

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

EVOLVED WIRELESS, LLC,)
)
Plaintiff,)
)
v.)
)
APPLE INC.,)
)
Defendant.)

Civil Action No. 15-542-JFB-SRF

UNDER SEAL

EVOLVED WIRELESS, LLC,)
)
Plaintiff,)
)
v.)
)
HTC CORPORATION and)
HTC AMERICA, INC.,)
)
Defendants.)

Civil Action No. 15-543-JFB-SRF

UNDER SEAL

EVOLVED WIRELESS, LLC,)
)
Plaintiff,)
)
v.)
)
LENOVO GROUP LTD., LENOVO)
(UNITED STATES) INC., and)
MOTOROLA MOBILITY,)
)
Defendants.)

Civil Action No. 15-544-JFB-SRF

UNDER SEAL

EVOLVED WIRELESS, LLC,
Plaintiff,
v.
SAMSUNG ELECTRONICS CO., LTD.
and SAMSUNG ELECTRONICS
AMERICA, INC.
Defendants.

Civil Action No. 15-545-JFB-SRF

UNDER SEAL

EVOLVED WIRELESS, LLC,
Plaintiff,
v.
ZTE (USA) INC.,
Defendant.

Civil Action No. 15-546-JFB-SRF

UNDER SEAL

EVOLVED WIRELESS, LLC,
Plaintiff,
v.
MICROSOFT CORPORATION,
MICROSOFT MOBILE OY and
NOKIA INC.,
Defendants.

Civil Action No. 15-547-JFB-SRF

UNDER SEAL

MEMORANDUM ORDER

At Wilmington this 27th day of November, 2017, the court having considered the parties' discovery dispute submissions and the arguments presented during the September 7,

2017 discovery dispute hearing (D.I. 200; D.I. 201; D.I. 210; D.I. 213; D.I. 217; 9/7/17 Tr.),¹ IT IS HEREBY ORDERED THAT defendants'² motion to compel the limited deposition of third party Qualcomm Inc. or its affiliate Qualcomm Technology Licensing (collectively, "Qualcomm") after the close of fact discovery is GRANTED.

1. Background. On June 25, 2015, Evolved filed six related cases asserting infringement of United States Patent Nos. 7,746,916 ("the '916 patent"), 7,768,965 ("the '965 patent"), 7,809,373 ("the '373 patent"), 7,881,236 ("the '236 patent"), and 8,218,481 ("the '481 patent") (collectively, the "patents-in-suit")³ directed to LTE wireless communication systems. (D.I. 1) Evolved owns the patents-in-suit by assignment from LG Electronics, Inc. ("LG"). (*Id.* at ¶ 15) LG is a member of the European Telecommunications Standards Institute ("ETSI"), and participated extensively in the Third Generation Partnership Project ("3GPP") Working Group meetings to develop the LTE standards. (*Id.* at ¶ 16) The patents-in-suit are essential to the 3GPP 36 Series technical specifications, which cover the LTE standards. (*Id.* at ¶ 15)

2. In March 2016, defendants served their first discovery requests on Evolved, [REDACTED]
[REDACTED]
[REDACTED] However,
Evolved did not produce [REDACTED]
[REDACTED]

¹ All citations to docket entries refer to Civil Action No. 15-542-SLR-SRF, unless otherwise noted.

² Defendants include Apple Inc., HTC Corporation, HTC America, Inc., Lenovo Group Ltd., Lenovo (United States) Inc., Microsoft Corporation, Microsoft Mobile OY, Microsoft Mobile Inc. (f/k/a Nokia Inc.), Motorola Mobility LLC, Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., ZTE (USA) Inc., Microsoft Corporation, Microsoft Mobile Oy, and Nokia Inc.

³ On July 14, 2017, a stipulation of dismissal was filed and entered with respect to the '916 patent, the '965 patent, and the '481 patent. (D.I. 164) These patents are no longer at issue in the litigation.

[REDACTED]

[REDACTED]

3. On August 23, 2016, defendants served a subpoena on TQ Lambda [REDACTED]

[REDACTED] TQ Lambda responded

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. On February 2, 2017, defendants served a subpoena on Qualcomm [REDACTED]

[REDACTED]

[REDACTED] The deadline for Qualcomm to produce documents in response to the subpoena was February 13, 2017. Defendants also sought to depose Qualcomm by way of a subpoena served on February 14, 2017. (*Id.*, Ex. B) On March 7, 2017, Qualcomm produced [REDACTED]

[REDACTED] (*Id.*, Ex. C) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Fact discovery closed on April 10, 2017. (D.I. 144) [REDACTED]

[REDACTED] Defendants

informed Evolved of their intent to pursue their license defense on May 31, 2017. (D.I. 201, Ex.

2) [REDACTED]

⁴ TQ Lambda is the predecessor in interest to Evolved. TQ Lambda purchased the patents-in-suit from LGE in January 2014, and sold them to Evolved in September 2014. (D.I. 200 at 2)

6. On September 7, 2017, the court held a discovery dispute hearing regarding the proposed third-party deposition of Qualcomm. (9/7/17 Tr.) At the conclusion of the hearing, the court ordered the parties to provide supplemental briefing on the issue of prejudice. Supplemental briefing was completed on September 26, 2017.

7. **Analysis.** Defendants' requested relief is granted. The court concludes that good cause exists to permit the third-party deposition of Qualcomm [REDACTED] [REDACTED] having found that Evolved will not suffer undue prejudice as a result of the requested third-party deposition.⁵

8. Good cause exists to permit the third-party deposition of Qualcomm because the deposition testimony sought is narrow in scope, [REDACTED] [REDACTED]. Moreover, the testimony is relevant and proportional to defendants' license defense. Defendants' pursuit of discovery relating to the license defense was timely filed, and their request for Qualcomm's deposition testimony was diligently pursued prior to the close of fact discovery.

9. Granting the requested relief will not prejudice Evolved or result in a substantial overhaul of the case schedule. Although the parties' briefing on summary judgment will require adjustment, the parties executed a stipulation modifying summary judgment briefing as it pertains to this discovery dispute. (D.I. 254) In accordance with the second proposal in the stipulation, the parties are to meet and confer regarding a proposed briefing schedule taking into account the discovery permitted by this Memorandum Order. (*Id.* at 3-4)

⁵ The court previously granted defendants' motion to compel production of the emails of Ms. Abha Divine, Evolved's managing director and a principal of TQ Lambda, Evolved's predecessor-in-interest. (7/10/17 Tr. at 42:11-44:22) The production of emails was made after fact discovery closed. (D.I. 210 at 3) Defendants contend that [REDACTED] is the subject of certain emails, a contention not disputed by Evolved. (*Id.*)

10. Evolved stresses that it will be prejudiced by any delays in the trial schedule, as the first trial in these related cases is set to begin on April 23, 2018. However, the parties' scheduled trial dates are subject to the availability of the visiting District Judge reassigned to these cases. The court may set a status conference to address the trial schedule once the parties have met and conferred with respect to any amendments to the schedule in response to this Memorandum Order.

11. Furthermore, this Memorandum Order is without prejudice to Evolved to seek relief from the court on matters which may arise from the Qualcomm deposition, to the extent that Evolved provides specific, targeted requests and reasonably justifies such requests.⁶

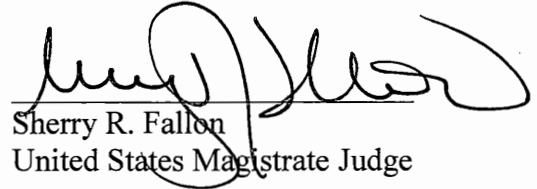
12. **Conclusion.** For the foregoing reasons, defendants' motion to compel the limited third-party deposition testimony of Qualcomm is granted. The deposition should be scheduled so as to conclude on or before December 11, 2017.

13. Given that the court has relied upon material that technically remains under seal, the court is releasing this Memorandum Order under seal, pending review by the parties. In the unlikely event that the parties believe that certain material in this Memorandum Order should be redacted, the parties should jointly submit a proposed redacted version by no later than **December 11, 2017**. The court will subsequently issue a publicly available version of its Memorandum Order.

14. This Memorandum Order is filed pursuant to 28 U.S.C. § 636(b)(1)(A), Fed. R. Civ. P. 72(a), and D. Del. LR 72.1(a)(2). The parties may serve and file specific written objections within fourteen (14) days after being served with a copy of this Memorandum Order. Fed. R. Civ. P. 72(a). The objections and responses to the objections are limited to ten (10) pages each.

⁶ The court notes for the record that defendants have offered to coordinate with Evolved to ensure that Evolved will have the same opportunity as defendants to examine the Qualcomm witness during the deposition. (D.I. 210 at 2)

15. The parties are directed to the court's Standing Order For Objections Filed Under Fed. R. Civ. P. 72, dated October 9, 2013, a copy of which is available on the court's website, www.ded.uscourts.gov.



Sherry R. Fallon
United States Magistrate Judge