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Attorneys for Plaintiff

PHOENIX DIGITAL SOLUTIONS LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

TECHNOLOGY PROPERTIES LIMITED
LLC, PHOENIX DIGITAL SOLUTIONS
LLC and PATRIOT SCIENTIFIC
CORPORATION,

Plaintiffs,

v.

LG ELECTRONICS, INC. and LG
ELECTRONICS U.S.A., INC.,
Defendants.

Case No. 3:12-CV-03880-VC (PSG)

JURY TRIAL DEMANDED

**PDS'S MOTION FOR AN ORDER
SHORTENING TIME FOR THE
COURT TO HEAR PDS'S MOTION TO
COMPEL DISCOVERY PURSUANT
TO CIVIL LOCAL RULE 6-3**

Hearing:

Date: August 11, 2015

Time: 10:00 a.m.

Place: Courtroom 5, 4th Floor

Judge: Hon. Paul S. Grewal

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Phoenix Digital Solutions LLC (“PDS”) hereby moves the Court, pursuant to Civil Local Rule 6-3, for an order shortening time on PDS’s Motion to Compel Discovery From LG (the “Motion to Compel”) filed concurrently herewith, and also on LG’s Motion to Strike Plaintiffs’ Infringement Contentions (the “Motion to Strike”), filed June 15, 2015. The Motion to Compel is scheduled for a hearing on August 11, 2015, before the Hon. Paul S. Grewal. The motion to shorten time is based on this Notice of Motion and the supporting Memorandum of Points and Authorities; the supporting Declaration of Barry J. Bumgardner (“Decl.”)¹ and the Exhibits² attached to the declaration.

RELIEF REQUESTED

Pursuant to Civil Local Rule 6-3, PDS respectfully asks the Court to hear PDS’s Motion to Compel, being filed concurrently herewith, as well as LG’s Motion to Strike, filed on June 15, 2015, according to the following schedule:

- Deadline for filing opposition briefs: June 23, 2015
- Hearing: June 30, 2015 at 10:00 a.m. in Courtroom 5, 4th Floor, United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, before the Honorable Paul S. Grewal.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Civil Local Rule 6-3, PDS moves for an Order Shortening Time for the Court to Hear PDS’s Motion to Compel Discovery, submitted concurrently herewith, because LG Electronics, Inc. and LG Electronics U.S.A., Inc., (“LG”) are withholding relevant financial and damages-related discovery, which is prejudicial to PDS. Despite numerous meet and confers on the several discovery issues, the parties are at an impasse on LG’s refusal to produce the full scope of

¹ The Declaration of Barry J. Bumgardner in Support of PDS’s Motion to Compel Discovery From LG, filed concurrently herewith, is hereby adopted and incorporated as if set forth fully herein, or attached separately hereto in support of the instant motion.

² All citations to “Exhibits” herein refer to the Exhibits to the Declaration of Barry J. Bumgardner in Support of PDS’s Motion to Compel Discovery From LG, filed concurrently herewith.

1 documents responsive to PDS's Request for Production No. 4. LG's refusal to produce these
2 financial and damages-related documents, which are directly relevant to damages in this case, is
3 highly prejudicial to PDS, particularly at this stage in the litigation when fact discovery is
4 scheduled to close on September 8, 2015, and expert reports are due soon thereafter. Due to
5 LG's failure to provide adequate discovery, PDS will find it difficult to proceed with depositions
6 in this action, and will not have the information necessary to fully evaluate damages in this case.
7 Fact discovery closes in less than three months and, as such, PDS cannot afford any further delay.
8 Accordingly, PDS seeks an expedited briefing schedule so that these issues can be resolved as
9 soon as possible and further delay is minimized.

10 LG filed a Motion to Strike Plaintiffs' Infringement Contentions ("Motion to Strike") that
11 is also currently scheduled for a hearing on or after August 11, 2015. LG has failed to produce
12 financial and damages-related documents under the cover of its objection to PDS's definition of
13 "Accused Products." Because LG's Motion to Strike and PDS's Motion to Compel are related to
14 the same issues, hearing both LG and PDS's motions on the same day would be more efficient
15 for the Court and the parties. As such, PDS respectfully requests that the hearing and briefing for
16 LG's Motion to Strike be placed on the same expedited schedule that PDS is seeking for its
17 Motion to Compel.

18 LG's full position is set forth in its Motion to Strike but, in summary, LG contends that
19 Plaintiffs' Infringement Contentions are deficient and fail to identify with particularity many of
20 the products identified by Plaintiffs as infringing the asserted claims of the Patents-in-Suit. LG
21 believes that the claim charts accompanying Plaintiffs' infringement contentions do not satisfy
22 the applicable Patent Local Rules. LG claims it does not have to produce certain documents for
23 products that Plaintiffs have not properly "charted" in its infringement contentions.

24 Accordingly, PDS requests that the Court grant the instant motion and order a shortened
25 briefing schedule on PDS's Motion to Compel. Further, PDS requests that the Court grant an
26 order for a shortened briefing schedule on LG's Motion to Strike.

1 PDS and LG held a meet and confer on June 15, 2015 regarding a potential stipulation to
2 expedite the briefing and hearing for both PDS's Motion to Compel and LG's Motion to Strike.
3 During the meet and confer, LG stated that it was not willing to agree to set the hearing for June
4 30th, but that it did not oppose moving up the hearing from August 11, 2015 to an earlier date.

5 **II. ARGUMENT**

6 Plaintiffs provided LG with notice of its infringement theories on January 20, 2015, when
7 Plaintiffs served their Infringement Contentions to LG (and other defendants), which sets forth
8 and specifically identified the LG products accused of infringement. *See* EXS. 1, 2. Exhibit A to
9 Plaintiffs' Infringement Contentions is titled "Accused Products" and is made up of seven
10 separate Tables (A.1-A.7), and each Table is directed to a different defendant and specifically
11 lists the "Accused Products" in each defendant's corresponding claim charts. The LG Accused
12 Products are specifically identified in Table A.6 (pages 56-68) of Exhibit A to Plaintiffs'
13 Infringement Contentions. *See* EX. 2.

14 PDS served its PDS's Second Set of Requests for Production to LG (Nos. 4-11) on March
15 9, 2015. EX. 3. LG served its Objections and Responses to PDS's Second Set of Requests for
16 Production on April 13, 2015. EX. 4.

17 On February 28, 2015, LG sent a letter to Plaintiffs. In this letter, LG unilaterally
18 declared Plaintiffs' Infringement Contentions to be deficient and stated that they "should be
19 struck in their entirety." LG also made express reservations of its "right to ... seek a protective
20 order in light of these deficiencies," and "right to refuse to provide any technical discovery to the
21 Accused Products until TPL has fully complied with its obligation to fully and fairly disclose its
22 infringement contentions against those products." EX. 5, at p. 6. On March 18, 2015, PDS
23 responded to LG's February 28, 2015 letter, explaining the sufficiency of Plaintiffs' Infringement
24 Contentions and stating that PDS was available for a meet and confer that same week. EX. 6.

1 Nelson Bumgardner became counsel of record for PDS on April 15, 2015. After Nelson
2 Bumgardner took over the representation of PDS in this matter, attorneys from Nelson
3 Bumgardner began reviewing LG's responses to PDS's discovery requests. It became apparent
4 that LG was objecting to producing technical and damages-related documents under the cover of
5 its objection to PDS's definition of "Accused Products."

6 PDS has attempted on several occasions to resolve the discovery issues with LG. PDS
7 and LG held multiple meet and confers on May 21, May 29, and June 15. *See* EXs. 10, 11 and
8 18. During the meet and confers, the parties discussed these discovery issues, including LG's
9 obligation to produce financial and damages-related documents in response to PDS's request for
10 production. During these calls, the parties were able to reach agreement and resolve some
11 discovery issues, but with respect to LG's production of financial and damages-related
12 documents in response to Request for Production No. 4, the parties were not ultimately able to
13 reach agreement.

14 On June 4, 2015, PDS emailed LG and other defendants in related cases. *See* EX. 12. In
15 the email, PDS asked if LG would agree to entry of a letter briefing procedure for the purposes of
16 handling discovery disputes in this case, and that the procedure had been adopted and entered by
17 this Court in similar patent infringement cases. PDS also indicated that it would ask the Court to
18 adopt the proposed letter briefing procedure for discovery disputes, and asked LG and the other
19 defendants to respond by June 9, 2015. LG did not provide any response to PDS's June 4, 2015
20 proposal.

21 PDS and LG also held a meet and confer on June 15, 2015. During the call, PDS stated
22 that it would be asking the Court for an expedited hearing date, and asked whether LG would
23 oppose this motion. *See* EX. 17. During the June 15, 2015 meet and confer, LG stated that it
24 would not agree to PDS's request to move the hearing date to June 30, 2015, but that it would not
25 oppose to moving the hearing up from the currently scheduled date of August 11, 2015.

26 If the Court hears PDS's Motion to Compel on a normal briefing schedule on August 11,
27 2015, it will further delay certain deposition discovery in this case. Further, any delay in the
28 briefing schedule will also delay the production of documents by a timely date. The delay in

1 discovery is prejudicial to PDS and its ability to prosecute its case by the close of fact discovery
2 on September 8, 2015.

3 Pursuant to Civil Local Rule 6-3(a)(5), PDS discloses that there has been one adjustment
4 to the originally entered case schedule related to the due date of Defendants' invalidity
5 contentions. This adjustment was not opposed by Plaintiffs and occurred a few months ago.
6 Finally, the requested modification of the briefing schedule will affect no other date or deadline
7 in this case.

8 **III. CONCLUSION**

9 For the foregoing reasons, the Court should grant PDS's Motion for an Order Shortening
10 Time for the Court to Hear PDS's Motion to Compel Discovery.

11 Dated: June 16, 2015

Respectfully Submitted,

/s/ Barry J. Bumgardner

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Attorneys for Plaintiff

PHOENIX DIGITAL SOLUTIONS LLC

PDS'S CERTIFICATION PURSUANT TO FED. R. CIV. P. 37(a)(1)

PDS hereby certifies that it has in good faith conferred with LG in an effort to obtain a stipulation described herein without Court action. PDS's efforts to resolve this issue without court intervention are described herein and in the supporting Declaration of Barry J. Bumgardner.

Dated: June 16, 2015

NELSON BUMGARDNER, P.C.

By: /s/ Barry J. Bumgardner
Barry J. Bumgardner

**Attorneys for Plaintiff
Phoenix Digital Solutions LLC**

CERTIFICATE OF SERVICE

I, Barry J. Bumgardner, hereby declare:

I am employed in Tarrant County, State of Texas. I am over the age of 18 years and not a party to the within action. My business address is: Nelson Bumgardner, P.C., 3131 W. 7th Street, Suite 300, Fort Worth, Texas 76107.

On this date, I served: PDS'S MOTION FOR AN ORDER SHORTENING TIME FOR THE COURT TO HEAR ITS MOTION TO COMPEL DISCOVERY PURSUANT TO CIVIL LOCAL RULE 6-3 by forwarding the document(s) by electronic transmission on this date to the electronic mail addresses for counsel of record for LG Electronics, Inc. and LG Electronics, U.S.A., Inc. as identified below:

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Dated: June 16, 2015

By: /s/ Barry J. Bumgardner
Barry J. Bumgardner

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

TECHNOLOGY PROPERTIES LIMITED
LLC, PHOENIX DIGITAL SOLUTIONS
LLC, and PATRIOT SCIENTIFIC
CORPORATION,

Plaintiffs,

v.

LG ELECTRONICS, INC. and LG
ELECTRONICS U.S.A., INC.,
Defendants.

Case No. 3:12-CV-03880-VC (PSG)

JURY TRIAL DEMANDED

**[PROPOSED] ORDER ON PDS'S
MOTION FOR AN ORDER
SHORTENING TIME FOR THE
COURT TO HEAR PDS'S MOTION TO
COMPEL DISCOVERY PURSUANT
TO CIVIL LOCAL RULE 6-3**

Hearing:

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Time: 10:00 a.m.

Place: Courtroom 5, 4th Floor

Judge: Hon. Paul S. Grewal

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Before the Court is PDS’s Motion for an Order Shortening time for the Court to Hear PDS’s Motion to Compel Discovery Pursuant to Civil Local Rule 6-3. Having considered PDS’s Motion, the Court finds that it is well taken and should be GRANTED.

As such, IT IS HEREBY ORDERED that the deadline for filing opposition to PDS’s Motion to Compel Discovery from LG and LG’s Motion to Strike is June 23, 2015, and that the hearing for both PDS’s Motion to Compel Discovery from LG and LG’s Motion to Strike is set for June 30, 2015, at 10:00 a.m. in Courtroom 5, 4th Floor, United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, before the Honorable Paul S. Grewal.

SO ORDERED.

Dated: _____

Hon. Paul S. Grewal
United States Magistrate Judge