

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>iROBOT CORPORATION,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO.: 07-cv-01511-RRA</b>
	)	
<b>ROBOTIC FX, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION FOR SANCTIONS**

Defendant Robotic FX, Inc. (“Robotic FX”), by and through its undersigned attorneys, hereby submits its Opposition to Plaintiff’s Motion For Sanctions.

**I. INTRODUCTION**

Plaintiff iRobot Corporation (“iRobot”) seeks an order imposing monetary and other sanctions against Robotic FX based upon actions taken by Robotic FX’s President, Jameel Ahed, shortly after the filing of this lawsuit. Robotic FX acknowledges that Mr. Ahed’s actions were improper and concedes that reasonable sanctions may be appropriate under the circumstances. For the reasons discussed below, however, Robotic FX respectfully submits that extreme sanctions are not warranted and that the patent infringement claim at issue in the present action can and should proceed to a resolution by trial on the merits.

Robotic FX does not dispute that information potentially relevant to the present action may have been destroyed. Robotic FX, however, believes that much of this information, to the extent it is relevant to the present action, exists elsewhere and was seized and sequestered by iRobot pursuant to the Court’s TRO. Moreover, while not justifying Mr. Ahed’s actions, Robotic FX believes that Mr. Ahed’s actions are mitigated somewhat by the context in which his

actions occurred. In this regard, Mr. Ahed was working around the clock under extremely stressful conditions in an attempt to qualify Robotic FX's Negotiator product for the xBot competition and a potential government contract. In this midst of this competition, Mr. Ahed was simultaneously sued by iRobot in both Alabama and Massachusetts. Mr. Ahed, frustrated and somewhat angry by the timing of the two lawsuits, and not acting as he normally would, conducted himself in a manner that he regrets.

## **II. ARGUMENT**

### **A. General Principles for Sanctioning Spoliation of Evidence**

This Court has broad discretion, both under its inherent powers and under Federal Rule 37, to impose sanctions against parties for spoliation of evidence. *Flury v. Daimler Chrysler Corp.*, 427 F.3d 939, 944 (11th Cir. 2005). The imposition of sanctions for spoliation is governed by federal law, although Alabama law is to be considered to the extent it is not inconsistent with federal law. *See id.* In *Flury*, the Eleventh Circuit explained that while federal law governs the imposition of spoliation sanctions, federal law in this circuit has not set forth specific guidelines, and the Court should therefore examine the factors enumerated in state law that are consistent with federal spoliation principles. This Court, therefore, should consider Alabama spoliation law, which is wholly consistent with federal principles of judicial process.

The Alabama Supreme Court has enumerated five factors that the Court should apply in analyzing spoliation of evidence issues. *See Story v. RAJ Properties, Inc.*, 909 So. 2d 797, 802-803 (Ala. 2005). These factors are: (1) the importance of the evidence destroyed; (2) the culpability of the offending party; (3) fundamental fairness; (4) alternative sources of the information obtainable from the evidence destroyed; and (5) the possible effectiveness of other sanctions less severe than dismissal. *Id.*

Federal and Alabama courts consistently hold that spoliation sanctions are to be tailored to fit the circumstances and that extreme sanctions, especially the sanction of default, are to be employed sparingly. The Eleventh Circuit recognizes that default (or dismissal, in the case of a plaintiff who has concealed or destroyed evidence) is an extreme remedy which should be imposed only if less drastic sanctions cannot properly redress the wrongdoing. *See, e.g., Hashemi v. Campaigner Publications, Inc.*, 737 F.2d 1538 (11th Cir. 1984). Similarly, the Alabama Supreme Court has observed that default as a sanction for spoliation of evidence is disfavored because that court “has a ‘long-established and compelling policy objective of affording litigants a trial on the merits whenever possible.’” *Vesta Fire Ins. Corp. v. Milam & Co.*, 901 So. 2d 84, 94 (Ala. 2004) (quoting *Cincinnati Ins. Co. v. Synergy Gas, Inc.*, 585 So. 2d 822, 827 (Ala. 1991)).

**B. The *Telectron* Decision**

iRobot offers *Telectron, Inc. v. Overhead Door Corp.*, 116 F.R.D. 107 (S.D. Fla. 1987) as the statement of controlling principles that this Court should consider in imposing sanctions on Robotic FX. The district court in *Telectron* determined that imposing monetary sanctions and granting a default on the issue of liability was the only appropriate response to the defendant’s premeditated and methodical destruction of critical evidence after being served with a request to produce those very documents. *Telectron*, however, turned on several factors that are absent in the present action.

**1. Period of Misconduct.**

In the *Telectron* case, the destruction of evidence was a premeditated and systematic course of conduct that extended over an almost two-year period. *See* 116 F.R.D. at 126 (“document destruction, both calculated and inadvertent, had been proceeding . . . for

approximately two years”). The spoliation described in the *Telectron* case was orchestrated by the defendant’s in-house counsel and implemented throughout the corporation over an extended period of time. *Id.* In contrast, Mr. Ahed’s destruction of materials took place over a period of approximately 48 hours. As Mr. Ahed later testified in the Massachusetts lawsuit filed by iRobot, his conduct during that 48-hour period was the result of poor judgment brought on by physical exhaustion, extreme pressure, and anxiety:

Q. Now, the Judge has been asking, the Court has in the course of our examination here about why you did the things you did.

THE COURT: Why?

Q. Why you did the things you did following the filing of this lawsuit. I’m going to ask you now the same thing. Given all that occurred and leading up to these events, why did you dispose of these things?

A. Well, during this time I was really overwhelmed. I was working beyond what I would think is humanely [sic] --

THE COURT: Now you’re talking the time period August 17th, 2007?

MR. BARRY: Yes, that’s correct. This is following 8-17, Saturday and Sunday.

A. I was just so sleep deprived and anxious and excited and scared and everything, and I think when I saw the lawsuit, I think I snapped, and I was angry that iRobot didn’t want to, you know, go through this [military robot] competition, they just wanted to sue me and shut me down, and I snapped and I threw some things away and then that’s what happened.

Hearing Transcript at 547:17-548:11 (attached as Exhibit C-4 to iRobot’s Motion For Sanctions).

Robotic FX does not deny the gravity or the culpability of Mr. Ahed’s actions. Nevertheless, the conduct attributed to Mr. Ahed is substantively different than the protracted and premeditated campaign of destruction and deceit that was at issue in *Telectron*.

## **2. Sophistication and Experience of Wrongdoer**

The primary wrongdoer in *Telectron* was an in-house attorney with several years of legal training and practice experience. *See* 116 F.R.D. at 113-114; 120. Jameel Ahed is a 29 year-old engineer with no legal training and no substantive litigation experience prior to the present action.

## **3. Prejudice To Movant From Destruction of Documents**

One of the most compelling factors noted by the *Telectron* court was the extreme prejudice to plaintiff that was created by the defendant's destruction of its corporate sales records. That court found that it was presented with "evidence of willful document destruction by a corporate defendant, carried out in an unabashed -- and successful -- attempt to render irretrievable records clearly pertinent to the claims brought against it." 116 F.R.D. at 127. Similarly, the court found that "the documents admittedly destroyed -- sales and pricing-related correspondence, literature, and records held by [defendant]'s general manager and sales personnel -- would have been highly relevant to [plaintiff]'s grievances, given the Complaint's central focus." *Id.* at 128.

In contrast, the present action is a patent infringement action. The claims of the patents in suit are directed to an articulated tracked vehicle and methods for operating such a vehicle. *See* Exhibit A to Complaint, '989 Patent, Claims 1-14; Exhibit B to Complaint '296 Patent, Claims 1-9. To prevail in the present action, iRobot must prove that Robotic FX's Negotiator product (*i.e.*, the allegedly infringing product) infringes at least one claim of the '989 Patent or the '296 Patent. In this regard, iRobot already possesses a Negotiator product because it purchased one in December of 2006. Hearing Transcript at 305:24-306:13. Robotic FX has also

agreed to produce a sample Negotiator as part of discovery during the present action.<sup>1</sup> To the extent needed, underlying design files for the Negotiator product still exist and have been seized and sequestered by iRobot pursuant to this Court's TRO. The items destroyed or discarded by Jameel Ahed are not critical to iRobot's patent infringement claim and the prejudice factor that was so significant in *Telectron* is virtually absent in the present action.<sup>2</sup>

The *Telectron* court's decision to enter default as a sanction was made in part because of the foregoing factors. Each of these factors is either absent or significantly differs factually in the case at bar. Because of the significant distinctions between the *Telectron* case and the case before this Court, Robotic FX respectfully submits that the factors that led to the entry of default in *Telectron* are not present in this case and that this Court should not enter default against Robotic FX.

**C. iRobot Has Not Demonstrated a Violation of This Court's TRO.**

iRobot points to one incident as its sole basis for arguing that Robotic FX has violated this Court's TRO regarding preservation of evidence. iRobot contends that Jameel Ahed's physical concealment of a laptop computer before the search of Ms. Hill's apartment constitutes an independent violation of the TRO. iRobot's brief characterizes this conduct as "establish[ing]" a continuing "destruction of evidence" by Mr. Ahed. *See* iRobot's Opening Brief In Support Of Motion For Sanctions For Violation of TRO at 3. iRobot does not explain,

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<sup>1</sup> Robotic FX agreed to produce a sample Negotiator prior to the entry of the preliminary injunction order in the Massachusetts action. Robotic FX stands by this agreement assuming that it will not be deemed a violation of the preliminary injunction order.

<sup>2</sup> Robotic FX acknowledges that certain of the information destroyed by Mr. Ahed may be relevant to the issues of willful infringement and copying, which is one of the secondary considerations of non-obviousness. Willful infringement is typically addressed only after a finding of infringement and copying is a factor that only comes into play if Robotic FX asserts invalidity under an obviousness standard. Assuming that these issues need to be addressed in the present action and adequate information does not exist elsewhere, this Court can address the potential prejudice to iRobot at that time.

however, how the placing of a laptop computer out of sight or failing to disclose the presence of that computer constitutes “destruction of evidence.” The laptop was located during the search of Ms. Hill’s apartment and was seized by iRobot, and there is no evidence that any information on the laptop was destroyed after the entry of the Court’s TRO.

iRobot does not identify a single specific provision of the TRO that Mr. Ahed violated, and it cannot do so because there is no such violation. iRobot submits no evidence that Ms. Hill deceived anyone about the presence of a laptop computer and it submits no evidence that Mr. Ahed affirmatively misrepresented any fact to anyone during the search of Ms. Hill’s home. The TRO directed Ms. Hill and Mr. Ahed to appear for deposition for questioning about their actions regarding potentially discoverable evidence, and Ms. Hill and Mr. Ahed fully complied with that aspect of the order.<sup>3</sup>

Robotic FX emphasizes to this Court that Robotic FX makes no attempt to justify or condone the actions of Mr. Ahed in concealing the location of the laptop computer. Robotic FX, however, respectfully submits that iRobot has not demonstrated that Robotic FX has violated this Court’s TRO and that sanctions should not be imposed or enhanced on that basis alone.

### **III. Conclusion**

Robotic FX sincerely regrets the significant judgment errors made by Mr. Ahed during the brief period immediately following the filing of this lawsuit. Robotic FX accepts responsibility for those actions and fully acknowledges this Court’s authority to impose sanctions that are suitable in the Court’s sound discretion. Robotic FX respectfully submits, however, that the ultimate sanction of default is not required or appropriate under the circumstances of this case. An entry of default in this action is an extreme penalty that should not be imposed where

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<sup>3</sup> Mr. Ahed also was deposed by iRobot’s counsel on September 19, 2007 and testified extensively during the preliminary injunction hearing in Massachusetts regarding his conduct.

other sanctions could properly redress the wrongdoing. Indeed, iRobot's ability to proceed with its claim of patent infringement against Robotic FX has not been prejudiced by Mr. Ahd's actions. This Court should fashion a lesser remedy and allow this action to proceed to resolution on the merits.

/s/ Luther M. Dorr, Jr.  
Luther M. Dorr, Jr. - ASB-0002-R53L

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. In the event that the CM/ECF system does not send notification of such filing to the following, undersigned counsel will serve the following via U.S. Mail.

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This 15<sup>th</sup> day of November, 2007.

/s/ Luther M. Dorr, Jr.  
Of Counsel