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E-filed 7/22/11

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FINISAR CORPORATION,

No. C 10-5617 RS

Plaintiff,

v.

**DENYING REQUEST FOR LEAVE
TO FILE MOTION FOR PARTIAL
SUMMARY JUDGMENT**

OPLINK COMMUNICATIONS, INC, et al.,

Defendant.

Plaintiff seeks leave to file a motion for partial summary judgment in conjunction with the claims construction briefing in this matter. Plaintiffs' proposed motion would seek to establish that any devices that comply with certain published industry standards infringe claims of the patents-in-suit. The decision in *Fujitsu Ltd. v. Netgear, Inc.*, 620 F.3d 1321 (Fed. Cir. 2010) permits courts, in appropriate cases, to analyze the existence of infringement with reference to an industry standard, rather than by examining the details of each accused device. Defendants insist that such an analysis will not be appropriate here because, they contend, the particular industry standards are such that compliance may be achieved through methods and structures that do not necessarily infringe.

At this juncture, plaintiff has not demonstrated that judicial efficiency will be served by considering its proposed motion in conjunction with claim construction proceedings. Accordingly, plaintiffs' request is denied, without prejudice to its right to invoke the principles of *Fujitsu* in any summary judgment motion it may bring at an appropriate point in time subsequent to issuance of a

1 claims construction order. The parties shall submit a joint proposed schedule extending through the
2 claim construction hearing no later than July 29, 2011, and a case scheduling order will issue
3 thereafter.

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5 IT IS SO ORDERED.

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7 Dated: 7/22/11



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

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