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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

STORAGECRAFT TECHNOLOGY  
CORPORATION,

No. 2:09-MC-0107-WBS-DAD

Plaintiff,

v.

JAMES KIRBY, et al.,

ORDER

Defendants.

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By order filed December 24, 2009, the hearing on plaintiff's November 25, 2009 motion to compel compliance with subpoenas (Doc. No. 4) was continued to January 8, 2010 at 10:00 a.m. in Courtroom 27 before the undersigned. On December 30, 2009, plaintiff StorageCraft Technology Corporation filed an ex parte application to continue that hearing date pending review of the December 23, 2009, order denying its related motion to compel in the district where this civil action is pending. On December 31, 2009, counsel for non-party NetJapan, Inc. filed a statement of objection to the ex parte application for a continuance.<sup>1</sup> On January 4, 2010, counsel for plaintiff and for non-party Leapfrog Software, Inc. filed a stipulation

<sup>1</sup> The statement of objection was filed as part of NetJapan's opposition to the motion to compel pending before this court.

1 to continue the January 8, 2010 hearing on the motion to compel before this court, suspend  
2 briefing on this matter and to have this court reserve decision on the motion to compel pending  
3 resolution of plaintiff's objections to the denial of its motion to compel in the District of Utah.  
4 The stipulation, of course, was not signed by counsel for NetJapan who had already objected to  
5 the continuance.

6           The points made by counsel for NetJapan in the statement of objection are  
7 generally well-taken. However, the motion to compel pending before this court may be rendered  
8 moot once the assigned district judge in the underlying civil action pending in the District of  
9 Utah rules on plaintiff's objections to the recent discovery order entered in that district.  
10 Accordingly, in the interest of judicial economy, the undersigned will grant a continuance of the  
11 January 8, 2010, hearing and temporarily suspend briefing on that motion. However, the  
12 continuance cannot be open-ended, particularly in light of the discovery cut-off date that  
13 currently governs the underlying action in the District of Utah.

14           Accordingly, IT IS ORDERED that:

15           1. Plaintiff's ex parte application for a continuance of the hearing (Doc. No. 21)  
16 is granted in part, with the hearing being continued to January 22, 2010 at 10:00 a.m.;

17           2. Plaintiff's response to non-party NetJapan, Inc.'s opposition to the motion to  
18 compel shall be filed and served on or before 5:00 p.m. Wednesday January 20, 2010;

19           3. In the event that plaintiff's objection to Magistrate Judge Nuffer's discovery  
20 order of December 23, 2009, is overruled and the motion to compel before this court is rendered  
21 moot as a result, counsel for plaintiff shall immediately file a notice withdrawing the pending  
22 motion to compel and serve that notice on counsel for all parties and non-parties identified in this  
23 court's docket; and

24           4. If the January 22, 2010, hearing is held, this court encourages telephonic  
25 appearance at that hearing. To arrange telephonic appearance, the party shall contact Pete Buzo,

26 //

1 the courtroom deputy of the undersigned magistrate judge, at (916) 930-4128 no later than 48  
2 hours before the hearing.

3 DATED: January 4, 2010.

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7 DALE A. DROZD  
8 UNITED STATES MAGISTRATE JUDGE

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