

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Wiley Y. Daniel

Civil Action No. 03-cv-1587-WYD-MEH

EDISYNC SYSTEMS, INC.,

Plaintiff,

v.

CENTRA SOFTWARE INC.;
CENTRA SOFTWARE, LLC; and
SABA SOFTWARE, INC.,

Defendants.

ORDER

THIS MATTER comes before me on Plaintiff Edisync LLC's Motion to Accept Cross-Motion for Summary Judgment of Validity as Filed, or in the Alternative for Leave to Submit a Separate Cross-Motion (ECF No. 307). I deny the motion on multiple grounds.

By way of background, my Order Granting Extension and Vacating Pretrial Conference (ECF No. 280), filed November 13, 2012, granted the parties' Sixth Joint Motion to Amend the Scheduling Order, which extended the deadline for dispositive motions up to and including November 28, 2012. In compliance with that order, on November 28, 2012, the parties filed their respective cross-motions for summary judgment. In the response to Defendants' cross-motion for summary judgment, Plaintiff filed both a response to Defendants' motion and an additional cross-motion for summary judgment of validity in the same document. (ECF No. 291).

I deny Plaintiff's motion to accept its cross-motion for summary judgment.

Plaintiff's filing (ECF No. 291) is in clear violation of my November 13, 2012 Order requiring all dispositive motions to be filed not later than November 28, 2013.

Additionally, Plaintiff's filing is in clear violation of this Court's Local Rule D.C.COLO.LCivR 7.1.C, which reads in relevant part, "[a] motion shall not be included in a response or reply to the original motion. A motion shall be made in a separate paper."

I also deny Plaintiff's motion for leave to file an additional cross-motion for summary judgment. My Practice Standards clearly state that "[a] party may **NOT** file multiple motions for summary judgment without obtaining permission from the Court. Such permission will only be given in exceptional circumstances." Senior Judge Wiley Y. Daniel's Practice Standards III.B.1(emphasis in original). I find that Plaintiff's motion fails to demonstrate exceptional circumstances warranting permission to file an additional cross-motion for summary judgment. As I previously stated in my order denying Defendants' motion for a stay (ECF No. 276), this matter has been pending for more than 9 years and the '320 patent expires in 2015. I have devoted extensive judicial resources to this case and have granted the parties numerous extensions of time to meet various deadlines. I simply cannot find a valid reason to permit additional motion practice that would simply delay resolution of this case. Accordingly, it is

ORDERED that Plaintiff Edisync LLC's Motion to Accept Cross-Motion for Summary Judgment of Validity as Filed, or in the Alternative for Leave to Submit a Separate Cross-Motion (ECF No. 307) is **DENIED**. Plaintiff's Response in Opposition to Defendants' Motion for Summary Judgment and Cross-motion for Summary Judgment of Validity (ECF No. 291) is **STRICKEN** from the record with

leave to refile as a proper response not later than **March 21, 2013**. Accordingly, through no fault of the Defendants, the Defendants' Reply (ECF No. 301) is also **STRICKEN** from the record. Defendants shall file an amended reply not later than **14 days** from the date of the filing of Plaintiff's compliant response. It is

FURTHER ORDERED that a hearing on the pending cross-motions for summary judgment and Final Pretrial Conference is set for **Tuesday, June 11, 2013 at 10:00 a.m.** **The parties shall submit a proposed Pretrial Order to the Court not later than Monday, May 11, 2013.**

Dated: March 7, 2013

BY THE COURT:

s/ Wiley Y. Daniel
WILEY Y. DANIEL,
SENIOR UNITED STATES DISTRICT JUDGE