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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 INDUSTRIAL TECHNOLOGY
12 RESEARCH INSITUTE,

13 Plaintiffs,

14 v.

15 LG ELECTRONICS INC. And LG
16 ELECTRONICS U.S.A. INC,

17 Defendants.

Civil No. 13-CV-2016-GPC-WVG

ORDER DENYING AS MOOT
DEFENDANTS' MOTION FOR
ISSUANCE OF A LETTER OF
REQUEST TO LG DISPLAY INC.
IN THE REPUBLIC OF KOREA

[DOC. NO. 66]

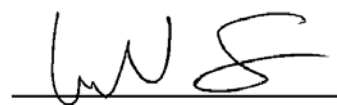
18 Pending before the Court is LG Electronics Inc.'s and LG Electronics U.S.A. Inc.'s
19 (Defendants) Motion for Issuance of Letter Rogatory to LG Display Inc. (LG Display), a
20 Korean company based in the Republic of Korea. (Doc. No. 66) Industrial Technology
21 Research Institute (Plaintiff) opposes the use of a letter of request. (Doc. No. 80). This Court
22 was prepared to grant Defendants' Motion for Issuance of the Letter of Request, but LG
23 Display's motion to intervene (Doc. No. 47) was granted today so this Court hereby denies
24 the Motion as moot.^{1/}

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28 ^{1/}This is in line with the Defendants intent as they expressed that they would withdraw
their motion if LG Display's motion to intervene was granted (Doc. No. 66-2 at 1).

1 This Court will, however, take this opportunity to address a misguided argument in
2 Plaintiff's opposition. Plaintiff argues that Defendants have "control" over LG Display's
3 documents under Federal Rule of Civil Procedure 26. (Doc. No. 80 at 4). Plaintiff's asserted
4 definition of "control" comes from a New York district court as "the legal right, authority
5 or *practical ability* to obtain documents upon demand" (*Id.* at 4 (*emphasis added* by the
6 Court), citing S.E.C. v. Credit Bancorp, Ltd., 194 F.R.D. 469, 471 (S.D.N.Y. 2000).
7 Plaintiff's liberal definition of "control," however, is NOT the definition in the Ninth Circuit.
8 Defendants correctly state the definition of "control" as being only the "legal right to obtain
9 documents upon request." (Doc. No. 82 at 2, citing In re Citric Acid Litig., 191 F.3d 1090,
10 1107-08 (9th Cir. 1999)). The court in Citric explicitly rejected the "practical ability" test for
11 "control" and acknowledges all the other Circuits that do as well. *Id.* Plaintiff's failure to
12 even acknowledge binding precedent is troubling. However, this Court has no evidence that
13 the Plaintiff intentionally misled it, so this Court will give Plaintiff the benefit of the doubt
14 as perhaps a rushed oversight. However, Plaintiff's counsel are strongly advised to
15 reacquaint themselves with the Model Rules of Professional Conduct, specifically rule 3.3
16 Candor Toward the Tribunal: "[a] lawyer shall not knowingly . . . fail to disclose to the
17 tribunal legal authority in the controlling jurisdiction" and the sanctions that can
18 accompany such a failure. See Fed. R. Civ. P. 11(c).

19 IT IS SO ORDERED.

20 DATED: October 17, 2014
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24 Hon. William V. Gallo
25 U.S. Magistrate Judge
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