

4. An opinion from the U.S. District Court for the Eastern District of Ohio refusing to compel a plaintiff to produce “all documents” that hit on certain keywords the defendant had unilaterally selected because the request was overbroad in the absence of a showing that the keywords were narrowly tailored or “calibrated to address the issues in this case.”

In *Ravin Crossbows, LLC v. Hunter’s Manufacturing Company, Inc.*, No. 5:23-cv-598, 2024 WL 3253265 (E.D. Ohio July 1, 2024), Chief U.S. District Court Judge Sara Lioi addressed the standards for compelling responses to document requests based solely on keywords.

Plaintiff sued Defendant for infringement of several patents involving crossbow configurations. One of Defendant’s requests for production in discovery sought production of “all documents, things and [ESI] having any of the following keywords, including any misspellings,” including 38 keywords mainly describing parts of a crossbow, Plaintiff’s technology, and certain inventors. *Id.* at *2.

A magistrate judge had denied Defendant’s motion to compel a response to this request because “it was overly broad and amounted to a fishing expedition” in light of the lack of narrowing criteria. Defendant sought reconsideration of the magistrate judge’s order, offering to reduce the number of terms and misspellings, and arguing that keyword searches are “useful tools for search and retrieval of ESI.” Plaintiff opposed the motion for reconsideration, arguing that the requests, even as amended, were overbroad and duplicative of other requested discovery.

Chief Judge Lioi began with a discussion of Rule 26, which “permits parties to discover any relevant, unprivileged information” while giving courts discretion to limit the scope of discovery where the information sought is overly broad. *Id.* at *3 (citing Rule 26(b)(2)). She explained that a request for discovery is overly broad where “it seeks irrelevant information, lacks sufficient limitations, or otherwise seeks information that is not “proportional to the needs of the case.” *Id.* (quoting Rule 26(b)(1)).

Chief Judge Lioi noted that “[k]eyword searches in particular carry special hazards” because while they may be useful in some contexts, “there are well-known limitations and risks associated with them.” Relying on materials from the Sedona Conference, she explained that one such risk is “the tendency of keyword searches to produce results that are both overbroad and underinclusive.” *Id.* (citing The Sedona Conference Best Practices Commentary on the Use of Search & Information Retrieval Methods in E-Discovery, 8 SEDONA CONF. J. 189, 194–95 (2007)). She noted that

keyword searches are often most useful “when they are the product of a cooperative effort between counsel” who “carefully craft the appropriate keywords, with input from the ESI’s custodians [and] quality-control tested to assure accuracy in retrieval and elimination of false positives.” *Id.* (internal quotations omitted).

Chief Judge Lioi found that cooperation among the parties was “non-existent” in this case and there was no showing from Defendant that any testing had been done to ensure the keywords would be effective search terms. In addition, she found Defendant’s request “flawed from the beginning” because it was not limited to “a particular source, time, subject matter, or custodian” but rather asked for “all documents, things and electronically stored information” containing any of the terms at issue. *Id.* at *3-4.

Chief Judge Lioi found that other of Defendant’s document requests would likely produce many of the same documents that would be produced by a broader keyword search and would “do so in a manner better calibrated to address the issues in this case.” For example, Defendant claimed certain of its terms were directed to the novelty of Plaintiff’s patents, Defendant’s invalidity defense, and prior art, but Plaintiff had already produced documents in response to more targeted requests concerning novelty, invalidity, and prior art.

Accordingly, Chief Judge Lioi held that Defendant had not met its “heavy burden” to show that the magistrate judge committed clear error or abused her discretion in denying its motion to compel responses to Defendant’s request for keyword terms. She affirmed the magistrate judge’s order denying the motion to compel.