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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

SERVER TECHNOLOGY, INC.,	)	
	)	
Plaintiff and Counterdefendant,	)	3:06-CV-00698-LRH-VPC
	)	
v.	)	
	)	<u>ORDER</u>
AMERICAN POWER CONVERSION CORPORATION,	)	
	)	
Defendant and Counterclaimant	)	
_____	)	

Before the court is plaintiff and counter-defendant Server Technology, Inc.’s (“STI”) motion for clarification on the court’s order denying its motion to dismiss defendant and counter-claimant American Power Conversion Corp.’s (“APC”) fifth counterclaim for false marking under 35 U.S.C. § 292 (Doc. #369<sup>1</sup>). Doc. #377.

**I. Facts and Procedural History**

Plaintiff and counter-defendant STI brought the underlying patent infringement action against defendant and counter-claimant APC. In response, APC counterclaimed that STI falsely marked certain product literature as patented. Subsequently, STI filed a motion to dismiss APC’s counterclaim for false marking. Doc. #340.

On July 26, 2012, the court denied STI’s motion to dismiss finding that APC had sufficiently

\_\_\_\_\_ <sup>1</sup> Refers to the court’s docket number.

1 alleged false marking. *See* Doc. #369. Thereafter, STI filed the present motion for clarification of the  
2 court's order. Doc. #377.

3 **II. Discussion**

4 In its motion for clarification, STI requests further clarification on whether or not the court would  
5 rule separately on its "in the alternative" argument for summary judgment. *See* Doc. #377.

6 The court now takes this opportunity to clarify its prior order. At no time did the court consider,  
7 and it will not consider, STI's prior motion as one for summary judgment. Discovery on the issue of false  
8 marking is currently underway and expert depositions and reports have not been completed. It would be  
9 inappropriate to rule on summary judgment on the limited record at this time. Therefore, the court shall  
10 not issue a separate order at this time.

11 That being said, however, the court is not precluding separately filed summary judgment motions  
12 by either party after the close of discovery. Accordingly, the court shall grant both parties leave to file a  
13 motion for summary judgment on APC's false marking counterclaim within thirty (30) days after the close  
14 of extended discovery.

15  
16 IT IS THEREFORE ORDERED that STI's motion for clarification (Doc. #377) is CLARIFIED  
17 in accordance with this order.

18 IT IS SO ORDERED.

19 DATED this 16th day of October, 2012.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE