

John F. Ward

From: Abrahamsen, Robert [Robert.Abrahamsen@WolfGreenfield.com]
Sent: Friday, March 18, 2005 7:02 PM
To: John F. Ward
Cc: Erik Belt; Foster, James
Subject: RE: L-3 v. AS&E



John - We stand firm on our demand that you produce documents relating to all related patent applications, and will file a motion to compel if you fail to do so. Given the relationship of the requested files to the patents-in-suit, it is clear that at the very minimum our request is reasonably calculated to lead to the discovery of admissible evidence. These files may, for instance, contain notes, memos, or other materials bearing on the state of mind of the prosecuting attorneys when the applications leading to the patents-in-suit were pending, or may contain information leading to such evidence. The original '929 patent, moreover, preceded the '533 patent in the priority chain. Inequitable conduct committed in connection with the '929 patent could thus directly affect the enforceability of at least one of the two patents-in-suit. Your client's refusal to produce these files is patently unreasonable.

In any event, please produce whatever files you are going to produce by midday Monday so they can be used at the depositions, as appropriate. It would be a shame to have to re-depose these witnesses due to your failure to make a timely production. As it appears that you are in good faith reconsidering your objections, we will hold off on filing a motion to compel until Monday morning, per your request.

On a related note, Erik agreed to produce a privilege log for all invention disclosures (in your files or the client's) that are being withheld on grounds of privilege. Any such disclosures for which privilege does not attach should be produced immediately. Please see that all such materials are also produced promptly.

Thanks,
Bob

From: John F. Ward [mailto:JWard@bromsun.com]
Sent: Friday, March 18, 2005 2:37 PM
To: Abrahamsen, Robert
Cc: Erik Belt
Subject: L-3 v. AS&E

Bob,

I write further to our conversation of a few hours ago and your request that AS&E produce the '683 and '929 prosecution files. We have told you our doubts concerning the propriety of such a request, and provided you with authority for our position. As we promised, however, we are considering your request and, subject to consultation with our client, we will contact you with AS&E's position. I suggest we speak again on Monday morning.

Thus, we believe it would be a mistake if you file a motion to compel today at 5:00 P.M., as you said you may and has been your recent practice. I urge you, don't jump the gun. When L-3 last moved to compel concerning the Rule 30(b)(6) deposition, it proved a wasteful drill for all concerned.

Finally, two points. First, as you know, in an effort to compromise and resolve this matter, we have offered to produce the '683 prosecution file. Although L-3 has rejected this compromise, the offer remains on the table. Second, as we said, we will be producing later today a Notice of Loss of Small Entity Status, dated March 1, 2005, which AS&E filed with the PTO in connection with the '623 patent.

Regards,

3/31/2005

John

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