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Court has harsh view of missed deadline for answering requests for admission

Question: What would a decent patent lawyer do to respond to requests to admit when the client is overseas and unavailable due to a COVID lockdown?

Discussion: Plaintiff Eagle Eyes Traffic Industry USA Holding LLC (“Eagle Eyes”) filed a motion for an order compelling defendant E-Go Bike LLC (“E-Go”) to provide responses to Eagle Eyes’ discovery including requests for admission (“RFAs”). E-Go conceded that the requests were properly served by e-mail and it missed the deadline for responding.

E-Go’s explanation for its failure to respond is that the company ceased operations toward the end of last year, and it was difficult for U.S.-based counsel to obtain information from the pertinent former E-Go employee due to COVID lockdowns in Shanghai and surrounding cities. That is a reasonable explanation for why it was difficult to produce documents or provide substantive information that counsel did not possess.

But, according to the court, it didn’t excuse the failure to respond to the RFAs in a timely manner.

It appears that 20 of the RFAs asked E-Go to admit allegations in the complaint that E-Go had already denied in the answer. Two of the RFAs asked E-Go to admit that it has no evidence supporting the affirmative defenses it pleaded in that same answer and that all those affirmative defenses are baseless. Assuming E-Go complied with Rule 11 when it filed its answer, its counsel did not need any further information from his client to respond to those RFAs.

That left one RFA: “Admit that YOU have sold or distributed ACCUSED PRODUCTS.”

The court then explained: “A decent patent lawyer would have noticed that this RFA was vague as to location, that asking about sales outside the U.S. might be objectionable as irrelevant, and that E-Go’s answer to a similar paragraph of the complaint



IP NEWS CHALLENGE

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would have enabled counsel to serve a lack-of-knowledge response as to sales in the U.S.” The court was skeptical that U.S. counsel needed any information not already on file in this matter to answer these RFAs. Regardless, even if counsel did not feel comfortable substantively answering

these RFAs until he could confer with his client, he still could have served objections simply to avoid defaulting.

Answer: When faced with the strict deadline for responding to requests to admit, a “decent” attorney would answer what can be answered, object to the objectionable and, for the rest, state a lack of knowledge with specificity.

Case Cite: *Eagle Eyes Traffic Industry USA Holding LLC v. E-Go Bike LLC*, Case. No. 21-cv-07097-JST (TSH) (N.D. Calif. July 1, 2022)

Sur-Reply: The court’s approach was pretty harsh. Any litigator could face a looming deadline to respond to RFAs and an unresponsive client. The answer lies right in Federal Rule of Civil Procedure 36(a)(4), “A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.” Counsel could or should have brought a motion before the deadline asking for an extension.