

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ADVANCED MICROTHERM, INC., et al.,  
Plaintiff,  
v.  
NORMAN WRIGHT MECHANICAL  
EQUIP. CORP., et al.,  
Defendant.

Case No. C 04-2266 JW (PVT)  
**FURTHER INTERIM ORDER RE  
PLAINTIFFS' MOTION TO COMPEL  
OBEDIENCE WITH PRIOR COURT ORDER  
REQUIRING F.W. SPENCER & SON, INC. TO  
PRODUCE SPECIFIED ELECTRONIC  
ACCOUNTING DOCUMENTS AND E-MAILS  
IN REASONABLE USABLE FORM**

On April 20, 2010, pursuant to this court’s prior order, Plaintiffs and Defendant F.W. Spencer & Son, Inc. (“F.W. Spencer”) submitted supplemental briefs. Based on the supplemental briefs and the file herein,

IT IS HEREBY ORDERED that, no later than 11:00 a.m. on Monday, April 26, 2010, Defendant F.W. Spencer shall submit a declaration explaining why responsive emails prior to 2008 “were available only to the extent they were printed out and included in the project files.” (See Defendant F.W. Spencer & Son, Inc.’s Opposition to Plaintiffs’ Motion re Electronic Discovery, 9:15-17.) The declaration shall also expressly state: 1) whether or not F.W. Spencer ever had any emails generated during the period 1999 through 2007 that are responsive to document request nos. 7, 8, 10 and/or 11 in the Plaintiffs’ Notice of Deposition [FRCP Rule 30] and Request to Produce

1 Documents at Deposition;<sup>1</sup> and 2) if it no longer has any such emails that it previously did have,  
2 what happened to those emails.

3 In its opposition brief, Defendant F.W. Spencer takes the position that it does not have  
4 responsive emails for the 1999 through 2007 time period other than any hard copies that were put  
5 into project files. However, the only declarations it cites in support of this claim are declarations of  
6 counsel, rather than individuals with personal knowledge of what documents F.W. Spencer  
7 previously had and has now. And nowhere in the briefs or declarations has F.W. Spencer explained  
8 *why* it has no other responsive emails from that time period.

9 Dated: 4/21/10

10   
11 PATRICIA V. TRUMBULL  
12 United States Magistrate Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

27 \_\_\_\_\_  
28 <sup>1</sup> See Exhibit 1 to the Declaration of Russell F. Brasso in Support of Plaintiffs' Motion for Order Requiring William Spencer and F.W. Spencer to Appear for Deposition on a Date Certain and to Produce the Documents Requested at Those Depositions; and for Sanctions (Docket No. 980).