

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

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SILICON GRAPHICS, INC.,

Plaintiff,

v.

ATI TECHNOLOGIES ULC,

Defendant,

*and*

ATI TECHNOLOGIES ULC,

Counterclaim Plaintiff,

v.

SILICON GRAPHICS, INC.,

Counterclaim Defendant.

ORDER

06-C-611-C

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On January 24, 2007, this court granted ATI's motion to submit and rely on documents outside the pleadings when responding to SGI's motion to strike ATI's counterclaims, relying on Rules 12(b)(6), 12(f) and 9(b). I noted that pursuant to Rule 12(c), this technically converted SGI's motion to a summary judgment motion, but I excused the parties from complying with this court's rigorous summary judgment procedure, since as a practical matter, we still were dealing with a procedural dismissal motion.

Now ATI has requested clarification of this court's order because SGI, in its reply, is asking for a decision on the substantive merits of ATI's counterclaims. If the court is willing to entertain this request, then ATI wants more time to develop a complete factual record.

Regardless whether SGI's tactical shift in its reply brief is vulpine or obtuse, it is misdirected. SGI's original motion to dismiss did not ask for a decision on the merits of ATI's counterclaims and the court does not intend to provide one at this early stage. The court will limit its ruling to the procedural challenges SGI raised at the outset.

To avoid a possible dispute in the future, the current motions have not triggered the court's rule allowing only one summary judgment motion per party per lawsuit.

Entered this 13<sup>th</sup> day of February, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge