

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

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SPRINT COMMUNICATIONS COMPANY L.P.,)
)
	Plaintiff,)
)
	v.)
)
VONAGE HOLDINGS CORP. and)
VONAGE AMERICA, INC.,)
)
	Defendants.)
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Case No. 05-2433-JWL

**VONAGE AMERICA, INC. AND VONAGE HOLDINGS CORP.’S EMERGENCY
MOTION FOR LEAVE TO FILE MOTION FOR SUMMARY JUDGMENT IN LIGHT
OF DAYS-OLD INTERVENING CHANGE IN CONTROLLING LAW**

Vonage America, Inc. and Vonage Holdings Corp. (collectively, “Vonage”) respectfully seeks leave to file a motion seeking summary judgment as to Sprint’s assertion of willful infringement in light of the Federal Circuit's August 20, 2007 ruling in *In re Seagate Technology, LLC*, Misc. No. 830, 2007 WL 2358677 (Fed. Cir. August 20, 2007) (*en banc*). This recent decision by the Federal Circuit overhauled the standard for proving willful infringement, and in doing so, overruled over twenty-plus years of precedent. The new decision holds that an accused infringer no longer has an affirmative duty of care, but instead, the patentee must now prove by clear and convincing evidence that the infringer acted with “objective recklessness” when faced with notice of infringement. Because the issues raised by *In re Seagate* are relevant to pending issues to be considered at the *limine* conference, Vonage asks the Court to permit it to file a motion for summary judgment based on the new decision, and that the motion be briefed on an expedited basis to be heard contemporaneous with the pending motions in *limine*.

Mindful of the Court's directive that the time for filing summary judgment motions has passed, Vonage respectfully suggests that the momentous change in the law this week on an issue that is central to this case requires an exception to the Court's normal practice.

Respectfully submitted,

BARBER EMERSON, L.C.

August 24, 2007

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CERTIFICATE OF SERVICE

I hereby certify on August 24, 2007, that a copy of the foregoing Vonage America, Inc. and Vonage Holdings Corp.'s Emergency Motion For Leave to File A Motion For Summary Judgment In Light of Days-Old Intervening Change in Controlling Law, was filed electronically, with a notice of case activity to be generated and sent electronically by the clerk of court to:

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