

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
DRONE TECHNOLOGIES, INC.,

Plaintiff,

14cv0111

ELECTRONICALLY FILED

v.

PARROT S.A., PARROT, INC.,

Defendants.

**MEMORANDUM OPINION RE: PLAINTIFF'S MOTION FOR ORDER TO
SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT
(DOC. NO. 78)**

Defendants, through their counsel,¹ have engaged in a systematic campaign to willfully defy this Court's Orders, prevent Plaintiff from receiving evidence necessary to develop its case-in-chief on infringement, delay the prosecution of this case, and substantially increase the costs, efforts, and time expended by Plaintiff to complete discovery and prepare for trial on liability issues. Defendants' legal and factual positions as to whether they have complied with the Court's Orders, or why they have not complied, are ever-changing, inconsistent, and appear to be designed to thwart justice in this case.² Defendants' continual motions practice, lack of candor

¹ This comment does not apply to Defendants' well-respected local Pittsburgh counsel because it appears to this Court (from the briefing and hearings) that Defendants' in-house counsel ("Head of Legal") from France and chief trial counsel from Texas are directing and controlling the litigation strategy and tactics.

² The factual determinations contained within this Memorandum Opinion are based upon the Court's review of the filings in this case, witness testimony received during the hearing on Plaintiff's Motion to Show Cause Why Defendants Should Not be Held in Contempt, and oral argument during the same. Witness testimony has been weighed by the Court based upon its ability to judge the credibility of the witnesses and the weight their testimony deserves. These determinations have been guided by the appearance and conduct of the witnesses, the manner in which they testified, the character of the testimony given, and by evidence or testimony to the contrary.

with the Court, and other conduct, has effectively impeded “the just, speedy, and inexpensive determination [of this] action” Fed.R.Civ.P. 1.

I. Introduction

The proceedings in this case have been fraught with disagreements over the most basic disclosure and discovery matters. In just over nine (9) months, the Court has had to intervene because of disputes related to initial disclosures, Alternative Dispute Resolution (“ADR”), and depositions, among other routine matters. The most persistent dispute between the Parties relates to the scope and the method of production of Court-ordered initial disclosures. Defendants have been required to produce specific information as part of their initial disclosures, as ordered by this Court and in compliance with the Local Patent Rules of this District Court, since July 9, 2014. Doc. No. 48. After numerous unsuccessful attempts to evade this obligation through motions practice, and over four months later, Defendants still have not complied with this Court’s Orders.

The Parties have filed almost a dozen Motions related to standard pre-trial proceedings, and the Court has ruled accordingly:

- Defendants’ Motion to Stay Pending *Inter Partes* Review (May 7, 2014, Doc. No. 17);
- Which was denied by this Court on May 19, 2014 (Doc. No. 29);
- Defendants’ Motion for Clarification of the Protective Order to Include a Limited Patent Prosecution Bar (May 27, 2014, Doc. No. 35);
- Which was denied by this Court on May 30, 2014 (05/30/14 Text Order);
- Defendants’ Motion to Bifurcate Discovery and Trial (June 27, 2014, Doc. No. 44);
- Which was denied by this Court on July 9, 2014 (07/09/14 Text Order);

- Plaintiff's Motion to Compel Initial Disclosure Documents (June 19, 2014, Doc. No. 41);
- Which was granted by this Court on July 1, 2014: Defendants were ordered to comply on or before July 9, 2014 (Doc. No. 48);
- Plaintiff's Motion to Compel Attendance at the ADR [Session] of a Decision Maker Who Has Full Settlement Authority (July 1, 2014, Doc. No. 49);
- Which was denied by this Court on July 8, 2014 (Doc. No. 54);
- Defendants' Emergency Motion for Reconsideration of this Court's July 1, 2014 Order (July 3, 2014, Doc. No. 51);
- Which was denied by this Court on July 8, 2014 (07/08/2014 Text Order);
- Defendants' Motion to Compel the Deposition of Mr. Bruce Ding (July 8, 2014, Doc. No. 57);
- Which was denied by this Court on July 9, 2014 (07/09/14 Text Order);
- Plaintiff's Motion to Compel Defendants to Obey this Court's July 1, 2014 Order (July 22, 2014, Doc. No. 61);
- Which was granted by this Court on July 25, 2014: Defendants were given until August 13, 2014, to comply with the July 1, 2014 Order (Doc. No. 63);
- Defendants' Emergency Motion to Modify the Protective Order (August 1, 2014, Doc. No. 64);
- Which was denied by this Court (August 7, 2014, Doc. No. 70);
- Defendants' Motion to Compel the 30(B)(6) Deposition of Drone Technologies, Inc. and the Depositions of Mr. Bruce Ding and Ms. Diane Lee (August 11, 2014, Doc. No. 72);
- Which was granted in part and denied in part by this Court on August 19, 2014 (Doc. No. 81);
- Defendants' Motion for Relief from the Court's Order Dated July 25, 2014, or in the Alternative, for a Stay Pending a Petition for Writ of Mandamus (August 13, 2014, Doc. No. 74); and
- Which was denied by this Court (August 14, 2014, Doc. No. 77).

Presently before this Court is Plaintiff's Motion for Order to Show Cause Why Defendants Should Not be Held in Contempt. Doc. No. 78. A hearing was held on October 23, 2014. Doc. No. 99. Karin Wittkotter, Parrot SA's Head of Legal, and Francois Callou, a Drone Project Manager at Parrot SA, testified during this hearing. Doc. No. 99.

II. Background of the Western District of Pennsylvania's Participation in the Patent Pilot Program and Local Patent Rule 3.1

A. Patent Pilot Program

The United States District Court for the Western District of Pennsylvania enacted Local Patent Rules, which took effect on April 1, 2005, and have been applied to any "civil action in which the infringement, validity or enforceability of a utility patent is an issue" LPR 1.4. This District is one of the 14 United States District Courts that have been chosen to participate in a 10-year patent cases pilot program designed "to encourage enhancement of expertise in patent cases among district judges." Pub.L.No. 111-349- Jan. 4, 2011, 124 Stat. 3674, 28 U.S.C. § 137. In January, 2011, the Honorable Gary L. Lancaster, former Chief Judge of the Western District of Pennsylvania, appointed himself, the Honorable Joy Flowers Conti (now Chief Judge of the United States District Court for the Western District of Pennsylvania), the Honorable Nora Barry Fischer, and this Court, as "Designated Patent Judges" to hear cases arising under any Act of Congress relating to patents. *In re: Implementation of Patent Pilot Program*, Misc. No. 11-00283, Oct. 12, 2011. Since that time, the Honorable Cathy Bissoon and the Honorable Mark R. Hornak have also been designated as Patent Judges for the Western District of Pennsylvania.

B. Local Patent Rule 3.1

The United States District Court for the Western District of Pennsylvania's Local Patent Rules apply to all patent cases pending before this Court, and are promulgated as authorized by, and subject to, the limitations of Federal Rule of Civil Procedure 83. LPR 1.1.

Rule 3.1 of the Local Patent Rules governs initial disclosures and provides, in relevant part, that:

No later than fourteen (14) days before the Initial Scheduling Conference, the parties shall exchange the initial disclosures required by Fed.R.Civ.P. 26(a)(1) ("Initial Disclosures").

* * *

With the Initial Disclosures of the party opposing a claim of patent infringement, such party ***shall produce or make available for inspection and copying***, among other items:

Source code, specifications, schematics, flow charts, artwork, formulas, drawings or other documentation, including sales literature, sufficient to show the operation of any aspects or elements of each accused apparatus, product, device, process, method or other instrumentality identified in the claims pled of the party asserting patent infringement; and

A copy of each item of prior art, of which the opposing party is aware, that allegedly anticipates each asserted patent and its related claims or renders them obvious. (emphasis added.)

C. Standard Patent Protective Order

This District's Local Patent Rules also provide for a standard protective order that governs the exchange of information that the parties believe are "Confidential Information" or

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