

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

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S
EMERGENCY MOTION FOR (1) A HEARING ON ITS
SANCTIONS MOTION AND (2) AN EXTENSION OF
ITS DEADLINE FOR SERVING EXPERT REPORTS**

Plaintiff, L-3 Communications Security and Detection Systems Corporation Delaware ("L-3"), requests a hearing as soon as possible on its previously filed sanctions motion, and further moves to extend for two months the deadline for L-3 (and only L-3) to serve its expert reports, from January 28, 2005 to March 28, 2005.

AS&E's deadline for serving expert reports would remain as January 28, 2005.

L-3 has for months been seeking critical testimony from AS&E that would establish L-3's claims that the AS&E patents in suit are invalid and unenforceable. As the Court is aware, AS&E has for months refused to produce even a single witness on these issues. The details of this saga were chronicled

in L-3's opening (Ex. 1)¹ and reply (Ex. 2) memoranda and declaration (Ex. 3) in support of its motion to sanction AS&E under Rule 37. The Court has yet to act on that motion.

The Court's Electronic Order of July 28, 2004 (Ex. 4) agreed to certain deadlines proposed by the parties (Ex. 5), including a requirement that the parties serve expert reports by January 28, 2005. Since AS&E has refused to be deposed, that deadline cannot be met by L-3.

To obtain needed evidence for its experts, L-3 needs to depose AS&E. Additional depositions will most likely be required on these issues, moreover, and L-3's experts must be given adequate time to prepare their reports after all of the supporting facts have been accumulated. AS&E's outright refusal to testify has made it impossible for L-3 to obtain that evidence.

AS&E's intransigence has brought this case to a halt. L-3 urgently requests that the Court schedule a hearing on the sanctions motion to break this logjam. In the meantime, the Court needs to extend the January 28 deadline for L-3 only.

Counsel for the parties have conferred on this issue, and have been unable to reach an agreement.

Conclusion

For the above reasons, the Court should schedule a hearing on the sanctions motion as soon as possible and extend for two months L-3's deadline for serving its expert reports.

¹ The exhibits referred to in this memorandum are attached to the accompanying declaration of Robert M. Abrahamsen.

Respectfully submitted,

L-3 COMMUNICATIONS SECURITY AND
DETECTION SYSTEMS CORPORATION
DELAWARE

Dated: January 19, 2005

/s/ James J. Foster

James J. Foster, BBO #553285

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