IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

VANDERBILT UNIVERSITY, Plaintiff, v. ICOS CORPORATION, Defendant.	)	Civil Action No.: 05-506-SLR

CERTIFICATION PURSUANT TO LOCAL DISTRICT COURT CIVIL RULE 7.1.1

I, Chad J. Toms, Esquire, attorney for Plaintiff, hereby certify that Plaintiff has made reasonable effort to reach agreement with the opposing attorneys on the matters set forth in Plaintiff's Motion for Correction of the Docket. Those efforts include the following:

1. On or about October 16, 2007, Plaintiff submitted a letter to the Court informing the Court of the errors in the civil docket. A copy of Plaintiff's October 16, 2007 letter, without exhibits, is attached hereto as Exhibit "A."

2. The next day, Defendant submitted an E-Mail Request for Emergency Relief stating that Plaintiff should have used the Emergency Email Procedures or filed a formal motion. A copy of Defendant's October 17, 2007 E-Mail Request for Emergency Relief is attached hereto as Exhibit "B."

3. On or about October 19, 2007, the Court directed the parties to confer "and determine whether this matter can be resolved informally through [the Court's] email procedure, or whether the matter must be resolved through a motion practice." A copy of the Court's October 19, 2007 ruling is attached hereto as Exhibit "C."

4. The parties conferred to discuss the issue via e-mail but have been unable to reach resolution. A copy of the most recent correspondence between the parties is attached hereto as Exhibit "D."

5. After reasonable efforts to reach agreement the matter remains unresolved.

Dated: October 23, 2007

Chad J. Toms (#4155)
Bifferato Gentilotti LLC
800 North King Street, Plaza Level
Wilmington, DE 19801
(302) 429-1900

Attorney for Plaintiff,
Vanderbilt University

EXHIBIT A

BifferatoGentilotti
ATTORNEYS AT LAW
www.bglawde.com

Ian Connor Bifferato
Wilmington Office
Direct Phone: (302) 429-0907
Direct Facsimile: (302) 792-7470
cbifferato@bglawde.com

October 16, 2007

VIA E-FILE & HAND DELIVERY
The Honorable Sue L. Robinson
Chief Judge
United States District Court
J. Caleb Boggs Federal Building
844 North King Street, Room 6124
Wilmington, Delaware 19801

Re: Vanderbilt University v. ICOS Corporation
Case No. 05-506 SLR

Dear Judge Robinson:

The purpose of this letter is to inform the Court of an apparent error on the civil docket for this case. The docket erroneously reflects that the January 3, 2008 trial is set for a bench trial rather than a jury trial, which was requested in the original pleadings and civil cover sheet (copies of the civil cover sheet and the original complaint are attached hereto as Exhibits A and B).

As this Court will note, Vanderbilt filed its Complaint and Jury Demand on July 20, 2005, which is reflected on the civil docket (attached hereto as Exhibit C). On December 7, 2005, the Court entered its initial Scheduling Order, which set the trial for March 6, 2007. The December 7, 2005 Scheduling Order did not provide that the trial was set for a bench trial; however, the docket entry that was made on December 7, 2005 reflecting the Scheduling Order does mistakenly indicate that the trial was set for a bench trial. There were no motions or pleadings that would have supported that change on the docket (a copy of the December 7, 2005 Scheduling Order is attached hereto as Exhibit D).

On April 4, 2007, the Court entered a Supplemental Scheduling Order, which set the trial for January 3, 2008. The April 4, 2007 Supplemental Scheduling Order similarly did not provide that the trial was set for a bench trial; however, the docket entry that was made on April 4, 2007 reflecting the Supplemental Scheduling Order again mistakenly indicates that the trial is set for a bench trial (a copy of the April 4, 2007 Supplemental Scheduling Order is attached hereto as Exhibit E).

The case should thus be docketed for trial by jury. Vanderbilt respectfully brings this issue to the Court's attention because counsel for the defendants have suggested that they believe that this matter will go forward on January 3, 2008 as a bench trial. Should the Court deem it appropriate, the Court may wish to direct the Clerk of the Court to correct the docket entries accordingly.

Respectfully,

Ian Connor Bifferato

Enclosures

cc: Robert S. Brennen, Esquire (via email w/enclosures)
Kevin Flowers, Esquire (via email w/enclosures)
Richard Hermann, Esquire (via email w/enclosures)
Kurt Rommel, Esquire (via email w/enclosures)

EXHIBIT B

Chad J. Toms

From: Hadley, Susan C. [SHadley@morrisjames.com] on behalf of Herrmann, Richard K. [RHerrmann@morrisjames.com]

Sent: Wednesday, October 17, 2007 3:49 PM

To: Slr_Civil@ded.uscourts.gov

Cc: rbrennen@milesstockbridge.com; denglish@milesstockbridge.com; krommel@milesstockbridge.com; Connor Bifferato; Chad J. Toms; mborun@marshallip.com; jdaly@marshallip.com; jflory@marshallip.com; kflowers@marshallip.com; mgreene@marshallip.com; rgupta@marshallip.com; emendelson@marshallip.com; tross@marshallip.com; tweber@marshallip.com; Matterer, Mary B.

Subject: Vanderbilt University v. ICOS Corp., C.A. No. 05-506-SLR - Emergency Request for Relief

Attachments: ICOS Email Request.pdf

Your Honor,

Attached please find an E-Mail Request for Emergency Relief submitted on behalf of Defendant ICOS.

Respectfully,

Morris James LLP

Richard K. Herrmann
Attorney at Law
rherrmann@morrisjames.com
500 Delaware Ave., Ste. 1500 | Wilmington, DE 19801-1494
Mailing Address P.O. Box 2306 | Wilmington, DE 19899-2306
T 302.888.6816 F 302.571.1750
www.morrisjames.com

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E-Mail Request for Emergency Relief

1. Case Number: 05 -cv- 506 -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:

Plaintiff Vanderbilt University filed a letter yesterday afternoon (DI #121) regarding whether the upcoming trial in January will be a bench trial or a jury trial. We believe that if counsel for Vanderbilt was going to bring this to your attention at this point, they should have used Your Honor's Emergency Email Procedure or filed a formal motion but they did not. Please let us know if the Court would like ICOS to respond in a letter format or if the Court will strike Vanderbilt's letter.
If following the meet and confer required by L.R. 7.1.1., the parties are unable to agree that a 35 U.S.C. § 256 action is a purely equitable claim that must be tried to the Court, ICOS is prepared to file a motion to strike the jury demand.

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

4. Name of opposing counsel contacted about this request:

5. Response of opposing counsel to this request:

6. Name of local counsel making this request: Richard K. Herrmann

7. Today's Date: October 17, 2007

****

For court use only:

☐ A teleconference will be held on to be coordinated and initiated by

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

☐ Other:

EXHIBIT C

E-Mail Request for Emergency Relief

1. Case Number: 05-cv-506 -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:

Plaintiff Vanderbilt University filed a letter yesterday afternoon (DI #121) regarding whether the upcoming trial in January will be a bench trial or a jury trial. We believe that if counsel for Vanderbilt was going to bring this to your attention at this point, they should have used Your Honor's Emergency Email Procedure or filed a formal motion but they did not. Please let us know if the Court would like ICOS to respond in a letter format or if the Court will strike Vanderbilt's letter.
If following the meet and confer required by L.R. 7.1.1., the parties are unable to agree that a 35 U.S.C. § 256 action is a purely equitable claim that must be tried to the Court, ICOS is prepared to file a motion to strike the jury demand.

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4. Name of opposing counsel contacted about this request:

5. Response of opposing counsel to this request:

6. Name of local counsel making this request: Richard K. Herrmann

7. Today's Date: October 17, 2007

****

For court use only:

☐ A teleconference will be held on to be coordinated and initiated by

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

☑ Other:

I do not respond to letters. Plaintiff should confer with opposing counsel and determine whether this matter can be resolved informally through my email procedure, or whether the matter must be resolved through a motion practice.

EXHIBIT D

Chad J. Toms

From: Chad J. Toms
Sent: Tuesday, October 23, 2007 10:56 AM
To: Chad J. Toms
Subject: FW: Motion to Correct Docket

----- Original Message -----
From: Kevin Flowers <kflowers@marshallip.com>
To: Brennen, Robert S.
Cc: Thomas Ross <tross@marshallip.com>; Elliot Mendelson <emendelson@marshallip.com>; Rashmi Gupta <RGupta@marshallip.com>
Sent: Mon Oct 22 22:11:20 2007
Subject: RE: Motion to Correct Docket

Bob:

ICOS has no reason to believe that the docket entry was a mistake. Consequently, ICOS does not consent to any "correction" of the docket. ICOS also does not consent to motion practice regarding this matter. Pursuant to Judge Robinson's order, Vanderbilt should first use the Court's e-mail procedure to seek resolution of this issue.

Regards,

Kevin

From: Brennen, Robert S. [mailto:RBRENNEN@MilesStockbridge.com]
Sent: Fri 10/19/2007 2:56 PM
To: Kevin Flowers
Cc: Rommel, Kurt C.; English, Donald E.; cbifferato@bglawde.com
Subject: Motion to Correct Docket

Dear Kevin,

As you know, Vanderbilt University's complaint was accompanied by a demand for jury trial, but the Clerk mistakenly docketed the matter for a bench trial. In the absence of an agreement with ICOS that the docket should be corrected to reflect Vanderbilt's jury demand, Vanderbilt intends to file a motion reqyesting that docket be corrected. Please advise as soon as possible whether ICOS consents to the correction of the docket.

Best regards,

Bob Brennen

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