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

RICOH COMPANY, LTD.,

Plaintiff,

v.

ASUSTEK COMPUTER, INC., *et al.,*

Defendants.

ORDER

06-C-462-C

I suppose the court has nobody to blame but itself. After admonishing the parties to attempt to work out discovery disputes without court intervention, I indicated that the court expected the parties promptly to file their motions if self-help failed and stated that we had moved into the realm of Rule 37(b) sanctions for discovery abuses. *See* Jan. 24, 2007 Order, dkt. 122, at 4-5. In a lawsuit already pockmarked with discovery disputes, my instruction to file motions quickly with the possibility of drawing blood from one's opponent was like waving a red flag in front of a bull. The barrage of discovery motions that I was hoping to discourage has been launched.

In this order I address the February 16, 2007 motion of defendants Quanta Storage Inc. and Quanta Computer Inc. (collectively "Quanta") to compel plaintiff Ricoh Company, Ltd. to produce technical and sales information concerning optical disk drive products used, manufactured, tested, sold, offered for sale or licensed by or for plaintiff that embody the claimed inventions of the patents-in-suit. *See* dkt. 140. Quanta first requested this information from Ricoh on December 20, 2006, when Quanta served its First Set of

Requests for Production of Documents and Things and First Set of Interrogatories on Ricoh. Quanta seeks three forms of relief for Ricoh's alleged failure to produce this information: 1) an order compelling Ricoh to produce the information immediately; 2) an order granting the Quanta defendants leave to amend their expert reports pending Ricoh's production; and 3) an order precluding Ricoh from relying upon or using its products in this lawsuit for any reason.

As a technical matter and consistent with my March 2 order addressing a different discovery motion, I will grant Quanta's first two requests, although it appears that this may not accomplish much useful: in its response, Ricoh states that it has agreed to produce the information sought by Quanta and that it is and has been working diligently to do so. If Ricoh's predicted "end of February" completion date was correct, then Quanta now should have the materials it seeks. Additionally, Ricoh has no objection to allowing Quanta's experts to supplement their reports to account for information produced by Ricoh after the reports were prepared so long as Ricoh is allowed to rebut that supplemental report.

The only question presenting an actual dispute is whether to punish Ricoh's failure to produce the sought-after information by February 16, which was the deadline set by Quanta and the date on which it filed the instant motion to compel. No doubt encouraged by my earlier order, Quanta insists that drastic sanctions are warranted for Ricoh's "gamesmanship" and "stonewalling," including Ricoh allegedly reneging on its agreement not to rely on any of its own products in this litigation.

Having reviewed the letters and e-mails exchanged by counsel during their effort to resolve the instant discovery dispute, I see no evidence that Ricoh intentionally delayed its document production or otherwise hid the ball from Quanta in an effort to gain a tactical advantage. To the contrary, it appears that Ricoh's failure to produce certain documents sooner arose from its hope that the parties would reach an agreement that would make it unnecessary to search for and produce these documents.

To the extent Ricoh had agreed to forego reliance on its own products, as Quanta contends, it appears that this concession was predicated on Ricoh misapprehending the extent to which Quanta was willing to limit the scope of its discovery. Nothing suggests that Ricoh entered into that agreement with its fingers crossed behind its back in an effort to forestall discovery.

Absent a showing of foul play or prejudice–neither of which Quanta has made–Ricoh's failure to produce complete discovery by February 16 does not warrant the severe sanctions urged by Quanta.[1] True, I did urge the parties to file motions promptly and I did invoke the possibility of Rule 37(b) sanctions, but not every miscue or misunderstanding merits a smackdown from the court. In light of my January 24 order, I cannot fault Quanta for filing its motion, but its recommended remedy is too harsh. At the time it filed this

[1] Nor are such sanctions warranted for Ricoh's failure to indicate in its initial Rule 26(a)(1) disclosures that it intended to rely upon or use its own products to show either commercial success or that the parties were competitors. As Ricoh points out, this lawsuit is relatively new and Ricoh reserved its right to supplement its Rule 26 disclosures. It appears that if Ricoh does rely on its own products, it would be to counter Quanta's invalidity defense, which Ricoh might not have contemplated when it filed its initial disclosures.

motion, Quanta simply had no reasonable basis for seeking this type of relief. I find no abuses that would merit sanctions. Perhaps the parties could try a little harder to work out their discovery concerns before filing their motions.

ORDER

IT IS ORDERED that the Quanta's motion to compel plaintiff to provide discovery and for sanctions (dkt. 140) is GRANTED IN PART and DENIED IN PART:

Not later than March 9, 2007, Ricoh shall provide complete, meaningful responses to Quanta's requests for discovery, particularly with respect to the production of technical and sales information related to plaintiff's products;

Quanta may promptly amend expert reports, if necessary, after Ricoh has completed its production;

Quanta's request for an order precluding plaintiff from relying upon or using its products in this litigation for any reason is DENIED; and

Each side will bear its own costs on this motion.

Entered this 5th day of March, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge