

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

3M COMPANY, *et al.*

Plaintiffs,

v.

KERR CORPORATION,

Defendant.

ORDER

07-C-87-C

On March 6, 2007, plaintiffs moved to compel defendant to decide whether it intended to rely on advice of counsel as a defense to plaintiffs' claim of willful infringement. *See* *dk.* 10. Defendant resists, claiming it should not be put to this choice until plaintiff has made a threshold showing of willfulness. *See* *dk.* 16. Plaintiff replies that defendant is confusing order of proof at trial with its obligations under the discovery rules. *See* *dk.* 23. Having carefully considered both sides's submissions, the court will invoke Rule 1 and indulge its fondness for sunshine during discovery:

It is ORDERED that:

(1) As soon as possible but not later than April 18, 2007, plaintiff shall disclose the evidence upon which it intends to rely to make its threshold showing of willfulness at trial.

(2) Not more than 21 calendars days after such disclosure by plaintiffs, defendant either shall explicitly waive the defense of advice of counsel or it shall disclose all information upon which it intends to rely in claiming advice of counsel as a defense to plaintiff's claim of willfulness. Information not timely disclosed by defendant shall not be used for any purpose in this case.

(3) The court shall decide any dispute about the adequacy of submissions ordered herein; the existence and resolution of any such dispute shall take place within the time allotted by this order. The court expects the fast, full exchange of information or it will exact a dear price from the party it deems to have fallen short.

(4) Each side will bear its own costs on this motion.

Entered this 28th day of March, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge