

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

WNS HOLDINGS, LLC, INTELLIGENT
TECHNOLOGIES INTERNATIONAL,
INC. and MARK ALLAN EBERWINE,

ORDER

Plaintiffs,

08-cv-275-bbc

v.

UNITED PARCEL SERVICE, INC.,

Defendant.

On March 4, 2009, this court held a recorded telephonic hearing on defendant UPS's motion to compel the production of documents (*see* dkt. 64). Both sides were represented by counsel.

Having read the parties' submissions and having entertained further argument from the parties, I granted the motion in part and denied the motion in part. First, as explained in more detail at the hearing, I am giving effect to WNS's clawback of the documents. It is, however, WNS's burden to rebut the presumption that the documents Bates-stamped in other lawsuits were not actually disclosed in any judicial order or open court proceeding. Absent this rebuttal, the privilege is waived for these documents. Additionally, the reference in any deposition or interrogatory answer to any clawed-back document shall stand. The use of any such reference in the future is subject to the parties' motions *in limine*. Finally, I will conduct an *in camera* review of the disputed documents to determine whether the attorney-client privilege or the work product privilege actually applies to them.

The parties' dispute over disclosure of additional documents from the inventors appears to have been resolved, although UPS wants cost-shifting under Rule 37(a)(5) based on the post-motion disclosure of the requested documents. I reserved on this request pending my privilege review of the still-disputed documents, so that I can determine which side prevailed in greater measure on the entire motion.

Entered this 5th day of March, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge