

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

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THIRD WAVE TECHNOLOGIES, INC.,

Plaintiff,

v.

STRATAGENE CORPORATION,

Defendant.  
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MEMORANDUM

04-C-680-C

Without seeking leave of the court, defendant has submitted “supplemental” responses to two of the proposed findings of fact that plaintiff made in support of its motion for summary judgment. These responses are untimely and will not be considered for purposes of resolving the summary judgment motion. Responses were due May 31; defendant filed this supplement on July 12.

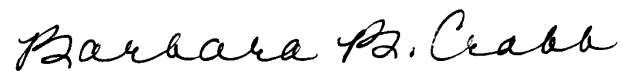
In addition to being untimely, defendant’s new responses relating to plaintiff’s ownership of the patents at issue are inappropriate. Despite its admission in its original responses that plaintiff has a valid assignment over the patents at issue, defendant now disputes plaintiff’s ownership. To support these denials, defendant cites its brief and the supporting documents it submitted with its motion to dismiss for lack of standing. I denied

this motion pursuant to Magistrate Judge Crocker's discovery sanction barring defendant from filing dispositive motions. I will not strip this sanction of its bite by allowing defendant to pursue its motion by means of an untimely response to plaintiff's proposed findings of fact. For the purpose of resolving plaintiff's motion for summary judgment, I will accept as true defendant's prior admission that plaintiff is the valid owner of the patents at issue.

Defendant's supplemental responses also include a "general supplemental response to proposed finding[s] of fact nos. 313-402" premised on "evidence recently obtained through the deposition of Mary Ann Brow" and a supplement to plaintiff's proposed finding of fact No. 318 with citations to defendant's own operating manual and a scientific journal. Defendant does not suggest that it was unable to obtain this evidence earlier because of any misconduct on plaintiff's part. Thus, I see no reason to excuse the month and a half delay. Plaintiff need not file a reply to these supplemental responses.

Entered this 13th day of July, 2005.

BY THE COURT:



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BARBARA B. CRABB  
District Judge