UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DELPHI CORPORATION, Plaintiff, v. LITEX, INC., Defendant.	Civil Action No.: 05-10415(WGY)

DEFENDANT LITEX, INC'S MOTION FOR TEMPORARY IMPOUNDMENT OF ITS ANSWER AND COUNTERCLAIMS, AND MEMORANDUM IN SUPPORT THEREOF

Pursuant to Rule 7 of the Federal Rules of Civil Procedure and Local Rules 7.1 and 7.2, defendant Litex, Inc. hereby moves for the temporary impoundment of its Answer and Counterclaims until the Court conducts the initial scheduling conference in this matter and addresses any questions of confidentiality and the applicability, if any, of its prior protective order from an earlier related case. In further support of this motion, defendant Litex states as follows:

1. This action is based in part on previous litigation before the Honorable William G. Young which ultimately resulted in a settlement agreement and release, followed by a subsequent arbitration on the question of patent infringement damages. See Litex v. Delphi, Civil Action No. 01-CV-10910 ("*Litex I*").

2. A stipulation and protective order was entered in *Litex I* on April 11, 2002, a copy of which is attached to Delphi's Complaint as Exhibit B. By its terms, the protective order survives the end of *Litex I*. *See* Ex. B to Dephi's Complaint, ¶16.

3. In its Complaint, plaintiff Delphi alleges that defendant Litex's counterclaims and related actions breach the settlement agreement and protective order in *Litex I*.

4. Paragraph 9(e) of that protective order states "[a]ll documents or things containing Confidential Information or Confidential-Attorneys Eyes Only Information, including without limitation any brief or memoranda, to be filed or lodged with the Court, shall be filed with the Clerk of the Court in a sealed envelope marked with the caption of the case, a schedule of the contents of the envelope" and a notation on the envelope indicating the confidential nature of the materials inside.

5. Defendant Litex submits its Answer and Counterclaims herewith in a marked sealed envelope in accordance with this provision in an abundance of caution. Litex's pleading is based upon the actions of Delphi in *Litex I,* but only excerpts public documents, or documents that were not designated as Confidential by Delphi in *Litex I*. Furthermore, while Litex's pleading excerpts testimony of Delphi's witness in the damages arbitration following *Litex I*, Delphi never designated that testimony under the protective order.

6. Nevertheless, Count II of Delphi's Complaint, wrongly, accuses Litex of breaching the protective order in *Litex I* with a draft version of Litex's pleading sent to Delphi in an attempt to settle this current matter. Delphi Complaint ¶28-34. To avoid creating any additional dispute over Litex's treatment of any confidential Delphi information, Litex requests the Court to impound Litex's Answer and Counterclaims until it conducts the Initial Scheduling Conference in this matter pursuant to Fed. R. Civ. P. 16 and Local Rule 16.1.

7. At the Initial Scheduling Conference, Litex anticipates the parties will have conferred and be in a position to address the Court on the applicability, if any, of the protective order in *Litex I* to this case, and the treatment of confidential information in this matter in general. See Local Rule 16.1. As part of those discussions with the Court, Litex anticipates the parties will address the need to continue or lift the impoundment of Litex's Answer and Counterclaims.

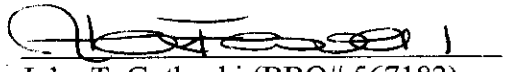
8. Post-impoundment custody of the protected materials shall lie with the parties' counsel.

WHEREFORE, defendant respectfully requests that this Court:

(1) temporarily impound the Defendant's Answer and Counterclaims until the Court addresses the need for any further protective order at the initial scheduling conference on this matter; and

(2) such other relief as the Court determines just and appropriate.

LITEX, INC.
By its attorneys,



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April 18, 2005

CERTIFICATE OF CONSULTATION

Pursuant to Local Rule 7.1(A)(2), I hereby certify that I contacted counsel for plaintiff on Friday, April 15, 2005 seeking to narrow the issues raised by this motion, but counsel was unable to reach an agreement on this motion.

Alexandra C. Fennell

CERTIFICATE OF SERVICE

I, Alexandra C. Fennell, do hereby certify that I have served this Motion for Temporary Impoundment of Litex's Answer and Counterclaims and Memorandum in Support Thereof by causing copies to be hand delivered to H. Joseph Hameline, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111 on this 18th day of April, 2005.

Alexandra C. Fennell