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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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

**DEFENDANTS LG ELECTRONICS, INC.  
AND LG ELECTRONICS U.S.A., INC.'S  
OPPOSITION TO PDS'S MOTION TO  
COMPEL DISCOVERY FROM LG**

DATE: June 30, 2015 (by order)

TIME: 10:00 AM

PLACE: Courtroom 5

JUDGE: Hon. Paul S. Grewal

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1 **I. INTRODUCTION**

2 “Courts in this district generally do not order defendants to proceed with discovery in  
3 patent cases until the plaintiff provides infringement contentions that comply with Patent L.R. 3–  
4 1.” *Digital Reg of Texas, LLC v. Adobe Systems Inc.*, 2013 WL 633406, at \*5 (N.D. Cal. Feb. 20,  
5 2013).

6 Before demanding discovery and moving to compel, Plaintiffs failed to meet their  
7 threshold burden of providing infringement contentions compliant with Patent L.R. 3–1. This is  
8 true not only in the present case, but also across the rest of the seven related pending cases filed by  
9 the same Plaintiffs on the same asserted patents. In two of these cases—the present case and  
10 *Technology Properties Limited LLC et al. v. Samsung Electronics Co., Ltd et al*, Case No.  
11 3:12cv3877-VC (PSG)—LG and Samsung each moved to strike Plaintiffs’ infringement  
12 contentions on almost identical grounds, and Plaintiffs filed motions to compel against each LG  
13 and Samsung (though the relief requested in those motions differs in scope.)

14 As explained in more detail in LG’s Motion to Strike, Plaintiffs’ Infringement Contentions  
15 attempt to accuse 437 LG end products and a variety of microprocessors in a sweeping manner but  
16 fail to “identify specifically where each limitation of each asserted claim is found within each  
17 Accused Instrumentality” as required by Patent L.R. 3-1. Although Plaintiffs’ infringement charts  
18 list seven processors as representative of the rest of the processors in the accused products,  
19 Plaintiffs failed to establish why these processors are representative and failed to chart even these  
20 seven processors through every element of a single claim.

21 Despite these defects, to minimize discovery disputes, LG has agreed to produce financial  
22 information responsive to Plaintiffs’ RFP No. 4 for the products that contain the seven processors.  
23 But Plaintiffs are not entitled to such discovery for the rest of the products which have no  
24 established relationship to the purported “representative” products and for which Plaintiffs failed  
25 to provide any treatment in the infringement charts.

26 Accordingly, PDS’s motion to compel should be denied.

## II. FACTUAL BACKGROUND

### A. Deficiencies in Plaintiffs' Infringement Contentions

LG described in detail the deficiencies in Plaintiffs' Infringement Contentions in its Motion to Strike the Infringement Contentions [D.I. 80] and will summarize only the relevant information here.

Plaintiffs served their Infringement Contentions on January 20, 2015. The Infringement Contentions purport to accuse 437 LG products, including mobile phones, tablets, TVs, and Blu-ray players.

Patent Local Rule 3-1(c) requires a patentee to provide "[a] chart identifying *specifically* where *each limitation of each asserted claim* is found within *each Accused Instrumentality*." *Id.* (emphasis added). Despite the extensive list of accused products, Plaintiffs produced only three infringement claim charts, one for each asserted patent. The charts fail to provide the requisite specific identification as to where each claim element is found in every individual accused processor.

The charts only briefly mentioned two of the 437 products without charting either one through the claim elements of any single claim. Instead, the charts focus on accusing the microprocessors contained within the accused LG end products. Plaintiffs' list of the accused products and corresponding processors, included as a separate attachment to the contentions, lists a profusion of processors of different makes and models by more than half a dozen different manufacturers. Each chart lumps "each Accused Microprocessor in each Accused Product" together and purports to accuse them all at once:

On information and belief, each Accused Product listed in the attached list of Accused Products (Ex. A.6), including phones and televisions, contains a microprocessor ("Accused Microprocessors"). <http://www.phonescoop.com/>; <http://pdadb.net/>; <http://www.gsmarena.com/>; see PDSLG000001-PDSLG000050; see also PDSND077821-PDSND078576 for datasheets identifying microprocessors. <sup>1</sup> *For example, the Escape contains a Qualcomm MSM8960L.* See Ex. A.6 for listings of microprocessors in the Accused Products with information obtained from <http://www.phonescoop.com/>; <http://pdadb.net/>; <http://www.gsmarena.com/>; see PDSLG000001-PDSLG000050; see also PDSND077821-PDSND078576 for datasheets identifying microprocessors."

[D.I. 79-5, May Decl., Ex. G-1 at 1; *see also* D.I. 79-7 and 79-9, May Decl. Exs. G-2 at 1, G-3 at 1] (emphasis added).

The charts largely rely “on information and belief,”<sup>1</sup> knowledge of a person of ordinary skill in the art,<sup>2</sup> and generic articles and Wikipedia for conclusory statements about general technology.<sup>3</sup>

Apart from “each Accused Microprocessor in each Accused Product,” the charts identify seven specific processors: Qualcomm MSM8960, Qualcomm MSM8660, Qualcomm MSM8260, Qualcomm MSM7227, TI OMAP4430, TI OMAP4460, and TI OMAP4470. None of these processors, however, is charted through every element of a single claim. For certain claim elements, the allegations as to these processors also rely on “information and belief” [*see, e.g.*, D.I. 79-5, May Decl., Ex. G-1 at 15-16, 18-19], knowledge of a person of ordinary skill in the art [*id.*, G-1 at 11, 16], or generic evidence [*id.*, G-1 at 15, 19].

Although the charts purport to rely on the seven identified processors as “representative” of the rest, the charts openly state that this attempt is based solely on “information and belief”— “[t]his chart provides some examples of such operation that, **on information and belief, are representative** of the operation of the processors in each of the Accused Products.” [May Decl., Exs. G-1, G-2, G-3 at 1, respectively] (emphasis added).

In addition, the Infringement Contentions purport to accuse products that were first released after the respective August 8, 2012 and June 25, 2013 expirations of the ’749 and ’890

<sup>1</sup> *See, e.g.*, D.I. 79-5 through 79-9, May Decl., Exs. G-1 at 1, 4-5, 17-20, 23 (’336 elements 6.a, 6.b, 6.c, 6.f, 6.g and 9.b); G-2 at 1, 11, 20, 23-24, 27, 32, 35, 41-43, 47, 50, 53-54, 56, 59-60, 63, 65, 67-68, 72-73, 82, 85-86, 89, 95, 98, 104-106, 109, 112, 115, 117, 119-120, 122-123, 126-127 (’890 elements 1.a, 1.b, 1.c, 1.f, 1.g, 1.i, 1.j, 1.k, 1.l, 1.m, 1.n, 1.o, 7.b, 9.b, 9.c, 9.d, 9.e, 11.a, 11.b, 11.c, 11.d, 11.e, 11.f, 11.g, 11.i, 11.k, 11.l, 11.m, 11.n, 11.o, 11.p, 12.b, 13.b, 17.b, 19.b, 19.c, 19.d, and 9.e); and G-3 at 1, 3, 8, 15, 24, 45, 54, 63, 65, 70, 74, 84, 88-89, 92, 96, 99, 104, 106 (’749 elements 1 (preamble), 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, 9.d, 9.e, 43 (preamble), 43.a, 43.b and 59 (preamble)).

<sup>2</sup> *See, e.g.*, D.I. 79-5 and 79-7, May Decl., Exs. G-1 at 10-11, 16-17 (’336 elements 6.d and 6.e), 18-19 (6.g); G-2 at 112 (’890 element 12.b).

<sup>3</sup> D.I. 79-5 and 79-7, May Decl., Ex. G-1 at 10-11, 16-20 (’336 elements 6.d, 6.e, 6.g and 9.b); Ex. G-2 at 1, 5, 50, 67, 113, 117 (’890 elements 1.b, 1.c, 7.b, 11.c, 12.b and 17.b)).]

1 Patents. Further still, a large number of the accused products LG has never made, sold, used, or  
 2 imported into the United States.

3 **B. The Parties' Meet-and-Confer Process regarding the Deficiencies in Plaintiffs'**  
 4 **Infringement Contentions and LG's Production of Financial Information**

5 LG first raised the deficiencies in the Infringement Contentions as early as February 2015.  
 6 [D.I. 81-6, Bumgardner Decl., Ex. 5.] Plaintiffs attempted to defend the adequacy of their  
 7 Contentions but never attempted to remedy the deficiencies. [D.I. 81-7, Bumgardner Decl., Ex. 6.]

8 On March 9, Plaintiffs served their Second Set of Requests for Production ("RFPs") of  
 9 Documents, including RFP No. 4 at issue on this motion. LG served objections, including based  
 10 on the deficiencies in Plaintiffs' Infringement Contentions.

11 Initially, in response to Plaintiffs' question regarding the scope of financial information LG  
 12 would produce for the accused products, LG informed Plaintiffs that it would produce unit sales  
 13 volume information for the accused LG products with the seven processors identified in Plaintiffs'  
 14 infringement charts. [D.I. 81-14, Bumgardner Decl., Ex. 13.] On June 15, the parties met and  
 15 conferred regarding these issues, deficiencies in Plaintiffs' Infringement Contentions, and LG's  
 16 prospective Motion to Strike. [D.I. 79-1, May Decl. ¶ 10.] LG restated its position that Plaintiffs'  
 17 Infringement Contentions are deficient and that it intended to move to strike. But to streamline  
 18 discovery disputes, LG will produce the financial information requested in RFP No. 4 (to the  
 19 extent requested information exists) for the accused LG products containing the seven processors  
 20 identified in Plaintiffs' infringement charts.

21 On June 15, LG filed its Motion to Strike. [*Id.*] On June 16, PDS filed its Motion to  
 22 Compel.

23 **III. LEGAL STANDARD**

24 "The overriding principle of the Patent Local Rules is that they are designed [to] make the  
 25 parties more efficient, to streamline the litigation process, and to articulate with specificity the  
 26 claims and theory of a plaintiff's infringement claims." *Bender v. Maxim Integrated Products, Inc.*  
 27 2010 WL 1135762, at \*2 (N.D. Cal. March 22, 2010) (citing *Intertrust Techs. Corp. v. Microsoft*  
 28

1 *Corp.*, No. 01-1640, 2003 U.S. Dist. LEXIS 22736, at \*6 (N.D. Cal. Nov. 26, 2003)). “[P]laintiff  
 2 bears the burden of providing infringement contentions that specify the location of every claim  
 3 element within the accused products, so that the Court can make a principled decision on whether  
 4 discovery will proceed.” *Bender*, 2010 WL 1135762, at \*2.

5 Courts in this district generally do not order defendants to proceed with discovery in patent  
 6 cases in response to infringement contentions that fail to comply with Patent L.R. 3–1. *Digital Reg*  
 7 *of Texas*, 2013 WL 633406, at \*5 (denying patentee’s motion to compel production of  
 8 documents); *see also Bender*, 2010 WL 1135762, at \*2 (declining to order defendant to proceed  
 9 with discovery due to plaintiff’s failure to meet burden under Patent L.R. 3-1).

#### 10 **IV. ARGUMENT**

11 PDS is not entitled to demand discovery on products beyond the discovery LG agreed to  
 12 produce on the products with the seven processors identified in the infringement charts, because  
 13 PDS has failed to meet its “burden of providing infringement contentions compliant with Patent  
 14 L.R. 3-1.” *Bender*, 2010 WL 1135762, at \*2; *Digital Reg of Texas*, 2013 WL 633406, at \*5.

15 In fact, as detailed in LG’s Motion to Strike, PDS has failed to meet this burden as to a  
 16 single accused product. Both the allegations regarding “each Accused Microprocessor in each  
 17 Accused Product” and the seven listed processors fail to identify where each limitation of each  
 18 asserted claim is found within each processor. The allegations premised on “information and  
 19 belief,” unsupported opinions of persons of ordinary skill in the art, and generic public articles and  
 20 Wikipedia are conclusory and cannot carry Plaintiffs’ burden under Patent L.R. 3-1. *See, e.g.*,  
 21 *Solannex, Inc. v. MiaSole, Inc.*, 2013 WL 1701062, at \*3 (N.D. Cal. April 18, 2013) (allegations  
 22 based on “information and belief” do not satisfy Patent L.R. 3-1); *Bender*, 2010 WL 1689465, at  
 23 \*4 (“[m]erely alluding to the fact that any electrical engineer would understand the infringement  
 24 contentions is not sufficient”); *Shared Memory Graphics LLC v. Apple, Inc.*, 812 F. Supp. 2d  
 25 1022, 1026 (N.D. Cal. 2010) (vague and conclusory statements “fall short of the specificity  
 26 required by Local Rule 3-1”).

1 The allegation that the seven identified processors can represent the rest is pure speculation  
 2 and an attempt to circumvent the local rules because they are made solely on “information and  
 3 belief.” A patentee relying on “representative” products is required to show how they are similar  
 4 to the “represented” products. *See Silicon Labs., Inc. v. Cresta Tech. Corp.*, No. 5:14-cv-03227-  
 5 PSG, 2015 WL 846679, at \*1 (N.D. Cal. Feb. 25, 2015). PDS did not even attempt this showing.  
 6 To the contrary, even a cursory look at the contentions and publicly available information about  
 7 the accused processors reveals that at least some of the “represented” processors differ in design  
 8 from the “representative” ones. [See D.I. 80-9, May Decl., Ex. E as compared to D.I. 79-5, Ex. G-  
 9 2 at 1 (the “represented” ARM1136 processor has only one core, in contrast to PDS’s allegation  
 10 that the claim requires the “representative” processor to have two).]

11 Accordingly, under the precedent in this district, LG has no obligation to produce  
 12 discovery for any of the purportedly accused products. *Digital Reg of Texas*, 2013 WL 633406, at  
 13 \*5; *Bender*, 2010 WL 1135762, at \*2. Such discovery would not only be irrelevant but also  
 14 burdensome, given Plaintiffs’ attempt to accuse 437 LG products with significantly deficient  
 15 contentions.

16 To minimize discovery disputes, however, LG will produce the requested financial  
 17 information for the accused LG products containing the seven processors identified in Plaintiffs’  
 18 infringement charts. But for the remaining purportedly accused products, lack of sufficient  
 19 infringement contentions precludes this discovery. *Id.*

20 Finally, PDS’s claimed prejudice from “looming discovery deadlines” is of Plaintiffs’ own  
 21 making. PDS had years to prepare proper contentions. LG provided Plaintiffs with a detailed  
 22 description of the deficiencies in Plaintiffs’ contentions and legal authority for its position in  
 23 February 2015. Because the burden to satisfy Patent L.R. 3-1 is on Plaintiffs, contrary to PDS’s  
 24 claims, LG was not required to move to strike before objecting to this discovery. For four months,  
 25 Plaintiffs have done nothing to cure the deficiencies and justify the requested discovery.

## 26 **V. CONCLUSION**

27 Based on the above, PDS’s Motion to Compel should be denied.

1 Dated: June 26, 2015

FISH & RICHARDSON P.C.

2  
3 By: /s/ Olga I. May

Olga I. May

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5 LG ELECTRONICS U.S.A., INC.  
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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

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

19 Plaintiffs,

20 v.

20 LG ELECTRONICS, INC. AND LG  
21 ELECTRONICS U.S.A., INC.,

22 Defendants.

Case No. 3:12-cv-03880-VC

**[PROPOSED] ORDER DENYING  
PLAINTIFF PDS'S MOTION TO  
COMPEL DISCOVERY FROM LG**

DATE: June 30, 2015 (by order)

TIME: 10:00 AM

PLACE: Courtroom 5

JUDGE: Hon. Paul S. Grewal

1 Having carefully considered Plaintiff Phoenix Digital Solutions LLC (“PDS”)’s Motion to  
2 Compel Discovery from Defendants LG Electronics, Inc. and LG Electronics U.S.A., Inc. and the  
3 parties’ arguments with regard to that motion, this Court **DENIES** the motion.

4 IT IS SO ORDERED.

5  
6 DATED: \_\_\_\_\_, 2015

\_\_\_\_\_  
HONORABLE PAUL S. GREWAL  
UNITED STATES MAGISTRATE JUDGE