UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASIO INC.

Plaintiff,

v.

PAPST LICENSING GMBH & CO. KG,
Defendant.

PAPST LICENSING GMBH & CO. KG,
Counter-Plaintiff

v.

CASIO INC. and
CASIO COMPUTER CO., LTD.

Counter-Defendants

Civil Action No. 1:06 CV 01751

Judge: Gladys Kessler

Magistrate Judge: Deborah A Robinson

PAPST LICENSING GMBH & CO. KG'S REQUEST FOR CLARIFICATION OF MAGISTRATE JUDGE ROBINSON'S MAY 31, 2007 ORDER

Defendant and Counter-Plaintiff Papst Licensing GmbH & Co. KG ("Papst Licensing") respectfully requests clarification of Magistrate Judge Robinson's May 31, 2007 Order to state (1) that Papst Licensing has not waived its protections under the work product doctrine, the attorney-client privilege and other privileges recognized by law, and (2) that Papst Licensing has not waived its right to protect information as confidential under a future protective order, or by agreement of the parties.

On May 31, 2007, U.S. Magistrate Judge Robinson heard oral argument on Casio Inc.'s Motion to Compel and for Sanctions. A copy of the Court's Minute Entry and the

transcript from this hearing are attached hereto as Exhibit A. In its oral ruling, the Court stated "First, the Court orders that complete responses – that is, without objections, which have been waived by the failure to respond in a timely fashion – be served within 10 calendar days of today's date." (Ex. A, p. 27.)

Papst Licensing is diligently assembling the information to comply with this Court's Order. However, it is not clear to Papst Licensing whether this Court also ordered that Papst Licensing should produce information that is protected by the work product doctrine, the attorney-client privilege or any other privilege recognized by law such as the Rule 26(b)(4)(B) consulting expert privilege. These privileges and the work product doctrine are not specifically mentioned by the Court in its ruling. Such a ruling on waiver of privilege would inflict a disproportionate punishment on Papst Licensing. Therefore, Papst Licensing respectfully requests that this Court clarify its order to reflect whether it intended that Papst Licensing has also waived its protections under the work product doctrine, the attorney-client privilege and other privileges recognized by law.

It is also not clear to Papst Licensing whether this Court ordered that Papst Licensing has waived its right to protect information that is confidential to Papst Licensing or third-parties under a future protective order. The parties are currently discussing a potential protective order, and Casio has already agreed in an e-mail attached hereto as Exhibit B that Papst Licensing may "produce its confidential documents to Casio on an outside counsel only basis until the protective order issues are resolved by the Court." (See Ex. B).

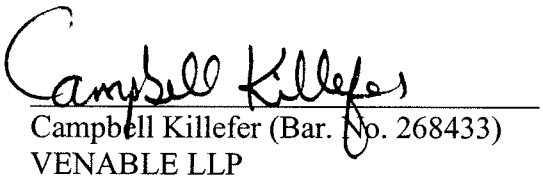
On June 5, 2007, counsel for Papst Licensing, Joseph E. Cwik, and counsel for Casio, Scott Stimpson, conferred on this issue pursuant to Local Rule 7(m). Casio

opposes this motion because it believes that the Court intended to rule that Papst Licensing has waived its protections under the work product doctrine, the attorney-client privilege and all other privileges recognized by law.

WHEREFORE, Papst Licensing respectfully requests that this Court clarify its May 31, 2007 Order to state (1) that Papst Licensing has not waived its protections under the work product doctrine, the attorney-client privilege and other privileges recognized by law, and (2) that Papst Licensing has not waived the right to protect documents as confidential under a future protective order, or by agreement of the parties. A proposed Order accompanies this motion.

Dated: June 6, 2007

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon the following counsel for Plaintiff and Counterclaim Defendant Casio Inc. and Counterclaim Defendant Casio Computer Co., Ltd. through the Court's ECF electronic service and by regular U.S. mail, postage prepaid, this June 6, 2007:

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Exhibit A

Cwik, Joseph

From: DCD_ECFNotice@dcd.uscourts.gov
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U.S. District Court

District of Columbia

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Case Name: CASIO INC v. PAPST LICENSING GMBH & CO. KG
Case Number: 1:06-cv-1751
Filer:
Document Number: No document attached

Docket Text:
Minute Entry. Proceedings held before Magistrate Judge Deborah A. Robinson : Motion Hearing held on 5/31/2007 re [24] MOTION for Sanctions filed by CASIO INC and [22] MOTION to Compel Discovery and for Sanctions is granted for reasons set forth on the record. (Court Reporter Pro-typists.) (lm)

1:06-cv-1751 Notice has been electronically mailed to:
Campbell Killefer ckillefer@venable.com, docket@welshkatz.com, mamarkowska@venable.com, mhbelayneh@venable.com, wjkawula@welshkatz.com
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Joseph E. Cwik jecwik@welshkatz.com

1:06-cv-1751 Notice will be delivered by other means to::

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In the Matter of:	:	
CASIO, INC.,	:	
Plaintiff,	:	
vs.	:	Civil Action No. 06-1751
PAPST LICENSING GMBH & CO.,	:	
Defendant.	:	
	:	Washington, D.C.
	:	May 31, 2007

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE DEBORAH A. ROBINSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: J. KEVIN FE, ESQ.
SCOTT D. STIMPSON, ESQ.

For the Defendant: JEROLD B. SCHNAYER, ESQ.
DAMON W.D. WRIGHT, ESQ.

Proceedings recorded by the Court, transcript produced by Pro-Typists, Inc., 1012-14th Street, N.W., Suite 307, Washington, D.C. 20005, 202-347-5395, www.pro-typists.com
M1837V/bf

PROCEEDINGS

THE CLERK: Civil Case Number 06-1751. This is in the matter of Casio, Inc. versus Papst Licensing GMBH & Company. I don't know what the "KG" is. I have that on our archive. Kevin Fe and Scott D. Stimpson for the Plaintiffs; Jerold B. --

MR. SCHNAYER: "Schnayer."

THE CLERK: -- Schnayer and Damon Wright for the Defendant. This is set for a motions hearing.

THE MAGISTRATE JUDGE: Now, good afternoon to all of you. This matter was scheduled for a hearing on the motion filed by Casio, to compel and for sanctions.

The issue presented by the motion is a relatively straightforward one, and the Court indeed considered ruling on the motion without scheduling a hearing. But recognizing that the status of the issue presented might have changed as of the time the Court made a ruling had there been no hearing, the Court thought it prudent for counsel to come in and address the matter.

I understand, based upon your informal discussion off the record my law clerk before the case was called, that it may be the case that some responses to the outstanding interrogatories have been served. However, recognizing that that may not fully address the pending motion, the Court will hear first from Plaintiff's counsel, then from counsel

for the Defendant, regarding these issues.

Now, who will address the matter on behalf of the Plaintiff?

MR. STIMPSON: I will, Your Honor. Scott Stimpson.

THE MAGISTRATE JUDGE: Mr. Stimpson, good afternoon.

MR. STIMPSON: Good afternoon, and thank you. I will be brief.

We were served last night with responses to interrogatories and document requests. There are many objections. We still have not received a single document in document production.

I think it would help just to have a very short recitation of the chronology as things have played out here.

On March 2 we had what we believed to be our 26(f) conference and we served our discovery requests. We served a proposed discovery plan on the other side on March 9. It was more than six weeks later before we got any comments from the other side after this motion was filed.

On March 13, Judge Kessler issued an order that discovery proceed.

Exhibit J to our motion is a letter we sent to opposing counsel shortly before their responses were due, which I think is instructive here. We were getting wind

that -- it's "J," Your Honor. We were getting wind that perhaps they were not going to respond on time, and we sent a letter telling them that Judge Kessler has ordered discovery to proceed and we expect full and appropriate responses, and if we don't get them we are going to take appropriate action.

So counsel for Papst took the risks they were taking with their eyes wide open to what might happen here.

It is now May 31. We are about three months since we served our discovery requests. We are two-and-a-half months after Judge Kessler ordered discovery to proceed. We do not have a single document. And the responses we received last night are riddled with objections.

THE MAGISTRATE JUDGE: May I ask you to state the substance of some of the objections. In other words, what sort of objections were raised.

MR. STIMPSON: I only received them last night, so I went over them briefly today, Your Honor.

The objections to the document requests -- they have objections on a protective order, they have objections on over-breadth, they have, you know, your typical objections you'd expect, privilege and work product.

Some of the document requests, they say they will give us some documents at some unspecified date. Some of the document requests, they simply -- if I remember

correctly, they simply say, "No," or "We'll think about it. We'll talk to you at some other time." Or, "We'll have a meet and confer, and discuss it."

But as I say, we have yet to receive a single document, and the case has been going for three months now - discovery has been going for three months.

THE MAGISTRATE JUDGE: What is your proffer regarding whether or not any agreement was reached with respect to objections?

MR. STIMPSON: I believe no agreement was reached -- absolutely none.

THE MAGISTRATE JUDGE: Very well, you may continue.

MR. STIMPSON: So, Your Honor, my opponent is trying to make this into a 26(f) issue. 26(f) is long since done, and this is not a 26(f) issue. This is a 26(d) issue. This is about a failure to respond to the Court order. 26(d) says that discovery can proceed regardless of whether there's been a 26(f) conference if the Court orders it, and unquestionably the Court ordered it.

So the question, I think, or the consequences of what's happened here, it's very clear that the Court order has been -- they have not complied with the Court order. And so we request basically four remedies for that.

One is, since the objections are untimely, they

are waived. That we get prompt discovery, including all the documents that should have been produced. We also request our fees and costs under 37(a) and (b).

THE MAGISTRATE JUDGE: And by "fees and costs," may I assume you mean fees and costs associated with the filing of the motion?

MR. STIMPSON: Correct. Correct. And lastly, Your Honor, I think an appropriate sanction in this situation would be entry of an order bifurcation. I think, for one thing, it's going to avoid another motion which may be coming, and bifurcation is particularly appropriate in this case.

Judge Kessler has asked that fact discovery be completed by December, December of this year. We've now had three months of our fact discovery period go by. We haven't received a single document. We've now just got six months left. And if damages and willfulness are left in this case, it is going to be darn near impossible to get this done pursuant to Judge Kessler's order. And it's a particularly appropriate sanction here, Your Honor, because they're effectively using the 26(f) procedures as a shield to prevent themselves from having to comply with the CRA.

So if there are no questions, I'll turn it over to my opponent.

THE MAGISTRATE JUDGE: Well, I do have one

additional question, Mr. Stimpson. Is your request for what you term "bifurcation" a request for a sanction or is it simply your view that, given the delay in making discovery that discovery cannot be completed in the time for which the Court already provided.

MR. STIMPSON: Well, it's both actually, Your Honor. We've cited cases where, in fact, one Court specifically mentioned entering a scheduling order by opposing party if they didn't comply with the Court orders. It's certainly an appropriate sanction for what's happened here.

But stepping back and just looking at where we are now, and we've got six more months of fact discovery, it's a very complicated case, even liability-wise. We've got two patents, we've got many accused products, we've got lots and lots of prior art. I assume there will be many accused claims of each patent that are alleged to be infringed. It is going to be a mountain for a jury. And if you add damages and willfulness to that, it is going to be a very lengthy trial and I can't see how we can really get it done in time.

So there are many reasons for bifurcation. I will leave that argument for another day, if it's needed. But a short answer to your question is, as a sanction and because it's appropriate, we request bifurcation.

THE MAGISTRATE JUDGE: Very well. Thank you very much, Mr. Stimpson.

MR. STIMPSON: Thank you.

THE MAGISTRATE JUDGE: Mr. Schnayer?

MR. SCHNAYER: Yes, Your Honor.

THE MAGISTRATE JUDGE: Very well. Good afternoon.

MR. SCHNAYER: Good afternoon. Nice to see you again.

Your Honor, first of all, let me make it clear we did serve discovery responses, and I would like to point out that the -- I'm going to hand up a copy -- they only have one copy, but I'd like to point out --

THE MAGISTRATE JUDGE: Let me interrupt you just one moment.

MR. SCHNAYER: Sure.

THE MAGISTRATE JUDGE: I don't believe that I need to see the responses. Let me ask whether you concede that service of any responses last night was well beyond the time in which --

MR. SCHNAYER: No, Your Honor.

THE MAGISTRATE JUDGE: -- the responses were due.

MR. SCHNAYER: Your Honor -- no.

THE MAGISTRATE JUDGE: When were you served with the discovery requests?

MR. SCHNAYER: We were served with the discovery

requests -- maybe I should go back and give you my version of what happened.

THE MAGISTRATE JUDGE: Well, let me ask when you were served with the discovery requests.

MR. SCHNAYER: On March 2nd, we were served with the discovery responses, Your Honor. And --

THE MAGISTRATE JUDGE: Discovery "requests."

MR. SCHNAYER: Discovery requests.

THE MAGISTRATE JUDGE: Very well. You may continue.

MR. SCHNAYER: Your Honor, in this case originally we had been having discussions about infringement charges. I'm going to go back to the beginning, because I think it needs to be understood. We've had discussions with Casio about charges of infringement we made against them concerning two patents that are involved in this lawsuit. They concern digital cameras. We had one meeting with them, never with their client, and my normal experience is we usually have five, ten meetings with companies and we discuss the issues. They decided to sue Papst, to bring a DJ action. So this case started as a DJ action.

We filed a counterclaim against them, and originally it was Casio USA involved, and we also sued Casio Japan. And when we sued Casio Japan we did so because it's our understanding that they manufacture the infringing goods

here.

And we had meetings with counsel before the Rule 26(f) conference that they claim happened, and we said to them, "Lookit, do you represent Casio Japan? Would you accept service of process for Casio Japan?"

And we were told, "We don't represent Casio Japan and we won't accept service of process for Casio Japan."

So we were forced to go through the Hague Convention. What that means is, since it's a foreign company we have to file a request with the Court, the Court files a request with the Justice Department, the Justice Department here files a request in Japan, and they serve the company, and eventually they got served.

And so a lot of delay that was caused in this case was caused by the Plaintiff in this case. They could have accepted services of process.

Now, we have this meeting, and we asked them to provide us with a draft before the meeting. We also asked them whether they represented Casio Japan. Because Casio Japan is a party. And they come to the meeting, we never got a draft of a proposal for the 26(f) scheduling order that we had to present to the Court -- they're the Plaintiff. And they come to the meeting and they say, "We don't represent Casio Japan."

So I said, "Well, how could we have a 26(f)

conference if you don't represent Casio Japan?"

And they said, "Well, we don't represent them. And we're not going to accept service of process."

Counsel wasn't at that conference. It lasted for about 15 minutes.

THE MAGISTRATE JUDGE: Do you agree, Mr. Schnayer, that there's no authority which holds that even the complete absence of a meet and confer session relieves a party of the time limits which otherwise apply to the service of responses to interrogatories and requests for production of documents?

MR. SCHNAYER: I don't. I think the rule is clear. I think you have --

THE MAGISTRATE JUDGE: What portion of the rule is it --

MR. SCHNAYER: 26(f) --

THE MAGISTRATE JUDGE: -- on which you rely?

MR. SCHNAYER: Okay. Yes. It says --

THE MAGISTRATE JUDGE: What portion are you reading?

MR. SCHNAYER: I'm in 26(d), Timing and Sequence of Discovery. "Except in categories of proceedings exempt from initial disclosure under Rule 26(a)(1)(E) or when authorized under these rules or by order of agreement of the parties, a party may not seek discovery from any source

before the parties have conferred as required by Rule 26(f)."

And then, Your Honor --

THE MAGISTRATE JUDGE: Doesn't the order of Judge Kessler, which directed that discovery proceed, mean that your reliance on that rule is misplaced?

MR. SCHNAYER: I don't think so, Your Honor, at all. It's not how I read the Judge's order.

Counsel asked that discovery be allowed to go forward. After we had that 15-minute conference, this so-called 26(f) conference, we met numerous times for many hours on the phone.

And when I saw the Judge's order, it was my understanding that we had to -- that discovery would go forward, but the Judge never said that you don't have to comply with 26(d). 26(d) is very specific. It says you have to have a 26(f) conference. That doesn't mean meet for 15 minutes and discovery goes forward. It means you're supposed to prepare a discovery plan. You're supposed to discuss the issues. And I have a section of the statute that -- I'm going to hand up a copy of this, if I may, Your Honor?

THE MAGISTRATE JUDGE: You need not hand up the statute or the rule. We have it here.

MR. SCHNAYER: Well, these are the notes for the -

- committee notes for that, that were part of it, describing what was contemplated under new twenty -- or, 26(f), and what it basically talks about is -- these were recently passed. It talks about electronic discovery, it talks about the requirement to talk about electronic discovery, to exchange information; that the committee now wants these initial conferences to be significant, to exchange information, for the parties to cooperate.

And the first conference we had, one of the parties wasn't even present at that conference. Because they wouldn't agree -- the same attorneys that represent them now wouldn't agree to talk on their behalf. We couldn't have had a conference.

I asked them to provide me with information about electronic discovery. The new rules say this is an important issue that must be addressed, and we had hours of conversations after this. Right up until the time we filed the 26(f) statement. And we -- we -- took the initiative on that.

We asked them to provide us with a bunch of information. If you look at the letters attached to my motion, we sent out letters and we show you a list of questions we asked them, that they never complied with.

So, for example -- we were trying to hone the issues down. This is a complicated case. Understand,

there's a Japanese company and a U.S. company. This is not easy. There might be additional companies involved here. If we don't get the parties that we need involved or find out about the electronic data, it's hard for us to comply with Rule 26(f) as contemplated by the rules. And we had conversation after conversation with them. And they wouldn't provide us with the information. Their answer was, "We're not going to give you free discovery."

Serve formal requests. Well, the rule contemplates the parties are going to cooperate. We hoped to get a 26(l) conference completed pretty quickly, but we couldn't until the very last day because the parties were exchanging extensive drafts, because we weren't getting cooperation. In the end, I finally threw up my hands and said, "Okay, I have to move forward, I have to agree on something," and we submitted a joint report to the Court.

THE MAGISTRATE JUDGE: Do you agree that in the joint report this issue which -- when I say the "joint report," I mean the joint report which you also signed -- does not raise this issue at all?

MR. SCHNAYER: No, it doesn't really address it at all. They filed a separate motion. It doesn't address it. And it does not --

THE MAGISTRATE JUDGE: Do you also acknowledge that you did not file a motion to extend the deadline for

serving your answers to these discovery requests until a more meaningful meet and confer session could take place?

MR. SCHNAYER: Your Honor, I didn't -- the rule is specific. It says you have to have one beforehand.

You know, I feel like I'm getting set up here. You know, they complain my answers aren't sufficient. Your Honor, they gave me nothing in their answers. They gave me nothing. They objected to everything. I provided them with substantive responses. You know, we walk into this case --

THE MAGISTRATE JUDGE: Is there a motion pending regarding your client's concerns about the sufficiency of the responses served by Casio?

MR. SCHNAYER: I haven't had a chance to meet and confer with them. We were preparing for this motion, and we'll deal with it. We have to meet and confer. I was only -- he comes in and he says my responses aren't good. I was responding to that. And I was pointing out to you and I was going to show you, here's a several-page response showing how the claims read on their device.

We gave them substantive responses. They didn't give us substantive responses. They wouldn't provide us with the information we needed for the 26(f) conference. It's my view that it never occurred until the day we finalized, signed off on the agreement, and sent it to the Court, and the answers aren't due until -- they're not even

due today. We served them early. By serving him yesterday, we served him early.

THE MAGISTRATE JUDGE: What is your contention regarding when the answers to discovery requests served on March 2nd, 2007, are due?

MR. SCHNAYER: They won't be due until a couple of days from now. They're not due, because we never had a 26(f) conference.

THE MAGISTRATE JUDGE: What is the basis of your determination that they're not due until two days from today?

MR. SCHNAYER: Because we took the exact date when the parties did have a completed 26(f) conference, after several substantive meetings, and the parties came to a proposal to submit to the Court and we submitted the scheduling proposal. That's the day that we had our 26(f) conference and finalized it. And it's my position that's -- according to the rules, that's the only date that makes sense.

If I'm wrong, I apologize. We did this in good faith. We did not do this to delay anything. This is a complicated case. There's complicated issues. We have been looking into getting documents, we've got a client from Germany, we've got a -- the patentee doesn't work for our company, so it's not such an easy issue, but we have been

gathering documents. And we put together a very substantive charge of infringement here. Your Honor, they don't have anything like this in their discovery responses. So this took time to put together.

But they complain that I delayed everything. It's not true. We tried to get the 26(f) conference done sooner. We couldn't get any responses from them. They didn't give us the information. I'll point out the letters to you, because I think those are important.

If you look at our brief --

THE MAGISTRATE JUDGE: I have it here.

MR. SCHNAYER: And if you look at Exhibit A. This is an interesting one. Exhibit A, in the back two pages, is a letter from opposing counsel. It starts out as a -- the bottom part is an e-mail from J. Gold, who is Plaintiff's counsel, and Mr. Swick, Joseph Swick, who is the top part, this is a response to a e-mail, is on the part -- is the top part.

But if you look at the second page -- and this is the letter that Mr. Gold sent after that supposed conference. It says, "With regard --" on the last page of this. Second to last page, I'm sorry. Second to last page, point 4 of Exhibit A, it says -- Point 4 on there? Second line?

THE MAGISTRATE JUDGE: I have it.

MR. SCHNAYER: Okay. "Regarding your request to identify the specific details of Casio Inc., Casio Japan, and any related entities' computer systems, such a request is beyond the scope of the 26(f) conference." Then he goes on and gives us a little bit of information about it, but he says -- and this is the important part -- bottom line, last line, "If you believe you are entitled to any more information about Casio Inc.'s system or any specific discovery, please serve a discovery request and we'll consider it." That was their attitude. We're not going to give you free discovery. As the rules contemplate, parties should cooperate.

Then if you look at my letter, if you look at Exhibit -- look at Exhibit, if you would, please, Your Honor, E. First page.

THE MAGISTRATE JUDGE: I have it.

MR. SCHNAYER: This discusses a conference that Mr. Swick in my office had with Mr. Gold, and Mr. Gold represents the Plaintiff. And you can see the second paragraph. It says, "At the conference we asked you several questions relevant to developing a carefully considered litigation schedule. At the time, you weren't able to provide any answers to several of our questions. We ask that you please provide us with answers to these questions before our next meeting on April 16th." So these were part

of the continuing meetings.

And you can see we're asking questions about the name of the companies that were involved in the design and development, so we can decide if we have the right parties and know how long discovery is going to take -- reasonable questions. "What are the names of the companies that were involved in the manufacture of the cameras. What are the names --" 3, "What are the names of all Casio companies that were involved in the sale of the cameras." That's also relevant. "Are both Casio Japan and Casio USA willing to voluntarily produce relevant information and witnesses from all their parent companies?" So we're trying to find out how much foreign discovery we have to do. That's a reasonable request.

Five, "Is Casio Japan and Casio US potentially relevant electronic information reasonably accessible?" The rules require you to talk about reasonable accessibility in the 26(f) conference. That is something you must discuss. Or you should discuss. And that is, is the information reasonably accessible because electronic discovery is very complicated and if it's not reasonably accessible, then you have to talk about shifting costs and who should pay for it. And that's important, according to the new rules, to deal with electronic discovery. We asked them questions about that and we got no answers.

And then we asked, "Who are the names of the -- names, titles and employers of those individuals at Casio Japan and Casio US who have special knowledge about each respective party's computer system." If you read the section of the rule, the notes on it, it says that that's the kind of information you're supposed to talk about. In fact, they discuss and some Courts have said you've got to bring somebody knowledgeable about it from the company and have a real significant exchange. So we tried to do that with them.

And now look, if you would, at Exhibit F. Exhibit F is April 18th, a further letter from Mr. Swick to Mr. Gold. "We are disappointed that you called this morning to state you were unilaterally canceling our previously agreed to upon continuation of the Rule 26(f) conference scheduled to occur today. As we understand it, you are unwilling to participate because you have not received _____ proposal. However, at this time you also indicated you were unwilling to discuss many of the Rule 26(f) issues that will help parties develop a carefully developed scheduling plan. Specifically, you told me, for the first time, you're unwilling to discuss the following questions," and those are the same questions that we had listed in our other letter to them. And there's no letter that says, "Yes, we were willing to discuss these with you."

So a lot of the delay here was caused in having the final Rule 26(f) conference by counsel for Plaintiff not giving us, quote, "free discovery," which is the kind of cooperation you need in a case to formulate a reasonable discovery plan.

THE MAGISTRATE JUDGE: Am I correct, Mr. Schnayer, that the sole basis of your client's determination to serve no answers until last night has to do with the manner in which the conference was conducted?

MR. SCHNAYER: The fact that there was no conference. There was no conference. And --

THE MAGISTRATE JUDGE: Very well.

MR. SCHNAYER: There was none. That's not a conference. And it didn't occur until we signed the papers after many discussions, and trying to do it in a quick fashion.

I also have one other point I'd like to make.

THE MAGISTRATE JUDGE: Yes.

MR. SCHNAYER: Counsel has raised an issue, and this is sort of a side point, but I want to make this clear because I think it's important.

He said one of the sanctions we want is that you should segregate out the damages issue and willfulness issue. And I'd like to point out that at the hearing that occurred with the Judge, the scheduling hearing that we had,

the one hearing, the Judge -- that issue was before the Court because both parties addressed it in the papers they filed, this big paper we put together finally which listed the parties' positions. And they asked the Judge for bifurcation. They asked the Judge for bifurcation.

And the Judge, at the end of the hearing, issued an order and that's -- of the record, and she ordered the schedule. And there's nothing in the order that talks about bifurcation. And after she read the order -- she read it out loud, and then she issued it in writing after the hearing, she said, "Are there any more questions?" She turned to Plaintiff first. Counsel didn't raise any questions. He didn't raise this issue with the Judge.

Bifurcation was already considered by the Court -- by the District Court Judge -- and denied. It was denied. And now they're saying, we want the sanction of bifurcation. Well, they have it -- it's already been ruled on. And second, it's not a proper -- there's no authority to say that this is a proper sanction under the rules. There's no authority for it. it's just like, we want it because we want it. It's not proper. So it's already been ruled on.

So, Your Honor, we did believe that the Judge's order -- they have the ability to ask the Judge -- and they never did in the papers they filed -- to address the issue of the Rule 26(f) conference. They never said to the Judge,

"You know, we want a specific ruling that discovery should be considered served as of that day." They never asked for it in their pleading. And the Judge never ruled on it. If you look at the paper they filed, it doesn't ask for that. So they never asked for it, the Judge never ruled on it, and we proceeded with that understanding.

If I'm wrong, I apologize. We served our discovery requests. But it's not sanctionable, Your Honor.

THE MAGISTRATE JUDGE: Very well, thank you, Mr. Schnayer.

MR. SCHNAYER: Thank you, Your Honor.

THE MAGISTRATE JUDGE: Mr. Stimpson, if you wish a brief reply I will hear you.

MR. STIMPSON: Your Honor, I don't (inaudible) have 30 seconds.

THE MAGISTRATE JUDGE: My expectation was that one of you would address the issue -- do you need a moment to confer with Mr. Schnayer? If so, you certainly may do so and I'm happy to take a brief recess if you need more than a moment or two to huddle.

MR. STIMPSON: Not a problem.

MR. SCHNAYER: Your Honor?

THE MAGISTRATE JUDGE: Mr. Schnayer, yes.

MR. SCHNAYER: If I may, please. Thank you. Counsel points out to me, co-counsel, that the committee

notes _____ -- Subsection (f) of the committee notes points out and it talks about Rule 26(f) as amended to direct the parties to discuss discovery electronically stored information during their discovery planning conference. And the rule focuses on the issues relating to disclosure or discovery of electronically stored information. Discussion is not required in cases which involve -- don't involve electronic discovery. In this case, of course, it does.

And it goes on in the committee notes, it says, it talks extensively about how this is important to focus the issues, to focus the issues so that you can have a good proposal to the Judge and focus the discovery in the case.

To have a 15-minute discussion where the parties haven't done anything is not a local rule conference. It's not consistent with these guidelines that are set out in the committee notes. It really contemplates that you -- and it goes through, and if Your Honor would care to read it after the hearing, it goes through and it says you're supposed to discuss these issues and narrow the issues.

THE MAGISTRATE JUDGE: The Court is eminently familiar with the committee notes.

MR. SCHNAYER: Thank you, Your Honor.

THE MAGISTRATE JUDGE: Very well. Thank you. You may have a seat.

MR. SCHNAYER: Appreciate it. Thank you.

MR. STIMPSON: Your Honor, 30 seconds. Just on the last point that Mr. Schnayer raised, about this being already -- bifurcation already being decided by Judge Kessler. And that meet and confer statement, I believe -- I don't have it in front of me, but I believe the very first thing we said was we're asking for this as a sanction, and Judge Kessler said she's passing this motion on to Your Honor. She certainly did not rule on bifurcation.

The rest of Mr. Schnayer's argument was all about 26(f), and I don't believe this is about 26(f). This is about noncompliance with Judge Kessler's order.

If you don't have any further questions, I'll sit down.

THE MAGISTRATE JUDGE: Very well. Thank you. You may have a seat.

MR. STIMPSON: Thank you.

THE MAGISTRATE JUDGE: As the Court indicated at the outset, the Court reviewed the motion, the opposition and the reply in advance of the hearing, and the Court has now considered the proffers and arguments of counsel during the course of the hearing. Having done so, the Court will grant the motion, largely for the reasons offered by the Movant, both orally and in writing.

More specifically, the Court finds that what Papst

urges upon the Court is a novel way of counting the number of days in which a party must serve responses to written discovery requests. The Court uses the term, quote, "novel," close quote, because there is simply no authority which supports this method of calculating the deadline.

The rules make plain when it is that a party is to serve responses to written discovery requests. There was no motion for enlargement of time filed by Papst. Papst did not seek any clarification of the due date in the meet and confer report that counsel, along with opposing counsel, filed in this matter, and appears to have unilaterally taken the position that because Papst was displeased with the manner in which the Rule 26(f) meeting or conference was conducted that the responses to the written discovery requests would be withheld.

However, there is no authority that suggests that a party may unilaterally alter the rule which would otherwise apply, particularly in an instance such as this where the Court ordered that discovery proceed, simply because of a concern regarding the sufficiency of the 26(f) conference.

For these reasons, the Court finds that the opposition to the motion to compel and for sanctions was not substantially justified and that there are no circumstances which would make the imposition of sanctions unjust.

The Court therefore orders the following.

First, the Court orders that complete responses -- that is, without objections, which have been waived by the failure to respond in a timely fashion -- be served within 10 calendar days of today's date.

Second, the Court imposes as a sanction the costs to Casio, including reasonable attorney's fees, of moving to compel and for sanctions. The Court will order that such costs be paid within 30 days of today's date and that counsel work cooperatively to share and comment upon the reasonableness of those costs. This is not a matter that should entail the filing of a motion, because the Court expects that you will work cooperatively to determine what the reasonable costs are.

To the extent that there is an additional sanction that Casio requests, the motion for any additional sanction other than the fees and costs, is denied.

The Clerk will prepare a minute entry which will indicate that the motion to compel and for sanctions was granted for the reasons set forth on the record at the hearing. There is no order, no written order, that will follow. The minute entry will also indicate that complete responses without objection are to be served within ten days of today's date, and that Papst is to pay Casio's costs within 30 calendar days of today's date.

Now, is there anything further in this matter this afternoon? Mr. Stimpson or Mr. Fe?

MR. STIMPSON: Not that's pending before Your Honor right now, nothing (inaudible).

THE MAGISTRATE JUDGE: Very well, thank you. Mr. Schnayer, Mr. Wright?

MR. SCHNAYER: Nothing further, Your Honor. Thank you.

THE MAGISTRATE JUDGE: Very well. Thank you very much.

There is nothing scheduled for the courtroom for the rest of the day, so if you wish to stay and continue your efforts to confer before you return to your respective destinations, you are welcome to do so.

COUNSEL: Thank you.

THE MAGISTRATE JUDGE: Very well. Thank you very much.

(Whereupon, proceedings were concluded.)

UNITED STATES OF AMERICA)
) Civil Action No. 06-1751
DISTRICT OF COLUMBIA)

I, PAUL R. CUTLER, do hereby certify that a recording of the foregoing proceedings in the above matter was duplicated from an original recording by the Office of the Clerk, United States District Court for the District of Columbia, and that said duplicate recording of the proceedings was transcribed under my direction to typewritten form.

PAUL R. CUTLER

I do hereby certify that the foregoing transcript was typed by me and that said transcript is a true record of the recorded proceedings to the best of my ability.

BONNIE FURLONG

Exhibit B

Cwik, Joseph

From: Scott Stimpson [stimpsonlaw@gmail.com]
Sent: Tuesday, June 05, 2007 12:13 PM
To: Cwik, Joseph
Cc: Jeffrey Gold; lkrawczyk@morganlewis.com; jkfee@morganlewis.com; Schnayer, Jerold; Killefer, Campbell
Subject: Re: Conference Today

Joe:

Correct, with the qualifier that people regularly employed by MLB may see the documents. As for Casio documents, ordinarily we would make a reciprocal arrangement, but here your firm is prosecuting applications and trying to cover products that would be in our confidential documents and information, and so we first need to get that issue resolved.

As for the order on waiver, we think the order was very clear that privilege and work product are waived.

Scott

On 6/5/07, **Cwik, Joseph** <jecwik@welshkatz.com> wrote:

Scott,

Confirming our conversation today, you have agreed that Papst Licensing will be allowed to produce its confidential documents to Casio on an outside counsel only basis until the protective order issues are resolved by the Court. Nonetheless, Casio does not agree to produce confidential Casio documents to Papst Licensing on the same basis. You have further confirmed your interpretation of the Magistrate's Order is that Papst Licensing's attorney-client privilege and work product protections have been waived.

Please let me know if I have misstated your positions in any way.

Regards,

Joe

Joseph E. Cwik
Welsh & Katz, Ltd.
120 S. Riverside Plaza, 22nd Floor

Chicago, IL 60606
Direct Phone: (312) 526-1622
Fax (312) 655-1501

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASIO INC.

Plaintiff,

v.

PAPST LICENSING GMBH & CO. KG,
Defendant.

PAPST LICENSING GMBH & CO. KG,
Counter-Plaintiff

v.

CASIO INC. and
CASIO COMPUTER CO., LTD.

Counter-Defendants

Civil Action No. 1:06 CV 01751

Judge: Gladys Kessler

Magistrate Judge: Deborah A. Robinson

[PROPOSED] ORDER ON PAPST LICENSING GMBH & CO. KG'S MOTION FOR CLARIFICATION

Upon consideration of Defendant and Counter-Plaintiff Papst Licensing GmbH & Co. KG's ("Papst Licensing") Motion for Reconsideration of Magistrate Judge Robinson's May 31, 2007 Order, the Opposition thereto of Plaintiff and Counterclaim-Defendant Casio Inc. and Counterclaim-Defendant Casio Computer Co., Ltd., and the record in this case, it is hereby

ORDERED that Papst Licensing's motion for clarification is GRANTED, and it is FURTHER ORDERED that the Court's oral ruling at the May 31 hearing is modified to clarify: (1) that Papst Licensing has not waived its protections under the work product

doctrine, the attorney-client privilege and other privileges recognized by law; and (2) that Papst Licensing has not waived its right to protect information as confidential under a future protective order, or by agreement of the parties.

SO ORDERED

Dated: June ___, 2007

Deborah A. Robinson
U.S. Magistrate Judge