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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CASIO INC., **Plaintiff** **v.** **PAPST LICENSING GMBH & CO. KG** **Defendant.**	**Case No. 1:06-CV-01751** **Judge: Gladys Kessler** **Magistrate Judge: Deborah Robinson**
PAPST LICENSING GMBH & CO. KG, **Counter-Plaintiff** **v.** **CASIO INC. and CASIO COMPUTER CO., LTD.** **Counter-Defendants**	**Next status conference: December 4, 2007**

CASIO'S OPPOSITION TO PAPST'S MOTION FOR CLARIFICATION

I. NO CLARIFICATION IS NEEDED

The Court's Order on waiver of objections needs no clarification. Casio's Proposed Order was very clear that it was requesting "that all Papst objections to Casio, Inc.'s outstanding Interrogatories and Document Requests are waived . . . ." Proposed Order (emphasis added). The Court granted this request. Hearing Transcript, pp. 25 ("the Court will grant the motion, largely for the reasons offered by the Movant, both orally and in writing.").

Moreover, at the hearing, the Court specifically asked what objections had been made, and the Court was advised that Papst had made objections of privilege and work product. *Id*. at 4. The Court then ruled that Papst must provide "complete responses – that is, without objections, which have been waived by the failure to respond in a timely fashion…." *Id.* at 27.[1]

II. PAPST SEEKS RECONSIDERATION, WHICH SHOULD BE DENIED

The Papst motion is, in reality, a request for reconsideration. Judge Kessler addressed motions for reconsideration in her Scheduling Order:

> Motions for reconsideration are greatly disfavored . . . The Court assumes that counsel have made their best and most convincing arguments in their first round of briefing, and presumes that motions for reconsideration are simply a repetition and reframing of those original arguments. "Only if the moving party presents new facts or a clear error of law which 'compel' a change in the Court's ruling will the motion to reconsider be granted". *New York v. United States*, 880 F. Supp. 37, 38 (D.D.C. 1995).

5/14/07 Scheduling Order ¶14 (emphasis by Judge Kessler); *see also Zyko v. DOD*, 180 F. Supp. 2d 89, 91 (D.D.C. 2001) ("the reconsideration and amendment of a previous order is an extraordinary measure."); *New York v. United States*, 880 F. Supp. 37, 38 (D.D.C. 1995) (a motion to reconsider is not "a vehicle for presenting theories or arguments that could have been advanced earlier.").

[1] Casio does not object to Papst's request for reasonable confidentiality restrictions under a Protective Order.

It is well-established that untimely objections to discovery requests waive the work product and attorney-client privileges. *See United States v. British Am. Tobacco Ltd.*, 387 F.3d 884, 887 (D.D.C. 2004) (affirming holding that untimely objection waived privilege); *Schalk v. Teledyne, Inc.*, 1991 U.S. Dist. LEXIS 1974, *3 (W.D. Mich. Feb. 15, 1991) (untimely objection to discovery request resulted in the waiver of the attorney-client privilege); *Applied Sys. v. Northern Ins. Co.*, 1997 U.S. Dist. LEXIS 16014, *8 (D. Ill. Oct. 7, 1997) ("[I]t is firmly established that failure to object to a discovery request in a timely fashion may constitute waiver of the [work-product] objection."); *Layman v. Combs*, 1988 U.S. Dist. LEXIS 18517, *2-3 (N.D. Cal. Feb. 23, 1988) ("The law is well established that one who fails to timely object to discovery requests waives all objections including those based on privilege.").

Counsel for Papst presumably read our Proposed Order, and listened at the hearing while the Court asked about the nature of the objections and the response that identified privilege and work product, but Papst never attempted to carve out those objections in its briefing or during the hearing. Their time to do so has past.

There are neither new facts nor any clear error of law justifying reconsideration, as required by Judge Kessler's Scheduling Order. Accordingly, we respectfully request that the Court decline to reconsider this issue.

III. CONCLUSION

For all the foregoing reasons, we respectfully request that the Court deny the Papst motion for reconsideration/clarification, and again rule that all objections are waived.

Respectfully submitted,

DATED: June 7, 2007

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASIO INC., 570 Mount Pleasant Avenue, Dover, New Jersey 07801 Plaintiff, v. PAPST LICENSING GMBH & CO. KG, Bahnhofstrasse 33, 78112 Georgen, Germany Defendant.	**Civil Action No. 1:06 CV 01751** Judge: Gladys Kessler Magistrate Judge: Deborah Robinson Next status conference: 12/4/07
PAPST LICENSING GMBH & CO. KG, Bahnhofstrasse 33, 78112 Georgen, Germany Counter-Plaintiff, v. CASIO INC., 570 Mount Pleasant Avenue, Dover, New Jersey 07801, and CASIO COMPUTER CO., LTD., 6-2, Honmachi 1-chome, Shibuya-ku, Tokyo 151-8543, Japan Counter-Defendants.	

[PROPOSED] ORDER

Upon consideration of the Request of Papst Licensing GMBH & Co. KG ("Papst") for Clarification, it is hereby

ORDERED, that Papst's Request for Clarificiation is **denied**.

ORDERED that all of Papst's objections to Casio's discovery requests are waived, including all privilege and work product objections.

DATED:_____

_____
Deborah Robinson
United States Magistrate Judge