[All Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ASETEK HOLDINGS, INC. and ASETEK A/S,

Plaintiffs,

v.

COOLER MASTER CO., LTD. and COOLER MASTER USA INC.,

Defendants.

CASE NO. 3:13-CV-00457 JST

PARTIES' JOINT STATEMENT IN RESPONSE TO ORDER TO SHOW CAUSE WHY THE COURT SHOULD NOT IMPOSE SANCTIONS FOR FAILURE TO FILE JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Date: October 31, 2013
Time: 2:00 p.m.
Dept.: Courtroom 9, 19th Floor
Judge: Hon. Jon S. Tigar

I. Introduction

The parties regret and apologize for the circumstances which led this Court to issue its Order to Show Cause. As explained below, the parties have acted in good faith and never intentionally failed to comply with any Court orders or requirements.

This patent infringement action, brought by Asetek against Cooler Master, involves two patents that are also asserted by Asetek against CoolIT Systems, Inc. in another case pending before the Honorable Edward M. Chen, *Asetek v. CoolIT Systems, Inc*. The *CoolIT* case was filed five months before this *Cooler Master* case, and Judge Chen agreed to conduct consolidated claim construction proceedings before him to preserve judicial resources and maintain the earlier claim construction schedule in the *CoolIT* case. The parties were under the impression that this Court and Judge Chen had agreed upon this procedure, and that this Court was fully aware of it. Upon receiving this Court's Order to Show Cause, however, the parties realized that this was not the case. In hindsight, the parties could have, and should have, been more diligent in apprising this Court of Judge Chen's order consolidating claim construction proceedings in the earlier-filed case. This is not, however, a situation in which any party intentionally failed to comply with this Court's Order. Instead, the parties' joint proposal to consolidate the cases for Claim Construction proceedings was primarily to promote judicial economy and efficiency. The parties reasonably believed that this Court and Judge Chen had conferred and agreed that Judge Chen would preside over consolidated claim construction proceedings, and the parties conducted themselves accordingly and in good faith. Accordingly, the parties respectfully submit that no sanctions are warranted.

II. Statement of Facts

This action against Defendants Cooler Master Co., Ltd. and Cooler Master USA Inc. (collectively "Cooler Master") was filed on January 31, 2013. Dkt. 1. At the time this action was filed, Plaintiffs Asetek Holdings, Inc. and Asetek A/S (collectively "Asetek") already had an action pending in this court before Judge Chen asserting the same two patents against Defendant

CoolIT Systems Inc., ("CoolIT"), Case No. 3:12- cv-04498-EMC (filed August 27, 2012).[1] Declaration of Elizabeth H. Rader ISO Parties Joint Response to Order to Show Cause. ("Rader Decl.") ¶ 2. On February 14, 2013, Asetek filed Plaintiffs' Administrative Motion Under L.R. 3-12 in the earlier-filed *CoolIT* case (per the Local Rule) to consider whether the two Asetek cases should be related. *Id.* ¶ 3. On February 26, the Court denied that motion, deeming the cases not related. *Id.* During a May 23, 2013, Case Management Conference in the earlier-filed *CoolIT* case, Defendants CoolIT and Cooler Master proposed consolidating the claim construction proceedings for the two Asetek cases. Judge Chen instructed the parties to meet and confer on this issue and set a further case management conference for June 20, 2013, at which time Judge Chen was also hearing a motion filed by Asetek. Rader Decl., ¶ 4. This is reflected in the civil minutes of that conference, Docket 83 in that case. *Id.* On May 29, 2013, this Court held an Initial Case Management Conference in this action. At that time, the parties in this action addressed the possibility of consolidating the claim construction proceedings in the two cases. *Id.* ¶ 5. The parties, however, had not yet agreed on a schedule, and Asetek reiterated that it could not agree to anything that would delay its November 4 and 5 claim construction hearing already scheduled in its earlier filed case against CoolIT. This Court acknowledged the possibility of consolidating claim construction proceedings, but in the meantime, set a claim construction schedule in this action (with the understanding it might be vacated). Rader Decl., ¶ 5; Declaration of Robert McCauley In Support of Joint Response to Order to Show Cause, ("McCauley Decl."), ¶ 4. That schedule is found in the Scheduling Order for this case [Dkt. 22]. Rader Decl., ¶ 5.

The parties (Asetek, Cooler Master, and CoolIT) further met and conferred and agreed that, with the Court's permission, efficiency would be served by consolidating claim construction in both cases, assuming that (1) there would be no delay in the November 4 and 5 claim

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[1] The *CoolIT* case also involves a third patent that CoolIT has asserted against Asetek, and which is not at issue in the *Cooler Master* case.

construction dates in this *CoolIT* case, and (2) Judge Chen would agree to construe 12 claim terms. Rader Decl., ¶ 6.

On June 20, 2013, Judge Chen held a further case management in the action against CoolIT. The procedural posture of the two cases and the parties' proposal to the Court was summarized in the Joint CMC Statement filed with Judge Chen for that case management conference as follows:

> On May 29, 2013, Judge Tigar held an Initial CMC in the *Cooler Master* litigation. At that time, the parties to that case addressed the possibility of consolidating the claim construction proceedings in the two cases. The parties, however, had not yet agreed on a schedule, and Asetek reiterated that it could not agree to anything that would delay its November 4 and 5 claim construction hearing in this case against CoolIT. Judge Tigar acknowledged the possibility of consolidating claim construction proceedings, but in the meantime, set a claim construction schedule in the *Cooler Master* case (with the understanding it might be vacated). Scheduling Order, No. 13- 0457-JST [Dkt. 22].
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> Both the *CoolIT* and *Cooler Master* cases involve the same two Asetek patents, and the *CoolIT* case involves a third CoolIT patent asserted against Asetek. The parties (including Defendant Cooler Master) have met and conferred and agree that, with the Court's permission, efficiency would be served by consolidating claim construction in both cases, assuming that (1) there is no delay in the November 4 and 5 claim construction dates in this *CoolIT* case, and (2) the Court would agree to construe 12 claim terms.

Further Joint Case Management Conference Statement, filed in *CoolIT* case on June 12, 2013 [Dkt. 85], attached as Ex. A to McCauley Decl.

At that June 20 case management conference, Judge Chen discussed the parties' proposal and stated that he would discuss the issue with Judge Tigar, as the parties were all in agreement about consolidation and the proposed schedule. Rader Decl., ¶ 7; McCauley Decl., ¶ 6. On June 24, 2013, Judge Chen issued Civil Minutes for the June 20 case management conference. The summary in these minutes states "Consolidating tutorial and claims construction hearing for this case and Case No. C13-0457-JST Asetek v. Cooler Master will be held." The summary goes on to recite that the parties' proposed schedule is adopted. Rader Decl., ¶ 8.

Counsel for both Asetek and Cooler Master understood, from the events described above and the content of Judge Chen's Civil Minutes, that this Court and Judge Chen had discussed and agreed upon consolidation, and that the Schedule set by this Court during the May 29, 2013 case management conference was effectively vacated with respect to claim construction proceedings. *Id.* ¶ 9; McCauley Decl., ¶ 8. With this understanding, on August 26, 2013, Asetek filed the parties' Joint Claim Construction Statement [Dkt. 108] in the *CoolIT* case. Rader Decl., ¶ 10. Likewise, on September 23, 2013, CoolIT and Asetek each filed their Opening Claim Construction Briefs in the *CoolIT* case. *Id.*, ¶ 11. Finally, on October 15, 2013 all three parties in the consolidated claim construction proceedings filed their Responsive Claim Construction Briefs in the *CoolIT* case. *Id.*, ¶ 12. After receiving this Court's Order to Show Cause, the parties' Joint Claim Construction Statement was also filed in this case.

III. Argument

As discussed above, the parties worked diligently to bring to the attention of both judges their reasons for believing that claim construction of the patents asserted in two cases pending in the same district should be coordinated for claim construction. Based on the events described above, the parties also believed that both judges agreed. Moreover, based on Judge Chen's statements at the June 20 case management conference, the parties reasonably believed that Judge Chen would discuss the parties' proposal to consolidate claim construction with this Court, and based on Judge Chen's Civil Minutes issued several days later, the parties reasonably believed that this Court and Judge Chen had agreed that the two cases were consolidated for claim construction, as stated in Judge Chen's Civil Minutes.

Counsel for Asetek and Cooler Master also believed that they were fulfilling their obligations to both judges of the Court by complying with the schedule for claim construction proceedings issued by Judge Chen. In hindsight, the parties could have, and should have, been more diligent in apprising this Court of the proceedings before Judge Chen at the June 20 case management conference and Judge Chen's Civil Minutes following that case management conference. This is not, however, a case in which any party intentionally failed to comply with

this Court's orders. Instead, the parties' joint proposal to consolidate the cases for claim construction proceedings was primarily intended to promote judicial efficiency and conserve this Court's time and resources. The parties reasonably believed that this Court and Judge Chen had conferred and agreed that Judge Chen would preside over consolidated claim construction proceedings. The parties conducted themselves accordingly and in good faith by meeting every deadline on Judge Chen's schedule for the consolidated claim construction proceedings. For all these reasons, the parties respectfully submit that no sanctions are warranted.

IV. Conclusion

For the reasons set forth above, the parties have acted in good faith and respectfully request that the Court not impose sanctions for failure to file a Joint Claim Construction and Prehearing Statement in this action.

Respectfully submitted,

Dated: October 17, 2013

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ATTESTATION OF E-FILED SIGNATURES

I, Robert F. McCauley, am the ECF user whose ID and password are being used to file this PARTIES' JOINT STATEMENT IN RESPONSE TO ORDER TO SHOW CAUSE WHY THE COURT SHOULD NOT IMPOSE SANCTIONS FOR FAILURE TO FILE JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT. In compliance with Civil L.R. 5-1(i) (3), I hereby attest that Elizabeth H. Rader has concurred in this filing.

Dated: October 17, 2013 By: */s/ Robert F. McCauley*