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*E-FILED: November 6, 2012

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TESSERA, INC.,

No. C11-04399 EJD (HRL)

Plaintiff,

DISCOVERY ORDER

v.

[Dkt. 107]

SONY CORP.,

Defendant.

_____/

In this breach of contract case Plaintiff Tessera, Inc. (“Tessera”) sues Defendant Sony Corporation (“Sony”) for alleged failure to pay royalties under a Master License Agreement (“Agreement”) between the parties. The dispute arose when Tessera arranged for Connor Group NV, LLC to audit records of Sony that bear on Sony’s royalty obligations under the Agreement. The parties dispute the audit process and its results. Tessera claims that the audit reveals underpayment of royalties under the Agreement and that Sony withheld information from Connor Group. Sony counterclaims that Tessera breached the implied covenant of good faith and fair dealing by causing to be prepared an audit report that is not independent and then using the audit report as a basis to demand payment for more than it’s entitled to under the Agreement.

The parties bring to the Court a dispute over whether and for how long Tessera may depose or cross examine the Connor Group, Nigel Shepherd, and Edgar Ooms. Shepherd is the managing director of Connor Group and he authored the audit report that spawned this litigation. Ooms is a manager at Connor Group. Sony properly noticed and served subpoenas for these depositions well

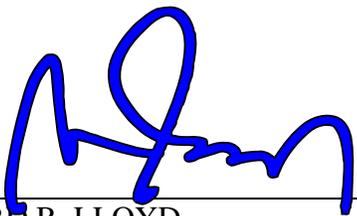
1 before the October 19, 2012 close of discovery. When the schedules of these third parties prevented
2 Sony from taking the depositions before the close of fact discovery, the parties filed a stipulation
3 with the Court, requesting an extension on expert discovery deadlines and seeking the Court's
4 permission to conduct these three depositions beyond the close of fact discovery. The Court granted
5 the requested extensions.

6 After getting the extensions, and after the parties and third parties negotiated a schedule for
7 the depositions (which involved combining the 30(b)(6) deposition of Connor Group and the
8 individual deposition of Shepherd into seven total hours of deposition), Tessera issued its own
9 notices of depositions for the days and times arranged through Sony's notices. The materials
10 submitted to the Court show that sharing the deposition time was not originally contemplated by the
11 parties and that the Court's extension of the time to depose Connor Group and these individuals was
12 based on *Sony's* timely notices of the depositions. It appears as though Tessera, as a result of an
13 oversight or as a strategy, is attempting to usurp the limited time allotted to Sony for depositions.

14 In spite of this history, however, Tessera is entitled to cross-examine the deponents. In light
15 of the disagreement between the parties over how to allocate the deposition time, the Court has
16 determined that at least 45 minutes of the combined deposition of Connor Group and Shepherd
17 should be allotted to Tessera for cross-examination. And, at least 45 minutes of the deposition of
18 Ooms shall be allotted to Tessera for cross-examination.

19 **IT IS SO ORDERED.**

20 Dated: November 6, 2012

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24 HOWARD R. LLOYD
25 UNITED STATES MAGISTRATE JUDGE
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