

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

HOYT A. FLEMING,

Plaintiff,

v.

ESCORT, INC. and BELTRONICS
USA, INC.,

Defendants.

Case No. CV 09-105-S-BLW

**MEMORANDUM DECISION
AND ORDER**

INTRODUCTION

Plaintiff Fleming alleges that defendants Escort and Beltronics (hereinafter collectively referred to as Escort) are infringing its patents on radar detectors. The parties have discovery disputes that were mediated by the Court's staff, successfully reaching agreement on two issues and reserving a third for resolution by the Court. The Court will set forth below the agreements of counsel and the Court's resolution of the contested issue.

ANALYSIS

Interrogatory 18

As now written, interrogatory 18 seeks the source code locations that relate to each claim of the patents at issue. The parties agreed that Fleming will rewrite interrogatory 18 to limit it to requesting only the source code locations for those claims that Escort asserts are not met by its products. Fleming will provide the rewritten interrogatory on November 9, 2010, and Escort

Memorandum Decision & Order - 1

will respond with an answer on November 23, 2010.

Interrogatory 19 & 20

Escort agreed to provide a list of the accessories requested in this interrogatory on or before November 12, 2010. Fleming will examine the list and respond by identifying those items on the list for which he wants the financial information requested in interrogatory 20.

Passport iQ

Within the last few weeks, Escort has started selling a new product called the Passport iQ. The day after learning that the device was for sale, Fleming's counsel met with defense counsel and discussed obtaining discovery on the device. When the parties could not reach agreement, Fleming's counsel immediately contacted this Court, and a mediation session with the Court's Law Clerk was set for November 9, 2010.

There is no doubt that Fleming has diligently brought this issue to the attention of both Escort and the Court. Typically the Court would add the product to the case. But the timing of Escort's sales, coming so late in the discovery period, raises a concern with the Court that the deadlines set in the Case Management Order (docket no. 64) may not be met if the product is added to the case. The deadlines for Fleming's expert reports has already passed, and Escort's are due on December 2, 2010, less than a month away. The discovery deadline is January 31, 2011, and the dispositive motion deadline is February 28, 2011.

If the Passport iQ raises new infringement contentions, a new round of expert reports will be necessary and the dispositive motion deadline will need to be extended. The Court is unwilling to extend that deadline.

If Fleming can agree that adding the Passport iQ raises no new infringement contentions

in this case, the Court will allow Fleming to make the new product a part of this case. Escort argues that even if Fleming raises no new infringement contentions, the new product may require new defenses. That is unlikely, however – if the infringement contentions are unchanged, any defenses to those contentions should have been raised long ago.

If, however, Fleming's counsel cannot enter into such an agreement, the infringement allegations regarding the Passport iQ will have to be pursued in another case. In that event, the parties agreed – and the Court will so order – that Fleming will not be prejudiced in any way by not litigating the Passport iQ infringement issues in this case.

Fleming's counsel shall contact the Court's law clerk David Metcalf by e-mail on or before November 12, 2010, as to whether he is willing to agree that adding the Passport iQ to this case will not result in any new infringement contentions.

ORDER

In accordance with the Memorandum Decision set forth above,

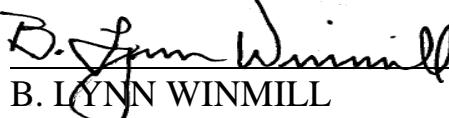
NOW THEREFORE IT IS HEREBY ORDERED, that with regard to interrogatory 18, Fleming will provide the rewritten interrogatory on November 9, 2010, and Escort will respond with an answer on November 23, 2010.

IT IS FURTHER ORDERED, that Escort will provide a list of the accessories requested in interrogatory 19 on or before November 12, 2010. Fleming will examine the list and respond by identifying those items on the list for which he wants the financial information requested in interrogatory 20.

IT IS FURTHER ORDERED, that Fleming's counsel shall contact the Court's law clerk David Metcalf by e-mail on or before November 12, 2010, as to whether he is willing to agree that adding the Passport iQ to this case will not result in any new infringement contentions.



DATED: **November 9, 2010**


B. LYNN WINMILL
Chief Judge
United States District Court