

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

DIGENE CORPORATION,

Plaintiff,

v.

THIRD WAVE TECHNOLOGIES, INC.,

Defendant.

ORDER

3:07-cv-00022-bbc

A status conference was held in this case on November 13, 2007, before United States District Court Judge Barbara B. Crabb. Digene was represented by Errol Taylor, John Griem, Gregory Baker and Cathy Cetrangolo. Defendant was represented by Graham Gerst and Robert Robertson. Also present was Cindy Ahn, corporate counsel for defendant.

The court took up plaintiff's motion for entry of a Rule 54(b) judgment to allow plaintiff to take an interlocutory appeal and defendant's motion for a declaration of non-infringement of plaintiff's '915 patent. I began by advising counsel that I would not be entering a Rule 54(b) judgment, permitting an interlocutory appeal. Instead, the entire case will go to trial in early February as previously scheduled. This left only one question remaining, which is whether any eventual declaration of non-infringement of the '915 patent

should be limited to defendant's ASR products or whether it should include defendant's Plasmid 52A products as well. Plaintiff believes that it lacks sufficient discovery at this time to go forward on the Plasmid 52 product; defendant believes that plaintiff has had exhaustive discovery on this subject and should be able to proceed to trial without undertaking any additional discovery. Given the uncertainty between the parties on this issue, I asked counsel to give the matter more thought, confer with each other and report to the court in a telephone conference to take place on November 21, 2007, at 9:00 a.m. Mr. Taylor is responsible for setting up the conference call to chambers at (608) 264-5447.

Entered this 14th day of November, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge