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

RICOH COMPANY, LTD.,

Plaintiff,

v.

QUANTA STORAGE, INC., *et al.,*

Defendants.

ORDER

06-C-462-C

The two most recent discovery motions in this case are Ricoh's motion to compel disclosure of Quanta's worldwide sales data (dkt. 198) and Quanta's motion to compel Ricoh to make its expert witness available for a second day of deposition testimony (dkt. 215). Having read and considered both sides' submissions on both motions, I am granting both but declining to shift any costs.

Notwithstanding the length of the submissions by both sides, neither motion requires a great deal of analysis or explanation by this court. Let's start with a review of some of this court's previous orders in this lawsuit:

> [T]his court will not countenance sharp litigation tactics of the sort sometimes attempted by parties and attorneys in lawsuits of this nature. . . . Relatively large, sophisticated multinational corporations represented by large, sophisticated multinational law firms have the resources and the ability to exchange large amounts of complicated information quickly. From the court's perspective, there is no acceptable reason for this not to happen.
>
> Therefore, I am ordering the parties hereafter to cooperate and to accommodate each other during discovery in order to allow the quick and complete exchange of relevant information. Discovery is not the adversarial phase of this lawsuit, and a party or attorney

> who treats it as such will be sanctioned. This court has no patience for obstructionist tactics and the court's definition of obstruction is very broad. There shall be no quibbling, flyspecking [*or*] contrariness. The parties shall promptly and completely provide documents requested for production. The parties shall promptly and completely answer interrogatories.
>
> The parties shall not interpose unnecessary or ill-founded objections during depositions or in response to discovery requests, nor shall a party decline to answer a question or interrogatory unless there is a privilege against answering recognized by the rules. These requirements do not mean that a party has to acquiesce to palpably improper discovery demands, but if the demand is not palpably improper, the party had better provide a timely and complete response to it, or promptly file a motion for protection if a timely parley doesn't solve the problem. A party that interferes with the orderly and timely exchange of information–or conversely, a party that tries to victimize its opponent with clearly improper discovery demands–shall be sanctioned.
>
> The warning: as a result of this order, we have moved to Rule 37(b) sanctions for future discovery problems, should there be any. If the court determines that a party has not complied with its discovery obligations as defined by this court, no sanction is off limits. This court routinely strikes expert witnesses, claims and defenses, it dismisses lawsuits, shifts costs, and imposes monetary sanctions on offending parties and directly on their attorneys. As demonstrated by my handling of the deposition dispute, I expect that discovery will proceed smoothly hereafter and the court will not have to impose any of these sanctions. But no sanction in the court's arsenal is too extreme if the parties do not live up to the court's expectations. Obviously, the best course of action is for the parties and their attorneys to find a way to resolve their differences without barraging the court with discovery motions.

Jan. 24, 2007 Order, dkt. 122, at 4-5.

To my pollyannaish surprise, the parties ignored the sunshine-and-granola exhortations that concluded this order, instead using the order as a weapon to cudgel concessions from their opponents. This led to a follow-up order:

> 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. . . . Perhaps the parties could try a little harder to work out their discovery concerns before filing their motions.

March 5, 2007 Order, dkt. 150, at 3-4.

Nothing changed between the parties. I expressed puzzlement at the parties' failure to bend over backwards to accommodate each other on discovery, given this court's notoriety for favoring discovery sunshine when asked to weigh in. May 6, 2007 Order, dkt. 200, at 2-3. So here we are again, with Quanta resisting disclosure of world-wide sales data that Ricoh asserts is relevant, and Ricoh refusing to permit Dr. T. E. Schlessinger, one of its experts, to sit for more than seven hours of deposition testimony.

Deposition Practice

The contretemps regarding Dr. Schlessinger's deposition is merely the latest deposition dispute to establish that the attorneys just don't get it. It is incomprehensible to this court that the plaintiff in a multinational high-tech patent lawsuit flat-out refused to make one of its pivotal experts available for more than seven hours of deposition based solely on the presumptive limit of Rule 30(d). *See* April 23, 2007 letter from Attorney Michael Joffre to Attorney Daniel

Prince, dkt. 216 (sealed), Exh. C. This uncompromising position violates the orders quoted above.

Ricoh now claims in response to Quanta's motion that its punctilious invocation of the rule was based on Quanta's abuse of Ricoh's other witnesses at previous depositions. This explanation is yet another post-hoc rationalization of discovery nit-picking that this court has forbidden. There is no indication that Ricoh contemporaneously and seriously challenged Quanta's tactics regarding other witnesses. More importantly, Ricoh did not promptly seek assistance from this court. There is no indication that Ricoh raised its abuse concern with Quanta in an attempt to reach an acceptable compromise regarding Dr. Schlessinger's deposition. Instead, Ricoh just said "No."

So how did Quanta respond? It served two subpoenas on Dr. Schlessinger personally, requiring his attendance at "two" depositions back-to-back on days when he was scheduled to be out of town for a conference. Attorney Daniel Prince signed the subpoenas on behalf of Quanta. Ricoh moved to quash these subpoenas in the federal district whence they issued. *See* May 5, 2007 letter from Attorney Daniel Prince to Attorney Michael E. Joffre, dkt. 221, Exh. G, and Motion To Quash, *id*., Exh. H at 4.

Enough is enough. Hereafter, all of the parties shall make all of their experts available for whatever length of time their opponents reasonably need to depose them. The deposing party shall not abuse this privilege.[1]

[1] I am declining to shift costs in favor of Quanta on this motion because it does not have clean hands. Its attempt at self-help in the Western District of Pennsylvania was improper and ill-advised.

Further, since the parties and their attorneys repeatedly have disobeyed this court's previous discovery orders, it is time to make good on my previous threats of sanctions. This court is revoking the pro hac vice status of attorneys Joffre and Prince. Their handling of the Schlessinger deposition dispute violated this court's previous orders governing discovery in this case. Neither attorney shall perform any additional work on this case in this court. Judge Crabb is entering a separate order to this effect.

Quanta's Worldwide Sales Data

The dispute over Quanta's worldwide sales data involves Ricoh's requests for production of documents on Topics 87, 103-09, 111 and 113-19. Ricoh claims to need these documents to prepare questions for its Rule 30(b)(6) deposition of Quanta regarding sales, distribution, finances, profits and damages allegedly owed to Ricoh. Quanta refuses to provide this information, claiming that it is not relevant, the request is burdensome, and that Ricoh should try to get it from other sources.

Both sides make some valid arguments and this court could justify a decision in either direction on this motion. In order to provide a decision in time for it to be useful to the parties, I am foregoing a longer explanation of the court's thought process. In any event, my decision to grant Ricoh's motion is based as much on the discovery context that surrounds it as the merits of the individual motion. Once again the parties are traveling to Taiwan to depose more 30(b)(6) witnesses, a time-consuming and burdensome task. I ruled in a previous order that Quanta had not presented an adequate 30(b)(6) witness the first time round. I surmise that,

by virtue of this second trip, Quanta has avoided the need to bring its representatives to Madison, as my order would have required. But having already seen so many poorly-executed discovery maneuvers in this lawsuit, I am not going to invite yet another set of motions demanding either a third trip to Taiwan for depositions or depositions of Quanta's representatives in Madison. Sometimes the most efficient, risk-adverse solution in the long run might impose what appear to be higher short term costs. I say "appear" because I am not convinced that Quanta is right and Ricoh is wrong on the potential relevance of this information. If I were, then I would deny Ricoh's motion. There is sufficient arguable relevance to the worldwide sales data requested by Ricoh to require Quanta to produce it in time for Ricoh to use it at the next round of 30(b)(6) depositions.

If, after Ricoh obtains and attempts to use this information, Quanta can establish that it really was a wild goose chase, then Quanta may ask this court to shift all costs on this dispute in its favor retroactively. To the same effect, this court's order to disclose this information as part of pretrial discovery is a very different issue from the trial judge's decision whether to allow this data (or evidence derived from it) to be used at trial. I'm sure that we will see *in limine* motions on that point at the appropriate time.

Having considered both sides' submissions and arguments, I am granting Ricoh's motion to compel. Quanta's resistence to disclosure was sufficiently justified to avoid cost-shifting under Rule 37(a).

ORDER

IT IS ORDERED that:

(1) Quanta's Motion Regarding Expert Depositions is GRANTED IN PART and DENIED IN PART for the reasons and in the manner stated above. Each side will bear its own costs on this motion.

(2) Ricoh's motion to compel Quanta defendants to produce documentation as to worldwide sales data is GRANTED. Each side will bear its own costs on this motion.

(3) All attorneys for all parties shall redouble their efforts to complete the necessary discovery in this case amicably and efficiently.

Entered this 1st day of June, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge