UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHILIN PROSPERITY COMPANY, LTD., **Plaintiff,** **v.** **FELLOWES MANUFACTURING COMPANY,** **Defendant.**	**Civil Action No. 04-1025 (RWR/JMF)**

MEMORANDUM ORDER

This case was referred to me for the resolution of discovery disputes. There are presently three pending discovery motions. A hearing was held on May 22, 2006, and, after taking into considering the arguments presented at that hearing and in the briefs filed with the Court, it is, hereby, **ORDERED** that

1. Defendant Fellowes Manufacturing Company's ("Fellowes") Expedited Motion to Compel Production of Documents and Things and to Shorten the Responsive Deadlines [#63] is **DENIED**. The attorney for plaintiff Michilin Prosperity Company, Ltd. ("Michilin") represented in open court that the documents Fellowes seeks by its motion to compel do not exist. Michilin's counsel is an officer of the court and I shall credit his representation. Therefore, there is nothing for me to compel produced. I warn Michilin, however, that if, during the course of the inventor's deposition, currently scheduled for May 24, 2006, it is

discovered that responsive documents do in fact exist, sanctions will be imposed.[1]

2. Fellowes' Second Expedited Motion to Compel Responses to Discovery and to Shorten Responsive Deadlines and for a Brief Hearing on These Discovery Issues ("Sec. Mot. to Compel") [#67] is **GRANTED in part** and **DENIED in part**.

   a. With regard to Fellowes' Requests for Admission, I find that Michilin's objections were inappropriate. Michilin responded to almost every request with the following objection: "Objection, calls for a speculative legal opinion." Sec. Mot. to Compel, Exh. C. In essence, Michilin's objection appears to be that (1) the requests call for legal opinions and (2) any such legal opinions would be speculative because the Court has yet to rule on those legal issues. However, under Rule 36, requests relating to the application of law to fact are permissible. Fed. R. Civ. P. 36(a). After reviewing Fellowes' requests, I find that they do not seek purely legal opinions, but rather, the application of law to fact – indeed many just ask about facts. Moreover, under Rule 36, the responding may not object on the ground that the request presents an issue for trial. Id. Therefore, it was not proper for Michilin to object on the ground that the requested application of law to fact is speculative.

   b. Michilin responded to four of Fellowes' requests for admission with the following objection: "Vague and calls for speculation." Sec. Mot. to

[1] Because I have resolved Fellowes' motion to compel on the ground that the sought after documents do not exist, there is no need, at this time, to resolve the parties' dispute regarding the discoverability of "extrinsic evidence."

Compel, Exh. C. I have reviewed these requests and find that they are not vague. Moreover, to the extent that the requests may call for factual speculation, Michilin should have stated that it was unable to admit or deny and then explained why it could not truthfully admit or deny the request. See Fed. R. Civ. P. 36(a). Due to the fact that the inventor's deposition is scheduled for tomorrow and the parties are likely busy preparing for that deposition, I will not compel Michilin to provide answers to Fellowes' Requests for Admission at this time. Instead, I will allow Fellowes to pursue the substance of its requests at the deposition of the inventor, if it sees fit, and, once the deposition is over, Fellowes will be permitted to re-propound its requests. Michilin shall have five days thereafter to respond.

c. With regard to Fellowes' claim construction interrogatory, I am not persuaded by Michilin's argument that the articulation of its proposed claim construction was intended by Judge Roberts to be reserved for the Markman hearing opening briefs. I see nothing on the face of Judge Roberts' Supplemental Scheduling Order to suggest that Judge Roberts intended for the parties' claim construction to be reserved exclusively for their opening briefs in preparation of the Markman hearing. Michilin's claim construction is undeniably relevant and Fellowes' interrogatory complies with Rule 33. See Whitserve LLC v. Computer Patent Annuities N. Am., LLC, No. 04-1897, 2006 WL 1273740, *1-2 (D. Conn May 9,

2006) (granting motion to compel answers to claim construction interrogatory before the date for filing claim construction briefs because the opposing party's interpretation of patent claims is clearly relevant and interrogatories asking for legal conclusions or opinions are permissible). Accordingly, Michilin shall provide, prior to the inventor's deposition, an answer to Fellowes' interrogatory, to the extent that the interrogatory asks for Michilin's proposed claim construction.[2] I note, however, that Michilin's interrogatory answer will be subject to the understanding that discovery is ongoing and that Michilin is required to supplement its response if additional or contrary information becomes available. See Fed. R. Civ. P. 26(e).

3. Michilin's Motion for Leave to Take Deposition [#66] is **DENIED**. Under Rule 30(b)(6), a party noticing a corporate deposition must describe with reasonable particularity the matters on which examination is requested. Fed. R. Civ. P. 30(b)(6); Alexander v. Fed. Bureau of Investigation, 186 F.R.D. 137, 139 (D.D.C. 1998). Michilin's deposition notice identified the subject matter of the examination as the following: "The deponent(s) will be examined with respect to the approximately 2,000 pages of documents produced by Fellowes by delivery to Michilin's attorneys yesterday, May 15, 2006." Opposition to Michilin Prosperity Company, LTD's Motion for Leave to Take Deposition, Exh. A. I find that

[2] Fellowes' interrogatory also asks about the basis of Michilin's infringement allegations. However, Fellowes' attorney stated in open court and in his brief that Fellowes agreed to narrow the interrogatory to claim construction.

Michilin's notice failed to describe with reasonable particularity the matters on which examination was requested and, therefore, I will not grant Michilin leave to take the deposition.[3]

SO ORDERED.

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JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

Dated:

[3] Because I find that Michilin's deposition notice was insufficient, it is unnecessary to address the issue of whether the notice was timely served.