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

SILICON GRAPHICS, INC.,

Plaintiff,

v.

ATI TECHNOLOGIES, INC,

Defendant,

and

ATI TECHNOLOGIES, INC,

Counterclaim Plaintiff,

v.

SILICON GRAPHICS, INC.,

Counterclaim Defendant.

ORDER

06-C-611-C

On May 4, 2007, this court granted in part and denied in part two discovery motions (dkts. 102 & 113) after an hour long telephonic hearing with the parties (*see* transcript, dkt. 127). Now before the court is SGI's motion to clarify or reconsider my ruling on its motion to compel discovery from ATI and third-party Nintendo. Specifically, SGI suggests a five-step protocol for implementing my order. *See* dkt. 128 at 2. In the event that the court finds this suggestion unpalatable, SGI asks for reconsideration. *Id.* at 8-9. ATI opposes clarification or reconsideration, finding the post-hearing status quo satisfactory. *See* dkts. 129-30.

SGI has misconstrued what I ordered the parties to do. To the extent that SGI believes that the court erred and is asking for reconsideration, I have re-examined my ruling and have concluded that it still is sound. Let me spell it out in a bit more detail:

SGI and ATI are supposed to agree on an outside lawyer and/or outside technical expert who will serve as neutral referees in this discovery dispute. *See* transcript at 23. Both sides have a say in who is chosen, and the evaluation team (which could be a "team of one") does not work for or have a privilege relationship with either side in this lawsuit. That's one of the main reasons for doing it this way: the evaluation team is neutral. SGI complains that it will have to provide privileged information to the team, so SGI is entitled to have a protected relationship with it. This puts the cart before the horse.

SGI is free to provide whatever information it wishes to the evaluation team that will assist the team review ATI and Nintendo's confidential information to determine if there is a match with the instant lawsuit. If SGI believes that the evaluation team cannot make an accurate determination without access to SGI's attorney work product, then SGI has a semi-tough choice to make. "Semi-" because the evaluation team, pursuant to its mandate, will never disclose this information to ATI or Nintendo. Again, that's the main reason for engaging in this exercise: the evaluation team operates as a one-way valve: information flows in both from SGI and from ATI/Nintendo, but it does not flow out to anyone without a court order. *See* Transcript at 28. If SGI is unhappy with this arrangement, then it does not have to participate. However, this is the only mechanism by which this court will allow a review of the game board information currently being withheld by ATI and Nintendo.

Although I anticipated that the parties would split the cost of the evaluation team 50/50, I didn't actually say this at the hearing, so I'm saying it now. Cost-sharing is fair because both

sides have an equal stake in this: SGI wants to see the guts of the withheld game board products, while ATI and Nintendo want to keep them out of SGI's hands.

Finally, SGI expresses concern about how long all this will take. This concern qualifies as looking for trouble, an exercise we avoid in this court's patent litigation. I am directing both sides to jumpstart this process and mash the gears with an eye toward quick implementation of the court's order. As I already have told the parties, if they run into an unavoidable timing crunch, the court will cut them some slack in this case. The important thing now is to start moving.

Entered this 4th day of June, 2007.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge