

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

WILLIAM C. FRAZIER, FRAZIER
INDUSTRIES, INC., and AIRBURST
TECHNOLOGIES, LLC,

Plaintiffs,

v.

LAYNE CHRISTENSEN COMPANY
and PROWELL TECHNOLOGIES, LTD.,

Defendants.

ORDER

04-C-0315-C

In an effort to get this case on track and headed for trial, I held a telephone status hearing on September 23, 2005 and a second one on September 28, 2005. Jane Schlicht appeared for plaintiffs at both hearings; Robert Johnson joined her for the second hearing. Robert Adams and Bruce Schultz appeared for defendants for both hearings, joined by Richard Johnson at the second hearing.

The upshot of the discussions at both hearings is that I have rescinded that portion of the order entered on August 4, 2005, in which I imposed sanctions on defendants for their failure to be forthcoming in discovery. I am reconfirming that portion of the August 4 order

in which I vacated the May 16, 2005 order on summary judgment with respect to plaintiffs' claims of direct infringement, contributory infringement and inducement of infringement. I am not vacating the portion of the May 16 order concerning claim construction.

I will take no action with respect to plaintiffs' allegations of discovery failures until after trial in this case. However, it remains a possibility that defendants will be subject to monetary or other sanctions if plaintiffs are able to prove that defendants were derelict in their production of discovery. If counsel for either side encounter new discovery problems between now and the rescheduled date for trial, they are to bring the problems to the attention of the magistrate judge without delay.

Trial of this case is rescheduled for March 6, 2006. Counsel are to agree upon a revised discovery schedule and submit it to the court. The final pretrial conference will take place on March 2, 2006 at 4:00 p.m. Settlement letters are to be submitted to United States Magistrate Judge Theresa Owens no later than February 1, 2006.

All previously set discovery deadlines are rescinded.

Defendants are ordered to identify all sites on which they used the BoreBlast/BoreBlast II process and produce all documents related to those sites and the use of the process.

In light of this order, it will not be necessary to make a pretrial determination of the sites for which defendants will be barred from contesting.

Plaintiffs' motion to reconsider the rescission of that portion of the August 4 order prohibiting defendants from introducing evidence relating to sites for which they had not previously produced discovery is denied. Plaintiff's motion for leave to take an interlocutory appeal of the May 16 order is denied as well.

Entered this 29th day of September, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge