

CASE PROFILE

Synventive v. Husky

Plaintiff ordered to implement a legal hold after claim that holds not required

KEY INFORMATION

Reference No.:	2009 U.S. Dist. LEXIS 105306, WL 3172740
Date:	March 13, 2009
Court:	U.S. District Court for the District of Vermont
Judge:	U.S. Magistrate Judge John M. Conroy
Sector:	Intellectual Property
Type:	Patent Infringement

CASE SUMMARY

This case was between two molding companies engaged in a highly contested patent infringement lawsuit. Defendant sought a legal hold because it became obvious during discovery that plaintiff was not adequately preserving evidence.

In response, plaintiff argued that there was a lack of evidence of a failure to preserve, and that the Federal Rules of Civil Procedure do not contain a rule requiring implementation of a litigation hold. The court dispatched plaintiff's argument and stated, "Synventive's argument that the Federal Rules do not require litigants to adopt a 'litigation hold,' though technically accurate, is ultimately not persuasive." The judge cited *Fujitsu Ltd. v. Federal Express Corp*, *Jacob v. City of New York*, *Treppel v. Biovail Corp* and *Heng Chan v. Triple 8 Palace* as key precedents.

Plaintiff also argued that under *Zubulake*, a corporation is not required to institute companywide litigation holds and that litigants may choose their own means of document preservation. The court also dispatched this argument and wrote that "*Zubulake* states only that litigants are 'free to choose' a method to store electronic information, not a general method of evidence retention." Moreover, once a party anticipates litigation, it must implement a litigation hold to ensure the preservation of relevant documents.

OUTCOME

The court ordered a litigation hold for personnel likely to possess discoverable information. In addition, the judge compelled plaintiff to file a sworn declaration describing:

- whether any responsive documents, including electronic files, have been destroyed or otherwise lost since February 1, 2007;
- the methods used to determine whether any responsive documents have been lost;
- the extent to which the quantity or nature of the lost or destroyed documentation is unknowable; and
- the nature and extent of the litigation hold put in place in response to this Order, including the individual personnel affected by the hold.

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