

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

---

EXTREME NETWORKS, INC.,

ORDER

Plaintiff and Counter Defendant,

3:07-cv-00229-bbc

v.

ENTERASYS NETWORKS, INC.,

Defendant and Counter Plaintiff.

---

In an order dated December 31, 2007, I considered several motions involving plaintiff's efforts to expand the scope of the lawsuit. I granted plaintiff's request to amend its complaint to seek declaratory relief, but I concluded that plaintiff was prohibited from asserting new affirmative defenses and new claims.

Plaintiff has filed a motion for reconsideration of the order, which is DENIED. Most of plaintiff's arguments are repeats of the ones it made for the first time in its (uninvited) reply brief in support of its motion for leave to amend. In any event, plaintiff still fails to explain why it did not file a motion to compel if it believed that it was not getting the discovery it needed to develop its case.

However, plaintiff makes one observation that requires attention. In accepting plaintiff's proposed amended complaint, I believed incorrectly that the changes were limited to a request for declaratory relief relating to noninfringement and invalidity. However, plaintiff notes that its amended complaint includes its proposed affirmative defenses as well (which it recharacterizes in the amended complaint as "claims"). Accordingly, IT IS ORDERED that plaintiff's amended complaint is DISMISSED as to its declaratory judgment claims for equitable estoppel and inequitable conduct.

Entered this 3d day of January, 2008.

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