

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

GODO KAISHA IP BRIDGE 1, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TCL COMMUNICATION TECHNOLOGY )  
 HOLDINGS LIMITED, a Chinese )  
 Corporation, TCT MOBILE LIMITED, a )  
 Hong Kong Corporation, TCT MOBILE )  
 (US), INC., a Delaware Corporation, and )  
 TCT MOBILE, INC., a Delaware )  
 Corporation, )  
 )  
 Defendants. )

Civil Action No. 15-634-JFB-SRF

**MEMORANDUM ORDER**

At Wilmington this **21st** day of **February, 2018**, the court having considered the letter briefs, arguments, and status report presented by the parties regarding: (1) plaintiff Godo Kaisha IP Bridge 1's ("IP Bridge") motion to compel responses to its Rule 26(e) requests; (2) the sufficiency of IP Bridge's privilege log of communications between IP Bridge and third-party ██████████; and (3) the alleged refusal of defendants TCL Communication Technology Holdings Ltd. ("TCL Holdings"), TCT Mobile Limited ("TCT Hong Kong"), TCT Mobile (US), Inc., and TCT Mobile Inc. (collectively, "defendants") to accept the offered deposition of IP Bridge's Rule 30(b)(6) deponent, (D.I. 326; D.I. 328; D.I. 329; D.I. 330; D.I. 341; 12/20/17 Tr.), IT IS HEREBY ORDERED that IP Bridge's request to compel the production of broader financial discovery and compliance matrices regarding the twelve additional products is denied without prejudice, and the remaining issues are granted-in-part or rendered moot.

**1. Background.** IP Bridge commenced this patent infringement action on July 24, 2015 against defendants TCL Holdings, TCT Hong Kong, and TCT Mobile (US), Inc. (D.I. 1) On July 11, 2016, the parties entered into a joint stipulation to amend the pleadings to add TCT Mobile, Inc. as a defendant. (D.I. 62) The amended complaint asserts causes of action for infringement of U.S. Patent Nos. 7,373,295 (“the ‘295 patent”), 8,351,538 (“the ‘538 patent”), and 8,385,239 (“the ‘239 patent”), which are directed to technology declared essential to one or more of the W-CDMA and LTE telecommunication standards. (D.I. 63 at ¶¶ 27-48)

**2.** On February 22, 2016, defendants responded to IP Bridge’s interrogatories, identifying over forty mobile devices made, used, sold, or imported within the United States on or after July 24, 2009 in response to IP Bridge’s Interrogatory 1. (D.I. 326, Ex. 2 at 5-6) On January 5, 2017, IP Bridge asked defendants to update their discovery responses to Interrogatory 1, identifying additional products allegedly implicating technology covered by the patents-in-suit which were not included in defendants’ original response to Interrogatory 1. (D.I. 326, Ex. 4) Defendants submitted their sixth and final supplemental responses to the interrogatories on February 7, 2017,<sup>1</sup> attaching multiple appendices listing the relevant products. (D.I. 326, Ex. 5)

**3.** On November 3, 2017, IP Bridge requested that defendants again supplement their response to Interrogatory 1, identifying an additional twelve products for inclusion. (D.I. 326, Ex. 6) Defendants responded on November 9, 2017, refusing to supplement their response to Interrogatory 1 for a seventh time due to the impending fact discovery deadline on November 15,

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<sup>1</sup> Defendants’ supplementation occurred before the original March 10, 2017 fact discovery deadline. (D.I. 30) The parties amended the scheduling order in January 2017, extending the fact discovery deadline to April 7, 2017. (D.I. 153) A second amended scheduling order was entered on June 12, 2017, further extending the fact discovery deadline to August 31, 2017. (D.I. 259) On September 20, 2017, the court entered the current amended scheduling order setting November 15, 2017 as the fact discovery cutoff. (D.I. 302) These extensions of the fact discovery deadline accommodated the taking of additional depositions and the inclusion of the Qualcomm discovery. IP Bridge did not request to extend the fact discovery deadline for purposes of accusing more products of infringement. (12/20/17 Tr. at 16:22-18:2)

2017. The parties met and conferred on November 11, 2017. IP Bridge proposed an agreement in which certain accused products would be considered representative of still-unidentified products. (*Id.*, Ex. 7) In correspondence dated November 14, 2017, defendants refused IP Bridge's proposal. (*Id.*, Ex. 8)

4. On November 21, 2017, IP Bridge's final identification of accused products was due under the scheduling order. (D.I. 302 at ¶ 1(g)) IP Bridge served its final infringement contentions on December 1, 2017, identifying fifty-two accused products, including the twelve products defendants refused to include in their response to Interrogatory 1.

5. On December 20, 2017, the court held a discovery dispute teleconference, during which the parties challenged the adequacy of each other's discovery responses. At the conclusion of the teleconference, the court reserved decision on several issues and ordered the parties to submit a status report by December 29, 2017. (12/20/17 Tr. at 60:19-61:16)

6. On December 22, 2017, IP Bridge produced redacted communications between itself and ██████ IP Bridge served the corresponding privilege log on December 25, 2017. (D.I. 341 at 5) The parties exchanged communications regarding the perceived deficiencies in the privilege log on December 28, 2017, and defendants provided an exemplary entry and case law citations to support their position on December 29, 2017. (*Id.*)

7. On December 29, 2017, the parties filed their status report indicating that certain issues remained unresolved, and requesting that the court resolve the remaining issues on the papers in accordance with the court's representation during the December 20, 2017 teleconference. (D.I. 341)

**8. Legal Standard.** Pursuant to Rule 26(e),

[a] party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:

- (A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or
- (B) as ordered by the court.

Fed. R. Civ. P. 26(e)(1). Failure to timely supplement a disclosure under Rule 26(e) may lead to exclusion of the materials in question under Rule 37(c)(1), which states that “[i]f a party fails to provide information . . . as required by Rule 26(a) or (e), the party is not allowed to use that information . . . to supply evidence on a motion, at a hearing, or at trial, unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c)(1). Rule 26(e) recognizes that supplementation to initial disclosures is only required “if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.”

**9. Analysis.** The parties’ December 29, 2017 joint status report identifies the following issues: (1) discovery relating to the twelve additional products, (2) the parties’ attempt to identify and narrow the issues, (3) the identification of representative products, (4) the production of communications between IP Bridge and [REDACTED] and (5) the taking of depositions relating to the IP Bridge-[REDACTED] communications.

**10. Discovery relating to the twelve additional products.** IP Bridge served a Rule 26(e) request on defendants following the court’s December 20, 2017 hearing which sought compliance matrices, manuals, identification of chipsets, and financial information for the twelve additional products identified by IP Bridge in its final infringement contentions. (D.I. 341 at 2) The parties’ joint status report reflects that defendants have collected product manuals, an

identification of chipsets, and overall sales revenue from United States sales for each of the twelve products. (*Id.* at 4) Defendants' efforts following the December 20, 2017 teleconference are consistent with its representations on the record during the teleconference. (12/20/17 Tr. at 29:14-30:22) IP Bridge continues to seek broader financial discovery and compliance matrices.<sup>2</sup> (D.I. 341 at 2)

11. For the twelve additional products discussed at the December 20, 2017 hearing, as to each, defendants shall produce no later than March 14, 2018 the following: (1) an identification of the broadband processor or chipset; (2) product manuals; and (3) overall U.S. sales revenue. IP Bridge's request for production of compliance matrices is denied without prejudice. IP Bridge's request for "financial information" beyond sales revenue is denied as vague and overbroad.

12. **Identification and narrowing of issues.** Defendants shall supplement their response to Interrogatory 1 to identify the new LTE products, if any, introduced into the U.S. marketplace through the close of fact discovery on November 15, 2017. (D.I. 326, Ex. 1) The additional LTE products identified shall be limited to those sharing the same chipsets as other such products previously disclosed in discovery. To the extent that any additional LTE products are identified in defendants' final supplemental response to Interrogatory 1, defendants shall produce on or before March 14, 2018 the following documents as to each additional product identified: (1) an identification of the broadband processor or chipset; (2) product manuals; and (3) overall U.S. sales revenue. This supplementation moots the issue regarding identification of

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<sup>2</sup> IP Bridge has indicated that it would drop its request for compliance matrices if defendants stipulate that certain products could be deemed representative of other products having the same baseband chip. (D.I. 341 at 5) Defendants have declined to identify representative products because they do not possess complete information regarding the operation of the chipsets. (*Id.*)

representative products, absent mutual agreement by the parties to identify such representative products. (12/20/17 Tr. at 11:10-12:7; D.I. 341 at 3)

**13. IP Bridge- [REDACTED] communications.** IP Bridge has produced nearly 500 communications between IP Bridge and [REDACTED] as well as a detailed privilege log of almost 200 items. (12/20/17 Tr. at 52:1-17; D.I. 341, Ex. 1) Although the joint status report reflects that defendants contest the clarity of a small number of entries in the privilege log, the parties' joint status report represents that "[t]he parties' discussions regarding the [REDACTED] communications are ongoing." (D.I. 341 at 3, 5) If any issues remain pending regarding deficiencies in the privilege log regarding communications between IP Bridge and [REDACTED] then the parties are directed to follow the court's standard discovery dispute procedures and, in addition, notify the court if an *in camera* inspection is requested in order to resolve the privilege issue.

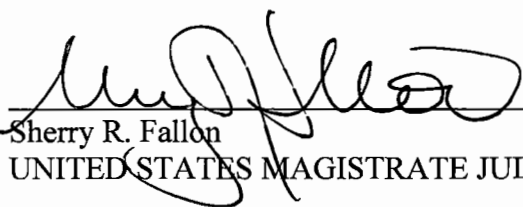
**14. Depositions.** The parties are in apparent agreement regarding the need for a subpoena to compel the appearance [REDACTED] for a deposition. (D.I. 341, Ex. 1)

**15. Conclusion.** In view of the foregoing analysis, defendants are to supplement their response to Interrogatory 1 and produce the following discovery relating to the twelve additional products and new LTE products on or before March 14, 2018: (1) an identification of the broadband processor or chipset, (2) product manuals, and (3) overall U.S. sales revenue.

**16.** 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 **March 2, 2018**. The court will subsequently issue a publicly available version of its Memorandum Order.

17. 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.

18. 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](http://www.ded.uscourts.gov).

  
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Sherry R. Fallon  
UNITED STATES MAGISTRATE JUDGE