

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

L-3 COMMUNICATIONS SECURITY
AND DETECTION SYSTEMS
CORPORATION DELAWARE,

Plaintiff,

v.

AMERICAN SCIENCE & ENGINEERING,
INC.,

Defendant.

CIVIL ACTION NO. 04-10339-RWZ

**PLAINTIFF'S MOTION FOR LEAVE TO FILE A
SUR-REPLY IN SUPPORT OF ITS OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

Plaintiff, L-3 Communications Security and Detection Systems Corporation Delaware (“L-3”), requests this Court’s permission to file the accompanying Sur-reply In Support of Its Opposition to Defendant's Motion to Dismiss, in the event that Defendant American Science & Engineering, Inc. (“AS&E”) is permitted to file its Reply Memorandum dated April 2, 2004.

In its Reply, AS&E made reference to two hearing transcripts that were not available at the time when AS&E filed its original motion.¹ In addition, AS&E offered a new Declaration (of Mr. William Greico), and made new contentions regarding L-3’s manufacturing or selling of mobile truck X-ray systems that are simply untrue, and that L-3 should have an opportunity to address. While issues raised for the first time in a Reply should not be considered at all, see, e.g., DeNadai v. Preferred Capital Mkts., Inc., 272 B.R. 21, 33 n. 10 (D. Mass. 2001) (finding argument raised for first time in reply memorandum waived) and White v. Meador, 215 F. Supp.

¹ Both parties made efforts to obtain these transcripts at an earlier time, but the court reporter was unable to provide them any earlier than she did.

2d 215, 226 n. 7 (D. Me. 2002) (same) (citation omitted), if the issues are considered, L-3 should at least be given the opportunity to respond by means of the accompanying Sur-reply.

Respectfully submitted,

L-3 COMMUNICATIONS SECURITY AND
DETECTION SYSTEMS CORPORATION DELAWARE,

Dated: April 19, 2004

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LOCAL RULE 7.1 CERTIFICATE

I hereby certify that counsel for the parties conferred in good faith prior to the filing of this motion, but were unable to resolve the issue raised herein.

/s/Michael A. Albert
Michael A. Albert