

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 POWERTECH TECHNOLOGY INC.,

No. C 11-6121 CW

4 Plaintiff,

ORDER REGARDING
MOTIONS FOR LEAVE
TO FILE MOTIONS
FOR

5 v.

6 TESSERA, INC.,

RECONSIDERATION OF
THE COURT'S
JANUARY 15, 2014
ORDER

7 Defendant.
8

(Docket Nos. 457,
462)

9 _____/
10 AND ALL RELATED COUNTERCLAIMS
11 _____/

12 Tessera has requested leave to file a motion for
13 clarification of the Court's January 15, 2014 order addressing the
14 parties' cross motions for summary judgment. In that order, the
15 Court noted that there was no motion for summary judgment
16 regarding PTI's claim for breach of the implied covenant of good
17 faith and fair dealing, and so only that claim from PTI's
18 complaint remains in the case. Docket No. 447.

19 Tessera contends that it did in fact move for summary
20 judgment on this claim. Tessera's notice of motion requests
21 summary judgment on "PTI's Second Claim for breach of contract and
22 Third Claim for breach of the implied covenant of good faith and
23 fair dealing," and its memorandum of points and authorities states
24 that summary judgment should be granted on PTI's implied covenant
25 claim for the same reasons as on PTI's breach of contract claim.
26 See Docket No. 407. However, neither PTI nor Tessera's opposition
27 and reply briefs discuss the issue further.
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1 At oral argument, the Court questioned the parties about
2 their respective motions for summary judgment. Tessera
3 unequivocally stated it was not pursuing a motion for summary
4 judgment against PTI's breach of the implied covenant claim.¹
5 Accordingly, both the Court and presumably PTI understood
6 Tessera's response to indicate that Tessera was no longer
7 challenging PTI's breach of the implied covenant claim. Tessera
8 has now clarified that it did not intend to waive its challenge at
9 all, despite its statement at oral argument to the contrary.

10 The Court finds that Tessera has raised material facts that
11 ought to be considered. As a result, the Court allows Tessera to
12 file a brief not exceeding five pages to support its motion for
13 summary judgment on PTI's breach of the implied covenant of good
14 faith and fair dealing claim. PTI may file an opposition of up to
15 seven pages and Tessera may file a reply of up to two pages. The
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18 ¹ THE COURT: On the breach of the covenant, I'm having a hard
19 time keeping track of who moved on whose cause of action, but
20 you each have a breach of the covenant claim against each
21 other.

21 MS. SEIGLE (Counsel for Tessera): Correct.

22 THE COURT: Did you move on theirs or on yours?

23 MS. SEIGLE: We did not move on PTI's claim for breach of the
24 implied covenant. They moved on our claim for breach of the
25 implied covenant.

26 COURT: Okay.

27 MR. GUY (Counsel for PTI): That's correct.

28 Docket No. 444.

1 Court will then decide on the papers whether the summary judgment
2 order should be modified.

3 PTI also seeks leave to file a motion for reconsideration of
4 the Court's January 15, 2014 order. PTI contends that the Court
5 did not consider the possibility that Tessera's arguments made in
6 seeking a General Exclusion Order (GEO) in 2009 constituted a
7 breach of the TCC License. PTI contends it was not in breach at
8 that time. But the TCC License states that "bring[ing] an action
9 in the U.S. International Trade Commission" would be a breach, TCC
10 License § XIV.A, not making miscellaneous arguments during the
11 course of litigation against others. The Court noted that, except
12 for a brief period in 2008 to 2009, it is undisputed that PTI
13 willfully withheld royalties, and so "PTI was not a non-breaching
14 party when Tessera purportedly breached, when PTI attempted to
15 terminate, or even now." Docket No. 447 at 12. PTI therefore did
16 not have a right to terminate when it attempted to do so and
17 cannot do so now. PTI's request to file a motion for
18 reconsideration is denied.

19 IT IS SO ORDERED.

20 Dated: 1/28/2014


CLAUDIA WILKEN
United States District Judge

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