

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**GENERAL ELECTRIC COMPANY,
Plaintiff,**

v.

**MITSUBISHI HEAVY INDUSTRIES,
LTD. ET AL.,
Defendants.**

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CIV. ACTION NO. 3:10-CV-276-F

ORDER DENYING PLAINTIFF’S MOTION FOR CLARIFICATION

BEFORE THE COURT is Plaintiff General Electric Company’s (“GE”) Motion for Clarification, filed on July 24, 2012 (Doc. No. 644). Defendants Mitsubishi Heavy Industries, Ltd.’s and Mitsubishi Power Systems Americas, Inc.’s (collectively “Mitsubishi”) filed a Response on June 31, 2012 (Doc. No. 647), GE filed a Reply on August 3, 2012 (Doc. No. 648), and Mitsubishi filed a Sur-reply on August 6, 2012 (Doc. No. 652). Having considered the parties’ briefs, the Court is of the opinion that GE’s Motion should be DENIED.¹

The bench trial on Mitsubishi’s inequitable conduct defense will begin on October 3, 2012. In its Order Regarding Direct Testimony, the Court instructed the parties to “submit in writing the direct testimony to be offered in evidence no later than fourteen days before trial begins.” Ct.’s Order 1 (Doc. No. 642). In the instant Motion, GE argues that because Mitsubishi carries the burden of proof at trial, a staggered exchange of the narratives is merited. Specifically, GE argues that the Court should require Mitsubishi to provide GE with its witnesses’ narratives twenty-one days before the trial, and allow GE to provide its witnesses’ narratives to Mitsubishi fourteen days before the trial. Otherwise, GE argues, “GE will be in the unenviable position of having to guess, based on Mitsubishi’s pleadings, discovery responses,


¹ This Order resolves Doc. No. 644.

and expert reports, what evidence Mitsubishi will include in its direct examinations, so that GE can include in its own witness statements all of the evidence that is necessary to rebut it.” GE’s Mot. 2. Mitsubishi responds that GE’s proposed “staggered exchange” is both a violation of the rule of sequestration and bestows an unfair advantage on GE.

While the Court agrees with GE that if the Court’s rule were not in place, GE would have the benefit of witnessing Mitsubishi’s case in chief prior to presenting its own, the party without the burden always prepares a rebuttal case in advance of trial with the help of the other side’s “pleadings, discovery responses, and expert reports” and without the benefit of having access to the opposing party’s witness testimony. Requiring Mitsubishi to give GE its witness narratives one week before the deadline applicable to both parties would give GE an advantage in preparing its case that it would not have but for the Court’s procedural rule. Accordingly, GE’s Motion is DENIED. All parties will submit their direct-testimony narratives fourteen days in advance of trial. However, in order to streamline the process, Mitsubishi is ORDERED to provide GE with a list of all prior art about which it will present evidence and all individuals whom it claims withheld material information from the PTO by **August 29, 2012**. During trial, the Court will give both parties a limited opportunity to conduct direct examinations of its witnesses as needed for rebuttal.

IT IS SO ORDERED.

Signed this 6th day of August, 2012.



Royal Furgeson
United States Senior District Judge