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

KERR CORPORATION,

Plaintiff,

v.

3M COMPANY and DENTSPLY INTERNATIONAL INC.,

Defendants.

ORDER

06-C-423-C

3M COMPANY and 3M INNOVATIVE PROPERTIES COMPANY

Counter-plaintiffs

v.

KERR CORPORATION,

Counter-defendant.

Before the court is 3M's motion and supplemental motion to compel Kerr to provide quicker, better responses to 3M's requests for admission (RFAs). *See* dkts. 41 & 43. In a nutshell, 3M is unhappy with Kerr's initial resistance to providing substantive responses to some RFAs, followed later by Kerr's explanation that although it now is willing to provide more thorough answers, it needs additional time to ensure the correctness and completeness of its answers. In response, Kerr analogizes the disputed RFAs to contention interrogatories and it repeats its assertion that it was caught flat-footed by 3M's counterclaim regarding the '948 patent. Kerr characterizes 3M's instant motions as a tactic designed to paint Kerr in a bad light.

At this juncture, the court has affirmed its willingness to try 3M's Fifth Counterclaim, it has pushed back the claims construction hearing to February 23, 2007, and Kerr has committed to providing more thorough answers to 3M's RFAs not later than January 12, 2007, less than two weeks hence. So, there's not much left for the court to do with the pending motion except perhaps to impose a marginally earlier deadline on Kerr and shift costs under Rule 37(a)(4), neither of which would have much practical effect in this case.

So, I'm not going to do anything right now except to note that 3M was right and Kerr was wrong on this one. Yes, I understand Kerr's assertion that 3M's complicated counterclaim changed the contours of this lawsuit, but was it really *that* unexpected that 3M would do this and that this court would allow it? Yes, sometimes RFAs are equivalent to contention interrogatories and can be culled from front end discovery; but as a tactical matter, once the court has chastised you for trying to slow things down in *your* lawsuit, do you really want to get maneuvered into a position that allows your opponent file *another* discovery motion accusing you of delay?

Since none of the parties in this lawsuit has any obvious connection to Wisconsin, I surmise that Kerr chose to file in this district because of its notorious track speed. Yet up to this point, the *defendant*, 3M, has been making the hole shots out of the lights and Kerr has been left at the line, complaining that things are moving too fast. If you don't have a ten-second car, don't race for pink slips. If you're already in the race, you'd better find a way to get fast before the next heat or you'll be walking home.

It is ORDERED that 3M's motion to compel and supplemental motion to compel are DENIED WITHOUT PREJUDICE because they essentially are moot. Kerr shall provide complete responses to 3M's pending RFAs as soon as possible but not later than January 12, 2007. Each side will bear its own costs on this set of motions.

Entered this 2nd day of January, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge