

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JUNIPER NETWORKS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:09cv287
)	
GRAPHON CORPORATION et al.,)	
)	
Defendants.)	
_____)	

MEMORANDUM OPINION AND ORDER

With respect to defendants’ motion to compel (no. 86), the court has under advisement the parties’ dispute over production of documents for which plaintiff claims the attorney-client privilege and work product protection.

The court has examined the documents and the privilege log which were submitted for *in camera* inspection pursuant to the previous order (no. 95), and finds as follows.

Document number 39 was created by an employee of plaintiff and was prepared in anticipation of litigation within the meaning of Fed. R. Civ. P. 26(b)(3). It is accordingly protected from disclosure.

Each of the other documents in issue was prepared by one or more employees or agents of British Telecommunications plc (“BT”), which is not a party herein and as to which there is no showing that it might have anticipated being a litigant. Therefore none of these documents is entitled to work product protection. To the extent that any of these documents arguably reflect privileged attorney-client communications, BT waived the privilege by disclosing them to

plaintiff, and this result is not affected by any confidentiality agreement between plaintiff and BT in the circumstances presented, even if plaintiff could assert the privilege on behalf of BT.

Accordingly, plaintiff shall produce all disputed documents except number 39 to defendants within three (3) days.

It is so ORDERED.

ENTERED this 24th day of August, 2009.

/s/
Thomas Rawles Jones, Jr.
United States Magistrate Judge

Alexandria, Virginia