

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

Before the court are three overlapping motions relating to pretrial discovery. First filed was the Quanta Defendants' Motion For Protective Order and To Compel Infringement Contentions (dkt. 77), quickly followed by a nearly identical motion from Asustek and Asus Computers (dkt. 98); plaintiff's response to these motions included a motion to compel directed toward the Asus defendants (dkt. 111).¹ I have read parties' submissions and I understand their positions. Every party is partly correct and partly incorrect, so I am granting and denying portions of all three motions in the manner and for the reasons stated below.

The most salient conclusions are that plaintiff does not need to provide its infringement contentions at this time, the 30(b)(6) depositions shall occur in Taiwan, the plaintiff is entitled to more information from defendants in response to its discovery

¹ Plaintiff filed its motion to compel on January 16, which means that any response was due by noon on January 22, 2007. *See* preliminary pretrial conference order, dkt. 47, at 5. It is now January 24, and defendants have not responded.

demands, and the parties hereafter must exchange discovery more completely and quickly under penalty of Rule 37(b) sanctions.

In their motion, the Quanta defendants object to plaintiff's attempt to require defendants' corporate executives, who are based in Taiwan, to appear in Madison, Wisconsin for 30(b)(6) depositions. Defendants also object to the scope of the topics to be covered and ask this court to compel plaintiff to provide its infringement contentions and to identify which of defendants' devices allegedly infringe the patents at issue.

The motion filed by the Asustek and Asus Computers defendants essentially mirrors the Quanta defendants' motion: they ask that the 30(b)(6) depositions of their witnesses take place in Taiwan and ask that plaintiff be ordered to identify its infringement contentions and to limit its inquiry to the devices specifically named in its complaint.²

Plaintiff objects to both aspects of these motions. Plaintiff also has moved for an order compelling the defendants to submit to 30(b)(6) depositions in Madison and to provide complete responses to plaintiff's discovery demands, including its requests for production of documents. Plaintiff claims that the depositions must be conducted in Madison so that a judicial officer is available to intervene quickly when the anticipated obstructionist conduct begins.

² After defendants filed this motion, they agreed to provide information about devices other than the two named in plaintiff's complaint. *See* plaintiff's Jan. 16, 2007 letter, dkt. 116.

Additionally, plaintiff contends that it has provided sufficient specificity in its notice(s), it is not required to narrow its discovery to the degree demanded by defendants, infringement contentions aren't due yet, and it needs the information obtained at the depositions to develop its infringement contentions in consultation with its experts, whose reports are due by February 16, 2007.

Defendants filed an unbidden reply which I will not consider, except to note defendants' observation that plaintiff's motion responses have helped narrow the deposition topics, causing defendant to ask the court to limit plaintiff's depositions to the topics addressed in its submissions on these motions.

Starting at the end, I will not take defendants' bait, since plaintiff did not purport in its response to be addressing every topic on which it was seeking 30(b)(6) testimony. I will note, however, that the filing of motions and the exchange of briefs has opened a discovery dialogue that apparently eluded the parties earlier. This segues to an observation, an order and a warning:

The observation: the fast schedule in this case does not allow, and this court will not countenance, sharp litigation tactics of the sort sometimes attempted by parties and attorneys in lawsuits of this nature. Included in the court's definition of sharp litigation tactics are unreasonably slow or incomplete responses to discovery demands. 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, contrariness, disingenuous claims of ignorance or lack of comprehension, or other sharp practices during discovery in this case. The parties shall promptly and completely provide documents requested for production. The parties shall promptly and completely answer interrogatories.³

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

³ My decision not to require plaintiff to provide its infringement contentions in advance of the 30(b)(6) depositions meshes with this overarching directive because plaintiff is entitled to obtain additional information from defendants before providing final contentions. I fully expect, however, that the court-ordered dialogue between the attorneys prior to the depositions will cause plaintiff further to clarify, specify and narrow the information it is seeking so that the witnesses can be properly prepped and are able to provide the information plaintiff actually needs to move forward.

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. But if they must, they should do so quickly so that the parties do not fall behind because the summary judgment motion deadline and the trial date are firm.

I am ordering defendants forthwith to provide complete responses to plaintiff's requests for production of documents, since they have not provided any reason not to.

I will not compel plaintiff to provide its infringement contentions to defendants at this stage. Nonetheless, it is no more acceptable for plaintiff to play coy with discovery than it is for defendants. I expect all parties to continue in good faith the dialogue opened by

their submissions on these motions so that both sides have a clear and accurate expectation as to what topics will be covered to what degree at the 30(b)(6) depositions.

I will not, at this time, order defendants' 30(b)(6) witnesses to travel from Taiwan to Madison for their depositions, a 7300 mile journey across 14 time zones. I do not share plaintiff's concern that the parties will need ongoing, real-time access to a judge to referee captious behavior by the witnesses and the attorneys. Dozens of patent suits as complicated and hard-fought as this one have been litigated in this district without telephone calls to the court during the depositions.

My optimism is buoyed by the order and warning set forth above. If my optimism turns out to be misplaced then I shall order prompt follow-up 30(b)(6) depositions in this courthouse at defendants' expense, with a judge available to rowel the attorneys and witnesses in person. Conversely, if plaintiff improperly attempts to *provoke* a mulligan, then it will forfeit its right to stateside supplemental depositions. Since the court's determination will be after-the-fact, no one will know until later whose side the court will take. To spare their clients unnecessary aggravation and a huge waste of time and money, it would behoove both sides to play it straight and approach this set of depositions in the spirit of mutual accommodation. When in doubt, the information gets exchanged under whatever level of protection is necessary to complete the depositions without incident.

Because I granted in part and denied in part all three motions, each side shall bear its own costs this go-round.

ORDER

It is ORDERED that each of the discovery motions discussed above (and docketed by the court as 77, 98 and 111) is GRANTED IN PART and DENIED IN PART for the reasons and in the manner stated above.

Entered this 24th day of January, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge