

**MGE UPS SYSTEMS, INC., Plaintiff, vs. FAKOURI ELECTRICAL ENGINEERING, INC., MICHAEL I. KHALIL, ELDRICK LEE LOFTON, DC GROUP, INC., and ANDREW POWELL, Defendants.**

**CIVIL ACTION NO. 4:04-CV-0445-Y**

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION**

**July 26, 2006, Decided  
July 26, 2006, Filed**

**PRIOR HISTORY:** *MGE UPS Sys. v. Fakouri Elec. Eng'g, Inc.*, 422 F. Supp. 2d 724, 2006 U.S. Dist. LEXIS 14635 (N.D. Tex., 2006)

**COUNSEL:** For MGE UPS Systems Inc, Plaintiff: Stephen A Kennedy, LEAD ATTORNEY, Law Offices of Stephen A. Kennedy, PC, Dallas, TX; James E Davis, Davis Rawlins PC, Dallas, TX.

For Fakouri Electrical Engineering Inc, Defendant: Joseph F Cleveland, Jr, LEAD ATTORNEY, Richard H Gateley, Brackett & Ellis, Fort Worth, TX; Eric C Wood, Scheef & Stone, Dallas, TX; Michael A O'Neil, Law Office of Michael A O'Neil, Dallas, TX.

For Michael Khalil, Eldrick Lee Lofton, Defendants: Jeffrey L Cureton, LEAD ATTORNEY, Cureton & Gordon, Fort Worth, TX; Eric C Wood, Scheef & Stone, Dallas, TX.

For DC Group Inc, Andrew Powell, Defendants: Stephen L Tatum, LEAD ATTORNEY, Cantey & Hanger - Fort Worth, Fort Worth, TX; Timothy D Howell, Moses Palmer & Howell Oil & Gas Bldg, Fort Worth, TX.

For Lloyd Sisemore, Movant: Joe D Tolbert, LEAD ATTORNEY, Harris Finley & Bogle, Fort Worth, TX.

Maxel Bud Silverberg, Provider, Pro se, Addison, TX.

For Fakouri Electrical Engineering Inc, Counter Claimant: Robert T Sherwin, Brackett & Ellis, Fort Worth, TX.

For MGE UPS Systems Inc, Counter, Defendant: Stephen A Kennedy, LEAD ATTORNEY, Law Offices of Stephen A. Kennedy, PC, Dallas, TX; James E Davis, Davis Rawlins PC, Dallas, TX.

**JUDGES:** TERRY R. MEANS, UNITED STATES DISTRICT JUDGE.

**OPINION BY:** TERRY R. MEANS

**OPINION**

**ORDER DENYING PLAINTIFF'S MOTION TO STRIKE**

Pending before the Court is Plaintiff's motion to strike, filed June 13, 2006. After consideration of the motion, the response, and the reply, the Court DENIES the motion.

Plaintiff MGE UPS Systems, Inc. seeks to strike the expert declaration of Henry Saint Dahl, which was proffered by defendants Fakouri Electrical Engineering, Inc., Michael I. Khalil, and Eldrick Lee Lofton (collectively, "Fakouri"). Fakouri identified Saint Dahl as an expert on the transfer of copyrights under French law in their November 29, 2004, expert disclosures. Attached to the disclosures was a copy of Saint Dahl's October 12, 2004, declaration.<sup>1</sup> On May 31, 2005, MGE moved to strike several declarations submitted by Fakouri, including the expert declaration of William Rustrum, who was also identified in Fakouri's 2004 expert disclosures. At no point, even in its motion for partial summary judgment, its responses to Fakouri's motion for summary judgment, or its motion to strike, did MGE raise any objection to Saint Dahl's declaration. The deadline for filing motions to strike was May 9, 2005. (Doc. # 227.)

<sup>1</sup> In support of its amended motion for partial summary judgment, Fakouri submitted a declaration by Saint Dahl that was similar to the 2004 declaration, but that was dated April 25, 2005. (Defs.' App. in Supp. at 1372-81.) However, MGE specifically challenges Saint Dahl's 2004 declaration.

Indeed, Fakouri asserts in its response that MGE's motion is untimely because MGE was first aware of Saint Dahl's testimony in September 2004 at the preliminary-injunction hearing, discovery has closed, and trial is currently set for October 2006. MGE asserts that because Fakouri has had an opportunity to "fully respond"

to the motion to strike, Fakouri will not be prejudiced by the timing of the motion. But trial is a mere nine weeks away, and striking one of Fakouri's experts at this late date would surely be prejudicial. *See Canales Martinez v. Dow Chem. Co.*, 219 F. Supp. 2d 719, 723 (E.D. La. 2002). This seems especially true when the deadline to file such motions was over a year ago.

SIGNED July 26, 2006.

/s/ Terry R. Means

TERRY R. MEANS

UNITED STATES DISTRICT JUDGE