

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

**L-3'S OPPOSITION TO AS&E'S MOTION TO EXTEND ITS
DISCOVERY DEADLINES OR STAY DISCOVERY**

L-3 opposes AS&E's motion (D.I. 50) requesting relief from the deadlines imposed by the Court's Scheduling Order of July 28, 2004.

L-3 has moved for a unilateral extension of the January 28 expert reports deadline. L-3 cited AS&E's refusal to be deposed in December or January as the reason for the extension. In its response, AS&E agreed that L-3's request should be granted, but argued that its own deadline should also be extended so that it would be given "equal treatment."

AS&E, however, gave no reason for its not meeting the Scheduling Order deadlines. Rule 16(b) provides that "[a] schedule shall not be modified except upon a showing of good cause" Thus, "[i]n the absence of some showing of why an extension is warranted, the scheduling order shall control." Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §1522.1 (and cases cited at n.

14). AS&E has not shown any reason why it could not serve its expert reports by the date ordered. Its request that the Court modify the Scheduling Order should thus be denied. E.g., Geiserman v. MacDonald, 893 F.2d 787, 790-92 (5th Cir. 1990).

AS&E did not blame L-3 for its failure. Nor could it, since L-3 has cooperated fully with all of AS&E's discovery efforts.

L-3, by contrast, has been trying for months to obtain from AS&E the discovery its experts will require to prepare their reports. L-3 has been unable to obtain that discovery, because AS&E has refused to provide it.

On July 9, 2004, several weeks before the July 27 Scheduling Conference, L-3 served AS&E with initial disclosures, document requests, interrogatories, and requests for admission. Under normal circumstances, six months would have provided ample time to obtain the discovery required to meet the January 28, 2005 deadline for serving expert reports.

After some delay, AS&E served written responses to L-3's discovery on August 25, 2004. L-3 then diligently began its unsuccessful attempts to first review the requested documents and then to take AS&E's deposition. As the Court is aware, AS&E refused to be deposed during December or January (L-3 chronicled its diligent efforts to obtain needed discovery in the opening (D.I. 28) and reply (D.I. 35) memoranda and declaration (D.I. 36) L-3 filed in support of its Rule 37 Motion for Sanctions.)

AS&E's misconduct justified L-3's request for an extension. Nothing has justified AS&E's counter-request. L-3 has acted diligently to comply with the

Court's July 28, 2004 Scheduling Order. AS&E has not. AS&E's refusal to be deposed in December or January prevented L-3 from serving its expert reports by the January 28 deadline. Nothing prevented AS&E's from serving its reports. Thus, AS&E's deadline should not be extended.

AS&E also requested that all discovery be stayed pending resolution of the motion for partial summary judgment it filed in mid December. AS&E, however, has refused to provide L-3 with discovery on the issue on which it moved for partial summary judgment. Thus, AS&E's request would put the cart before the horse. Further, staying discovery would further delay this lawsuit, which L-3 brought to free itself from the cloud of threatened litigation against its ongoing business. AS&E's request for a stay should thus be denied as well.

CONCLUSION

For the reasons above, the Court should deny AS&E's motion to extend its discovery deadlines or to stay discovery.

Respectfully submitted,

L-3 COMMUNICATIONS SECURITY AND
DETECTION SYSTEMS CORPORATION
DELAWARE

Dated: February 2, 2005

/s/ James J. Foster
James J. Foster, BBO #553285
Michael A. Albert, BBO #558566
Robert M. Abrahamsen, BBO #636635
John L. Strand, BBO #654985
WOLF, GREENFIELD & SACKS, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210
Tel.: 617.646.8000
Fax: 617.646.8646
JFoster@wolfgreenfield.com