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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

NAZOMI COMMUNICATIONS, INC.,	No. C-10-05545 RMW
Plaintiff,	
v.	ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO COMPEL DISCOVERY
SAMSUNG TELECOMMUNICATIONS, INC., et al.,	
Defendants.	**[Re Docket No. 176]**

Plaintiff Nazomi Communications, Inc. ("Nazomi") moves for an order compelling

defendants Samsung Telecommunications America, LLC, Samsung Electronics Co., Ltd., and

Samsung Electronics America, Inc. (collectively, "Samsung") to respond to certain discovery

propounded by Nazomi. Samsung opposes the motion. On June 1, 2012, the court held a hearing to

consider plaintiff's motion. Having considered the papers submitted by the parties and the

arguments of counsel, and for the reasons set forth below, the court grants in part and denies in part

the motion.

I. BACKGROUND

In brief summary, Nazomi is asserting three patents that relate to technology for more

efficiently processing Java-based software programs. Nazomi contends that defendants (1) infringe

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1 the '362 Patent and '436 Patent based on the use of processor cores designed by defendant-intervenor

2 ARM Inc. ("ARM") that incorporate the Jazelle technology, and/or (2) infringe the '160 Patent based

3 on the use of the Dalvik Virtual Machine, part of Google's Android operating system.

4   Nazomi now seeks an order compelling Samsung to respond to the following discovery

5 requests:

6 **INTERROGATORY NO. 1:** For each of Your Products, identify, on a Product-by-
Product basis, the operating system and operating system versions, the chipset(s) or
7 processor(s) in the following format:

8 [Chart with columns for Product, Operating System and Version,
Chipset(s)/Processor(s), and Processor Core(s) Used]

9
10 **INTERROGATORY NO. 2:** For each of Your Products, identify, on a Product-by-
Product basis, the virtual machine, virtual machine supplier, and virtual machine
version in the following format:

11
12 [Chart with columns for Product, Virtual Machine Name, Virtual Machine Supplier,
and Virtual Machine Version]

13 **INTERROGATORY NO. 3: ['436 and '362 Patents]** For each of Your Products
that use a Java virtual machine or equivalent virtual machine to execute Java
14 bytecodes, state, on a Product-by-Product basis, whether the virtual machine supports
and/or uses Jazelle direct bytecode execution (DBX).

15
. . . .
16
INTERROGATORY NO. 7: For each of Your Products, identify the time period
17 during which the Product was imported, made, used (including any test use), sold or
offered for sale in the United States, including specifying the first date the Product
18 was imported, made, used, offered, or sold in the United States and the last date the
Product was imported, made, used, offered, or sold in the United States.
19
 . . . .
20
INTERROGATORY NO. 15: Identify, on a Product-by-Product basis, the
21 instruction set(s) supported (*e.g.*, ARMv5, ARMv6, ARMv7, ARMv7-a) by each of
Your Products.
22
. . . .
23
RFP NO. 16: A complete copy of the Source Code included on each of Your
24 Products, including, without limitation, all Source Code relating to the processing
and/or execution of bytecodes. The Source Code should be produced as maintained
25 by You in the ordinary course of business, including all directory or folder structures
and the corresponding software developer suite and/or environment You use to
26 generate, edit, and review the Source Code.

27 Nazomi's requests define "Products" as any device that includes a processor capable of executing

28 bytecodes, but the motion seeks responses only as to products equipped with an ARM processor

1 core with Jazelle and/or the Dalvik Virtual Machine. Samsung's responses have been limited to

2 products specifically identified in Nazomi's infringement contentions.

II. ANALYSIS

A. Discovery Relating to the '362 and '436 Patents

5 In opposing Nazomi's motion, Samsung does not appear to argue that discovery should be

6 limited to the products specifically identified in Nazomi's infringement contentions. Rather,

7 Samsung argues that the motion is an attempt to subvert the early *Markman* hearing and motion for

8 summary judgment of non-infringement. Samsung argues that it is premature for Nazomi to seek

9 discovery of products containing an ARM processor core in which Jazelle is disabled, since those

10 products may be rendered irrelevant by the court's rulings. However, the court has already found

11 that, even under a settled claim construction, determining infringement can still involve a factual

12 dispute regarding the functioning of the accused devices. *See Nazomi Commc'ns, Inc. v. Nokia*

13 *Corp.*, Case No. 5:10-cv-04686, Dkt. No. 335 at 4. The court has also indicated that Nazomi may

14 need certain discovery, including source code, of the products defendants contend are non-

15 infringing, in order for Nazomi to oppose the motion for summary judgment. *See id.* at 5-6; Dkt.

16 No. 173 (Case Management Order) at 3 n.1.

17 Aside from Interrogatory No. 7 and RFP No. 16, which are discussed below, Nazomi's

18 discovery requests appear to seek basic, straightforward information about Samsung's products.

19 Although Samsung's counsel indicated at the hearing that the information may not be as simple to

20 obtain as it would seem at first glance, no declaration was submitted indicating precisely how

21 burdensome these requests are. Nor has Samsung shown that Nazomi does not need this information

22 for the purposes of determining (1) which products incorporate Jazelle and (2) in which of those

23 products Samsung contends Jazelle is disabled and therefore non-infringing. Those issues are

24 certainly relevant to this case. Thus, the court will require Samsung to respond to Nazomi's requests.

B. Discovery Relating to the '160 Patent

26 Samsung states that it is willing to produce the requested information concerning products

27 that incorporate the Dalvik Virtual Machine but argues that Nazomi's requests do not adhere to the

28 court's admonition that the parties "focus on issues relevant to the initial, limited claim construction

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1   issue and pending motion for summary judgment related thereto." Samsung's emphasis on this

2   language ignores the fact that the court explicitly declined to either limit the scope of discovery or

3   order that discovery be conducted in phases. *See* Dkt. No. 173 at 3. Notably, Samsung does not

4   argue that responding to Nazomi's requests will impede its ability to obtain or provide discovery

5   relevant to the early *Markman* and summary judgment hearing. Nonetheless, Samsung has proposed

6   that it will supplement its discovery responses regarding products containing the Dalvik Virtual

7   Machine by June 30, 2012, and Nazomi has not specifically objected. Thus, the court adopts

8   Samsung's proposed timing.

9   **C.   Interrogatory No. 7**

10   Samsung argues that Nazomi's motion should be denied as to Interrogatory No. 7 because

11   Nazomi has not shown why it is relevant to infringement and because it would be burdensome to

12   collect such information for products that may be irrelevant if defendants are successful in their

13   summary judgment motion. Again, the court notes that discovery in this case has not been

14   bifurcated. However, the court agrees that Nazomi has not particularly explained why this discovery

15   is necessary at this stage, and Samsung has agreed to "produce relevant sales information at the

16   appropriate time." Thus, this aspect of Nazomi's motion is denied without prejudice.

17   **D.   Request for Production No. 16**

18   Samsung argues that its production of source code should be limited to portions of source

19   code that are relevant to the technology at issue in the patents-in-suit. Samsung also argues that the

20   public version of Android is already available to Nazomi, so it should only be required to produce

21   the non-public, relevant portions for inspection. Nazomi argues that obtaining a complete copy of

22   the source code compiled onto each Samsung device "will enable Nazomi to fully understand the

23   operation of Samsung's products and to determine whether relevant source code is in the exclusive

24   possession of one or more third parties." However, Nazomi has not demonstrated the necessity of

25   "fully understand[ing] the operation of Samsung's products" as opposed to understanding the portion

26   that is covered by its infringement claims. Given the sensitivity of source code, the court is not

27   inclined to order broad disclosure absent a more specific showing. *See also Synopsys, Inc. v. Nassda*

28   *Corp.*, 2002 WL 32749138 at *1 (N.D. Cal. 2002) (where source code is a trade secret, requesting

1 party "has the burden of establishing that the disclosure of the source code is both relevant and

2 necessary to the action" (citing *Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co.*, 107

3 F.R.D. 288, 292 (D. Del. 1985)).

4   At the hearing, the parties informed the court that they have agreed, at this time, to limit

5 production of source code for products containing Jazelle to source code for the Java Virtual

6 Machine module. Counsel for Nazomi also stated that a similar limitation would be acceptable

7 regarding products containing the Dalvik Virtual Machine, so long as it could also obtain admissible

8 evidence linking public versions of Android source code to the accused products.

9 **III. ORDER**

10   For the foregoing reasons, the court grants in part and denies in part plaintiff's motion to

11 compel as follows:

12   1.   Samsung shall provide responses to Nazomi's Interrogatory Nos. 1-3 and 15 as to

13   products containing an ARM processor core with Jazelle, whether enabled or not,

14   within two weeks of this order;

15   2.   Samsung shall provide responses to Nazomi's Interrogatory Nos. 1-3 and 15 as to

16   products containing the Dalvik Virtual Machine by June 30, 2012;

17   3.   Samsung shall produce source code for the Java Virtual Machine module in its

18   products containing an ARM processor core with Jazelle (a) within two weeks for

19   products listed in Nazomi's infringement contentions and (b) by June 30, 2012 for all

20   other products;

21   4.   Samsung shall produce non-public source code for the Dalvik Virtual Machine

22   module in its products containing the Dalvik Virtual Machine (a) within two weeks

23   for products listed in Nazomi's infringement contentions and (b) by June 30, 2012 for

24   all other products;

25   5.   The remainder of Nazomi's motion is denied without prejudice.

26

27 DATED: June 1, 2012

                        RONALD M. WHYTE

28   United States District Judge