

Whose Search Term is it Anyway?

In *Spieker v. Cherokee*, 2008 U.S. Dist. LEXIS 88103 (D. Kan. Oct. 30, 2008), the parties became entangled in a dispute over who created search terms for a set of specific discovery requests.

The Plaintiff had served the Defendant with specifically defined Federal Rule of Civil Procedure Rule 34 requests for email and other electronically stored information. The Defendant claimed the suggested search terms were “not specific enough” for a discovery production. *Spieker*, 9.

The Court found that since the ESI was created, stored, and/or maintained by the Defendant, they were in the “better position to develop the most appropriate list of search terms to produce” the requested electronically stored information. *Spieker*, 9.

A producing party cannot escape its burden of production by claiming that the requesting party’s suggested search terms were “not specific enough.” As such, producing parties should modify search terms if those terms need to be more specific to answer a requesting party’s specific production requests. *Spieker*, 9.