E-Mail Request for Emergency Relief

1. Case Number: 05-cv-418-SLR

2. Check the box that applies:

☐ Requesting a teleconference with the parties and the court
☐ Requesting an in-person conference with the parties and the court
☑ Requesting either of the above listed options at the court's determination

3. BRIEFLY describe the reason for this **emergency** request:

Foundry seeks an order compelling Alcatel to supplement discovery responses and to provide deposition dates for fact and Rule 30(b)(6) witnesses. This request for emergency relief, Foundry's first, is warranted because: (a) Alcatel still has failed to provide responses to discovery from its foreign and U.S. affiliates, despite the Court's June 13 order requiring it to do so; and (b) the October 16 discovery cutoff is less than two months away. Alcatel has failed to supplement its responses to discovery requests that have been outstanding since January, and has also failed to disclose all Alcatel affiliates who have knowledge relating to Foundry's counterclaim. Foundry also seeks an extension of the deadline to amend the pleadings (currently August 25) for the limited purpose of possibly adding an inequitable conduct defense on the '090 patent, because Alcatel has withheld necessary information. Alcatel has refused to provide a timely deposition date for a key fact witness, and yesterday it demanded the return of relevant documents on alleged privilege grounds.

*Any text added beyond the limits of this space will be disregarded by the court.

4. Name of opposing counsel contacted about this request: Robert Greenspoon

5. Response of opposing counsel to this request:

Opposed

6. Name of local counsel making this request: Philip A. Rovner

7. Today's Date: August 22, 2006

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For court use only:

☑ A teleconference will be held on 9/6/06 @ 3:00pm to be coordinated and initiated by Foundry's counsel.

☐ An in-person discovery conference will be held on:

☐ Other:

Costs to be assessed if either party's position determined to be frivolous.

Opposing Counsel's Response to E-Mail Request for Emergency Relief

1. Case Number: 05 -cv- 418 -SLR

2. BRIEFLY state your response to the **emergency** request made by opposing counsel:

These issues should have been raised at the recent discovery conference. Briefly responding, we received Foundry's first identification of categories for Count II on July 21. Count II should be severed if Foundry thinks it needs more time than the present cutoff. Meanwhile, the Alcatel parties are supplementing discovery as requested, and have offered to make witnesses available earlier to resolve this dispute. The Court did not "order" the Alcatel parties to produce foreign and U.S. affiliate discovery. Instead we agreed to produce the discovery voluntarily. Those efforts netted over 10,000 pages produced from overseas. But the Alcatel parties do not control Alcatel non-parties. Pleadings should be amended by the August 25 deadline with any new 'inequitable conduct' defense Foundry thinks it has discovered; Alcatel has not withheld discovery. We did demand return of privileged documents inadvertently produced, but the same day they were returned we sent back the revised production. Foundry's request should be denied.

*Any text added to beyond the limits of this space will be disregarded by the court.

3. Name of local counsel submitting this response: Josy W. Ingersoll

4. Today's Date: 8/23/06

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