

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

EXTREME NETWORKS, INC.,

Plaintiff,

v.

ENTERASYS NETWORKS, INC.,

Defendant.

ORDER

07-cv-229-bbc

A hearing on the plaintiff Extreme Networks' motion for discovery sanctions was held in this case on October 8, 2011 before United States District Judge Barbara B. Crabb. Plaintiff appeared by James Peterson and Margaret Duncan. Terrence McMahon appeared by phone. Defendant Enterasys Networks was represented by Lester Pines, Christopher Sullivan and Susan Crawford.

Plaintiff objects to defendant's production of approximately 76,000 pages of discovery documents on the last day of discovery, September 13, 2011. Defendant characterizes its production as consisting primarily of price lists and product catalogs, some legal documents and other materials created long after the filing of the application for the '181 patent that is at issue in this case.

It is true that many of the 92 documents are price lists and product documents, but plaintiff has shown that at least four documents of significance were tucked in among the less useful materials. And even if defendant were correct in its characterizing of the documents, late production of so many is guaranteed to interfere with the other side's preparation for trial. Defendant knew that plaintiff wanted these documents; plaintiff asked for them at the outset of discovery, in July 2007. However, the documents were not irrelevant or redundant. One purported to claim an earlier invention date; others related to licenses to use the invention of the '181 patent and one included a 2003 evaluation of the worth of the products using the invention. In addition to the late documents, defendant served an updated Rule 26(a)(1) initial disclosure, listing two additional witnesses never before disclosed.

By the time of the hearing, defendant had notified plaintiff that it did not intend to call either of the newly disclosed witnesses and that it would not rely on an earlier invention date. Although this eased some of the strains on plaintiff caused by the late disclosure, it left a number of others.

Some sanction is necessary for defendant's untimely production. Plaintiff has asked that the court dismiss defendant's counterclaim, but I am not persuaded that such a severe sanction is warranted. However, I will allow plaintiff to (1) put in evidence of the Ichikawa patent through its expert, Dr. Davis; (2) update its damages evidence to take into account

the new information it has been provided; and (3) treat the DNPG Patent Value Data, Bates #EN 1 0070508 as an admission by defendant.

ORDER

IT IS ORDERED that plaintiff Extreme Networks' motion to sanction defendant Enterasys Networks for its late discovery is DENIED with respect to plaintiff's motion to strike defendant's counterclaim; it is GRANTED with respect to plaintiff's motion to put (1) put in evidence of the Ichikawa patent through its expert, Dr. Davis; (2) update its damages evidence to take into account the new information it has been provided; and (3) treat the DNPG Patent Value Data, Bates #EN 1 0070508 as an admission by defendant. Plaintiff is to file its updated expert reports no later than October 21, 2011; responses will be due on October 26, 2011. The final pretrial conference will be held on Thursday, October 20, 2011 at 7:00 a.m.

Entered this 12th day of October, 2011.

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