

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CORNING INCORPORATED and	:	
ARTIFICIAL SENSING INSTRUMENTS	:	
ASI AG,	:	
	:	
Plaintiffs,	:	
	:	Civil Action No. 03-633 JJF
v.	:	
	:	
SRU BIOSYSTEMS, LLC, SRU	:	
BIOSYSTEMS, INC., and SRU	:	
HOLDINGS, LLC,	:	
	:	
Defendants.	:	

Richard L. Horwitz, Esquire, and David E. Moore, Esquire of POTTER ANDERSON & CORROON LLP, Wilmington, Delaware.  
Of Counsel: Kenneth E. Krosin, Esquire, Andrew E. Rawlins, Esquire, Larry L. Shatzer, Esquire, and George C. Best, Esquire of FOLEY & LARDNER LLP, Washington, D.C.  
Attorneys for Plaintiffs Corning Incorporated and Artificial Sensing Instruments ASI AG.

Steven J. Balick, Esquire, and John G. Day, Esquire of ASHBY & GEDDES, Wilmington, Delaware.  
Of Counsel: John J. McDonnell, Esquire, Daniel A. Boehnen, Esquire, Matthew J. Sampson, Esquire, Richard A. Machonkin, Esquire, and Patrick G. Gattari, Esquire of McDONNELL BOEHNEN HULBERT & BERGHOFF LLP, Chicago, Illinois.  
Attorneys for Defendants SRU Biosystems, LLC, SRU Biosystems, Inc., and SRU Biosystems Holdings, LLC.

**MEMORANDUM OPINION**

August 13, 2004  
Wilmington, Delaware

**Farnan, District Judge.**

Presently before the Court is the Request For Reconsideration Of July 7, 2004 Order (the "July 7 Order") Granting Plaintiffs' Motion To Compel And Denying SRU's Motion For Protective Order filed by SRU Biosystems, LLC, SRU Biosystems, Inc., and SRU Biosystems Holdings, LLC (collectively "SRU"). (D.I. 173.) For the reasons that follow, the Court will deny the Motion.

**STANDARD OF REVIEW**

"As a general rule, motions for reconsideration should be granted 'sparingly.'" Stafford v. Noramco of Delaware, Inc., 2001 WL 65738 at \*1 (D. Del. Jan. 10, 2001) (quoting Karr v. Castle, 768 F. Supp. 1087, 1090 (D. Del. 1991)). The purpose in granting motions for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicky, 779 F.2d 906, 909 (3d Cir. 1985) (citing Keene Corp. v. Int'l Fidelity Ins. Co., 561 F. Supp. 656, 665 (N.D. Ill.1983)). Parties should remain mindful that a motion for reconsideration is not merely an opportunity to "accomplish [the] repetition of arguments that were or should have been presented to the court previously." Karr, 768 F. Supp. at 1093 (citing Brambles U.S.A., Inc. v. Blocker, 735 F. Supp. 1239, 1240-41 (D. Del. 1990)). However, a court should reconsider a prior decision if it overlooked facts or precedent that

reasonably would have altered the result. Id. (citing Weissman v. Fruchtman, 124 F.R.D. 559, 560 (S.D.N.Y. 1989)).

## **DISCUSSION**

### **I. Parties' Contentions**

SRU contends that reconsideration of the July 7 Order is appropriate because the Court incorrectly concluded that granting Corning Incorporated's and Artificial Sensing Instruments ASI AG's (collectively "Corning") Motion to Compel would not deter negotiations with potential bidders for SRU's acquisition. SRU contends that this conclusion was in error because: 1) it assumes that third parties are aware of Corning's lack of interest in acquiring SRU; and 2) it ignores the realities of the business environment in the biosensor industry where potential bidders will feel threatened by Corning's access despite the Protective Order in this case. SRU contends that third parties will be unaware of Corning's lack of interest because Corning filed the motion containing this representation under seal. Moreover, SRU asserts that Corning has never publicly announced that it has no intention to bid for SRU. Finally, SRU contends that the oppression to SRU significantly outweighs any relevance of this information, as was admitted by Corning's expert

Corning responds that it only sealed the motion containing the representation that it had no intention to bid for SRU because the motion contained SRU's and third parties'

confidential information. Corning also attaches a declaration of its corporate representative stating that Corning has no intention to bid for SRU and states that SRU is free to make this declaration public. Further, Corning contends that third parties' misperceptions about the effectiveness of the Protective Order are not grounds to deny the production of relevant information. Finally, Corning asserts that in the July 7 Order the Court correctly concluded that the subject information was relevant.

## **II. Decision**

After considering the parties' arguments and the applicable legal principles, the Court concludes that the instant motion should be denied. First, with regard to SRU's contentions about potential bidders' ignorance of Corning's lack of interest in acquiring SRU, the Court concludes that the declaration of Corning's Director of Commercial Technologies, which Corning encourages SRU to provide to potential bidders, will sufficiently appraise potential bidders of Corning's intentions.

Next, the Court agrees with Corning that the potential negative views held by third parties regarding the efficacy of the Protective Order are insufficient to prevent the disclosure of relevant documents that Corning needs to maintain a defense in this action. In order to permit parties to proceed with litigation involving confidential information, protective orders,

such as the one entered in this case, must be respected by the parties and thus are presumed by courts to be effective.

Otherwise, many complex cases, particularly patent cases, would be impossible to prosecute and defend.<sup>1</sup>

#### **CONCLUSION**

For the reasons discussed, the Court will deny SRU's Motion. An appropriate Order will be entered.

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<sup>1</sup> In addition, the Court is not persuaded by the declaration of SRU's Chief Financial Officer that the Court's July 7 Order is unduly oppressive. First, the declarant's opinion is based, in part, on the assumption that potential bidders will be, or are, unaware of Corning's lack of interest in acquiring SRU. As noted above, however, this information is now publicly available. Also, although the Court does not have reason to doubt the declarant's good faith in providing his opinions on the nature of competition in the biosensor industry, the declarant's opinions on how other competitors will regard SRU's discovery obligations are either speculative or based on hearsay, and thus, not sufficient to prevent the Court from ordering the production of relevant documents to Corning.

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**ORDER**

At Wilmington, this 13th day of August, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that the Request For Reconsideration Of July 7, 2004 Order Granting Plaintiffs' Motion To Compel And Denying SRU's Motion For Protective Order filed by SRU Biosystems, LLC, SRU Biosystems, Inc., and SRU Biosystems Holdings, LLC (D.I. 173) is **DENIED**.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE