
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

PHILLIP M. ADAMS & ASSOCIATES,
L.L.C., a Utah Limited Liability Company,

Plaintiff,

vs.

WINBOND ELECTRONICS CORP.,
ASUSTEK COMPUTER, INC., ASUS
COMPUTER INTERNATIONAL, MICRO-
STAR INTERNATIONAL CORPORATION,
LTD., MSI COMPUTER CORPORATION,
ITE TECH. INC., INTEGRATED
TECHNOLOGY EXPRESS, INC.,

Defendants.

**MEMORANDUM DECISION AND
ORDER DENYING ADAMS'S MOTION
TO STRIKE MSI'S REBUTTAL EXPERT
REPORT OF BRETT L. REED**

Civil No. 1:05-CV-64 TS

The Honorable Ted Stewart
Magistrate Judge David Nuffer

And Related Third-Party Claims

Phillip M. Adams & Associates L.L.C. (Adams) has submitted a motion to strike MSI Computer Corporation's (MSI) Rebuttal Expert Report of Brett L. Reed dated June 3, 2010.¹ Adams's motion is DENIED as provided herein.

Adams previously submitted a motion to amend its complaint and add a claim against MSI for trade secret misappropriation.² On May 25, 2010, the Magistrate Judge denied Adams's motion.³ MSI submitted its Rebuttal Expert Report of Brett L. Reed (Reed Report) on June 3,

¹ Adams' Motion to Strike MSI's Rebuttal Expert Report of Brett L. Reed as Untimely by Over 8 Months, docket no. 1336, filed June 11, 2010.

² Adams' Motion for Terminating Sanctions Against MSI, Motion to Amend Complaint, and Other Relief, docket no. 836, filed June 30, 2009.

³ Memorandum Decision and Order Denying Adams's Motion for Terminating Sanctions Against MSI, Motion to Amend Complaint, and Other Relief, docket no. 1310, filed May 26, 2010.

2010. Adams believes that because the Reed Report has been submitted after the agreed upon deadline of September 25, 2009⁴ that the Reed Report should be stricken.

The decision on Adams's motion to amend its complaint had consequences for MSI's expert reports. MSI did not know the scope of Mr. Reed's expert report until that motion to amend was decided on May 25, 2010. MSI filed the Reed Report a little more than one week after MSI knew the exact claims that Adams was allowed to bring against MSI. The Reed Report was timely filed.

The Reed Report is important to the case. Adams's damages expert, Mr. Gemini, has determined that MSI owes Adams \$37.5 million.⁵ Mr. Reed believes that the adequate compensation to Adams is \$488,000.⁶ Mr. Reed disagrees with Mr. Gemini and feels Mr. Gemini:

fail(ed) to make appropriate adjustments to his determination of a reasonable royalty for the alleged infringement by MSI, such as the failure to consider that the accused FDC is a small part of the Super I/O chip, failure to consider the actual contribution of Adams' patent rights, failure to consider the patent damages concept of exhaustion, statute of limitation and marking/notice, and the failure to adjust the benchmark licenses to account for existing alternatives and other variables.⁷

The damages that each defendant owes to Adams, if any, is at the heart of this lawsuit. Damages, as expected, are a heavily contested issue. To allow only Adams to present what it believes to be the correct amount of damages owed could severely prejudice MSI's case. Adams, on the other hand, will suffer no unfair prejudice by allowing the Reed Report to be used at trial. The data Mr. Reed used "was long ago

⁴ Order Granting Stipulated Request for an Extension of Expert Discovery Deadlines with Respect to the MSI Entities and Adams to Discuss Settlement, docket no. 970, filed September 15, 2009.

⁵ Memorandum in Opposition to Adams' Motion to Strike MSI's Rebuttal Expert Report of Brett L. Reed at 3, docket no. 1361, filed June 28, 2010.

⁶ Id. at 6.

⁷ Id. at 2.

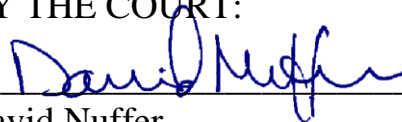
produced to Adams.”⁸ MSI claims that it will not oppose Adams’s attempt to depose Mr. Reed.⁹ If Adams desires to question Mr. Reed’s conclusions, Adams has ample time to do so.

ORDER

IT IS HEREBY ORDERED that Plaintiff’s motion¹⁰ to strike Mr. Reed’s Rebuttal Expert Report is DENIED as provided herein.

Dated July 20, 2010.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

⁸ Id. at 7.

⁹ Id. at 9.

¹⁰ Adams’ Motion to Strike MSI’s Rebuttal Expert Report of Brett L. Reed as Untimely by Over 8 Months, docket no. 1336, filed June 11, 2010.