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

PHILLIP M. ADAMS & ASSOCIATES, LLC, a Utah Limited Liability Company, Plaintiff, vs. WINBOND ELECTRONICS CORPORATION, ASUS COMPUTER INTERNATIONAL, MICRO-STAR INTERNATIONAL CORP., LTD, AND MSI COMPUTER CORP., et al., Defendants.	MEMORANDUM DECISION AND ORDER DENYING MSI'S MOTION TO FILE SUPPLEMENTAL BRIEF Case No. 1:05-CV-64 TS

MSI moves to file a supplemental brief disclosing newly discovered evidence on a pending motion for summary judgment.[1] Plaintiff opposes the motion on the ground that the evidence is not newly discovered. The Court agrees with Plaintiff; the matters proffered by MSI are not newly discovered. MSI proffers the testimony of Plaintiff's damages expert that the contracts between Plaintiff and HP/Compaq grant HP/Compaq licences and contain covenants not to sue. However, the contracts at issue are attached to the

[1]Docket No. 1063.

summary judgment motion[2] and, therefore, any provision therein cannot be newly discovered. What is disputed in the summary judgment motion[3] is the effect of those contractual provisions. As the damages expert explained about MSI's position that the effect is to trigger a duty to mark products: "legally, I don't know if that is the case."[4] The effect of those contractual provision is an issue that Defendants have already submitted to the Court in the summary judgment motion. It is therefore

ORDERED that MSI's Motion to File Supplemental Brief (Docket No. 1374) is DENIED.

DATED August 16th, 2010.

BY THE COURT:

TED STEWART
United States District Judge

[2]Docket No. 1097, Exs. 3 and 4.

[3]The same issue is raised in MSI's Motion in Limine No. 19 (Docket No. 1475) and ASUS' Joinder (Docket No. 1481).

[4]Def.'s Ex. 1 at 12.