

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

COLLABO INNOVATIONS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 16-197-JFB-SRF
)	
OMNIVISION TECHNOLOGIES, INC.,)	PUBLIC VERSION
)	
Defendant.)	

MEMORANDUM ORDER

At Wilmington this **25th** day of **July, 2018**, the court having considered the parties' discovery dispute submissions, supplemental exhibits, and the arguments presented during the June 20, 2018 discovery dispute hearing (D.I. 218; D.I. 219; D.I. 223; D.I. 224; D.I. 225; D.I. 228; D.I. 229; D.I. 236; D.I. 237; 6/20/18 Tr.), IT IS HEREBY ORDERED THAT plaintiff Collabo Innovations, Inc.'s ("Collabo") motion to compel the production of core technical documents for all of the Accused Products¹ from defendant OmniVision Technologies, Inc. ("OmniVision") is GRANTED-IN-PART.

¹ The term "Accused Products," as used in this Memorandum Order, is defined in a manner consistent with the definition of the term set forth in Collabo's discovery requests:

The term "ACCUSED PRODUCTS" refers to (1) all YOUR products accused in Plaintiff's First Amended Complaint [D.I. 14] of infringing any of the PATENTS-IN-SUIT; (2) all YOUR products identified in Plaintiffs' (*sic*) preliminary disclosures submitted pursuant to Paragraph 1(c)(2) of the Court's Scheduling Order and all supplements thereto; (3) all YOUR products identified in Plaintiffs' initial infringement contentions submitted pursuant to Paragraph 1(c)(5) of the Court's Scheduling Order and all supplements thereto; (4) all YOUR products identified in Plaintiff's final infringement contentions submitted pursuant to Paragraph 1(f)(2) of the Court's Scheduling Order and all supplements thereto; (5) all supplements and/or amendments to the foregoing; and (6) all reasonably similar products.

1. **Background.** Collabo filed suit against OmniVision on March 29, 2016, alleging that OmniVision makes, uses, offers to sell, and/or imports into the United States semiconductor devices, including complementary metal-oxide semiconductor (“CMOS”) image sensors, which allegedly utilize technologies covered by the patents-in-suit. (D.I. 1 at ¶ 11) Collabo filed its first amended complaint on June 3, 2016, alleging that OmniVision infringes U.S. Patent Nos. 7,411,180 (“the ‘180 patent”), 8,592,880 (“the ‘880 patent”), 7,944,493 (“the ‘493 patent”), 7,728,895 (“the ‘895 patent”), and 8,004,026 (“the ‘026 patent”) (collectively, the “patents-in-suit”). (D.I. 14) The patents-in-suit are directed to semiconductor devices, such as CMOS image sensors and related technologies, which are incorporated into mobile handsets, tablets, automotive cameras, and gamepads. (D.I. 14 at ¶¶ 11-51)

2. On August 25, 2016, Collabo served its first set of interrogatories and requests for production of documents on OmniVision. (D.I. 28) Interrogatory No. 1 sought identification of “products, by part number, that contain the same lens and color filter configuration (e.g., physical layout) within the ACCUSED PRODUCTS accused of infringing” the ‘180 patent, along with any supporting documents. (D.I. 223, Ex. 11 at 8) In response to Collabo’s first set of discovery requests, OmniVision identified twelve products with similar lens and color filter configurations to the single Accused Product identified by Collabo. (D.I. 30; D.I. 223, Ex. 12 at 6)

3. On August 26, 2016, Collabo served its First Identification of Asserted Patents, Accused Products, and Damages Model, which identified six Accused Products and the asserted claims of each of the five patents-in-suit. (D.I. 29; D.I. 223, Ex. 1) On October 3, 2016, OmniVision began producing its core technical documents and sales figures relating to the

(D.I. 106, Ex. A at 2; Ex. C at 2)

Accused Products, and offered to make its source code available for inspection. (D.I. 223, Ex. 3) Collabo served its initial infringement contentions on November 4, 2016, identifying the OV7740 image sensor as the only Accused Product accused of infringing the ‘180 patent. (D.I. 223, Ex. 2)

4. On April 18, 2017, Collabo inspected the color filter substrate GDS layout files depicting the color filter and lens configuration, as well as the design rules and SPICE models, for the six Accused Products identified in Collabo’s Initial Identification of Accused Products. Collabo subsequently sent a letter to OmniVision’s counsel, dated April 20, 2017, outlining purported deficiencies in OmniVision’s production of core technical documents. (D.I. 76, Ex. B) Specifically, Collabo cited deficiencies in the production of relevant circuit schematics, source code, and GDS files. (*Id.*) OmniVision produced additional GDS files for the OV7740 image sensor on June 16, 2017, and produced additional GDS layer information for the OV7740 image sensor on August 3, 2017. (D.I. 223, Exs. 7 & 8)

5. The court held a discovery dispute hearing to address the purported deficiencies in OmniVision’s core technical document production on August 16, 2017. During the hearing, Collabo indicated that the GDS files, schematics, and design rules produced by OmniVision did not contain information regarding the micro-lens on the chip, the color filters, or the transparent film on the micro-lenses. (8/16/17 Tr. at 35:20-36:8) The court granted-in-part Collabo’s motion to compel the production of core technical documents, ordering a “complete production of full and complete GDS files,” full and complete schematics, and “full and complete process layer information, including design rules, for the six originally accused products.” (*Id.* at 70:19-24) However, the court declined to extend its ruling beyond the original six Accused Products. (*Id.* at 70:15-16)

6. The court held another discovery dispute hearing on September 25, 2017 to address, among other issues, the purported deficiencies in OmniVision's production of core technical documents. (9/25/17 Tr. at 4:21-5:7) During the hearing, OmniVision represented that it had produced all of the GDS files, complete chip level schematics, design rules, specifications, and process flow documents for every layer. (*Id.* at 37:7-38:15) The court reiterated its ruling that the August 16, 2017 order applied to the production of full and complete GDS files, including the color filter and micro-lens layers. (*Id.* at 52:9-16) The court emphasized that the ruling was limited to the six originally accused products, stating "I'm not satisfied that the case has been made out substantively that this production for the six originally accused products is the catalyst to produce all 27 in toto." (*Id.* at 53:7-11; 64:6-11)

7. Following OmniVision's production of design rules for the OV8865 image sensor on October 13, 2017, Collabo sent a letter to OmniVision's counsel on October 18, 2017, challenging the adequacy of OmniVision's production of full and complete GDS files and process information. (D.I. 223, Ex. 14 at 1-3; D.I. 224, Exs. A & B) Collabo explained that OmniVision produced a [REDACTED] [REDACTED] but did not produce similar information for the other five devices originally accused of infringement. (D.I. 223, Ex. 14 at 1)

8. On October 20, 2017, OmniVision responded to Collabo's correspondence, representing that it had produced full and complete GDS files, design rules, and process information for the originally accused six devices in accordance with the court's orders. (D.I. 223, Ex. 9 at 1) OmniVision encouraged Collabo to seek additional discovery from third parties [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. Pursuant to the scheduling order, fact discovery closed on November 22, 2017. (D.I. 78) On December 15, 2017, Collabo supplemented its infringement contentions. (D.I. 223, Ex. 10) Collabo’s infringement contentions did not identify any evidence associated with the “transparent film” limitation claimed in the ‘180 patent. (*Id.* at 6)

10. On January 30, 2018, the parties filed a stipulation agreeing to a list of representative products. (D.I. 138) Pursuant to the stipulation, the parties agreed that any technical information regarding the six originally identified Accused Products applies equally to corresponding products in the broader groups of Accused Products. (*Id.*)

11. On February 23 and March 29, 2018, OmniVision served supplemental responses to Collabo’s first and second sets of interrogatories, respectively, identifying products “contain[ing] the same lens and color filter configuration” as the Accused Products. (D.I. 228, App’x A at 2)

12. On April 6, 2018, the parties held a meet and confer to discuss a proposed stipulation regarding the representative products. (D.I. 223, Ex. 15 at 1) During and after the meet and confer, Collabo challenged OmniVision’s characterization of certain products as representative of broader product groups, specifically highlighting the presence of [REDACTED] and suggesting that this component satisfies the “transparent film” limitation in the ‘180 patent. (*Id.* at 1-2)

13. In response, OmniVision indicated that it had accurately identified products having similar lens and color filter configurations in accordance with Collabo’s Interrogatory

No. 1. (D.I. 223, Ex. 16 at 1-2) According to OmniVision, the lens and color filter configurations are separate and distinct elements from the transparent film layer. (*Id.* at 2)

However, OmniVision agreed to continue investigating [REDACTED]. (*Id.* at 3)

14. The parties continued to meet and confer on these issues in May 2018, and OmniVision identified whether sixty-one products sold in the United States had [REDACTED] [REDACTED] (D.I. 223, Ex. 18) The data revealed that the presence or absence [REDACTED] [REDACTED] was not necessarily consistent among products within each representative product group. (*Id.*, Ex. 19) In correspondence dated May 22, 2018, OmniVision maintained its position that the parties' proposed representative products stipulation was not required to account for [REDACTED] transparent layer data. (*Id.*, Ex. 20 at 1-2)

15. On June 7, 2018, Collabo took the deposition of ChenWei "Lou" Lu, OmniVision's senior manager of process integration.² (D.I. 223, Ex. 21; D.I. 225, Exs. L & M) During the deposition, Mr. Lu identified a number of products, including an Accused Product, having [REDACTED] (*Id.* at 61:20-64:3) Mr. Lu confirmed that [REDACTED] transparent films on the micro-lenses, including [REDACTED] (*Id.* at 25:21-28:11)

16. OmniVision represents that, on June 15, 2018, it produced four spreadsheets containing United States sales information and foreign sales information for each Accused

² OmniVision offered Mr. Lu for deposition on October 31, 2017, following the completion of OmniVision's technical ESI production in accordance with search terms selected by Collabo. (D.I. 169 at 5-6; D.I. 228, Ex. 24) However, Collabo declined to take Mr. Lu's deposition at that time. (D.I. 228, Ex. 25) OmniVision again offered Mr. Lu for deposition on March 29, 2018, but Collabo declined. (*Id.*, Ex. 26) On May 23, 2018, OmniVision offered Mr. Lu for deposition again, and Collabo ultimately accepted Mr. Lu's deposition on June 5, 2018. (*Id.*, Exs. 27-29)

Product having [REDACTED]

(D.I. 223 at 5)

17. The court held a discovery dispute teleconference on these issues on June 20, 2018. (6/20/18 Tr.)

18. On June 29, 2018, [REDACTED]

(D.I. 237, Ex. 30)

19. **Legal standard.** Rule 26 provides that

[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). A party may move for an order compelling discovery pursuant to Rule 37. Generally, a party moving to compel discovery bears the burden of demonstrating the relevance of the requested information. *See Delaware Display Group LLC v. Lenovo Group Ltd.*, C.A. Nos. 13-2108-RGA, 13-2109-RGA, 13-2122-RGA, 2016 WL 720977, at *2 (D. Del. Feb. 23, 2016) (citing *Inventio AG v. TyssenKrupp Elevator Am. Corp.*, 662 F. Supp. 2d 375, 381 (D. Del. 2009)). However, "[t]he parties and the court have a collective responsibility to consider the proportionality of all discovery and consider it in resolving discovery disputes." Fed. R. Civ. P. 26, advisory committee's note to 2015 amendment.

20. **Analysis.** Collabo's request to compel the production of core technical documents is granted-in-part. Specifically, OmniVision shall produce [REDACTED]

[REDACTED] as well as documents addressing [REDACTED]

██████████ (6/20/18 Tr. at 43:5-16; 66:24-67:3; 68:15-69:5) OmniVision shall also produce any documents it relied upon in preparing the proposed stipulation regarding which devices have ██████████ and shall supplement its interrogatory responses to identify products both having and not having ██████████ sharing the same micro-lens and color filter with the representative products. (D.I. 236 at 1; 6/20/18 Tr. at 63:22-64:4, 64:17-22) Collabo's motion is denied in all other respects.

21. Collabo bases its argument on the premise that OmiVision has failed to comply with the court's previous order compelling OmniVision to produce core technical documents for the representative Accused Products, alleging that OmniVision was also obligated to identify and disclose all products having the same function and structure as the products identified in the complaint. (D.I. 218 at 1) However, the only product accused of infringing the '180 patent in Collabo's amended complaint is the OV7740 image sensor.³ (6/20/18 Tr. at 51:10-15; D.I. 14 at ¶ 17; *see also* D.I. 223, Ex. 1 at Ex. A) OmniVision identified the OV7740 image sensor in accordance with Interrogatory No. 1, which requests identification of Accused Products "that contain the same lens and color filter configuration." (D.I. 223, Ex. 11 at 8) The record before the court establishes that the OV7740 image sensor ██████████ (D.I. 223, Ex. 18 at 2)

³ The amended complaint identifies two other allegedly infringing products. Specifically, the amended complaint alleges that the OV13860 image sensor infringes the '493 patent, and the OV10640 image sensor infringes the '895 and '026 patents. (D.I. 14 at ¶¶ 31-32, 38-39, 47-48; D.I. 223, Ex. 1 at Ex. A) The '493 patent was subsequently rendered indefinite pursuant to the court's August 25, 2017 Memorandum Opinion on claim construction. (D.I. 88) Counsel for OmniVision represents, and Collabo does not dispute, that the '180 patent is the only patent presently at issue, as it is the only patent-in-suit containing the "transparent film" limitation. (6/20/18 Tr. at 51:10-52:9)

22. OmniVision has confirmed that it produced the full schematics, complete GDS and map files for the array substrate and the color filter substrate, SPICE files, design specifications, design rules, process information, and technical ESI for the six representative products in accordance with this court's previous orders. (6/20/18 Tr. at 54:4-13, 60:15-22) Included in this production was the [REDACTED] for the OV8865 image sensor,⁴ which illustrates [REDACTED] (D.I. 224, Ex. A at 3) In October 2017, Collabo acknowledged that it received and reviewed this page of the OV8865 image sensor design rule. (D.I. 223, Ex. 14 at 1) ("Omnivision did, however, produce a 'design rule' PowerPoint presentation for the optical layer section of the OV08865 [REDACTED] [REDACTED] [REDACTED] In its final infringement contentions served on December 15, 2017, Collabo submitted claim charts identifying all six representative products as infringing the '180 patent, but did not recite any evidence in support of the transparent film limitation in the OV8865 image sensor despite having reviewed the design rule two months prior to the service of the infringement contentions. (D.I. 223, Ex. 10; 6/20/18 Tr. at 57:11-17)

23. The representative product stipulation executed by the parties on January 30, 2018 was made "[p]ursuant to ongoing discovery exchanges and information disclosed to the Court at the hearing held on September 25, 2017." (D.I. 138 at 1) Thus, the stipulation was based on the criteria outlined in Interrogatory No. 1 pertaining to products sharing the same lens and color filter configuration, and did not include any showing of similarity based on the transparent film limitation. (6/20/18 Tr. at 57:18-58:21) In light of the foregoing facts, the court concludes that

⁴ OmniVision represents that the OV8865 design rule was the only design rule in its possession relevant to this dispute, and additional design rules are in the possession of third parties. (6/20/18 Tr. at 54:20-55:25)

Collabo's position regarding OmniVision's alleged failure to satisfy its discovery obligations is unsupported on the present record.

24. Nonetheless, OmniVision has offered to provide additional information on the [REDACTED] (6/20/18 Tr. at 66:24-67:3) OmniVision also offered to address the [REDACTED] by way of an interrogatory response to identify products both having and not having [REDACTED] that shared the same micro-lens and color filter with the representative products. (6/20/18 Tr. at 63:22-64:4, 64:17-22) This limited production is ordered.

25. Collabo's request for tapeout records, made in its July 3, 2018 supplemental submission following the discovery dispute hearing, is denied without prejudice. (D.I. 236 at 1-2) Collabo has not articulated with precision the scope of the requested relief, or how it is relevant and proportional to the needs of the case.

26. **Conclusion.** In view of the foregoing analysis, Collabo's requested relief is granted-in-part as follows:

(A) On or before **August 6, 2018**, OmniVision shall produce [REDACTED] referenced in Mr. Lu's deposition, and documents addressing [REDACTED] [REDACTED] (6/20/18 Tr. at 66:24-67:3; 68:15-69:5)

(B) On or before **August 6, 2018**, OmniVision shall also produce any documents it relied upon in preparing the proposed stipulation as to which devices have the [REDACTED], and shall supplement its interrogatory response to identify products both having and not having the [REDACTED] sharing the

same micro-lens and color filter with the representative products. (D.I. 236 at 1; 6/20/18 Tr. at 63:22-64:4, 64:17-22)

(C) Having considered the parties' requests to modify the scheduling order (D.I. 165; D.I. 166; D.I. 167; D.I. 168; D.I. 222; D.I. 234), on or before **July 31, 2018**, the parties shall submit a joint proposed scheduling order which identifies areas of disagreement and attaches as an exhibit a chart setting forth the remaining dates of each party's proposal.⁵

(D) Collabo's motion is denied in all other respects.

(E) The court shall hold a teleconference on **August 15, 2018 at 1:00 p.m.** limited to one (1) hour to address any remaining disputes concerning fact discovery. The party moving for relief may file a four-page letter brief on or before **August 8, 2018 at 2:00 p.m.** The moving party is limited to one moving submission. The four-page moving submission shall attach a proposed form of order consistent with the relief requested. The four-page responsive letter brief is due on or before **August 9, 2018 at 2:00 p.m.**

27. 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 **August**

⁵ Pursuant to the amended scheduling order entered on July 26, 2017, fact discovery closed on November 22, 2017, summary judgment briefing was to be completed on June 29, 2018, and trial is set to begin on November 5, 2018. (D.I. 78) Because fact discovery remains ongoing as of the date of this Memorandum Order, and summary judgment briefing cannot commence as a practical matter until fact discovery is closed, the November 5, 2018 trial date is no longer feasible. The parties' proposals shall be based on a July 8, 2019 trial date.

1, 2018. The court will subsequently issue a publicly available version of its Memorandum Order.

28. 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.

29. 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