

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ADVANCED SOFTWARE )  
DESIGN CORPORATION, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
FISERV, INC., )  
 )  
Defendant. )

Case No. 4:07CV185 CDP

**MEMORANDUM AND ORDER**

This matter is before the Court on two contested motions: plaintiffs’ motion to amend the complaint to add a new claim and dismiss, without prejudice, certain other claims, and defendant’s motion for additional time to respond to plaintiffs’ recently-filed motion for summary judgment.

I will deny plaintiffs’ motion for leave to file their proposed First Amended Complaint. Plaintiffs’ argument that the initial Case Management Order did not set a deadline for all amendments is simply wrong. Although plaintiffs are correct that the initial order related mainly to the jurisdictional issues, it also adopted the parties’ proposal for a deadline for amendment of pleadings apart from the jurisdictional dispute. The amendment deadline was not limited as plaintiffs now claim, and no new amendment deadline was set in the later Case Management

Orders because the date for amendments had already passed and neither party asserted that any new amendments were contemplated. The amendment plaintiffs now seek is almost two years late.

Plaintiffs have also failed to show that their delay was related to defendant's failure to produce discovery or any other legitimate reason, and I do not believe that allowing amendment to change the focus of this lawsuit at this late stage is in the interests of justice. Plaintiffs filed this suit more than two years ago, and they have unduly delayed seeking to amend. They have had ample time to conduct discovery and to have their experts analyze defendant's product. Discovery is set to close in two months, and if I granted the amendment I would undoubtedly be required to reopen discovery and delay the trial of this matter, which I am not interested in doing.

In denying plaintiffs' motion for leave to file their amended complaint, I am necessarily denying their request to dismiss certain claims without prejudice. Defendant objects that any dismissal at this late stage should be with prejudice, and I agree. Plaintiffs may continue with all their original claims, or they may dismiss them with prejudice, at their option.


I will grant defendant's motion for additional time to respond to plaintiffs' recently-filed motion for summary judgment. The request is reasonable, and the

motion will still be briefed ahead of the schedule contemplated by the Case Management Order. Accordingly,

**IT IS HEREBY ORDERED** that plaintiffs' motion for leave to amend [#110] is denied.

**IT IS FURTHER ORDERED** that defendant's motion for additional time [#118] is granted, and defendant shall file its opposition to the existing summary judgment motion no later than **April 10, 2009**. Plaintiff shall file any reply brief no later than **April 20, 2009**.

**IT IS HEREBY ORDERED** that the Case Management Order is clarified as follows: If either party files any further summary judgment or other dispositive motion *before* the deadline now set by the Case Management Order, the response to such motion must be filed within thirty calendar days of the filing of the motion, and any reply brief must be filed within ten calendar days of the filing of the response. For purposes of this paragraph, three days shall *not* be added to either time limit, and weekends and intervening holidays shall *not* be excluded.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 2nd day of March, 2009.