UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

L-3 COMMUNICATIONS CORPORATION,
doing business as L-3 LINKABIT,

Plaintiff,

v. Case No.: 6:13-cv-01481-Orl-TBS

SPARTON CORPORATION and SPARTON ELECTRONICS FLORIDA, INC.,

Defendants.
_____/

PLAINTIFF'S RESPONSE TO DEFENDANT'S OBJECTIONS TO DISCOVERY DETERMINATIONS IN THE SPECIAL MASTER'S NOVEMBER 24th RECOMMENDATION AND REPORT (DOC. 134) AND MEMORANDUM OF LEGAL AUTHORITY IN SUPPORT

Plaintiff, L-3 Communications Corporation, doing business as L-3 Linkabit ("L-3"), by and through the undersigned, respectfully submits this Response in opposition to "Sparton's Objections to Discovery Determinations in Special Master's November 24 Recommendation and Report" ("Sparton Objection") (Doc. 134).[1,2]

[1] The Sparton Objection was solely filed on behalf of one defendant, Sparton Corporation ("Sparton Corp."), not the other defendant, Sparton Electronics Florida, Inc. ("Sparton Florida"). Thus, Sparton Florida has arguably waived its right to object. For purposes of this submission, however, Sparton Corp. and Sparton Florida will be collectively referred to herein as "Sparton".

[2] During the November 24, 2014 hearing, L-3 offered to discuss resolution of the issues without the need for the Sparton Objection. Doc. 132, p. 11. Exhibit "A".

> "[MR. LEVITT]: The only thing that might make sense, Joe, is that if there is -- if you want to suggest something short of having to file the objections, I'll be glad to talk to you about it.
> [MR. LEVITT]: We'll do that off line, Your Honor.
> THE COURT: Sure."

Sparton never attempted to confer with L-3 before filing the Sparton Objection.

SUMMARY OF THE ARGUMENT

On November 24, 2014, Special Master Manuel Farach ("Special Master Farach") entered and filed his Report and Recommendation ("S.M. Farach R/R") (Doc. 130) in which he recommended, in pertinent part, as follows:

> 1. The discovery propounded on the Testing Laboratories [Trace Laboratories, Inc. and Foresite, Inc.] should be limited to production by the Testing Laboratories of information that products manufactured by or delivered for testing by Defendant were tested for cleanliness or connectivity [3] (or lack thereof), and the results of those tests. The complete results of those tests should, subject to confidentiality and *in camera* concerns, be produced.
>
> 2. Discovery upon the Testing Laboratories sought beyond that set forth above may be relevant in the future, but its relevance has not been shown at this stage of the proceedings.
>
> 3. The parties have not agreed between themselves on the limiting of search terms and the court has not revised, amended nor revoked its previous order regarding search terms so the Defendant shall run all search terms propounded by Plaintiff subject to further order of the court.

Sparton challenges each and every one of Special Master Farach's recommendations. The Sparton Objection is without basis. The Court should grant the S.M. Farach R/R in its entirety.

First, pursuant to L-3's subpoenas served nearly 5 months ago, discovery should now be produced, over Sparton's objections, by 2 non-party cleanliness testing laboratories, Trace Laboratories, Inc. and Foresite, Inc. (the "Testing Laboratories"). The subpoenas, as narrowed by the S.M. Farach R/R, are limited to information containing the testing and test results of Sparton's products for "cleanliness or contamination".

[3] L-3 believes "connectivity" was a scrivener's error and that Special Master Farach intended to write "cleanliness or ***contamination***", as it appears in L-3's subpoenas. *See* Sparton Objection, Exhibit 11, Doc. 137-2, p. 11.

Second, Sparton's actions concerning L-3's search terms have stalled party discovery in 4 key respects. Over 5 months after the parties first exchanged search terms: (1) Sparton has run only 19 of L-3's 153 search terms, in contravention of this Court's June 19th Order that made clear there is no veto power, and flatly refuses to run 29 terms (on relevance grounds) that are critical to L-3's claims; (2) incredibly, of the documents Sparton has produced, fewer than 10% of the documents Sparton has produced are readable[4]; (3) Sparton has failed to produce discovery by an agreed-upon date (October 23rd); and (4) Sparton misuses the concept of a "rolling basis" production to artificially limit its production to 50,000 pages of (largely unreadable) documents each day.[5] Meanwhile, Sparton has had L-3's full production since October 9th (so for two and a half months).

L-3 took to heart the Court's statement that it has "never appointed a special

[4] The readability of Sparton's production was not an issue before the Special Master underlying the S.M. Farach R/R. However, Sparton has put before the Court a new argument, not previously made to the Special Master, that Sparton has produced over 2.3 million pages of documents in discovery and so it shouldn't have to produce any additional documents. L-3 wishes to inform the Court that only approximately 154,000 of those pages (so, less than ten percent), across over 30 volumes, are readable, and Sparton placed the burden on L-3 to cull through these 2.3 million pages of documents to determine this. L-3 has raised this latest issue before the Special Master and it is now presently pending before him (*see* Exhibit "B", L-3's December 17th letter to Special Master Farach, without exhibits). Thus, Sparton has produced virtually no documents even with respect to the search terms it "agreed" to run. Accordingly, its new argument that it now wants the Court to excuse it from any further production because of the burden of such production rings especially hollow.

[5] On September 5th, L-3 advised the Court that it, as well as Sparton, would complete their respective rolling document productions by October 2nd. Doc. 120, at p. 2. On September 29th, L-3 and Sparton agreed by email that: (1) L-3 would have 1 additional week to complete its rolling production of documents (by October 9th); and (2) Sparton would have 3 additional weeks to complete its rolling production, to "on or before October 23" – due to "technical" issues – *not* so it could self-limit its production months beyond October 23rd.

discovery master" in any prior matter before the Court (June 18th Hrg. Tr., Doc. 88, p. 70 (Exhibit "C")). L-3 therefore sought to resolve the then pending issues without the need for a special master. Doc. 90 (L-3's status report) ("[C]ounsel for L-3 Linkabit emailed counsel for Defendants … in an attempt to resolve or narrow the parties' outstanding discovery issues." "L-3 Linkabit does not believe it is necessary for the Court to appoint a discovery Special Master at this time."). Nevertheless, Sparton continued to push for a special master ("…Defendants continue to assert that a special master is necessary."), until the Court appointed one. (Doc. 118, at 1). Now, ironically, after Special Master Farach's appointment and his issuance of an unfavorable report and recommendation, Sparton objects. Buyer's remorse is not grounds for reversal.

L-3 respectfully submits that the S.M. Farach R/R entered on November 24, 2014 should be adopted by this Court in all respects.

SUMMARY OF THE ACTION

This action was filed by L-3 against Sparton seeking the award of substantial damages L-3 sustained from two types of defective circuit card assemblies Sparton built and supplied to L-3. (First Amended Complaint, Doc. 35). The two relevant circuit card assemblies, the Rx CCA and the Ref Gen CCA, were part of a communications modem ("Modem") which L-3 sold to a military end-user, to be used in theatre by the warfighter. Exhibit "D" (Illustrations of the exterior and interior of L-3's Ruggedized Modem). Pursuant to L-3's purchase orders ("Purchase Orders"), Sparton warranted that the goods delivered "shall… be **free from defects in workmanship** [and] that the performance of work and services shall conform … to **high professional standards**." Exhibit "E"

(Excerpt of the Terms and Conditions to L-3's Purchase Orders) (emphasis added).

L-3's First Amended Complaint alleges, *inter alia*, the following:

24. That the Sparton Defendants failed to follow the Ref Gen Documentation, and did not mount the connectors flush against the printed wiring boards of the Ref Gen CCA.

28. That as a result of the Sparton Defendants' failure, the Sparton Defendants delivered Ref Gen CCAs with the following defects: a) Gaps existing between connectors and the printed wiring boards; and b) The presence of cracked, or "fractured" solder joints.

41. That, unbeknownst to L-3 Linkabit at the time, beginning in or about July 2012 … the Sparton Defendants began to deliver Rx CCAs to L-3 Linkabit with a change in their manufacturing process.

42. That the change in manufacturing process was without L-3 Linkabit's knowledge or permission.

43. That the Sparton Defendants' change in manufacturing process included using an excessive amount of flux, which in turn caused a defect whereby the flux did not convert to an inert substance, and instead allowed for "dendritic growths" to form and grow, which caused the Rx CCAs to fail.;[6] and

85. That by providing defective processes pursuant to the Statement of Work contained in the Purchase Order Agreements and by providing defective Rx CCAs, the Sparton Defendants provided processes and products that were not free from workmanship and design defects.

(Doc. 35, p. 7,10,17: ¶¶24-28; 41-43, 85).

It is undisputed that Sparton's answer denies that it delivered any goods or performed any processes (services) with workmanship defects nor violated high professional standards. *See* Defendants' Answer to Plaintiff's First Amended Complaint

[6] At the June 18th hearing, L-3 handed up, and the Court accepted, a sample Rx CCA board. "MR. LEVITT: … We have plastic bags. They're a little sticky." (June 18th Hrg. Tr. Doc. 88, p. 5, 97-98).

and Affirmative Defenses, Doc. 42, at p. 4-5,13, and 26. As such, Sparton has placed at issue its definition of workmanship and high professional standards.[7]

At bottom, this dispute is akin to a products defect case, except that what Sparton delivered were products manufactured with process defects which caused them to fail. The discovery sought by L-3, and resisted by Sparton, go directly to this seminal point.

THE COURT SHOULD APPLY A "CLEAR ERROR" STANDARD OF REVIEW

The Court, in its "Order Appointing Special Master," filed on August 27, 2014 ("Special Master Order") (Doc. 118 at 3-4), held, in pertinent part:

> 7. The Special Master shall issue orders or reports and recommendations on the motions which come before him. The parties may file objections to these orders and reports and recommendations in the same manner that they could object to orders and reports and recommendations issued by a magistrate judge. The Court will review objections to the Special Master's findings of fact and conclusions of law *de novo* and will review objections to the Special Master's procedural orders for abuse of discretion. *See* FED.R.CIV.P. 53(f). (emphasis added)

The Sparton Objection devotes a solitary sentence to the applicable standard of review, at page 15 (out of the 641-page Sparton Objection with exhibits) which they claim is an abuse of discretion, but provides no facts or argument in support of any abuse of discretion.

However, the Court made clear that Sparton had 14 days to object to the S.M. Farach R/R. November 24th Hrg. Tr., Doc. 132, at p. 8 (Exhibit "A") ("THE COURT: You have 14 days, Mr. Shannon."). The Sparton Objection was filed on December 11th, so, 17 days after the S.M. Farach R/R filing. In this Circuit, an out of time objection

[7] Additionally, as explained in further detail herein, the parties' agreed-upon Statement of Work has squarely places at issue Sparton's quality standards and processes, since it requires Sparton to utilize its "standard Quality Management System" to report failures. Doc. 36-6.

mandates a "clear error" standard of review, which is stricter than "abuse of discretion".[8] Regardless of which standard the Court applies, the Sparton Objection should be denied.[9]

SPARTON'S DISPARAGEMENT OF SPECIAL MASTER FARACH

Rather than set forth how the S.M. Farach R/R fails under the applicable standard of review, Sparton engages instead in *ad hominem* attack of Special Master Farach, claiming, in essence, that he did a poor job and violated his duties as Special Master. Thus, Sparton argues:

- "[T]he Report contains a limited, superficial analysis…". (Doc. 134, at 1);
- "[T]he Special Master issued a perfunctory Report…". (Doc. 134, at 14);
- "The perfunctory conclusory report was an abdication of the Special Masters' [*sic*] responsibility." (Doc. 134 at 14);

[8] In *Glatfelter v. Cochran*, 2014 U.S. Dist. LEXIS 69397, *17 (S.D.Ala. April 22, 2014), the standard of review in the Eleventh Circuit was clearly stated as follows:

> Any party who objects to this recommendation or anything in it must, within fourteen (14) days of the date of service of this document, file specific written objections with the Clerk of this Court. *See* 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 72(b); S.D. Ala. L.R. 72.4. The parties should note that under Eleventh Circuit precedent, 'the failure to object limits the scope of [ ] appellate review to **plain error** review of the magistrate judge's factual findings.' *Dupree v. Walden, Attorney General, State of Alabama*, 715 F.3d 1295, 1300 (11th Cir. 2011). (emphasis added.)

See also Carling v. Peters, 760 F. Supp. 2d 400, 402 (S.D.N.Y. 2011) ("[T]he Court finds that Peters did not file timely objections to the Order…. Here, the Order was entered into the public record on December 6, 2010. Notice of the Order and access to it were available to the parties through the Court's Electronic Case Filing system as of that date. Thus, the deadline for filing objections was December 20, 2010.").

[9] As will be explained in further detail herein, Sparton is in essence asking for a complete "do-over" because it submits new exhibits and makes multiple new arguments not previously before the Special Master. Even if the Court does not apply a "clear error" standard of review due to Sparton's out of time filing, Sparton had to, at very least, argue to the "abuse of discretion" standard, and not argue for a "do-over".

- "[The Special Master] abdicated his responsibility…". (Doc. 134, at 15); and
- "The Special Master did not conduct a conference or hearing before issuing a ruling…". (Doc. 134, at 18).[10]

SPARTON'S SUBMISSION OF DOCUMENTS AND "INFORMATION" NOT BEFORE SPECIAL MASTER FARACH WHICH ARE OUTSIDE THE RECORD

Sparton has submitted both new exhibits and new arguments in support of those new exhibits that were never before Special Master Farach. This attempt at a "second bite of the apple" outside of the Record below should be rejected out of hand by this Court.[11] *Liberty Life Assur. Co. v. Devillavilla*, 2014 U.S. Dist. LEXIS 10316, *3

[10] Indeed, Sparton has even gone a step further. Sparton now improperly seeks to blame Special Master Farach for relying upon Sparton's strategically chosen arguments and evidentiary submissions (i.e., calling the S.M. Farach R/R "perfunctory" (Sparton Objection, at page 14)) by claiming he should have had a hearing, even though Sparton never asked for one, and in any event he was not required to do so. August 27, 2014 Order (The Special Master's purview "*includes the authority* to conduct hearings…"). Doc. 118, p.2 (emphasis added).

[11] Sparton has "supplemented" the Record before Special Master Farach by adding additional exhibits and by "omitting" portions of exhibits that had been before Special Master Farach. The following 6 exhibits were not before Special Master Farach, are misleading, and should not be considered:

a. Sparton Objection, Exhibit 3 (Doc. 135): A February 15, 2014 letter from L-3's counsel to Sparton's counsel at the inception of discovery). Sparton attempts to use this to argue regarding L-3's requests for production and Sparton's responses.
b. Sparton Objection, Exhibit 4 (Doc. 136): L-3's Search Terms, with Sparton's counsel's colored annotations. Sparton attempts to use this as a demonstrative exhibit regarding L-3's search terms that it refuses to run.
c. Sparton Objection, Exhibit 5 (Doc. 136-1): Sparton's Search Terms. Sparton attempts to juxtapose this against L-3's Search Terms.
d. Sparton Objection, Exhibit 10 (Doc. 137): The parties' ESI Stipulation. Sparton attempts to use this to in support of its argument regarding L-3's search terms that it refuses to run.
e. Sparton Objection, Exhibit 24 (Doc. 138-3-138-6): Sparton's interrogatory responses (not before the Special Master, with the exception of pages 1 and 2). Sparton attempts to use this in support of its argument regarding other Sparton customers.
f. Sparton Objection, Exhibit 27 (Doc. 138-9): An October 14, 2014 email between L-3 and Sparton counsel. Sparton attempts to use this in support of its argument regarding L-3's search terms that it refuses to run.

(M.D.Fl. Jan. 28, 2014) ("The district court must consider the record and factual issues based on the record independent of the magistrate judge's report").

ARGUMENT

I. The Subpoenas to the Testing Laboratories Should be Enforced

The Testing Laboratories test whether products submitted to them comply with industry cleanliness specifications. The documentation that Sparton has, belatedly,[12] sought to prevent the Testing Laboratories from producing is key to L-3's claims. It bears repeating that Sparton warranted that the goods it delivered to L-3 "shall... be free from defects in workmanship [and] shall conform... to high professional standards." Exhibit "E". L-3 should be allowed to discover how Sparton applied this standard in other contexts.[13]

L-3's position in the litigation, among other things, is that Sparton's defective

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If Sparton is allowed to introduce, as part of its "Objection", evidentiary submissions that were not previously before the Special Master, it will allow it to argue inferences that it could not to Special Master Farach. This would be highly prejudicial to L-3.

[12] L-3 served both Subpoenas on July 31, 2014. Responses were due August 19, 2014. Sparton did not move to quash, nor did it move for a protective order. To the extent Sparton's Letter (to Special Master Farach) could somehow be considered a motion for protective order, it was made 17 days after documents were due under both Subpoenas. To the extent Sparton raised putative objections, they were of no legal effect because only the non-party Testing Laboratories could have objected to the subpoenas. Neither did. Fed.R.Civ.P. 45(d)(2)(B).

[13] As L-3 has previously informed the Court, the parties have entered into a Confidentiality Stipulation (Doc. 120, p. 5). While L-3 does not specifically seek the "confidential" information of Sparton's other customers, much less their trade secrets, a safeguard exists to satisfy any concerns regarding customer confidentiality. On this very issue, Sparton relies on to Foresite, Inc.'s "Report Release Authorization", however the release is, in Foresite's own words, for its "ISO system" (so, not to protect "confidentiality"). Exhibit "F" (email from Tracy Stout to Jane Quasarano). The email's attachment also illustrates that Sparton sought testing services from Foresite on "cleanliness", "residue", and "contamination" issues. *Id.*

processes used excess flux and/or solder in the course of its assembly of the Rx CCA. Sparton, though, has maintained that it is simply a contract manufacturer – it manufactures strictly as it is told. Sparton further claims that L-3 "owned" the process by reviewing certain of Sparton's actions in designing the process.

> "MR. SHANNON: [W]hat's important is to understand who Sparton is in this relationship, okay? Sparton is a contract manufacturer. They make what other parties ask them to make. They bring the specifications. They sign off on the processes. They supply that service of manufacturing." June 18, 2014 Hrg. Tr., Doc. 88, p. 13-14. Exhibit "C".

However, Sparton's position is flatly belied by the plain language of the Statement of Work issued under L-3's Purchase Orders, and to which Sparton agreed to perform. The Statement of Work specifically provided that while certain components (i.e., synthesizers) were to be soldered to the bottom and top sides of the Rx CCA, <u>how</u> this was to be accomplished was Sparton's responsibility. Doc. 63-6, p. 3 ("The vendor is requested to provide the process, the cost, and the schedule required to do the aforementioned tasks."). Additionally, Sparton was required to utilize its standard Quality Management System to report failures. *Id.* ("The contractor shall report failures and document any required corrective actions utilizing their standard Quality Management System."). Here, Sparton failed to detect, let alone report, any failures, and as a result, L-3's Modem suffered failures in the field. Obviously Sparton's "standard Quality Management System" is directly at issue.

Even if Sparton were simply a contract manufacturer, ignoring the plain language of the 2 sections above, even Sparton acknowledges it follows *some* unidentified standard. Thus, Mr. Shannon was forced to admit:

> "MR. SHANNON: … We don't have specifications **other than complying with good manufacturing specifications**." June 18, 2014 Hrg. Tr., Doc. 88, p. 14. Exhibit "C" (Emphasis added).

Thus, Sparton admits there are *some* workmanship specifications that it follows, and it is these standards that L-3 is entitled to discovery on.[14]

Where, as here, the processes utilized to manufacture and/or assemble the product are at issue, discovery regarding other customers whose products were subject to the same or similar processes is relevant. *Baine v. General Motors Corp.*, 141 F.R.D. 328, 329-331 (M.D.Al. 1991). In *Baine*, the court ordered defendant General Motors to produce discovery regarding all vehicles that utilized "similar" systems over a multi-year timeframe, holding that defendant "cannot allow General Motors to define the parameters and content of discovery in this case." 141 F.R.D. at 330. *See also*, *Hessen v. Jaguar Cars, Inc.*, 915 F.2d 641, 649 (11th Cir. 1990); *Dollar v. Long Mfg., N.C., Inc.*, 561 F.2d 613, 617 (5th Cir. 1977); *Jeld-Wen, Inc. v. Nebula Glasslam Int'l, Inc.*, 248 F.R.D. 632, 640-643 (S.D.Fla. 2008); *Fletcher v. Atex, Inc.*, 156 F.R.D. 45, 47-49 (S.D.N.Y. 1994); *Culligan v. Yamaha Motor Corp.*, 110 F.R.D. 122, 124-125 (S.D.N.Y. 1986); *Bowman v. General Motors Corp.*, 64 F.R.D. 62, 67-70 (E.D.Pa. 1974).

[14] We ask the Court to note that while Mr. Shannon admits Sparton manufactures to "good" specifications, the Purchase Order requires "high" professional standards. Since Sparton apparently denies the plain language of the Statement of Work means anything, or imposes any obligations on Sparton, what are the "good manufacturing specifications" that even Sparton's counsel admits it is required to perform to? What is the difference between the "high professional standards" L-3 thought it was getting, and the "good manufacturing specifications" Sparton claims it supplied? Any way you cut it, L-3 needs discovery into Sparton's application of its quality system generally to learn this.

II. Sparton Should be Required to Run All of L-3's Search Terms

In its June 19, 2014 Order, this Court specifically held that "[n]o party has the discretion to veto an opponent's search terms." (Doc. 87, at 5). Notwithstanding the Court's clear directive, Sparton only ran 19 search terms, which it unilaterally termed the "agreed search terms"[15]. Sparton's position is without support. **First, there is and was no "agreement" to Sparton's purported "agreed search terms"**.[16] The reason why Sparton did not attach any such "agreement" to the Sparton Objection is that none exists.

L-3 never agreed that Sparton could unilaterally determine what it would or would not run, and, when Sparton refused to run L-3's terms, L-3 brought the issue to the Special Master. Even if Sparton's version was accurate, the Court's June 19th Order permitted L-3 to serve more search terms at any time.[17] Doc. 87 ("[T]here is no limit on the number of search terms a party may submit to its opponent, and not all search terms must be submitted at one time."). That Sparton can now claim the search terms were "agreed" terms and L-3 could not later supplement the terms is baseless. Special Master Farach properly enforced the Court's Order.

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[15] Sparton places emphasis on L-3's requests for production, which are not before the Court. In its revisionist history, Sparton disregards that it agreed to comply with L-3's document requests by running search terms (as opposed to searching its files for discrete documents). However, once it made that agreement, it then refused to run L-3's search terms (despite the language of this Court's subsequent June 19th Order that "Defendants deny the assertion of any veto power over Plaintiff's search terms. No party has the discretion to veto an opponent's search terms.". Doc. 87; Sparton's Objection, page 5).

[16] BLACK'S LAW DICTIONARY defines "agree" as "to concur; to give mutual asset; to unite in mental action; to exchange promises". None of which occurred here.

[17] While not before the Court, L-3 served a Second Set of Search Terms, containing 6 additional terms. For 2 months, Sparton has refused to respond to these terms.

Sparton never argued before Special Master Farach, but now argues to this Court at pages 9-10, that some of L-3's search terms would "subsume" others of L-3's search terms (without even a declaration from its document vendor or any other support for that proposition). As set forth above, Sparton should not be given a second bite at the apple to now raise arguments it strategically chose not to raise before Special Master Farach, and the Court should not accord the argument any weight.

Nevertheless, in an attempt to narrow the issues, L-3 will focus on the most critical search terms at issue. Sparton has refused to run twenty-nine (29) search terms which are calculated to hit on documents critical to L-3's claims in this case. The documents that should result are critical for L-3 to determine, for example, how Sparton utilized its "standard Quality Management System" under the Statement of Work, or interpreted "high professional standards" under L-3's Purchase Orders. These documents cannot be captured by the terms Sparton already run, which will bring back only those documents relating to L-3. The 29 search terms are set forth below:

L-3 Search Term

1. ~~Fixture~~[18]
2. SCAR
3. Flush
4. Emerson
5. DOE
6. Ruggedized
7. Z Axis
8. Z-Axis
9. Quality Management System
10. Lessons Learned

[18] L-3 has already agreed to limit "Fixture", as Sparton concedes at page 12 of the Sparton Objection. Thus, L-3 has removed it from the terms Sparton refuses to run.

11. Indium
12. Corrective Action Request
13. Coplanarity
14. emerson.com
15. No Clean Flux
16. No-Clean Flux
17. Det Norske Veritas
18. Design of Experiments
19. Trace Laboratories
20. Quality Systems Manual
21. Co planar
22. Co-planar
23. Product Development Capabilities
24. Design of Experiments
25. Tinning Connectors
26. Tin Connectors
27. Clearance and Component
28. "High-Temp" or "High Temp" or "Hi-Temp" or "High Temperature" and "Solder"
29. "Low-Temp" or "Low Temp" or "low Temperature" and "Solder"
30. L3

A brief examination of some of the search terms shows their relevance:

A. *"Flush"; "Z Axis"; "Z-Axis"; "Coplanarity"; "Co planar"; "Co-planar"; "Emerson"; "emerson.com"; Tinning Connectors; and Tin Connectors*

These terms are critical to what processes Sparton used, and what manufacturing standards Sparton built to, under L-3's purchase orders with respect to the Ref Gen CCA[19], which is one of the 2 assemblies at issue.

[19] *See, e.g.*, First Amended Complaint, Doc. 35, p.7, Paras. 24-28:
24. That the Ref Gen Documentation required that connectors be installed flush against the printed wiring boards of the Ref Gen CCA.
25. That the Sparton Defendants failed to follow the Ref Gen Documentation, and did not mount the connectors flush against the printed wiring boards of the Ref Gen CCA.
26. That the Ref Gen Documentation required that connectors be installed co-planar with the printed wiring board of the Ref Gen CCA.
27. That the Sparton Defendants did not mount the connectors co-planar with the printed wiring boards of the Ref Gen CCA.

As the *Baine* case and other authority make clear, in a process defect case such as this, L-3 is entitled to discovery regarding Sparton's application in other, similar contexts. In fact, Sparton's Exhibit 24, which we understand to be "summaries" of customer complaints,[20] underscores why discovery regarding search terms like "Flush" and "Coplanar" is relevant. For example:

- [**CUSTOMER REDACTED**] "013 – [**REDACTED**] assy [**REDACTED**] shorted there is no pin protrusion and headers are **flush to board**." *Exhibit 24, Doc. 138-3, p.36* (emphasis added).

- [**CUSTOMER REDACTED**] "013 – Unable to assemble ECU with this channel due to connector [**REDACTED**] **not mounted flush to the board**." *Exhibit 24, Doc. 138-3, p.42* (emphasis added).

- [**CUSTOMER REDACTED**] "059 – [**REDACTED**] has insufficient solder on [**REDACTED**] leads. [**REDACTED**] had [**REDACTED**] leads with nonwetted solder ([REDACTED] **lead coplanarity issue**). No Xray. AOI and FP." *Exhibit 24, Doc. 138-5, p. 4* (emphasis added).

These complaints indicate Sparton had disagreements with other customers over these same issues, and the interpretation of the specifications to be applied. Sparton has represented the following with regard to the Ref Gen CCA:

> "MR. SHANNON: … [W]ith respect to the Ref Gen, there's no

28. That as a result of the Sparton Defendants' failure, the Sparton Defendants delivered Ref Gen CCAs with the following defects: a) Gaps existing between connectors and the printed wiring boards; and b) The presence of cracked, or "fractured" solder joints.

[20] Sparton's statement that L-3 agreed to simply "summaries" of customer complaints is incorrect. As the Sparton Defendants' "consideration" for L-3's agreement to withdraw (without prejudice) its then pending Motion to Compel Interrogatory Responses (Doc. 100, *as withdrawn, without prejudice, by* Doc. 119), Sparton agreed: (1) that Sparton would provide the full recitation of the Customer Complaints received by Sparton Corporation and Sparton Electronics; and (2) that the foregoing full recitation of the Customer Complaints would be in the customers' own words – and not redacted, undated, and/or containing, in whole or in part, any form of an "attorney" summary. The "summaries" are essentially useless for litigation purposes, lacking, among other things: the source document(s) or document title; where it came from or who authored it; what was redacted; or dates of the entries.

> specifications either. I mean, for this co-planar notion, which means on the same plane, there's no specifications that were given to Sparton which it didn't follow through." (June 18, 2014 Hrg. Tr., Doc. 88, p. 18-19). Exhibit "C".

Sparton's attorney's statement is consistent with its prior customers' complaints – that there is a disagreement on what is required for co-planarity.

Additionally, the "Z-Axis" pertains to top-down pressure applied (i.e., by a fixture, which is similar to a vice) on the board. "Emerson" is the manufacturer of the connectors that were damaged on the Ref Gen CCA. These terms are calculated to lead to relevant discovery, *i.e.*, what the manufacturer recommended for installation of the connectors, and how Sparton proceeded in light of the manufacturer's recommendation.

B. "High-Temp" and "Solder; "Low-Temp" and "Solder; "No Clean Flux"; No-Clean Flux"; Indium; and Trace Laboratories

These terms are critical to what processes Sparton used, and what manufacturing standards Sparton built to, under L-3's purchase orders with respect to the Rx CCA, the other assembly at issue. Sparton's processes are at issue (*i.e.*, changes from one solder or flux type to another). To that end, Indium is a flux manufacturer, and as stated, and Trace Laboratories is a cleanliness testing lab. Again, Sparton's Exhibit 24, containing "summaries" of its customers' complaints, show why this discovery is relevant:

- [**CUSTOMER REDACTED**] "038 – "Fails 100V full load test, **Possible Bd. contamination** or component issue." *Exhibit 24, Doc. 138-3, p. 24* (emphasis added).

- [**CUSTOMER REDACTED**] "056 – "**Excessive flux found on board** in area of [**REDACTED**] and resistors by [**REDACTED**]." *Exhibit 24, Doc. 138-4, p. 30* (emphasis added).

- [**CUSTOMER REDACTED**] "038 – "**No-Clean flux residue located** around leads of [**REDACTED**]." *Exhibit 24, Doc. 138-5, p. 20* (emphasis added).

Again, these complaints indicate Sparton had disagreements with other customers over these same issues, and the interpretation of the specifications to be applied.

C. "L3"

Sparton refuses to run the L-3 Search Term "**L3**" – by initially claiming that their running of "L-3" was sufficient. Although L-3 served this particular term in July, Sparton's refusal to run the term cannot be countenanced in light of the Court's June 19th Order that parties could serve additional search terms, and it need not be done all at once. Sparton also had reason to know from the parties' business documents that "L-3" and "L3" were used interchangeably. *See* Statement of Work, Doc. 63-6 (*i.e.*, "L3 Linkabit").

D. "Ruggedized"

Sparton has refused to run the L-3 Search Term "Ruggedized" unless L-3 agrees to exclude an entire production facility – called the Aydin facility. However, as L-3 has repeatedly explained to Sparton: (i) "Ruggedized" is the name of L-3's product; (ii) L-3does not know the location(s) where Sparton performed; and (iii) running the term is calculated to lead to relevant evidence because L-3's discovery is not limited to its own products - in other words, Sparton's process may have used different specifications for "ruggedized" versus "non-ruggedized" products, and/or that different locations of Sparton might have used inconsistent specifications.

Sparton's Inconsistent Use of "Hits", "Gigabytes", and "Pages"

Sparton refuses to run the 29 terms, it claims, apparently because of how many documents result. First, it argues the terms bring back too many "**hits**". However, the parties never agreed on what constituted too many document "hits".

Second, in connection with other L-3 Search terms (terms 27-29 above) – Sparton inexplicably changed gears, arguing too many "**Gigabytes**" of documents, rather than "hits". Sparton Objection, Exhibit 23, Doc. 138-2, at 5. In negotiating the ESI Protocol in this action, Sparton unilaterally struck L-3's proposed language that a party's search terms would be deemed too broad if a search term's results totaled more than 500 Megabytes. (Exhibit "G"). Having struck this language, Sparton should not be able to now argue it is excused from reviewing search results based on "Gigabytes" alone.[21]

Third, Sparton again shifted, disclosing that it "estimates that running the additional search terms would generate over 2 million additional "**pages**" in discovery. (Sparton Objection, at 1). Notably, Sparton has not submitted any affidavit from its document vendor setting forth an estimate of purported "hits", "Gigabytes", "pages", or the like.

Sparton's Production of Unreadable Documents

Sparton represents it "has already produced over 2 million pages of documents and spent hundreds of thousands of dollars in processing and review costs", and that it is essentially unfair for it to be 'burdened' further. (Sparton Objection at 1). However, in actuality, of the some 2.3 million pages of documents:

- **916,000** pages of documents were produced by Sparton on October 18th from its software called "Agile" (which are literally 99% of the documents produced from Agile altogether), which it decided to produce in a format it knew was unreadable

[21] Incredibly, Sparton has attempted to use the parties' ESI Protocol, Paragraph 11, as a "shield" against producing readable documents to L-3. Exhibit "B".

and looked like computer code. Sparton has steadfastly refused to produce them in readable format.[22] In a September 15, 2014 email, Sparton's counsel represented to L-3 that Sparton was looking into producing Agile documents, the implication being that they would be produced shortly. (Sparton Objection, Exhibit "9", Doc 136-5). However, on December 3rd, before the Special Master, Sparton's counsel then claimed Agile is "process" oriented.

- **1.23 million** more unreadable pages of documents (in addition to the unreadable Agile documents), that again look like computer code.

Thus, only approximately 154,000 pages, at most (so, less than ten percent of Sparton's overall production) were produced to L-3 in a readable format.

We frankly are not certain how Sparton allegedly incurred "hundreds of thousands of dollars in processing and review costs" in producing 154,000 readable pages of documents.[23] Regardless, it is not an excuse for Sparton to not produce relevant discovery.

Sparton's "defense" is that it knowingly bloated its production in one of three ways: (a) by producing multiple versions of 2 million pages of "duplicative" documents in nonreadable form (which begs the question why they were produced again); or (b) by producing 2 million pages of "irrelevant" documents in nonreadable form (which again

[22] When Sparton received documents that it could not read from L-3 in their native format, L-3 immediately reproduced the documents to Sparton days later.

[23] At the June 18th hearing, Counsel for the Sparton Defendants represented its own e-discovery effort would not be overly burdensome:
"THE COURT: Let's -- do you concur that we're talking about maybe a quarter of a million dollars cost for ESI discovery?
MR. SHANNON: I don't think so. I really don't think there's that many custodians that we're talking about."
(June 18, 2014 Hrg. Tr., Doc. 88, p. 87).

begs the question why they were produced to begin with); or (c) the worst scenario for Sparton, by producing 2 million pages of duplicative and irrelevant documents to L-3. (Exhibit "B", L-3's December 17th Letter to the Special Master). Regardless, Sparton has refused to provide the discovery for a matter of months.

CONCLUSION

L-3 Linkabit respectfully requests that Sparton's Objections be denied in all respects, that L-3 Linkabit be awarded its costs and attorneys' fees in responding to the Objections, and for such other and further relief as this Court deems just and proper.

Respectfully submitted this 24th day of December, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of December, 2014, I caused the foregoing PLAINTIFF'S RESPONSE TO DEFENDANT'S OBJECTIONS TO DISCOVERY DETERMINATIONS IN THE SPECIAL MASTER'S NOVEMBER 24th RECOMMENDATION AND REPORT (DOC. 134) to be filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Robin Fitzgerald