IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

ILLINOIS COMPUTER RESEARCH, LLC., Plaintiff and Counterclaim Defendant,

v.

FISH & RICHARDSON P.C., Defendant, Counterclaimant, Third-Party Plaintiff and Counterclaim Defendant,

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SCOTT C. HARRIS, MEMORY CONTROL ENTERPRISE, LLC, BARTEX RESEARCH, LLC, INNOVATIVE BIOMETRIC TECHNOLOGY, LLC, PARKER INNOVATIVE TECHNOLOGIES, LLC, VIRGINIA INNOVATIVE TECHNOLOGY, LLC, INNOVATIVE PATENTED TECHNOLOGY, LLC AND ANY JOHN DOE SHELL ENTITIES, *Third-Party Defendants.* Civil Action No. 07 C 5081

Honorable Rebecca R. Pallmeyer

Magistrate-Judge Maria Valdez

MOTION TO COMPEL DEPOSITION

After two extensions, Fish provided evasive and incomplete interrogatory responses. Mr. Harris and the third party defendants served a deposition notice on June 18, 2008 requesting Fish produce for deposition the witness who actually signed interrogatory answers.

Because the person who signed the interrogatories was an attorney for the Jenner firm, Fish objected and the Court directed Fish to promptly identify another witness to testify. Fish identified Dorothy Whelan as its witness and Mr. Harris and the third party defendants sought to take her deposition on the same schedule, namely on Thursday, June 26, 2008. To ease the burden on Ms. Whelan and Fish, we agreed to

conduct the deposition by telephone and to use only the interrogatory responses as exhibits.

Fish has simply refused to schedule a date for the telephone deposition insisting that the parties work out a more elaborate plan for all depositions before the witness will be made available. Agreement on other depositions unnecessary for the completion of this deposition which we anticipate can be completed in less than four hours.

Copies of the original deposition notice and the relevant correspondence on the subject are attached as Exhibits A-D. We hereby certify that a good faith effort was made to resolve this matter and that Fish's counsel has refused to set a firm date for the deposition despite efforts to reduce the burden on the witness and the parties by doing the deposition by telephone with limited exhibits.

For the reasons stated, it is respectfully requested that this motion be granted and that Fish be ordered to set a date certain in the next 5 days for taking the noticed deposition.

Respectfully submitted,

<u>/s/ Raymond P. Niro</u> Raymond P. Niro Paul K. Vickrey David J. Sheikh Richard B. Megley, Jr. Laura A. Kenneally Niro, Scavone, Haller & Niro 181 West Madison, Suite 4600 Chicago, Illinois 60602-4635 (312) 236-0733 Fax: (312) 236-3137

Attorneys for Illinois Computer Research, LLC and Scott C. Harris

CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **MOTION TO COMEPL DEPOSITION** was electronically filed with the Clerk of Court using CM/ECF system, which will send notification by electronic mail to the following:

> David J. Bradford - <u>dbradford@jenner.com</u>;;; Eric A. Sacks - <u>esacks@jenner.com</u> Daniel J. Weiss - <u>dweiss@jenner.com</u> Terrence J. Truax - <u>ttruax@jenner.com</u> Jenner & Block LLP 330 N. Wabash Avenue Chicago, IL 60611 (312) 222-9350 **Counsel for Fish & Richardson, P.C.**

on June 24, 2008.

/s/ Raymond P. Niro