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June 11, 2015
VIA EFC FILING AND CHAMBERS COPY

Honorable Paul S. Grewal
United States District Court
Northern District of California
Courtroom 5, 4th Floor
280 South 1st Street
San Jose, CA 95113

Re: *Technology Properties Limited LLC et al. vs. Related Cases:*

- Barnes & Noble 3:12-cv-03863-VC
- Huawei 3:12-cv-03865-VC
- ZTE 3:12-cv-03876-VC
- Samsung 3:12-cv-03877-VC
- Novatel 3:12-cv-03879-VC
- LG 3:12-cv-03880-VC
- Nintendo 3:12-cv-03881-VC

Dear Judge Grewal:

I write on behalf of several defendant groups in the related cases referenced above in response to the letter submitted by Plaintiffs on June 9, 2015.¹ Plaintiffs' letter, sent more than seven months into fact discovery and less than three months before the discovery close, requests an order modifying the dispute resolution procedures set forth in the Northern District of California Civil Local Rules and the Federal Rules of Civil Procedure.

Defendants appreciate that circumstances may arise in their respective cases where modification of certain procedures, for certain motions, may promote efficiency and conserve judicial and party resources. Defendants are open to discussing such modifications with Plaintiffs on a case-by-case basis.² However, Plaintiffs now seek to unilaterally impose restrictions across the board on all non-dispositive disputes that may arise, including reducing the time for the parties to submit briefing, the number of issues that can be addressed in any particular brief, and the pages and types of evidence that may be employed to support a party's position. Indeed, as Plaintiffs are aware, but did not mention in their letter, the order in the *Adaptix* case was entered based on stipulation by the parties and was included with a joint case management statement submitted early in the case. See *Adaptix, Inc. v. Motorola Mobility LLC*,

¹ This letter represents the collective position of Defendants Barnes & Noble, Huawei, ZTE, Samsung, Novatel, LG and Nintendo ("Defendants").

² As an example, Samsung recently filed a motion to strike Plaintiffs' infringement contentions, currently scheduled for hearing on August 11, 2015. At Plaintiffs' request, Samsung has advised Plaintiffs that it is willing to consider a shortened briefing and hearing schedule and currently is discussing terms for a potential stipulation.



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No. 5:13-cv-01774-PSG, Dkt. No. 71.³ Thus, it was only with the consent of the parties, early in the proceedings, that this Court changed the discovery procedures in *Adaptix*. In contrast, the Plaintiffs here are attempting to impose the restrictions in the *Adaptix* order late in the proceedings and to the significant prejudice to the Defendants. First, the seven court days' restriction on the time to oppose a motion would prejudice all defendants by limiting their ability to coordinate and come to consensus on key issues like claim construction, invalidity, and non-infringement. Second, the same restriction would create logistical difficulties and additional prejudice for defendants whose companies or parent companies are located overseas and require adequate time to respond due to differences in time zone, business hours, and national holiday schedules.

While Plaintiffs' letter states that there currently are "several disputes between Plaintiffs and the Defendants regarding a variety of discovery issues," it describes neither these disputes nor the relief that Plaintiffs may seek. Plaintiffs also fail to note whether these disputes could have been brought to the Court's attention earlier, and why they cannot be addressed in the normal fashion under the local rules.

Defendants also take issue with Plaintiffs' assertion that "substantial meet and confer efforts" already have taken place, which apparently will lead to "several motions to compel" and Plaintiffs' desire to streamline the dispute resolution procedures. Some Defendants are not aware of any pending motion to compel against them, or any disputes which would rise to that level. Rather, Plaintiffs have largely ignored this case for the past seven months following the order relating the cases and the Case Management Conference in November 2014. Plaintiffs' new counsel (which substituted in for Agility IP in April) has commented on several occasions that they are still getting up to speed on the issues, and that they are not familiar with the record, the status of the parties' document productions and other issues related to the nearly three years of litigation between the parties in both the International Trade Commission proceedings and current district court actions. Regardless, Plaintiffs – TPL, PDS and Patriot – are no strangers to this case, have previously litigated these patents numerous times, and are solely responsible for their lack of diligence in both identifying and seeking to resolve any disputes prior to now.

There are mechanisms in place for the parties to raise and resolve their discovery disputes. And Plaintiffs voiced no desire for different discovery rules prior to their June 9th letter. Moreover, Plaintiffs chose to pursue litigation against eight separate Defendants. If those rules are too restrictive in a specific case, the parties to that case should propose modifications as appropriate in each instance, as already permitted by the Civil Local Rules (*e.g.*, L.R. 6-1, 6-2, 6-3). But Defendants have been diligently planning and preparing their defense to Plaintiffs' allegations in accordance with the Court's schedule, and it is prejudicial to now implement new, blanket discovery rules, particularly absent any showing of special need by Plaintiffs.

³ The Case Management Conference in *Adaptix* was held on July 16, 2013. The proposed stipulated discovery dispute resolution order was submitted on August 6, 2013.



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Respectfully Submitted,

DLA Piper LLP (US)

/s/ Aaron Wainscoat

Aaron Wainscoat
Partner

Cc: See attached service list

CERTIFICATE OF SERVICE

I, Aaron Wainscoat, declare:

I am a citizen of the United States and employed in San Mateo County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is DLA Piper LLP (US), 2000 University Avenue, East Palo Alto, California 94303-2214. On June 11, 2015, I served a copy of the within document(s):

6/11/15 LETTER TO JUDGE PAUL S. GREWAL

by electronic mail, by transmitting a true copy thereof by electronic mail to the addresses' email addresses indicated below.

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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 11, 2015, at East Palo Alto, California.

/s/ Aaron Wainscoat

Aaron Wainscoat