

U.S. District Court
District of Delaware (Wilmington)
CIVIL DOCKET FOR CASE #: 1:19-cv-00627-CFC-CJB

Progressive Sterilization, LLC v. Turbett Surgical LLC et al
Assigned to: Judge Colm F. Connolly
Referred to: Judge Christopher J. Burke
Cause: 35:271 Patent Infringement

Date Filed: 04/03/2019
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Date Filed	#	Docket Text
06/25/2021	204	<p>ORAL ORDER: The Court, having considered Turbett Surgical, LLC and Turbett Surgical, Inc.'s ("Defendants") portion of the pending discovery dispute motion ("Motion"), (D.I. 183), having reviewed the parties' letter briefs, (D.I. 184; D.I. 191), and having heard argument on June 14, 2021, hereby ORDERS as follows: (1) With regard to Defendants' request that the Court order that Progressive Sterilization, LLC and PMBS, LLC ("Plaintiffs") remove its redactions from certain third-party documents, (D.I. 184 at 1-2), it is GRANTED. The Stipulated Confidentiality Order ("CO") in this case provides that certain highly sensitive documents may be designated "Attorneys' Eyes Only" ("AEO") and may not be disclosed to the parties in this case. (D.I. 81) Plaintiffs have not demonstrated why these provisions of the CO (which the parties have invoked "liberally" in this case with regard to many produced documents), (D.I. 184 at 1), are not sufficient to protect their confidential information without the need for further redaction. (See D.I. 184, ex. A at 2 (stating that counsel for one of the third parties noted to Plaintiffs that it did not see why redaction was needed in light of the CO's provision for an AEO production)) Furthermore, even if the redacted material is irrelevant to the case (it is not clear to the Court whether it is or is not), the material is found in documents that undisputedly are relevant to the case, and the redactions at issue "may deprive the reader of context." In re State St. Bank & Tr. Co. Fixed Income Funds Inv. Litig., No. 08 md 1945(RJH)(DFE), 08 Civ. 0333(RJH)(DFE), 2009 WL 1026013, at *1 (S.D.N.Y. Apr. 8, 2009); see also Data Treasury Corp. v. Wells Fargo & Co., CIVIL ACTION NO. 2:06-CV-72 DF, 2009 WL 10742267, at *2 (E.D. Tex. June 23, 2009). (To the extent that Defendants seek their fees and costs with regard to this portion of the Motion, (D.I. 184 at 2), that portion of the request is DENIED.); (2) With regard to Defendants' request that the Court require Plaintiffs to "produce communications responsive to RFP 109 [particularly regarding] communications with subpoena recipients relating to the substance of the[ir] response [to the subpoena,]" (D.I. 184 at 2), it is DENIED. What amounts to a communication regarding the "substance" of a subpoena response is a broad-sounding concept, and so the communications at issue seem likely to include a lot of back and forth between counsel for Plaintiffs and counsel for the subpoena recipients about the mechanics of responding to the subpoenas, which all seems far afield from what is pertinent to this case. (D.I. 191 at 2) Additionally, even if the request might turn up some relevant documents, the burden and expense of responding would surely outweigh the relevance of the request, as this is a long-running litigation and there appear to be a great number of such subpoena recipients, (D.I. 184, exs. BB, CC).; and (3) With regard to Defendants' request that the Court compel Plaintiffs to respond to Interrogatory No. 7 by identifying communications that are "negative, critical or disparaging of Robert Turbett [or] Turbett Surgical," (D.I. 184 at 3; see also D.I. 191 at 3), it is GRANTED. The Court can certainly see how such material could be relevant to Defendants' counterclaims for tortious interference and abuse of process, as both are premised on the allegation that Plaintiffs intentionally disseminated false information about Defendants in order to harm Defendants' business. (D.I. 184 at 3) And to the extent that Plaintiffs object that the requests are "unduly burdensome[.]" (D.I. 191 at 3), they have provided the Court with no record support as to what that burden would be. Plaintiffs should do their best to answer the interrogatory in as fulsome a manner as is reasonably possible. Ordered by Judge Christopher J. Burke on 6/25/2021. (dlb) (Entered: 06/25/2021)</p>