

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIREInsight Technology Inc.

v.

Civil No. 04-cv-74-JD

SureFire, LLCProcedural Order

SureFire, LLC has raised the affirmative defense that the '901 patent is unenforceable due to inequitable conduct during patent prosecution. Insight Technology, Inc. has moved to bifurcate trial of the defense of inequitable conduct from the trial of its infringement claim and SureFire's other defenses and suggests that the bench trial on inequitable conduct should be held immediately following the jury trial. SureFire has not yet filed its response nor has the deadline arrived for doing so.

A decision in SureFire's favor on the inequitable conduct defense would obviate the need for the more complex trial on Insight's infringement claim and SureFire's other defenses. In addition, it appears that the inequitable conduct defense would be tried to the court in a bench trial. See, e.g., Rothman v. Target Corp., 556 F.3d 1310, 1323-24 (Fed. Cir. 2009). In the event the court decides to bifurcate the trial, the court is giving serious consideration to holding the bench trial in

advance of the jury trial. Therefore, as part of the discussion of bifurcation, the parties shall address the advantages and disadvantages of holding the bench trial first.

Conclusion

**On or before September 30, 2009**, Insight shall file a supplemental memorandum addressing the scheduling of the bench trial on the inequitable conduct issue. **On or before October 2, 2009**, SureFire shall file its response to Insight's bifurcation motion and include a discussion concerning scheduling the bench trial. Both parties shall include an estimate of the time that would be necessary for a bench trial on inequitable conduct.

SO ORDERED.

/s/ Joseph A. DiClerico, Jr.  
Joseph A. DiClerico, Jr.  
United States District Judge

September 21, 2009

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