

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

OMNIVISION TECHNOLOGIES, INC.,	)	
	)	
Plaintiff and Counterclaim-	)	
Defendant,	)	
	)	
v.	)	Civil Action No. 24-187-CJB
	)	
RE SECURED NETWORKS, LLC,	)	
	)	
Defendant and	)	
Counterclaim-Plaintiff.	)	

MEMORANDUM ORDER

The Court has reviewed Defendant and Counterclaim-Plaintiff RE Secured Networks, LLC’s (“Defendant”) discovery dispute motion (“Motion”), (D.I. 208), and the briefing related thereto, (D.I. 202; D.I. 210; D.I. 221). The Motion is opposed by Plaintiff and Counterclaim-Defendant Omnivision Technologies, Inc. (“Plaintiff”). The Court hereby ORDERS that the Motion is GRANTED-IN-PART and DENIED-IN-PART for the reasons that follow:

1. This Motion relates to Defendant’s request for substantial discovery regarding certain of Plaintiff’s products. The Court will hereafter refer to these products—that is, Plaintiff’s products as to which Defendant seeks discovery via the Motion—as the “products at issue.”¹ For context, in this patent litigation, Defendant (who is the patentee) has received full discovery on at least two of Plaintiff’s products, which are known as the “OV24A” and “OV5640” products, and which the parties sometimes refer to as the “charted products.” (D.I. 202 at 1, 4) Everyone agrees that these two charted products are properly accused of infringing the four patents-in-suit, because Defendant has articulated, on a limitation-by-limitation basis, its

¹ It appears that the products at issue amount to nearly 150 additional accused products. (D.I. 202 at 2 n.1; *id.*, apps. 1-4)

allegations as to how those products read on each of the limitations of the asserted claims of the patents-in-suit. (D.I. 202 at 1; *cf.* D.I. 210 at 4) And so hereafter, the Court will refer to these two charted products as the “two accused products” or the “accused products.” The four patents-in-suit, in turn, are United States Patent No. 7,323,671 (the “671 patent”), 7,800,145 (the “145 patent”), 6,838,651 (the “651 patent”), and 7,495,274 (the “274 patent”).

2. With the Motion, Defendant is seeking certain technical discovery (“the discovery at issue”) as to the products at issue. More specifically, Defendant asks for the following discovery (where relevant with regard to each asserted patent): (a) financial and sales data, source code, circuit diagrams, GDS files, process flows, and mapping information for the products at issue, as identified in Defendant’s Second Amended Infringement Contentions (“infringement contentions”); and (b) supplementation of certain related interrogatory responses. (D.I. 202 at 3-4) Defendant had initially raised this request through a prior discovery dispute motion, and the Court thereafter determined, *inter alia*, that the request had been made in a timely fashion. (D.I. 197) The Court also noted that both sides seemed to agree that whether Defendant is entitled to the discovery it seeks turns on whether it has sufficiently explained how the two accused products are in fact representative of the products at issue—that is, that the dispute turned on the substance of Defendant’s allegations as to why there are no material differences, for purposes of the infringement analysis, between the two accused products and the products at issue. (*Id.*; D.I. 199) Since the parties’ prior briefing did not sufficiently address the relevant law on this question, nor the substance of Defendant’s relevant accused product charts and representativeness theories, the Court ordered further briefing. (D.I. 199) Having thereafter received supplemental briefing on these issues, the Court now addresses the renewed dispute.

3. In so doing, the Court will first discuss two related legal concepts that are at play here. One has to do with the concept of charting “representative products.” The other has to do with how a patentee is able to obtain discovery as to “uncharted” or “unaccused” or allegedly “represented” products.

4. Taking up the former concept first, generally, a party asserting patent infringement must provide “a claim chart that relates ‘*each* accused product to the asserted claims *each* product allegedly infringes.’” *Pers. Audio, LLC v. Google LLC*, Civil Action No. 17-1751-CFC-CJB, 2018 WL 11656746, at *1 (D. Del. Nov. 15, 2018) (quoting District of Delaware Default Standard for Discovery, Including Discovery of Electronically Stored Information (“ESI”), at ¶ 4(c)). That said, discovery in patent cases is not and need not be an exercise in redundancy. And there are some patent litigation matters in which there is no real dispute—or in which it can otherwise be readily demonstrated if need be—that an accused, allegedly “representative” charted product (“product A”) is composed or works just the same way as does another, uncharted product of the accused infringer (“product B” or the allegedly “represented” product)—at least in terms of those aspects of the respective products that are material for infringement purposes. In such cases, courts understandably note that the patentee can provide adequate infringement contentions about both accused product A and product B if the patentee can sufficiently set out: (a) how accused product A is representative of product B, by explaining in an adequately detailed fashion how product B shares the same, or substantially the same, infringing qualities or features with accused product A; and (b) a claim chart for accused product A that plausibly articulates how that product reads on all asserted claim limitations (this chart will, in turn, necessarily represent the infringement outlook for product B as well). *Id.* at *1-2; *Geovector Corp. v. Samsung Elecs. Co.*, Case No. 16-cv-02463-WHO,

2017 WL 76950, at *5 (N.D. Cal. Jan. 9, 2017) (noting that for representative claim charts to be permissible, representative products may only be charted when supported by “adequate analysis showing that the accused products share the same critical characteristics”) (internal quotation marks and citation omitted) (citing cases); *Seoul Semiconductor Co. v. Feit Elec. Co.*, Case No.: CV 22-05097-AB (SHKx), 2023 WL 8242156, at *3 (C.D. Cal. July 18, 2023) (recognizing that “representative charting is allowed only if Plaintiff ‘articulate[s] how the accused products share the same, or substantially the same, infringing [qualities]. . . .’”) (citation omitted); *cf.* *Commissariat à l’Energie Atomique v. Samsung Elecs. Co.*, 524 F. Supp. 2d 534, 541 (D. Del. 2007) (in assessing summary judgment motions, noting that “[a]lthough a party may not be required to reverse engineer every module, the party must specify which modules are representative of a particular series or group, why they are representative and how their particular properties or components directly infringe each and every element of a claim”). Conclusory allegations as to why one product’s allegedly infringing features are representative of the other allegedly represented product’s features are insufficient; instead, the allegations need to articulate *how* the one product is representative of the other, with regard to how the additional products read on the “various claim limitations” at issue. *Geovector Corp.*, 2017 WL 76950, at *5; *see also* *Seoul Semiconductor Co.*, 2023 WL 8242156, at *3; *Cap Co. v. McAfee, Inc.*, Case No. 14-cv-05068-JD, 2015 WL 4734951, at *2 (N.D. Cal. Aug. 10, 2015).² If the patentee does

² It is true that, as Defendant notes, (D.I. 202 at 1), a number of the opinions regarding representativeness cited above are from the United States District Court for the Northern District of California—a District Court that has Local Patent Rules, while our Court does not. But the Court does not see why that makes any difference to its articulation of the law, set out above. The legal principles discussed above that relate to how one should provide contentions regarding infringement in discovery are consistent with the Federal Rules of Civil Procedure, including Rule 26. (*See* D.I. 210 at 2 n.2) And indeed, our Court has acknowledged and/or implemented similar standards in prior cases. *See Pers. Audio*, 2018 WL 11656746 at *2 (citing *Geovector*); *TexasLDPC Inc. v. Broadcom Inc.*, C.A. No. 18-1966-SB, 2022 WL

not sufficiently demonstrate representativeness, it must otherwise provide infringement contentions on a product-by-product basis as to all potentially accused products it has identified (or, failing that, it forfeits the opportunity to have those products be considered “accused products” in the case). *Pers. Audio, LLC*, 2018 WL 11656746, at *1.

5. Relatedly, it is generally understood that a patentee is entitled to discovery on the properly-accused products in a patent case—that is, as to products that the patentee has plausibly alleged infringe each limitation of an asserted patent claim. Sometimes though, a patentee seeks to obtain discovery on an alleged infringer’s products that it has not yet charted for infringement on a limitation-by-limitation basis. If a patentee makes such a discovery request as to so-called “unaccused” products, courts assess whether the patentee is entitled to that discovery by asking whether the patentee has sufficiently demonstrated that the unaccused products are “reasonably similar” to the accused, fully-charted products in the case. *See Invensas Corp. v. Renesas Elecs. Corp.*, 287 F.R.D. 273, 279-82 (D. Del. 2012) (internal quotation marks omitted) (citing cases). And in determining whether to permit such discovery, courts typically consider a number of factors, including:

(1) as to relevance, the specificity with which the plaintiff has articulated how the unaccused products are relevant to its existing claims of infringement ([i.e.,] how they are thus “reasonably similar” to the accused products at issue. . .); (2) whether the plaintiff had the ability to identify [unaccused] products via publicly available information prior to the request and (3) the nature of the burden on defendant(s) to produce the type of discovery sought.

Id. at 282 (internal citation omitted); *see also Samsung Elecs. Co. v. Tech. Consumer Prods., Inc.*, 1:23-CV-186, 2024 WL 5106594, at *1 (D. Del. Dec. 13, 2024).

19406566, at *2 (D. Del. Aug. 4, 2022) (same); *Joao Bock Transaction Sys., LLC v. Jack Henry & Assocs.*, Civ. No. 12-1138-SLR, 2016 WL 1267159, at *2 & n.3 (D. Del. Mar. 31, 2016).

6. With the relevant law set out, the Court now turns to the merits of Defendant's Motion and its request for discovery. The Court will do so by addressing Defendant's allegations as to the products at issue and how they are alleged, in turn, to read on the limitations of: (a) the '671 patent; (b) the '145 patent and the '274 patent; and (c) the '651 patent.

7. The Court first takes up the allegations relating to the '671 patent. There Defendant charted, on a claim-limitation-by-claim-limitation basis, its allegations as to how the two accused products (i.e., the OV24A and the OV5640) infringed the asserted claims of this patent. (D.I. 202, at 1; D.I. 204, ex. 2) From there, Defendant: (a) picked out three claim limitations of the '671 patent, which appear to the Court to be limitation 1[b], limitation 1[f] and limitation 1[h]; (b) noted that in its claim charts for the OV24A and the OV5640 accused products, it had explained how the "Image Array," "Row and Column Circuitry" and "Control Register Bank" features of those products read on these three claim limitations, respectively; and (c) included block diagrams showing how, as to each of the additional products at issue, those products also contained a similar-looking "Image Array," "Row and Column Circuitry" and "Control Register Bank" feature. (*Id.*, ex. 2 at 3-4, 41-42 & 61-62; *id.*, ex. 3; *see also* D.I. 202 at 1-2; *id.*, app. 1) Defendant explains that it focused on demonstrating representativeness as to these three particular claim limitations of the '671 patent since these are the only claim limitations of that patent for which Plaintiff has disputed infringement. (D.I. 202 at 2)³ So far as

³ Defendant's assertions in this regard are admittedly a little confusing, because in its opening letter brief, Defendant states that "limitation 1[g]" and "limitation 1[h]" are the only "two limitations for which Plaintiff disputed infringement." (D.I. 202 at 2 (citing D.I. 207, ex 10 at 14)) But in explaining how it has demonstrated representativeness as to the '671 patent, Defendant cites to Exhibits 2-3 of D.I. 204 and Appendix 1 of D.I. 202. (*Id.*) And Exhibit 2 of D.I. 204 and Appendix 1 of D.I. 202 make reference to the representativeness of the products as they relate to limitation 1[b], limitation 1[f] and limitation 1[h] of the patent, respectively (i.e., not limitation 1[g]). (D.I. 202, app. 1; D.I. 204, ex. 2 at 3-4, 41-42 & 61-62) In any event, the issue seems not to matter in the end, as (for example) the key portion of limitation 1[g] in

the Court can tell, here Defendant *did* make an attempt to demonstrate that all of the accused products at issue “share the same critical characteristics” for purposes of representativeness with what it thought were the key disputed portions of two charted accused products. *Geovector*, 2017 WL 76950, at *5 (internal quotation marks and citation omitted). Moreover, in response, Plaintiff argues only that: (a) the three sets of sensor components that Defendant has identified are unduly “generic[;]”; or (b) that in some not-well-articulated way, Defendant’s showing as to limitation 1[h] is not “consistent with the Court’s [claim] construction[;]”; or (c) that Defendant did not sufficiently address “the appropriate claim scope.” (D.I. 210 at 3) But Plaintiff simply did not develop these arguments well enough *in its answering brief* for the Court to understand exactly what it argues that Defendant had done wrong here from an infringement contention perspective. And so the Court cannot rely on those arguments to deny the Motion as to the relevant products regarding this patent. Absent a better, more detailed explanation from Plaintiff as to why Defendant’s approach to representativeness regarding the '671 patent was improper, the Court finds Plaintiff’s arguments unpersuasive.

8. Next, the Court takes up the allegations relating to the '145 patent and the '274 patent. Here, Defendant explains that it: (a) charted how the two accused products (the OV24A and the OV5460) read on every claim limitation in these patents; (b) stated that the remaining products at issue contained materially the same functionality for purposes of infringement, including similar hardware and similar “CMOS image sensor technology”; and (c) included charts for each of the remaining accused products at issue depicting how those products included

Defendant’s view is the part that implicates the concept of “row and column circuitry”—and “row and column circuitry” is also the claim term that makes up the entirety of limitation 1[f]. (D.I. 202 at 2; '671 patent, col. 18:4-6)

three features that Defendant asserted were key to the representativeness showing: “CMOS Image Sensor Architecture,” “Row and Column Circuitry” and an “Image Array.” (D.I. 202, apps. 2-3; D.I. 204, ex. 1 at 11; *id.*, ex. 4; D.I. 205, ex. 5; D.I. 206, exs. 6-7) In its opening brief, Defendant acknowledged Plaintiff’s argument that the “relevant limitations for these patents are *not* demonstrated by Defendant’s representativeness contentions.” (D.I. 202 at 3) Indeed, in its answering brief, Plaintiff explained that this was, in fact, its position. There, Plaintiff asserted that: (a) for the '145 patent, the alleged representative products (i.e., “product A”) and represented products (i.e., “product B”) were *not* alike as it relates to the asserted claims’ “plurality of p-type regions” and “in an absence of the control voltage” limitations; and (b) for the '274 patent, the two sets of accused products were *not* alike as it relates to the asserted claims’ “nonconstant work function” limitation. (D.I. 210 at 3 (internal quotation marks and citations omitted); *see also* '145 patent, cols. 17:60-18:6; '274 patent, col. 17:63-65) And in response to *that*, Defendant seemed to suggest that even if Plaintiff had articulated a meaningful dispute about whether a representative product and represented product were similar as to a particular claim limitation/requirement, Defendant simply did not have to demonstrate *why* the two sets of products were similar in this regard—because the information that would make out a showing of representativeness as to these limitations is “proprietary” to Plaintiff. (D.I. 202 at 3-4 (emphasis omitted) (citing *Invensas Corp.*, 287 F.R.D. at 282); *see also* D.I. 221 at 2)

9. But that is not correct. To be sure, if certain documents or information that might help the patentee explain how an alleged represented product (i.e., “product B”) is similar to an allegedly representative product (i.e., “product A”) are not public, then courts can consider this as a factor when assessing the sufficiency of a patentee’s allegations regarding representativeness—and, relatedly, when deciding whether to permit discovery on the

represented product. *Cf. Invensas Corp.*, 287 F.R.D. at 282 (noting the same, as to an issue regarding discovery sought on unaccused products). For example, in this kind of scenario for the '145 patent, Defendant might be permitted to be a bit less detailed in its explanation of why it thinks that the represented products are made or function the same as the representative products, as it relates to how those represented products embody the “plurality of p-type regions” and “in an absence of the control voltage” limitations. But that does not absolve Defendant from making *some* reasonable articulation as to *why* the represented products are likely to look or work the same way as the representative products regarding the requirements of those limitations. If Defendant was not required to do that, then discovery as to alleged represented products could be obtained based simply on speculation, which is not permitted—since it would in turn lead to discovery-related “fishing expeditions.” *Id.* at 279-80 & n.6; *see also Ethicon LLC v. Intuitive Surgical, Inc.*, Civil Action No. 17-871-LPS-CJB, 2018 WL 1392341, at *3 (D. Del. Feb. 12, 2018) (finding that requested discovery about unaccused products was not relevant to a patentee’s existing infringement claims, as the patentee relied on “mere suspicion or speculation” that the unaccused product would infringe the asserted patents) (internal quotation marks and citation omitted). Here, because: (a) Plaintiff has clearly articulated the bases on which it believes that Defendant’s representativeness allegations are insufficient, and clearly articulated the claim limitations that it believes are relevant to those allegedly insufficient allegations; and (b) Defendant, in turn, did not sufficiently explain how, on that score, the alleged represented products at issue *are* in fact likely to be the same as the alleged representative products it has charted; then (c) Defendant is not entitled to the sought-after discovery regarding the '145 patent and '274 patent.

10. Lastly, the Court takes up the '651 patent. Here, the outcome is similar as to the '671 patent. With regard to the '651 patent, Defendant persuasively notes that it had: (a) charted how at least certain accused products (e.g., the OV5460) read on every claim limitation in the patent; (b) identified the one claim limitation as to which Plaintiff was contesting infringement—i.e., claim 1’s requirement that the device comprises “a color interpolation circuit for combining the first, second, third and fourth digital signals”; (c) provided a narrative explanation for why and how the remaining products at issue infringed the “color interpolation circuit” limitation; and (d) then included charts for each of the remaining products at issue depicting how those products included features that would allow those products to read on this “color interpolation circuit” claim limitation. (D.I. 202 at 4; *id.*, app. 4; D.I. 204, ex. 1 at 7; D.I. 207, ex. 8-9; *see also* '651 patent, col. 8:18-19) As with the '671 patent, here the difficulty for Plaintiff was that, in its answering brief, it articulated its responsive position in a terse and unclear fashion. (D.I. 210 at 3-4) In addition to vaguely suggesting that Defendant’s submission was too “generic” as to this patent, Plaintiff also asserted that “[t]he '651 patent actually claims a *specific arrangement* using two analog-to-digital converters each converting particular pixel colors” and that Defendant did not “attempt to address this required functionality[.]” (*Id.* at 3) But what exactly was Plaintiff arguing? Was it disputing Defendant’s assertion that the “color interpolation circuit” limitation was the only claim limitation that it had put at issue in terms of non-infringement? If so, what limitation (or limitations) was it suggesting *were* at issue—such that Defendant should have charted them, in explaining how and why the products at issue also contained these limitations? Was the problem that Defendant did not identify where in the products at issue the two respective claimed “analog-to-digital converter[s]” are located? ('651 patent, col. 8:7-17) Or was the issue instead that Defendant had not pointed out how the products at issue made use of

the claimed “red pixel[,]” or “blue pixel[,]” and/or “green pixel”? (*Id.*, col. 8:3-17) Was it some combination of both? For its part, Defendant was obviously uncertain as to what Plaintiff was arguing. That was evident from Defendant’s reply brief, where it again simply explained that: (a) the “color interpolation circuit” limitation was the only limitation that Plaintiff had put at issue for non-infringement purposes; and (b) it had sufficiently explained why all of the other products at issue read on this limitation. (D.I. 221 at 2) In the end here, because Plaintiff’s response regarding this patent was so sparse and so hard for the Court to understand, the Court cannot say that Plaintiff sufficiently explained why Defendant’s representativeness submission was wanting. And so the Court is not in a position to prevent Defendant from obtaining discovery of the type requested as to this patent.⁴

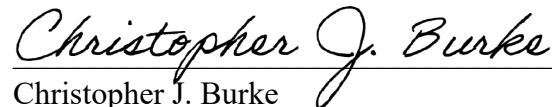
11. Lastly, Plaintiff also again asserted that Defendant’s Motion should be considered untimely for seeking the requested discovery so late in the case. (D.I. 210 at 4) But the Court has already addressed this issue, finding that the request was *not* untimely. (D.I. 197) And so Plaintiff’s arguments in this regard are not well-taken and cannot be the basis for relief.

12. For all of the reasons set out herein, the Motion is GRANTED-IN-PART and DENIED-IN-PART, in that it is GRANTED as to the requested discovery regarding the '671 patent and the '651 patent, and DENIED as to the requested discovery regarding the '145 patent and the '274 patent. Because this discovery at issue will no doubt take significant time to

⁴ Plaintiff had four single-spaced pages in which to articulate the substance of its response as to representativeness. It did not use that space wisely. Instead, it appears Plaintiff believed that it could evade the Court’s page limits by attaching a declaration that attempted to serve as a second brief. (D.I. 210 at Declaration of David H. Bluestone) That is an improper end run around the Court’s briefing page limits, and the Court does not consider that declaration here. *See Nevro Corp. v. Stimwave Techs., Inc.*, Civil Action No. 19-325-CFC, 2019 WL 3322368, at *12 n.9 (D. Del. July 24, 2019); *Monec Holding AG v. Motorola Mobility, Inc.*, Civil Action No. 11-798-LPS-SRF, 2014 WL 4402825, at *2 (D. Del. Sep. 5, 2014).

identify, produce and then react to, the Court ORDERS that the current pre-trial conference and trial dates are VACATED. It further orders that the parties should meet and confer on a schedule for the provision of the requested discovery, and the contours of a new case schedule. Among other things, they should discuss whether provision of the new discovery will likely prompt any need for further expert discovery, or for any newly-filed summary judgment and/or *Daubert* motions (beyond those that have already been filed). The parties shall provide a joint status report to the Court on this subject matter, including an attached proposed new Scheduling Order that leads up to a new proposed trial date, and shall do so by no later than **September 23, 2026**.

Dated: September 16, 2026



Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE