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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IPS GROUP, INC.,

Plaintiff,

v.

CIVICSMART, INC., et al.,

Defendants.

Case No.: 17cv632-CAB-MDD

**ORDER DENYING PLAINTIFF'S
MOTION FOR EXPEDITED
DISCOVERY**

[ECF NO. 44]

In this case, filed on March 29, 2017, Plaintiff alleges Defendants infringed Plaintiff's patents in parking meter devices, and also alleges Defendants violated California's False Advertising Law and Unfair Competition Law and the federal Lanham Act. (ECF Nos. 1 (Complaint) and 23 (First Amended Complaint)). Pertinent to this motion, Plaintiff alleges Defendants lured prospective customers into buying Defendants' products with false statements that Defendants' technology does not infringe Plaintiff's patents.

1 On May 26, 2017, Plaintiff filed a motion for preliminary injunction,
2 which is pending before the assigned District Judge. (ECF No. 24). On June
3 23, 2017, Defendants filed a motion to dismiss the First Amended Complaint
4 (ECF No. 41). On June 30, 2017, Plaintiff filed the instant motion seeking an
5 order authorizing limited expedited discovery related to its pending motion
6 for preliminary injunction. (ECF No. 44). Plaintiff seeks leave to serve
7 interrogatories and document demands, and to take a half-day Rule 30(b)(6)
8 deposition concerning Defendants' statements to prospective customers.
9 Defendants responded in opposition on July 14, 2017. (ECF No. 56).

10 Federal Rule of Civil Procedure 26(d) states:

11 A party may not seek discovery from any source before the
12 parties have conferred as required by Rule 26(f), except in a
13 proceeding exempted from initial disclosure under Rule
14 26(a)(1)(B), or when authorized by these rules, by stipulation, or
by court order.

15 In the instant case, Plaintiff needs a court order to obtain early
16 discovery. In this Circuit, courts must find "good cause" to determine
17 whether to permit discovery prior to the Rule 26(f) conference. Good cause
18 exists where the need for expedited discovery, in consideration of the
19 administration of justice, outweighs the prejudice to the responding party.
20 *See, e.g., Arista Records, LLC v. Does 1-43*, Case No. 07cv2357-LAB-POR,
21 2007 WL 4538697, at *1 (S.D. Cal. Dec. 20, 2007).

22 Plaintiff asserts that expedited discovery is necessary to provide
23 evidence in support of its motion for a preliminary injunction that
24 Defendants falsely represented to potential customers that Defendants'
25 technology did not infringe Plaintiff's patents. Plaintiff asserts it knows such
26 evidence exists, because Plaintiff obtained that evidence through discovery in
27 another pending court proceeding (Case No. 15cv1526-CAB-MDD). Plaintiff

1 explains it cannot use the evidence obtained in the other case in support of its
2 motion in this case because Defendants designated that evidence as
3 confidential under the Protective Order in the other case. Plaintiff contends
4 the evidence was improperly designated as confidential in that matter.
5 Plaintiff asserts that the burden to Defendants is minimal because they may
6 have already collected some of the responsive documents and the discovery
7 will inevitably occur in due course in this action.

8 Defendants oppose on the grounds that Plaintiff cannot demonstrate
9 need for the expedited discovery because briefing on the preliminary
10 injunction motion closed on the same day Plaintiff filed this motion.
11 Defendants further argue that the assumption that this discovery will
12 inevitably occur is no support for *expediting* this discovery. As for Plaintiff's
13 claim that the evidence has been produced but designated as confidential in
14 the other case, Defendants argue that Plaintiff's proper recourse is to follow
15 the Protective Order's procedures for de-designating the documents as
16 confidential in the other case. Defendants assert that the requests are vague
17 and overbroad. Defendants further contend that the discovery sought is
18 burdensome and the burden is not outweighed by Plaintiff's purported need.

19 The Court finds that good cause is lacking for expedited discovery. The
20 Court will not order Defendants to engage in early discovery in this action
21 that is duplicative of the discovery that Plaintiff asserts already occurred in
22 the other action. Plaintiff has a vehicle for obtaining this evidence that is far
23 less burdensome to Defendants than expedited discovery. Rather than
24 seeking expedited discovery here, Plaintiff should use the vehicle for de-
25 designating the evidence produced confidentially in the other action, or, if
26 permitted by the Protective Order in that action, file the evidence under seal
27 in this action.

1 Plaintiff has failed to demonstrate that the need for expedited discovery
2 outweighs the prejudice to Defendants in having to respond to discovery at
3 this stage of the case. The motion for expedited discovery is **DENIED**.

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5 **IT IS SO ORDERED.**

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7 Dated: July 27, 2017

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9 Hon. Mitchell D. Dembin
United States Magistrate Judge

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