

1
2
3
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6
7 SAN FRANCISCO DIVISION

8 LSI Corporation, Agere Systems LLC,
9 and Avago Technologies General (IP)
Singapore) Pte. Ltd.

10 Plaintiffs,

11 v.

12 Funai Electric Co., Ltd.; Funai
13 Corporation, Inc.; P&F USA, Inc.; and
Funai Service Corporation,

14 Defendants.

CASE NO. 15-CV-04307-EMC

**[PROPOSED] STIPULATION &
ORDER RE: DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION FOR PATENT
LITIGATION**

15
16 WHEREAS, Plaintiffs LSI Corporation, Agere Systems LLC, and Avago
17 Technologies General (IP) Singapore Pte. Ltd. and Defendants Funai Electric Co.,
18 Ltd.; Funai Corporation, Inc.; P&F USA, Inc.; and Funai Service Corporation have
19 stipulated to certain modifications to the Court's Model Stipulation & Order Re:
20 Discovery of Electronically Stored Information For Patent Litigation, and for good
21 cause shown, it is hereby ORDERED that all discovery and production of
22 electronically produced information in the above-captioned case shall be governed
23 as follows:

24 1. This Order supplements all other discovery rules and orders. It
25 streamlines Electronically Stored Information ("ESI") production to promote a
26 "just, speedy, and inexpensive determination of this action, as required by Federal
27 Rule of Civil Procedure 1."
28

15-CV-04307-EMC

1 2. This Order may be modified in the Court’s discretion or by stipulation.

2 3. As in all cases, costs may be shifted for disproportionate ESI
3 production requests pursuant to Federal Rule of Civil Procedure 26. Likewise, a
4 party’s nonresponsive or dilatory discovery tactics are cost-shifting considerations.

5 4. A party’s meaningful compliance with this Order and efforts to
6 promote efficiency and reduce costs will be considered in cost-shifting
7 determinations.

8 5. The parties are expected to comply with the District’s E-Discovery
9 Guidelines (“Guidelines”) and are encouraged to employ the District’s Model
10 Stipulated Order Re: the Discovery of Electronically Stored Information and
11 Checklist for Rule 26(f) Meet and Confer regarding Electronically Stored
12 Information.

13 6. General ESI production requests under Federal Rules of Civil
14 Procedure 34 and 45 shall not include email or other forms of electronic
15 correspondence (collectively “email”). Absent a showing of good cause, no party is
16 obligated to produce email or otherwise respond to an email production request.
17 Upon a showing of good cause, a party may request another party produce email
18 subject to the terms and conditions described herein. To obtain email parties must
19 propound specific email production requests.

20 7. If propounded, email production requests shall only be propounded for
21 specific issues, rather than general discovery of a product or business.

22 8. If propounded, email production requests shall be phased to occur after
23 the parties have exchanged initial disclosures and basic documentation about the
24 patents, the prior art, the accused instrumentalities, and the relevant finances.
25 While this provision does not require the production of such information, the Court
26 encourages prompt and early production of this information to promote efficient
27 and economical streamlining of the case.
28

1 9. If propounded, email production requests shall identify the custodian,
2 search terms, and time frame. The parties shall cooperate to identify the proper
3 custodians, proper search terms and proper timeframe as set forth in the Guidelines.

4 10. Each requesting party shall limit its email production requests to a total
5 of five custodians per producing party for all such requests. The parties may jointly
6 agree to modify this limit without the Court's leave. The Court shall consider
7 contested requests for additional custodians, upon showing a distinct need based on
8 the size, complexity, and issues of this specific case. Cost-shifting may be
9 considered as part of any such request.

10 11. Each requesting party shall limit its email production requests to a total
11 of five search terms per custodian per party. The parties may jointly agree to
12 modify this limit without the Court's leave. The Court shall consider contested
13 requests for additional search terms per custodian, upon showing a distinct need
14 based on the size, complexity, and issues of this specific case. The Court
15 encourages the parties to confer on a process to test the efficacy of the search terms.
16 The search terms shall be narrowly tailored to particular issues. Indiscriminate
17 terms, such as the producing company's name or its product name, are
18 inappropriate unless combined with narrowing search criteria that sufficiently
19 reduce the risk of overproduction. A conjunctive combination of multiple words or
20 phrases (e.g., "computer" and "system") narrows the search and shall count as a
21 single search term. A disjunctive combination of multiple words or phrases (e.g.,
22 "computer" or "system") broadens the search, and thus each word or phrase shall
23 count as a separate search term unless they are variants of the same word. Use of
24 narrowing search criteria (e.g., "and," "but not," "w/x") is encouraged to limit the
25 production and shall be considered when determining whether to shift costs for
26 disproportionate discovery. Should a party serve email production requests with
27 search terms beyond the limits agreed to by the parties or granted by the Court
28

1 pursuant to this paragraph, this shall be considered in determining whether any
2 party shall bear all reasonable costs caused by such additional discovery.

3 12. Nothing in this Order prevents the parties from agreeing to use
4 technology assisted review and other techniques insofar as their use improves the
5 efficacy of discovery.

6 13. Absent further Court order, the following parameters shall apply to
7 general ESI production requests under Federal Rules of Civil Procedure 34 and 45:

8 a. Absent a showing of good cause, general ESI production
9 requests or compliance with a mandatory disclosure requirement of this
10 Court shall not include or require the production of metadata.

11 b. **Accessible ESI.** The parties agree that reasonably accessible
12 sources of ESI for the purposes of this case include electronic documents
13 stored on computer networks, hard drives, shared network drives, and
14 workstation or laptop hard drives.

15 c. **General Document Image Format.** Each electronic document
16 shall be produced in black and white single-page Group IV Tagged Image
17 File Format (“TIFF”) or natively at the discretion of the producing party
18 (subject to a request under section 13h for TIFF production). TIFF files shall
19 be single page and shall be named with a unique production number followed
20 by the appropriate file extension. Load files stating the location and
21 unitization of the TIFF files shall be provided. If a document is more than
22 one page, the unitization of the document and any attachments and/or affixed
23 notes shall be maintained as they existed in the original document. In the
24 event the file type renders production in TIFF format impracticable, the
25 document shall be produced natively.

26 d. **Hard Copy Documents.** Documents that exist in hard copy
27 format only shall be scanned and produced as black and white single page
28 Group IV TIFFs, with at least 300 dpi. Each TIFF image shall be named

1 according to the corresponding Bates number associated with the document.
2 Each image shall be branded according to the production number and
3 applicable confidentiality designation. TIFFs shall show all text and images
4 that would be visible to a user of the hard copy documents. The documents
5 should be unitized as they currently exist in the ordinary course of business.

6 e. **De-Duplication.** A party is only required to produce a single
7 copy of a responsive document and a party may de-duplicate responsive ESI
8 (based on MD5 or SHA-1 hash values at the document family level) across
9 volumes. To the extent that a base document may contain handwriting, notes
10 or other modifications or marginalia which render the document non-
11 identical, a copy of each non-identical document shall be produced. To the
12 extent that de-duplication through MD5 or SHA-1 hash values is not possible,
13 the parties shall meet and confer to discuss any other proposed methods of
14 de-duplication.

15 f. **Text-Searchable Documents.** Documents shall be produced in
16 text-searchable format at no cost to the receiving party. However, documents
17 that do not have extractable text or text that can be generated by optical
18 character recognition (OCR) need not be produced in text-searchable format.

19 g. **Footer .** Each document image shall contain a footer with a
20 sequentially ascending production number except for those document
21 produced natively in which case a single production number may be assigned
22 to the document.

23 h. **Native Files.** Excel spreadsheets shall be produced in their
24 native format. However, native format production shall not be required if an
25 Excel spreadsheet requires redaction (for privilege or otherwise). Moreover,
26 document types that cannot be reduced to TIFF image (e.g., media files, etc.)
27 shall be produced in their native format. For other documents produced as
28 TIFF images, a party may make a reasonable request to receive the document

1 in its native format, and upon receiving such a request, the producing party
2 shall produce the document in its native format. For documents produced in
3 their native format, a party may make a reasonable request to receive the
4 document as TIFF images, and upon receiving such a request, the producing
5 party shall produce the document as TIFF images if reasonably practicable
6 and at the reasonable expense of the requesting party. Documents produced
7 in native format will have a single-page TIFF placeholder included in the
8 TIFF production.

9 i. **Color.** A party that receives a document produced in a format
10 specified above may make a reasonable request to receive a color version.
11 Upon receipt of such a reasonable request, the producing party shall produce
12 color images in single-page JPEG format unless the document was produced
13 natively. The requesting party shall pay for the printing costs of any
14 production under this particular provision.

15 j. **No Backup Restoration Required.** Absent a showing of good
16 cause, no party need restore any form of media upon which backup data is
17 maintained in a party's normal or allowed processes, including but not
18 limited to backup tapes, disks, SAN, and other forms of media.

19 k. **Inaccessible ESI.** Absent a showing of good cause, voicemails;
20 instant messages; legacy data; residual, fragment, damaged, permanently
21 deleted slack and unallocated data; PDAs; and mobile phones are all deemed
22 not reasonably accessible and need not be collected and preserved.

23 14. Under Federal Rule of Evidence 502(d), the inadvertent production of
24 privileged or work product protected ESI is not a waiver in this case or in any other
25 federal or state proceeding.

26 15. The mere production of ESI in litigation as part of a mass production
27 shall not itself constitute a waiver for any purpose.
28

1 16. Except as expressly stated, nothing in this order affects the parties'
2 discovery obligations under Federal or Local Rules.

3 **IT IS SO STIPULATED**, through Counsel of Record.

4 Dated: November 25, 2015 /s/ Kevin W. Kirsch

5 KEVIN W. KIRSCH
6 kkirsch@bakerlaw.com
7 BAKER & HOSTETLER LLP
8 312 Walnut Street, Suite 3200
9 Cincinnati, Ohio 45202-4074
10 Telephone: (513) 929-3499
11 Facsimile: (513) 929-0303

12 *Attorney for Defendants Funai Electric Co.,
13 Ltd.; Funai Corporation, Inc.; P&F USA,
14 Inc.; and Funai Service Corporation*

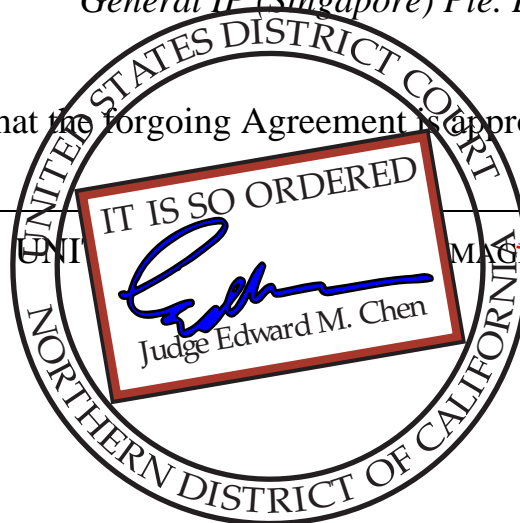
15 Dated: November 25, 2015 /s/ Matthew C. Holohan

16 Matthew Christian Holohan
17 mholohan@kilpatricktownsend.com
18 KILPATRICK TOWNSEND AND
19 STOCKTON LLP
20 1400 Wewatta Street Suite 600
21 Denver, CO 80202-5556
22 Phone: 303-405-8527
23 Fax: 303-648-4730

24 *Attorney for Plaintiffs LSI Corporation,
25 Agere Systems LLC, and Avago Technologies
26 General IP (Singapore) Pte. Ltd.*

27 **IT IS ORDERED** that the foregoing Agreement is approved.

28 Dated: 11/25/15



MAGISTRATE JUDGE