

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

PERSONAL AUDIO, LLC,                    )  
  )  
                  Plaintiff,                    )  
  )  
                  v.                            ) Civ. No. 17-1751-CFC/CJB  
  )  
GOOGLE LLC,                            )  
  )  
                  Defendant.                )

**MEMORANDUM ORDER**

Pending before the Court are Plaintiff Personal Audio, LLC’s Objection to November 15, 2019 Memorandum Order Denying Personal Audio’s Discovery Dispute Motion (D.I. 437).

In his November 15, 2019 Memorandum Order, the Magistrate Judge denied Personal Audio’s request for an order to compel Defendant Google LLC to produce discovery related to “the total number of all Android devices and Android users.” D.I. 432 at 1.

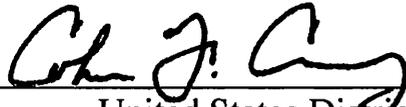
“Pursuant to 28 U.S.C. § 636(b)(1)(A) and Federal Rule of Civil Procedure 72(a), non-dispositive pre-trial rulings made by magistrate judges on referred matters should only be set aside if clearly erroneous or contrary to law.” *Masimo Corp. v. Philips Electronics North America Corporation*, 2010 WL 2836379, at \*1 (D. Del. July 15, 2010). “A finding is clearly erroneous if the determination “(1) is

completely devoid of minimum evidentiary support displaying some hue of credibility, or (2) bears no rational relationship to the supportive evidentiary data . . .” *Id.* (quoting *Haines v. Liggett Group Inc.*, 975 F.2d 81, 92 (3d Cir.1992)).

Applying this standard to the Magistrate Judge’s Memorandum Order, the Court finds no error in his decision. Decisions regarding the scope of discovery permitted under Rule 26(b)(1) are discretionary. *Wisniewski v. Johns–Manville Corp.*, 812 F.2d 81, 90 (3d Cir.1987). The Magistrate Judge thoughtfully addressed the arguments raised by Personal Audio in support of its motion to compel. The Court is persuaded by the Magistrate Judge’s conclusions that it is unclear whether Google could determine the total number of Android devices and Android users in the damages period and further that, in light of Personal Audio’s failure to demonstrate an equivalence between GPM installations and Android devices and the burden Google would incur in searching for the requested data, Personal Audio’s motion should be denied.

NOW THEREFORE, IT IS HEREBY ORDERED that Plaintiff Personal Audio, LLC’s Objection to November 15, 2019 Memorandum Order Denying Personal Audio’s Discovery Dispute Motion (D.I. 437) is OVERRULED.

1.6.20  
Date

  
\_\_\_\_\_  
United States District Judge