation of post hoc "me-too" motions. So hereafter, whenever a defendant files a motion, every other defendant has three calendar days—including weekends but not Monday federal holidays—within which to file an announcement that it is joining another defendant's

motion. The three days starts running the day the moving defendant files its motion with the court, not the service date if it is different. A defendant who joins another defendant's motion may not raise new facts or new legal arguments in support of the original motion (other than facts establishing that defendant's standing to join the motion, if necessary). A defendant's failure timely to file a joinder announcement may constitute waiver of the issues raised in the underlying motion. Plaintiff's response deadline to any defense motion runs from the filing of the original motion and is not extended if other defendants subsequently join that motion. The goal is to avoid the piecemeal motions practice that we all have encountered so far in this case.

ORDER

It is ORDERED that plaintiff's motion to compel a case management conference is DENIED.

It is FURTHER ORDERED that defendants shall join each other's motions only in the fashion stated in this order.

Entered this 15th day of January, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge