

Armstrong Pump, Inc. v. Hartman, Parties “Continual and Growing Animosity” During Discovery Results in NY District Court Ordering its Own “New and Simpler Approach.”

In this patent infringement case, the Court characterized the Motion for discovery relief before it as containing “allegations of delays, omissions, and misrepresentations” that threatened to “make this case more about document production than about a breach of a contract.” The Court, frustrated with the parties “continual and growing animosity” during discovery, remedied the problem by creating its own “new and simpler approach to discovery.”

On February 4, 2005, Defendant, Thomas Hartman (Optimum Energy) and Plaintiff, Armstrong, executed a license agreement involving three patents that Optimum owned. Under the license agreement, Optimum’s patented technology was to be incorporated in Armstrong’s HVAC systems at the factory. The license agreement prohibited the licensed technology from being added in the field absent special permission.

As summarized by the Court, Optimum’s counterclaims accused Armstrong of field implementation and stand-alone sales without Optimum’s permission. Optimum’s counterclaims also suggested that Armstrong might have contemplated field implementation and stand-alone sales even while negotiating the License Agreement.

In April of 2011, Optimum filed the first of two sets of document requests seeking all documents that related to the “License Agreement, communications between Hartman and Armstrong, the alleged field implementation of the licensed technology mentioned in the counterclaims and the IPC 11550 Control System.” A dispute regarding the document production caused Optimum to file a Motion to compel which was granted by the Court in June 2012 and admonished Armstrong, “not to engage in piecemeal production of materials it has located that are responsive to Optimum Energy’s unobjectionable requests.” In August of 2012, Optimum served its second document request requesting documents concerning marketing efforts and customers that might provide relevant information with respect to Optimum’s counterclaims. Subsequently both parties filed Motions to compel and the Court issued another order requiring discovery production.

During its deposition of Thomsen, Armstrong’s Global Director of the Systems Customer Solutions Group, Optimum learned for the first time about the patented “Hartman LOOP Technology” being put through a five step development process. Optimum alleged that details of the process were highly relevant to its claims and accused Armstrong of withholding information regarding this process. Optimum alleged that Thomsen and other employees needed to be further deposed and that much of the documentation recently provided by Armstrong provided only a “window” into an extensive marketing process including the five step process that Armstrong used for each new product it developed and sold.

In its discussion, the Court noted its frustration with the contentious discovery and the parties "continual and growing animosity" that "slowed the progress of the case and that has required repeated judicial intervention." The Court indicated that four and a half years into the case, discovery was still incomplete. The Court noted neither party had ever objected to a discovery request and made a Motion for a Protective Order under Rule 26 (c), and that rather than focusing on the actual claims in the case, the parties wished the Court to "start obsessing over the details" of discovery issues. Indicating that it had "Enough," the Court emphasized that a "lawsuit is supposed to be a search for the truth and the tools employed in that search are the rules of discovery."

In its reasoning, the Court found that Optimum had a right to explore its asserted allegations and had made a good faith effort to address the deficiencies in Armstrong's discovery. On the other hand, the Court found that Armstrong had not explained its continued "piecemeal" discovery.

To deal with the contentious discovery, the Court decided to "fashion a new and simpler approach to discovery." The Court identified "certain phrases" that appeared in discovery documents and motion papers that "would open the door to a more objective discovery process that leaves Armstrong no room for gamesmanship." The Court therefore ordered:

For a period starting from January 1, 2004 through the present time, Armstrong must search ALL corporate documents, files, communications, and recordings for EACH of the above phrases. Armstrong will maintain a list of every server, computer, file room, or other place searched, and a list of all positive search results. For each positive result, Armstrong will procure a full copy of the document in question. Armstrong also will furnish a complete and sworn description of its document retention policies, if any, from January 1, 2004 through the present time. In the specific instance of [REDACTED] reports, if for any reason a product did not have a written report for a certain stage or did not go through all five stages then someone at Armstrong with appropriate knowledge or expertise will provide a sworn statement explaining why. When the search is complete, a representative of Armstrong and all of Armstrong's counsel of record will file a sworn statement confirming that Armstrong made a good-faith effort to identify sources of documents; that a complete search of those sources for each of the above phrases occurred; and that the search results have been furnished to Optimum. All of this must occur on or before April 1, 2015, with absolutely no exceptions or extensions. Failure to comply will lead to sanctions under Rule 37(b)(2)(A).

The Court noted that it was currently focusing on Armstrong because it was ruling on Optimum's Motion, but put Optimum on notice that it would not "hesitate to apply the same approach to its document production." The Court ordered Optimum's counsel to file a sworn statement to certify that it had fulfilled Armstrong's entire outstanding discovery request or file a motion for a Protective order to quash any outstanding discovery requests that it opposed.

Armstrong Pump, Inc. v. Hartman, No. 10-CV-446S, 2014 WL 6908867 (W.D.N.Y. Dec. 9, 2014)

