

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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Before the court is SGI's Rule 56(f) motion for more time to obtain discovery before responding to ATI's front-end motion for summary judgment in this patent lawsuit. *See* dkt. 83. ATI opposes any extension. *See* dkt. 88. I am granting this motion in part: SGI may have until May 7, 2007 to obtain the information it claims to need and to file its complete response to ATI's motion. ATI may have until May 24, 2006 within which to file its response.

Scheduling in this lawsuit has proceeded fitfully. The court already has modified the schedule at ATI's request in order to postpone and perhaps to avoid expensive and time-consuming claims construction. The key to making this work is getting a quick ruling on ATI's pending summary judgment motion.

SGI has submitted an 8½ page, 42 paragraph affidavit from counsel detailing alleged discovery recalcitrance by ATI. that SGI claims has compromised its ability to respond effectively to ATI's out-of-the-blocks motion for summary judgment. *See* Confidential Declaration of Jennifer L. Dereka, dkt. 84 (sealed).

ATI responds by noting that SGI never filed a motion to compel discovery, SGI has not made a cause-effect showing that the allegedly late and incomplete discovery actually has prevented SGI from responding to ATI's motion, and that in fact, ATI has made timely, sufficient disclosures that would allow SGI adequately to respond. Consistent with its bellicose defense strategy in this case, ATI also questions the sufficiency of SGI's pre-filing investigation, suggesting that SGI sued prematurely and now is trying to bolster its claims during formal discovery. *See* ATI's Brief in Opposition, dkt. 88.<sup>1</sup>

This court has no mechanism that would allow it precisely to determine which characterization of this discovery dust-up is more accurate; there likely is some merit to both. But because this court views civil lawsuits through the lens of Rule 1, discovery disputes usually get resolved in favor of keeping the case moving. No plaintiff in a patent lawsuit files in Madison unless it wants speedy disposition of its claims. The usual scenario in our myriad patent lawsuits has the plaintiff urging tighter deadlines and the defendant begging for more time. In this case the parties have twisted this scenario back on itself: it appears that SGI was caught off guard by the speed and vigor with which ATI mustered its defense and counterattacked, and has been operating off-balance ever since.

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<sup>1</sup> To the court's knowledge, ATI has not served SGI with a Rule 11(c)(1)(A) motion.

This is not an excuse for ATI withholding or delaying legitimate discovery, but from this court's perspective, there are no material discovery problems in the absence of a motion to compel or to protect. This court understands the daunting magnitude of the discovery involved in a case of this nature, and it appreciates the attorneys' attempts to work through disputes and misunderstandings without running willy-nilly to the court. That said, it is imperative that parties promptly bring significant discovery disputes to the court's attention so that we may maintain the tight schedule. Here, the parties already have caught an unexpected scheduling break: the district judge already has acquiesced to postponing the claims construction hearing in order first to provide a ruling on defendant's early summary judgment motion. This court rarely spares patent attorneys from multi-tasking; it will not allow its forbearance in this case to sabotage the remainder of the schedule.

Tempering efficiency with fairness, I will allow SGI three more weeks to get its act together on summary judgment and present its full response to ATI's pending motion. There shall be no further extensions of these briefing deadlines.

Entered this 16<sup>th</sup> day of April, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge