

FILED
CLERK, U.S. DISTRICT COURT
September 15, 2004 (11:17am)
DISTRICT OF UTAH

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>PHILLIP M. ADAMS, et al., Plaintiffs,</p> <p>vs.</p> <p>GATEWAY, INC., f/k/a GATEWAY 2000, INC., a Delaware corporation, Defendant.</p>	<p>MEMORANDUM AND ORDER AFFIRMING MAGISTRATE JUDGE'S ORDER REGARDING MOTION FOR RELIEF AND DENYING GATEWAY'S MOTION TO STRIKE</p> <p>Case No. 2:02-CV-106 TS</p>
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This matter is before the court on Gateway's Objections to the Magistrate Judge Nuffer's March 9, 2004 Order Regarding Motion for Relief (the Order) denying Gateway's expert access to Adams' Source Code.

Adams' source code at issue in the appeal was disclosed to Gateway's attorneys, but not to its expert. In his Order, the Magistrate Judge found that Gateway had not shown a need for its expert to have access to Plaintiff's source code because it was Gateway's position that Adams' patents do not include the source code at issue. The Magistrate Judge also noted that it would be unfair to have Adams produce the Adams source code

when Gateway had not produced its source code. Finally, the Magistrate Judge found that the high risk of the source code's further dissemination required that it be protected under the circumstances of this case. Accordingly, the Magistrate Judge ordered that Gateway would not provide the source code to its expert, "without further leave of court," leaving open the possibility that Gateway could subsequently show the need for its expert to have access to the source code.

Gateway contends that the Magistrate Judge's Order is in error in three respects: one, that the Magistrate Judge's statement that "Adams does not rely on the source code for the validity of his patent" is "legally incomprehensible and reflects a misunderstanding of patent law;"¹ two, the Adams source code is relevant to Adams' trade secret/breach of contract claim; and three, Gateway had no notice that its own failure to make certain disclosures was at issue in connection with its request that Adams be required to disclose information to its expert.

For non-dispositive pretrial matters, this court reviews any objection to an order of the Magistrate Judge under a "clearly erroneous or contrary to law" standard of review. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a) and DUCivR 74-1(a)(1). Under the clearly erroneous standard, this court will affirm the Magistrate Judge's ruling "unless it 'on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Ocelot Oil Corp. v. Sparrow Industries*, 847 F.2d 1458, 1464 (10th Cir. 1988) (quoting *U.S. v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). Courts recognize

¹Objections, at 2.

that wide discretion is given the Magistrate Judge in discovery rulings. *Soma Med. Int'l v. Standard Chartered Bank*, 196 F.3d 1292, 1300 (10th Cir. 1999).

The court finds no error of fact or law in the well-considered Order. Further, it appears that Gateway has recently moved to reconsider that Order, raising a new basis for its alleged need to show the Adams' source code to its expert. Thus, it appears that the issue will be before the Magistrate Judge again pursuant to Gateway's August 27, 2004, Motion to Reconsider. Gateway may make all of its arguments at that time, including any arguments relating to the two Declarations that are attached to its Objections but that were not previously before the Magistrate Judge.

In addition to its Objections, Gateway also moves to strike Adams' Response to its Objections. Gateway asserts that because Fed. R. Civ. P. 72(a) does not expressly provide for such a Response, one should not be allowed. Gateway contends that if the Response is not stricken, it should be allowed to file a Reply. The court will deny Gateway's Motion to Strike and will deny the request to file a Reply Brief.

Based on the foregoing, it is therefore

ORDERED that Gateway's Objections to the Magistrate Judge's March 9, 2004 Order Regarding Motion for Relief to the OVERRULED, without prejudice to the determination of new issues raised in its August 27, 2004, Motion for Reconsideration of Magistrate Judge Nuffer's Order (Dkt. No. 171) Denying Gateway's Expert Access to Source Code. It is further

ORDERED that the Magistrate Judge's March 9, 2004 Order Regarding Motion for Relief is AFFIRMED AND ADOPTED IN FULL. It is further

ORDERED that Gateway's Motion to Strike Adams' Response or in the alternative, to file a Reply brief is DENIED.

DATED this 15th day of September, 2004.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Ted Stewart", is written over a horizontal line.

TED STEWART
United States District Judge

United States District Court
for the
District of Utah
September 15, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00106

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