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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 AVAGO TECHNOLOGIES FIBER IP
8 (SINGAPORE) PTE. LTD., et al.,

9 Plaintiffs,

10 v.

11 IPTRONICS INC., et al.,

12 Defendants.

Case No. [5:10-cv-02863-EJD](#)

**ORDER DENYING MOTION FOR
COSTS**

(Re: Docket No. 782)

13 Last August, the court allowed Plaintiffs Avago Technologies, Inc. et al. to take
14 depositions and secure document production from third parties it had not already deposed, on the
15 condition that Avago bear the burden of fees and costs associated with those depositions and
16 document production.¹ Non-party Sumitomo Electric Device Innovations U.S.A., Inc., which
17 Avago did not depose, moves to compel payment of its fees and costs associated with preparing
18 for a deposition that never happened and document production that did.² SEDU's motion is
19 DENIED.

20 Between December 2014 and May 2015, Avago served three deposition and document
21 production subpoenas on SEDU.³ As an initial matter, SEDU responded with general objections,
22 one of which stated:

23 Any and all costs relating to the Subpoena should be borne completely and in
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25 ¹ See Docket No. 703 at 2.

26 ² See Docket No. 782.

27 ³ See id. at 1.

1 advance by the party issuing the Subpoena, and SEDU objects to producing any
2 materials sought by the Subpoena in the absence of Avago's prior written
3 commitment to pay for all reasonable costs of production.⁴

4 While meeting and conferring on May 29, 2015, Avago explicitly rejected the request that Avago
5 pay these discovery costs⁵ and never gave SEDU a written commitment that it would.⁶

6 Nevertheless, from February to June, Avago and SEDU met, conferred and narrowed the scope of
7 the subpoenas.⁷ They were able to reach a tentative agreement on the scope of document
8 production,⁸ and notwithstanding Avago's refusal to pay costs, SEDU produced approximately
9 47,000 documents from June 12, 2015 to July 24, 2015.⁹

10 Talks about the deposition subpoenas were less successful, and on July 29, 2015, Avago
11 moved to compel the deposition of SEDU.¹⁰ Meanwhile, SEDU prepared to respond to the
12 subpoena.¹¹

13 In August, the court ruled on a number of discovery motions together and denied Avago's
14 motion to compel deposition as to SEDU but granted Avago's motions to compel against other
15 entities.¹² The court established "ground rules" for the depositions and discovery that it
16 authorized: first, Avago could "only take deposition of third parties it [had] not previously

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18 ⁴ See Docket No. 978 at 3.

19 ⁵ See Docket No. 798-1 at ¶ 2.

20 ⁶ See Docket No. 798 at 3.

21 ⁷ See id. at 2.

22 ⁸ See Docket No. 782 at 3.

23 ⁹ See id.

24 ¹⁰ See Docket No. 653.

25 ¹¹ See Docket No. 782 at 3.

26 ¹² See Docket No. 703 (denying depositions of parties previously deposed); Docket No. 723
27 (explicitly denying Avago's motion to compel SEDU's deposition).

1 Fed. R. Civ. P. 45(d)(2)(B)(ii) does not provide SEDU any relief. The court did not order
2 SEDU's compliance with the deposition or document production subpoenas. In fact, SEDU's
3 document production occurred without a court order. In order for SEDU to recover its fees under
4 this rule, then, Avago would have to have been on notice that SEDU would seek reimbursement of
5 costs. SEDU argues that it put Avago on notice first with its general objection¹⁹ and then again
6 during the May 29, 2015 meet and confer.²⁰ However, despite SEDU's general objection "to
7 producing any materials . . . in the absence of Avago's prior written commitment to pay for all
8 reasonable costs of production,"²¹ Avago's lack of a written commitment²² and Avago's explicit
9 refusal to pay for costs,²³ SEDU produced documents.²⁴ SEDU's decision to proceed with
10 production even in the face of Avago's refusal to pay for costs, and in contradiction of its stated
11 objection, did not put Avago on notice that SEDU would seek reimbursement of costs.

12 **SO ORDERED.**

13 Dated: December 17, 2015

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15 PAUL S. GREWAL
16 United States Magistrate Judge
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21 (N.D. Cal. Dec. 8, 2014).

22 ¹⁹ See Docket No. 798 at 3.

23 ²⁰ See Docket No. 782 at 2.

24 ²¹ See Docket No. 798 at 3.

25 ²² See id.

26 ²³ See Docket No. 798-1 at ¶ 2.

27 ²⁴ See Docket No. 782 at 3.