

1 *[Counsel Listed on Signature Block]*

2 **UNITED STATES DISTRICT COURT**  
3 **NORTHERN DISTRICT OF CALIFORNIA**  
4 **SAN JOSE DIVISION**

5 \_\_\_\_\_ )  
6 ADAPTIX, INC., )  
7 Plaintiff, )

Case No.: 5:14-cv-02359-PSG

8 v. )

JURY TRIAL DEMANDED

9 HTC CORPORATION, HTC AMERICA, )  
10 INC., and AT&T MOBILITY LLC, )  
11 Defendants. )

12 \_\_\_\_\_ )  
13 ADAPTIX, INC., )  
14 Plaintiff, )

Case No.: 5:14-cv-02360-PSG

15 v. )

JURY TRIAL DEMANDED

16 HTC CORPORATION, HTC AMERICA, )  
17 INC., and CELLCO PARTNERSHIP )  
18 *d/b/a* VERIZON WIRELESS, )  
19 Defendants. )

20 \_\_\_\_\_ )  
21 ADAPTIX, INC., )  
22 Plaintiff, )

Case No.: 5:14-02894-PSG

23 v. )

JURY TRIAL DEMANDED

24 KYOCERA COMMUNICATIONS, INC., )  
25 and SPRINT SPECTRUM LP, )  
26 Defendants. )

27 \_\_\_\_\_ )  
28 ADAPTIX, INC., )  
29 Plaintiff, )

Case No.: 5:14-02895-PSG

30 v. )

JURY TRIAL DEMANDED

31 KYOCERA COMMUNICATIONS, INC., )  
32 and CELLCO PARTNERSHIP )  
33 *d/b/a* VERIZON WIRELESS, )  
34 Defendants. )

1                    ~~PROPOSED~~ **ORDER REGARDING E-DISCOVERY IN PATENT CASES**

2                    Upon the stipulation of the parties, the Court ORDERS as follows:

3                    1.            This order supplements all other discovery rules and orders. It streamlines  
4 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive  
5 determination” of this action, as required by Federal Rule of Civil Procedure 1.

6                    2.            This order may be modified in the court’s discretion or by agreement of the parties.  
7 If the parties cannot resolve their disagreements regarding any such modifications, the parties shall  
8 submit their competing proposals and a summary of their dispute.

9                    3.            A party’s meaningful compliance with this order and efforts to promote efficiency  
10 and reduce costs will be considered in cost-shifting determinations.

11                   4.            Absent a showing of good cause, general ESI production requests under Federal  
12 Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure requirement of  
13 this Court, shall not include metadata. However, fields showing the date and time that the  
14 document was sent and received, as well as the complete distribution list, shall generally be  
15 included in the production if such fields exist.

16                   5.            Absent agreement of the parties or further order of this court, the following  
17 parameters shall apply to ESI production:

18                   A.            **General Document Image Format.** Each electronic document shall be produced  
19 in Portable Document Format (“PDF”) or single-page Tagged Image File Format  
20 (“TIFF”) format. Each hard copy document shall be scanned and produced in PDF  
21 or single-page TIFF format. TIFF files shall be single page and shall be named  
22 with a unique production number followed by the appropriate file extension. PDF  
23 files shall be named with a unique production number followed by the appropriate  
24 file extension. Concordance load files with opticon shall be provided to indicate  
25 the location and unitization of the PDF or TIFF files. If a document is more than  
26 one page, the unitization of the document and any attachments and/or affixed notes  
27 shall be maintained as they existed in the original document.

28                   B.            **Text-Searchable Documents.** No party has an obligation to make its production

1 text-searchable; however, if a party's documents already exist in text-searchable  
2 format independent of this litigation, or are converted to text-searchable format for  
3 use in this litigation, including for use by the producing party's counsel, then such  
4 documents shall be produced in the same text-searchable format at no cost to the  
5 receiving party. A party may produce extracted-text text files to correspond with  
6 Concordance load files and the produced PDF or TIFF files in lieu of producing  
7 text-searchable documents.

8 C. **Footer.** Each document image shall contain a footer with a sequentially ascending  
9 production number.

10 D. **Native Files.** A party that receives a document produced in a format specified  
11 above may make a reasonable request to receive the document in its native format,  
12 and upon receipt of such a request, the producing party shall produce the document  
13 in its native format. A Party may produce a document only in its native format, to  
14 the extent such production of the native format document will not hamper the other  
15 Party's review and is in compliance with the other requirements in this Order.

16 E. **No Backup Restoration Required.** Absent a showing of good cause, no party  
17 need restore any form of media upon which backup data is maintained in a party's  
18 normal or allowed processes, including but not limited to backup tapes, disks,  
19 SAN, and other forms of media, to comply with its discovery obligations in the  
20 present case.

21 F. **Voicemail, Instant Messages, and Mobile Devices.** Absent a showing of good  
22 cause, voicemails, instant messages, PDAs and mobile phones are deemed not  
23 reasonably accessible and need not be collected and preserved.

24 G. **Limited Number of ESI Custodians.** Each Party shall identify ESI custodians  
25 most likely to have discoverable information in their possession, custody, or control  
26 in view of the pleaded claims and defenses, infringement contentions and  
27 accompanying documents pursuant to P.R. 3-1 and 3-2, invalidity contentions and  
28 accompanying documents pursuant to P.R. 3-3 and 3-4, and preliminary

1 information relevant to damages. Each party<sup>1</sup> shall specifically identify five (5) ESI  
2 custodians. These lists are subject to revision or supplementation. The parties may  
3 jointly agree to modify this limit without the court's leave. The court shall consider  
4 contested requests for additional or fewer custodians per producing party, upon  
5 showing a distinct need based on the size, complexity, and issues of this specific  
6 case. The specific identification of ESI custodians shall include the name and title  
7 of the custodian, the custodian's role in the instant dispute, the subject matter of the  
8 information likely to be in the custodian's possession, and a short description of  
9 why the custodian is believed to be significant. An "ESI custodian," as used herein,  
10 does not include common repositories where ESI is stored, such as, without  
11 limitation, technical document repositories, license agreement repositories, source  
12 code repositories, network drives that are shared by numerous individuals, financial  
13 databases, etc. This Stipulation has no effect on the Parties' document production  
14 obligations, if any, regarding such common repositories. For the avoidance of  
15 doubt, and without limiting the generality of the foregoing, a Party need not choose  
16 as an "ESI custodian" a repository where relevant and discoverable materials are  
17 stored in order for those materials to be discoverable.

18 6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45,  
19 or compliance with a mandatory disclosure order of this court, shall not include e-mail or other  
20 forms of electronic correspondence (collectively "e-mail"). To obtain e-mail parties must  
21 propound specific e-mail production requests.

22 7. E-mail production requests shall be phased to occur timely after the parties have  
23 exchanged initial disclosures, a specific listing of likely e-mail custodians, a specific identification  
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27 <sup>1</sup> For purposes of this Order, any defendants in the above-captioned actions who are related  
28 corporate entities (e.g., parent and subsidiary) count as one party.

1 of the most significant listed e-mail custodians in view of the pleaded claims and defenses,<sup>2</sup>  
2 infringement contentions and accompanying documents pursuant to P.R. 3-1 and 3-2, invalidity  
3 contentions and accompanying documents pursuant to P.R. 3-3 and 3-4, and preliminary  
4 information relevant to damages. The exchange of this information shall occur at the time  
5 required under the Federal Rules of Civil Procedure, Local Rules, or by order of the court.

6 8. E-mail production requests shall identify the custodian, search terms, and time  
7 frame. The parties shall cooperate to identify the proper custodians, proper search terms, and  
8 proper time frame. Each requesting party shall limit its e-mail production requests to a total of  
9 five custodians per producing party. The parties may jointly agree to modify this limit without the  
10 court's leave. The court shall consider contested requests for additional or fewer custodians per  
11 producing party, upon showing a distinct need based on the size, complexity, and issues of this  
12 specific case.

13 9. Each requesting party shall limit its e-mail production requests to a total of seven  
14 search terms per custodian per party. The parties may jointly agree to modify this limit without  
15 the court's leave. The court shall consider contested requests for additional or fewer search terms  
16 per custodian, upon showing a distinct need based on the size, complexity, and issues of this  
17 specific case. The search terms shall be narrowly tailored to particular issues. Indiscriminate  
18 terms, such as the producing company's name or its product name, are inappropriate unless  
19 combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A  
20 conjunctive combination of multiple words or phrases (e.g., "computer" and "system") narrows  
21 the search and shall count as a single search term. A disjunctive combination of multiple words or  
22 phrases (e.g., "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 narrowing  
24 search criteria (e.g., "and," "but not," "w/x") is encouraged to limit the production and shall be  
25 considered when determining whether to shift costs for disproportionate discovery.

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27 <sup>2</sup> A "specific identification" requires a short description of why the custodian is believed to be  
28 significant.

1           10. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a  
2 privileged or work product protected ESI is not a waiver in the pending case or in any other  
3 federal or state proceeding.


4           11. The mere production of ESI in a litigation as part of a mass production shall not  
5 itself constitute a waiver for any purpose.

6           12. Except as expressly stated, nothing in this order affects the parties' discovery  
7 obligations under the Federal or Local Rules, or this Court's Discovery Order.

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9 **IT IS SO ORDERED.**

10 Dated: November 7, 2014

  
\_\_\_\_\_  
PAUL S. GREWAL  
United States Magistrate Judge

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Dated: November 7, 2014

Respectfully submitted,

/s/ Paul J. Hayes

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1 Dated: November 7, 2014

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15 Dated: November 7, 2014

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12 **VERIZON WIRELESS**

13  
14 **ATTESTATION OF CONCURRENCE IN FILING**

15 Pursuant to Civil Local Rule 5-1(i)(3), Iman Lordgooei attests that concurrence in the  
16 filing of this document has been obtained from each of the Signatories listed above.

17 /s/ Iman Lordgooei

18 Iman Lordgooei

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