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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: QUALCOMM LITIGATION

Case No.: 17-cv-0108-GPC-MDD

**ORDER ON JOINT MOTION FOR
DETERMINATION OF
DISCOVERY REGARDING
QUALCOMM’S RESPONSES TO
APPLE’S THIRD SET OF SPECIAL
INTERROGATORIES NOS. 21 AND
38**

[ECF NO. 353]

This Joint Motion was filed on March 2, 2017. The dispute involves Qualcomm’s responses to two interrogatories.

Legal Standard

The Federal Rules of Civil Procedure authorize parties to obtain discovery of “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case” Fed. R. Civ. P. 26(b)(1). “Information within the scope of discovery need not be admissible in evidence to be discoverable.” *Id.* District courts have broad discretion to

1 limit discovery where the discovery sought is “unreasonably cumulative or
2 duplicative, or can be obtained from some other source that is more
3 convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C).

4 An interrogatory may relate to any matter that may be inquired of
5 under Rule 26(b). Fed. R. Civ. P. 33(a)(2). The responding party must
6 answer each interrogatory by stating the appropriate objection(s) with
7 specificity or, to the extent the interrogatory is not objected to, by
8 “answer[ing] separately and fully in writing under oath.” Rule 33(b). The
9 responding party has the option in certain circumstances to answer an
10 interrogatory by specifying responsive records and making those records
11 available to the interrogating party. Rule 33(d).

12 DISCUSSION

13 1. Interrogatory 21

14 Apple is asked to identify all agreements, potential agreements,
15 licensees and potential licensees that proposed or requested (i) an alternative
16 royalty base structure to the royalty base you initially proposed or supported
17 or (ii) the smallest saleable patent-practicing unit or another component of
18 the consumer product be used as the royalty base. (ECF No. 353 at 4).¹

19 Qualcomm objects for vagueness, overbreadth, undue burden and lack
20 of proportion. Qualcomm also challenges relevance. In particular,
21 Qualcomm asserts that answering this interrogatory would require
22 Qualcomm to search records relating to thousands of actual or potential
23 agreements dating back more than 30 years for proposals or requests made
24 by licensees. (*Id.*).

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27 ¹ The Court will refer to pagination supplied by CM/ECF rather than original pagination throughout.

1 Apple asserts that this information is relevant to one of the most
2 important issues in this lawsuit and states that this discovery is designed to
3 test assertions by Qualcomm which, Apple says, “has repeatedly claimed that
4 charging royalties on the basis of the wholesale price of fully assembled
5 devices is ‘standard’ and ‘typical’ in the industry and in its practice, noting
6 that “That model has since been agreed to by over 300 licensees, for 2G, 3G
7 and 4G licenses.” (*Id.* at 5).

8 Qualcomm has offered to investigate a reasonable subset of agreements
9 to the extent Apple specifically identifies a relevant set. (*Id.* at 7). Apple has
10 demurred because it has no way of identifying which prospective or actual
11 licensees may have proposed different terms. (*Id.* at 6). Instead, Apple
12 suggested that Qualcomm provide the requested response for all of the
13 licenses listed in Exhibits 1-3 and the negotiations identified in response to
14 Interrogatory No. 15. Qualcomm responded that those exhibits and
15 negotiations cover thousands of agreements, addendums and other
16 negotiations. (*Id.* at 6-7). Neither party saw fit to provide the Court with
17 referenced responses and exhibits.

18 This dispute indicates a wholesale failure of the parties to cooperate
19 meaningfully “to secure the just, speedy, and inexpensive determination of
20 every action and proceeding.” Rule 1, Fed. R. Civ. P. Not only that, each
21 party has failed to provide the Court with an adequate basis to rule on their
22 assertions.

23 First, Qualcomm’s objection for undue burden and lack of proportion is
24 supported only by its claim that responding to this interrogatory would
25 require Qualcomm to search records relating to thousands of actual or
26 potential agreements dating back more than 30 years for proposals or
27 requests made by licensees. (ECF No. 353 at 4). This claim is not backed up

1 with any evidence, such as a declaration from a knowledgeable person,
2 regarding the extent of such records, their manner of storage, and the time
3 and effort necessary to collect, review and produce responsive, non-privileged
4 information. Consequently, Qualcomm’s objections for undue burden and
5 lack of proportionality are **OVERRULED**.

6 Apple fares no better in presenting purported quotes from Qualcomm
7 that its licensing scheme, based upon the wholesale price of a fully assembled
8 product, is “standard” and “typical.” (*Id.* at 5). The sources of these
9 purported quotes are not identified. No record or other citations are
10 provided. With a docket already at 378 entries, the Court is not going to
11 search for them.

12 The parties should have been able to resolve this dispute without Court
13 intervention. The Court finds that the interrogatory is overbroad as it is not
14 restricted in time. Despite the parties failing in their obligation to provide
15 evidence in support of their assertions, the Court partially will accept both
16 Qualcomm’s claim regarding burden and Apple’s claim regarding relevance,
17 to the extent Apple relies on unattributed quotes purportedly from
18 Qualcomm. The parties should have agreed on a subset of licensees for
19 Qualcomm to use to respond to the interrogatory. At a minimum, Apple
20 could have used the opportunity to select a number of licensees at random
21 from the information it has been provided. At most, this dispute should have
22 been over the number of licensees that Qualcomm had to research. Apple’s
23 decision not to compromise or cooperate, leaving this mostly as an all-or-
24 nothing proposition, makes it difficult for the Court to rule in its favor. Apple
25 is entitled to something but abdicated its responsibilities to work with
26 Qualcomm on an overbroad interrogatory. The Court will resolve the dispute
27 as provided below.

1 This case has been consolidated with a case carrying docket number 17-
2 cv-1010-GPC-MDD, initiated by Qualcomm against 5 companies identified as
3 “contract manufacturers.” (See ECF No. 118). These contract manufacturers
4 or “CMs” are licensees of Qualcomm and build products for Apple using, in
5 part, Qualcomm chipsets and technologies. The Court believes it appropriate
6 for Qualcomm to answer the disputed interrogatory regarding the CMs.

7 2. Interrogatory 38

8 Qualcomm is asked to explain, for each portion of a Standard identified
9 in its response to Interrogatory No. 3, how each element is satisfied by that
10 particular portion. Qualcomm is instructed, in the interrogatory, to provide a
11 response that is as specific as possible and identify the Qualcomm personnel
12 most knowledgeable about each assertion. (ECF No. 353 at 7-8).

13 Qualcomm’s response covers approximately 120 pages, broken down by
14 patent, and is technical in nature. Apple complains, that despite the volume,
15 Qualcomm fails to explain its position that each element is satisfied and is a
16 rehash of its response to Interrogatory No. 3. Neither party saw fit to provide
17 the Court with Interrogatory No. 3 or the response from Qualcomm.

18 This dispute exemplifies the limitations of interrogatories. The
19 question here, requiring an explanation how each portion of a particular
20 patent satisfies a standard, may be better left to expert reports and
21 depositions. It is not obvious to the Court that Qualcomm’s response is
22 deficient. Apple has not convinced the Court that Qualcomm is obfuscating
23 rather than clarifying. But, Apple is correct that Qualcomm did not identify
24 its personnel with knowledge of each assertion. Qualcomm will be required
25 to remedy that deficiency.

26 CONCLUSION

27 Apple’s motion to compel further responses to Interrogatories 21 and 38,

1 as presented in this Joint Motion, is **GRANTED IN PART AND DENIED**
2 **IN PART**. Within 14 days of this Order, Qualcomm is **ORDERED** to:

- 3 1. Respond fully to Interrogatory 21 limited to its licensees Compal
4 Electronics, Inc., Pegatron Corporation, FIH Mobile Ltd (“Foxconn”),
5 Hon Hai Precision Industry Co., Ltd., and Wistron Corporation; and,
- 6 2. In further response to Interrogatory 38, provide the identities of its
7 personnel knowledgeable of each assertion that a standard is
8 satisfied by a portion of a patent-in-dispute.

9 Dated: March 14, 2018

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11 Hon. Mitchell D. Dembin
12 United States Magistrate Judge
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