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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 AMERICAN GNC CORPORATION,

11 Plaintiff,

12 v.

13 LG ELECTRONICS U.S.A., INC., LG
14 ELECTRONICS MOBILECOMM U.S.A., INC.,
15 AND LG ELECTRONICS MOBILE RESEARCH
U.S.A., LLC,

16 Defendants.
17

Case No.: 17cv1090-BAS(BLM)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL TECHNICAL FACT
DISCOVERY AND LG'S PATENT
LICENSE AGREEMENTS**

[ECF No. 57]

REDACTED

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19 Currently before the Court is Plaintiff's November 2, 2017 "MOTION TO COMPEL
20 TECHNICAL FACT DISCOVERY AND LG'S PATENT LICENSE AGREEMENTS" [ECF No. 57 ("MTC")],
21 Defendants November 10, 2017 opposition to the motion [ECF No. 60 ("Oppo.")], and Plaintiff's
22 November 14, 2017 Reply [ECF No. 65 ("Reply")].

23 For the reasons set forth below, Plaintiff's motion is **GRANTED IN PART AND DENIED**
24 **IN PART.**

25 **RELEVANT BACKGROUND**

26 On August 2, 2017, Plaintiff sent Defendants its First Set of Interrogatories and Requests
27 for Documents ("RFPs"). MTC at 4-5. After meeting and conferring several times, including on
28 September 12 and 21, October 21 and 26, and November 2, 2017, Defendants have provided

1 four sets of objections and responses to the RFPs. Id.

2 On October 10, 2017, counsel for Plaintiff, Alison Richards and Alex Debski, and counsel
3 Defendants, Thomas Davis, Rick Rambo, Elizabeth Chiaviello, Collin Park, and Alan Wang,
4 contacted the Court regarding various discovery disputes concerning Defendants' responses to
5 written discovery. In regard to these disputes, the Court issued a briefing schedule. ECF No.
6 48.

7 On October 27, 2017, the parties filed a "JOINT MOTION TO MODIFY CERTAIN
8 DEADLINES." ECF No. 53. The parties sought to continue the deadline for (1) Plaintiff to file
9 its motion to November 2, 2017, (2) Defendants' opposition to November 9, 2017, and (3)
10 Plaintiff's reply to November 16, 2017 because they met and conferred and "Defendants agreed
11 to provide additional discovery responses by October 30, 2017 [that] may narrow the discovery
12 disputes that require the Court's attention." Id. at 1. The Court granted the parties' motion on
13 October 27, 2017. ECF No. 54. The parties failed to reach an agreement and timely filed their
14 pleadings. See ECF Nos. 57, 59, and 64.

15 **LEGAL STANDARD**

16 The scope of discovery under the Federal Rules of Civil Procedure is defined as follows:

17 Parties may obtain discovery regarding any nonprivileged matter that is relevant
18 to any party's claim or defense and proportional to the needs of the case,
19 considering the importance of the issues at stake in the action, the amount in
20 controversy, the parties' relative access to relevant information, the parties'
21 resources, the importance of the discovery in resolving the issues, and whether
22 the burden or expense of the proposed discovery outweighs its likely benefit.
Information within this scope of discovery need not be admissible in evidence
to be discoverable.

23 Fed. R. Civ. P. 26(b)(1).

24 District courts have broad discretion to determine relevancy for discovery purposes. See
25 Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). District courts also have broad discretion
26 to limit discovery to prevent its abuse. See Fed. R. Civ. P. 26(b)(2)(c)(i-iii)(instructing that
27 courts must limit discovery where the party seeking the discovery "has had ample opportunity
28 to obtain the information by discovery in the action" or where the proposed discovery is

1 “unreasonably cumulative or duplicative,” “obtain[able] from some other source that is more
2 convenient, less burdensome, or less expensive,” or where it “is outside the scope permitted by
3 Rule 26(b)(1)”.

4 **DISCUSSION**

5 Plaintiff seeks an order from the Court requiring Defendants to provide

6 (1) unequivocal responses to AGNC’s RFPs consistent with Rule 34 (as amended
7 in 2015) or an order that LG’s objections are now waived; (2) narrative responses
8 to AGNC’s interrogatories 4-9, which seek technical fact discovery relevant to
9 infringement issues; (3) LG’s factual basis for any non-infringement contention
10 (interrogatory 1); (4) an answer [to] interrogatory 19 and 20 regarding LG’s
knowledgeable witnesses; and (5) a response to interrogatory 12 that identifies
the full scope of LG’s prior patent licenses.

11 MTC at 4. Plaintiff argues that Defendants’ responses to its RFPs are not clear and unequivocal,
12 and improperly begin with the language “Subject to and without waiving the foregoing General
13 and Specific objections, LGE responds as follows.” Id. at 4-5. Plaintiff further argues that
14 Defendants’ interrogatory responses are improper as Defendants (1) cannot narrowly interpret
15 Plaintiff’s requests to suit their own needs, (2) cannot address only three of the fifty-three
16 accused products¹ in their responses, (3) cannot give responses indicating that they have
17 information beyond that contained in the documents, but which they are not willing to provide
18 (4) cannot claim that facts available to them are privileged, (5) do not clearly express if they
19 have possession, custody, or control over technical facts from component suppliers, (6) identify
20 over 16,000 pages of documents without explaining how the documents provide the information
21 requested in the interrogatory, (7) fail to provide the factual basis for a non-infringement
22 defense, and (8) fail to name any witnesses in response to interrogatories requesting
23 knowledgeable witnesses. Id. at 4-21. Finally, Plaintiff argues that Defendants “should produce
24 the full scope of [their] prior patent licenses” and not limit the production to those licenses in
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26 ¹ The Court is unclear on the number of accused products. Plaintiff’s motion states that there
27 are fifty-three accused products. MTC at 9. Defendants’ opposition states that there are “over
28 50” accused products [see Oppo. at 20.] and Plaintiff’s reply states that there are fifty-one
accused products. Reply at 10.

1 the “motion sensing, positions, and navigation field of art.” Id. at 21.

2 Defendants respond that Plaintiff is attempting to “turn the burden of proving
3 infringement on its head.” Oppo. at 6. Defendants assert that (1) their responses fully comply
4 with Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 34, (2) they have explained their
5 knowledge with respect to interrogatories 1 and 4-9, identified supporting documents, and
6 offered to let Plaintiff inspect relevant confidential documents in their control, (3) the issue of
7 their patent licenses is premature, and (4) Defendants are not required to identify their trial
8 witnesses at this juncture. Id. at 6-7.

9 Plaintiff replies that Defendants’ opposition “declines to directly address nearly all of the
10 specific issues [Plaintiff] raises in its Motion.” Reply at 2. Plaintiff notes that Defendants failed
11 to (1) claim that they responded to Plaintiff’s interrogatories to the extent of their available
12 knowledge, (2) provide information on their non-infringement defenses, (3) take a position on
13 the limits of their knowledge and what is or is not in their control, and (4) accept that there are
14 deadlines that apply to them. Id.

15 A. Plaintiff’s Requests for Production

16 A party may request the production of any document within the scope of Rule 26(b).
17 Fed. R. Civ. P. 34(a). “For each item or category, the response must either state that inspection
18 and related activities will be permitted as requested or state with specificity the grounds for
19 objecting to the request, including the reasons.” Id. at 34(b)(2)(B). The responding party is
20 responsible for all items in “the responding party’s possession, custody, or control.” Id. at
21 34(a)(1). Actual possession, custody or control is not required. Rather, “[a] party may be
22 ordered to produce a document in the possession of a non-party entity if that party has a legal
23 right to obtain the document or has control over the entity who is in possession of the
24 document.” Soto v. City of Concord, 162 F.R.D. 603, 619 (N.D. Cal. 1995).

25 Plaintiff seeks supplemental responses to its RFPs 1-31. Mot. at 4. Plaintiff argues that
26 all of Defendants’ responses begin with the phrase “Subject to and without waiving the foregoing
27 General and Specific objections, LGE responds as follows:” which is improper under the Federal
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1 Rules of Civil Procedure. Id. at 5. Plaintiff further argues that Defendants' placement of
2 "Preliminary Responses" at the beginning of its responses specifically identifying four reasons
3 for documents being withheld by Defendants is not acceptable because the reasons differ from
4 the objections and responses that Defendants provided in response to the RFPs. Id. at 6.
5 Plaintiff states that the inconsistent responses do not leave it with "a clear record of
6 [Defendants'] objections and responses." Id. Plaintiff requests that the Court deem Defendants'
7 objections waived. Id.

8 Defendants contend that their responses to the RFPs comply with Fed. R. Civ. P. 34 and
9 clearly set out their objections, which materials are being produced, and which materials are
10 being withheld. Oppo. at 7-8. Defendants also contend that Plaintiff fails to provide support for
11 its position that the phrase "Subject to and without waiving the foregoing General and Specific
12 objections, LGE responds as follows:" is improper under Fed. R. Civ. P. 34. Id. at 8. Defendants
13 note that Plaintiff does not challenge the objections specifically and that Plaintiff's argument on
14 waiver is unavailing and against recent precedent in this district.

15 Plaintiff replies that Defendants' objections and statements are inconsistent and preclude
16 a clear record. Reply at 4. Plaintiff further replies that this is not a case where finding
17 Defendants' objections to be waived could be considered "automatic" given that Plaintiff has
18 been requesting responses for several months. Id. Finally, Plaintiff replies that it is unable to
19 have a more specific discussion because Defendants have prevented Plaintiff from understanding
20 Defendants' position and because they have not produced all of the responsive documents in
21 their possession. Id. at 5.

22 As an initial matter, the Court notes that Plaintiff's objections to Defendants' RFP
23 responses center around the idea that Defendants' use of the phrase "Subject to and without
24 waiving the foregoing General and Specific objections, LGE responds as follows:" prior to
25 responding is inappropriate under the Federal Rules and should result in the waiver of
26 Defendants' objections. MTC at 5.

27 While Plaintiff provides case law from this district supporting its arguments, the Court
28 declines to find that Defendants' limiting language results in a waiver of all of their objections

1 and Plaintiff's motion for such a finding is **DENIED**. See Del Socorro Quintero Perez v. United
2 States, 2016 WL 304877, at *2 (S.D. Cal. Jan. 25, 2016) (stating that the "case law Plaintiffs
3 cite does not support their contention that boilerplate objections result in an automatic waiver,
4 but instead shows that courts sustain a thorough analysis of the objections before determining
5 whether or not they are overruled."). Unfortunately for Plaintiff, Plaintiff does not then address
6 any of the specific objections or limitations raised by Defendants; Plaintiff merely argues that
7 the "subject to" language should result in all objections being waived. Similarly, Plaintiff
8 complains that the litany of objections and limitations set forth in each RFP make it difficult to
9 understand what Defendant is producing, but does not identify any specific areas of confusion
10 or specific confusing or conflicting objections or responses. Because the Court has denied
11 Plaintiff's complete waiver argument and Plaintiff does not identify and brief any specific
12 deficiencies, Plaintiff has not satisfied its burden or set forth a dispute for this Court to resolve.
13 See Womack v. Virga, 2011 WL 6703958, at *3 (E.D. Cal. Dec. 21, 2011) ("[t]he party seeking
14 the motion to compel discovery has the burden of informing the court why the defendants'
15 objections are not justified or why the defendants' responses are deficient)).

16 Because the Court is not deeming all of Defendants' objections waived and Plaintiff has
17 not identified any specific RFP disputes, or provided law in support of its position regarding
18 specific objections and responses to the RFPs, the Court declines to issue any orders regarding
19 specific RFPs except as to RFPs 4, 7, 8, 11-12, 14, and 20-21. Defendants state they will
20 supplement their responses to these RFPs now that a protective order has been entered in the
21 case. MTC at Exh. 1. Specifically, Defendants agreed to respond to the requests within thirty
22 or sixty days after the entry of the Protective Order. Id. The Protective Order was entered on
23 October 23, 2017. ECF No. 51. Thirty days from October 23, 2017 was November 22, 2017 and
24 sixty days from October 23, 2017 will be December 22, 2017. Accordingly, Defendants are
25 ordered to provide their supplemental responses to RFPs 4, 7, 8, 11-12, 14, and 20-21 on or
26 before **December 22, 2017**.

27 Plaintiff's second argument is that Defendants' Preliminary Responses – which contain
28 four general objections to Plaintiff's requests – are inconsistent and do not leave Plaintiff with a

1 clear record of what is and is not being produced. MTC at 6. Defendants Preliminary Responses
2 state that they are

3 not producing documents, source code, or other information that are subject to
4 one or more of the following: 1) its objection to the time limitations in AGNC's
5 requests; 2) agreements with third parties, until those third parties have provided
6 LGE with consent to produce; 3) documents, source code, or other information not
7 related to products specifically accused in AGNC's September 6 Infringement
Contentions; and/or 4) the common interest privilege or any other applicable
privileges.

8 MTC at Exh. 1 at 12. Defendants argue that these objections are proper and necessary.
9 Oppo. at 9.

10 With regard to these four objections, the Court finds that Defendants must supplement
11 their responses to clarify what they are producing, not producing, and withholding. For
12 Preliminary Response 1, Defendants must specifically state the applicable time frame that they
13 are utilizing for each RFP response.² For Preliminary Responses 2 and 4, Defendants must
14 provide Plaintiff with a log identifying which documents are being withheld based on privilege
15 and/or agreements with third parties. Finally, with regard to Preliminary Response 3,
16 Defendants must produce supplemental responses for all accused products, not just the three
17 representative products identified by Plaintiff in its infringement contentions. However, in light
18 of Plaintiff's decision to group the accused products based on its organization of its infringement
19 theories and Plaintiff's failure to provide individual charts as required under Patent Local Rule
20 3.1(c), Defendants may provide their responses in kind and serve representative responses in
21 accordance with the three representative charts provided by Plaintiff or another appropriate
22 manner of representative grouping of products and responses. Defendants must serve their
23 supplemental responses by **December 29, 2017**.

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26 ² The Court is aware that Defendants appear to have done this for most of their responses by
27 stating that their responses are addressing Accused Products sold in the United States between
28 May 2011 and July 2017. MTC at Exh. 1. However, if there are any responses that do not have
this information and for any supplemental responses, Defendants must specify the time frame
being covered by the responses.

1 B. Interrogatories 1, 4-9, 12, 19-20

2 An interrogatory may relate to any matter that may be inquired under Rule 26(b). Fed.
3 R. Civ. P. 33(a)(2). "The grounds for objecting to an interrogatory must be stated with
4 specificity, [and] [a]ny ground not stated in a timely objection is waived unless the court, for
5 good cause, excuses the failure." Fed. R. Civ. P. 33(b)(4). Any interrogatory not objected to
6 must be answered fully in writing under oath. Fed. R. Civ. P. 33(b)(3). In answering
7 interrogatories propounded to a corporation, partnership, association or governmental agency,
8 the officer or agent responding on its behalf "must furnish the information available to the party."
9 Fed. R. Civ. P. 33(b)(1)(B); see also Cal. Prac. Guide Fed. Civ. Pro. Before Trial Ch. 11(IV)-B.
10 Fed. R. Civ. P 33(d)(1) states that "[i]f the answer to an interrogatory may be determined by
11 examining, auditing, compiling, abstracting, or summarizing a party's business records (including
12 electronically stored information), and if the burden of deriving or ascertaining the answer will
13 be substantially the same for either party, the responding party may answer by: specifying the
14 records that must be reviewed, in sufficient detail to enable the interrogating party to locate and
15 identify them as readily as the responding party could."

16 1. Interrogatories Nos. 4-9

17 Plaintiff seeks supplemental responses to Interrogatories Nos. 4-9. MTC at 6-16. Plaintiff
18 argues that Defendants responses thus far have a number of problems including that they (1)
19 improperly attempt to narrow the scope of the request to third party information only, (2)
20 improperly attempt to narrow the scope of the request to three of the fifty-three accused
21 products, (3) do not clearly state that the technical facts available to Defendants are limited to
22 the face of the documents or, alternatively, provide the technical facts available to Defendants,
23 (4) improperly withhold factual information as privileged without explaining the grounds for the
24 privilege, (5) leave unclear whether or not Defendants have possession, custody, or control over
25 technical facts from its component suppliers; and (6) improperly reference more than sixteen
26 thousand pages of documents without explaining how the documents provide the information
27 requested in the interrogatory. Id.

28 Defendants contend that the interrogatories are requesting detailed technical

1 documentation and information that Defendants do not possess or a statement that Defendants
2 know nothing about the topics and are an attempt to shift the burden of discovery onto
3 Defendants. Oppo. at 10. Defendants further contend that Plaintiff's claim that Defendants
4 have control over various third parties is baseless. Id. at 11. Defendants note that they are in
5 the process of producing 56,000 pages of confidential third party documents now that the
6 Protective Order is in place. Id. Defendants contend that Plaintiff's infringement contentions
7 are deficient and that they are not "withholding materials other than the privileged information
8 that is not subject to discovery." Id. at 15-16. Finally, Defendants contend that the sixteen
9 thousand pages referenced by Plaintiff were not part of a "heap" as the documents made up
10 around 100 technical manuals and thirty data sheets. Id. at 17. Defendants note that the
11 responses comply with Fed. R. Civ. P. 33(d) and Plaintiff's interpretation of FaceDouble is
12 misplaced. Id.

13 Plaintiff replies that Defendants fail to address the limitations on the scope of the
14 interrogatories and improperly categorize the interrogatories as contention interrogatories.
15 Reply at 5-6. Plaintiff further replies that Defendants still refuse to "either acknowledge [they]
16 have **no** responsive information or to divulge the responsive information [they] possess[]." Id.
17 at 6 (emphasis in original). Finally, Plaintiff replies that Defendants improperly treat the
18 interrogatory requests as document requests and fail to address that the burden is on
19 Defendants to show that the documents they have cited to contain the information being sought.
20 Id. at 6-7.

21 Now that there is a protective order in place, Defendants must supplement their
22 responses to include information subject to the Protective Order. Moreover, the Court has
23 reviewed Defendants' responses and finds that they are insufficient. Defendants must
24 supplement their responses by 1) answering the question asked, 2) responding as to all fifty-
25 three accused products, and 3) identifying the withheld information and privilege if a response
26 is incomplete due to a privilege. For example, Interrogatories 5, 6 and 8 ask Defendants to
27 describe specific processes. Defendants' response [REDACTED]

28 [REDACTED] Defendants must describe what they know.

1 Similarly, Interrogatories 6 and 7 ask how Accused Products use IMUs and Defendants respond
2 [REDACTED]
3 [REDACTED] Again, this is insufficient. Defendants must provide a response
4 to Plaintiff's request as written. Defendants must supplement their responses on or before
5 **December 29, 2017**. Defendants must provide all responsive information that is in their
6 possession, custody or control.

7 2. Interrogatory No. 1

8 Plaintiff seeks a supplemental response to Interrogatory No. 1. MTC at 16. Plaintiff
9 argues that Defendants should be required to "disclose any factual basis that it has for any non-
10 infringement defense." Plaintiff notes that despite having served the interrogatory on August 2,
11 2017, Defendants have failed to disclose any basis for their non-infringement defense or any
12 other explanation for their contentions that a claim element is not met. Id. Plaintiff argues that
13 this information should be disclosed immediately as the time for claim construction exchanges
14 nears. Id. at 16.

15 Interrogatory No. 1 asks:

16 For each limitation of the asserted claims of the Patents-in-Suit, state the complete
17 factual basis for Defendants' contention that each Accused Product does not
18 infringe that element, explaining in detail the factual and legal basis for each such
19 contention and identifying by Bates number documents sufficient to support each
20 such contention.

20 Id.; see also Exh. 3. Defendants respond by explaining that Plaintiff provided [REDACTED]
21 [REDACTED]
22 [REDACTED] so they only are providing responses as to those three products.
23 MTC. at Exh. 3 at 12-15. Defendants contend that their responses are appropriate "given that
24 Plaintiff refuses to provide [them] with Infringement Contentions that are compliant with Patent
25 L.R. 3.1." Oppo. at 18-19. Defendants note that Plaintiff is accusing over fifty products, but
26 has only provided Defendants with claim charts for three phones rendering their infringement
27 charts inadequate and limiting Defendants' ability to respond to the interrogatory. Id. at 19-20.
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1 Defendants also note that additional details “regarding non-infringement will be forthcoming
2 based on Plaintiff’s third-party subpoenas.” Id. at 20.

3 Plaintiff replies that its infringement contentions do not impact Defendants’ ability to
4 provide factual information and that there is no reason to limit fact discovery to three of the
5 fifty-one accused products. Id. at 10. Plaintiff further replies that its decision to use
6 representative charts for the infringement contentions is the most efficient way to proceed and
7 that this Court has allowed representative charts in other similar circumstances. Id. at 11.

8 Plaintiff’s motion to compel further response to Interrogatory No. 1 is **GRANTED**. “[A]
9 contention interrogatory during the early stages of litigation is appropriate where the responses
10 to the interrogatory would “contribute meaningfully” to: (1) clarifying the issues in the case; (2)
11 narrowing the scope of the dispute; (3) setting up early settlement discussion; or (4) providing
12 a substantial basis for a motion under Rule 11 or Rule 56.” Facedouble, Inc. v. Face.com, Inc.,
13 2014 WL 585868, at *2–3 (S.D. Cal. Feb. 13, 2014). Courts have found that it is appropriate to
14 have a defendant respond to a non-infringement contention interrogatory where a plaintiff has
15 provided its infringement contentions with corresponding claim charts that can allow that
16 defendant to respond accordingly. Id. Here, while Plaintiff has only served claim charts for
17 three of the fifty plus products that it accuses, the parties’ deadlines for filing Invalidity
18 Contentions, Preliminary Claim Constructions, and Responsive Claim Constructions, have passed.
19 ECF No. 33. Therefore, it is unlikely that Defendant does not have enough information to state
20 its non-infringement contentions. See Audatex N. Am. Inc. v. Mitchell Int’l, Inc., 2014 WL
21 4961437, at *3–4 (S.D. Cal. Oct. 3, 2014) (finding that the non-infringement interrogatory was
22 not premature where the case had “been pending for over two and a half years, and the parties
23 have exchanged infringement and invalidity contentions, preliminary and responsive claim
24 construction contentions, and supporting documentation”) (citing Facedouble, Inc., 2014 WL
25 585868, at *3 (after infringement contentions and supporting documents were served and claim
26 construction positions were known, “Defendant cannot assert that it does not have sufficient
27 information to formulate its non-infringement contentions.”)). Moreover, Defendants do not
28 argue that they do not have sufficient information to respond with regard to all products; they

1 merely argue that they should not have to do so because Plaintiff has not addressed all fifty-
2 one accused products. Also, while they complain about Plaintiffs' inadequate infringement
3 charts, Defendants did not file a motion challenging the adequacy of Plaintiff's representative
4 sample or its failure to address all accused products.

5 Defendants must supplement their response to address all products or representative
6 products, identifying which products are in each representative group. Defendants' responses
7 must be served on or before **January 5, 2018**.

8 3. Interrogatories No. 19 – 20

9 Plaintiff seeks a supplemental response to Interrogatory No. 19. MTC at 17. Plaintiff
10 argues that Defendants fail to identify a single witness in response to Interrogatory No. 19 which
11 asks:

12 Identify all witnesses Defendants either will or may call at trial, the general subject
13 matter of their testimony, whether they are represented by counsel, and their
14 contact information including telephone number and address.

15 Id.; see also Exh. 3. Defendants' responded to the interrogatory by stating:

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 Id. at Exh. 3.

21 Plaintiff's motion to compel further response to Interrogatory 19 is **DENIED**. Defendants
22 contend that they have not yet identified their witnesses and have responded to the
23 interrogatories by [REDACTED]

24 [REDACTED] Because the Case Management Order
25 Regulating Discovery and Other Pretrial Proceedings [ECF No. 33] only issued a few months
26 ago, and the Court has not yet set a fact or expert discovery deadline in this matter, Defendants'
27 response is not unreasonable. Plaintiff's concern that they will be ambushed with the identity
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1 of several witnesses on the eve of trial is unfounded and premature. Contrary to Plaintiff's
2 position, this is not the scenario described in Skertich v. Zale Corp., 15 F.3d 1089, *1 (9th Cir.
3 1993) where "after the close of discovery, the Skertichs attempted to supplement their list of
4 trial witnesses with some twenty-five new names" or Amador v. Bully's Sports Bar & Grill, 2017
5 WL 627214, at *5 (D. Nev. Feb. 15, 2017) where party sought to disclose trial witnesses for the
6 first time "on the eve of the discovery cut-off" and the court struck the witnesses." MTC at 19.
7 In addition, Fed. R. Civ. P. 26(a)(3)(B) states that parties must provide the contact information
8 for witnesses that may be called if not previously provided along with witnesses the party
9 anticipates deposing "at least 30 days before trial" unless the Court orders otherwise. Here
10 Defendants are nowhere near the "30 days before trial" deadline as no trial date has been set
11 and the Court has yet to issue a scheduling order with pretrial deadlines past the point of the
12 claim construction hearing. Accordingly, Plaintiff's position that it should not be forced to wait
13 any longer for this information is not reasonable.

14 With respect to Interrogatory No. 20, Plaintiff notes that Defendants' response, again fails
15 to identify any witnesses from Defendants with any technical knowledge. Id. Plaintiff argues
16 that Defendants initial disclosures do not satisfy Fed. R. Civ. P. 26 and that it should not be
17 required to wait any longer for the required information. Id. at 18-21. Interrogatory No. 20
18 asks:

19 Identify the people most knowledgeable, other than litigation counsel, regarding
20 the subject matter of this litigation or Defendants' contention(s) as well as each
21 and every person who provided any information used or considered in preparing
22 Defendants' response to interrogatories in this case and any other persons who
23 have knowledge of any one or more of the facts or contentions set forth in
24 Defendants' response to that interrogatory, and for each person state the subject
25 matter of that person's knowledge.

26 Id. at Exh. 3. Defendants responded:

27 [REDACTED]

28 [REDACTED]

1 Id. Defendants contend that they will identify their witnesses later in the case as permitted by
2 the Federal Rules of Civil Procedure, the Local Rules, and the Court's Orders. Oppo. at 21.
3 Defendants note that Plaintiff fails to cite any authority in support of its position that Defendants
4 must identify all of their witnesses less than ninety days after serving their initial disclosures.
5 Id. at 21-22. Defendants ask that Plaintiff's request regarding trial witnesses be denied. Id. at
6 22.

7 Plaintiff replies that it would be inefficient and prejudicial to allow Defendants "to wait
8 until a month or so before trial to find out" which fact witnesses will be knowledgeable and who
9 Defendants plan to rely on at trial. Reply at 9.

10 Plaintiff motion to compel further response to Interrogatory No. 20 is **DENIED**.
11 Defendants have provided some names and titles in their Initial Disclosures. While Defendants
12 fail to provide names and contact information for all of the people described in their Initial
13 Disclosures,³ they are already required to supplement their responses "in a timely manner if
14 the[y] learn[] that in some material respect the disclosure or response is incomplete or incorrect,
15 and if the additional or corrective information has not otherwise been made known to the other
16 parties during the discovery process or in writing." Fed. R. Civ. P. 26(e). In addition, Plaintiff's
17 request as written is overbroad.

18 4. Interrogatory No. 12

19 Plaintiff seeks a response to Interrogatory No. 12 which requests that Defendants

20 Identify each Patent License Agreement to which any LG Entity is a party in which
21 any patent licensed relates to technology related to mobile phones, laptops,
22 tablets, or smart watches by Bates number and explain Defendants' contention
23 about any royalty rate per device (e.g., phone) or rate per patent, or any other
24 royalty rate, reflected in any of the identified Patent License Agreements,
including, for example, LG's agreements with Qualcomm, Nokia, Google, Via, Core
Wireless, Conversant, etc.

25 MTC at 21. Plaintiff argues that Defendants have not "produced nor identified a single prior
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27 ³ Many of the descriptions state "[o]ne or more persons from [] who may have information
28 relating to []" instead of listing an actual name or contact information other than a company
name where the individual worked. MTC. at Exh. 9.

1 patent license.” Id. Plaintiff further argues that Defendants have stated that they plan to limit
2 the interrogatory to licenses in the “motion sensing, positioning, and navigation field of art”
3 which is overly restrictive. Id. Plaintiff argues that Defendants should produce their “multi-
4 patent and portfolio-wide licenses” and that Defendants have not shown that responding to the
5 request would be unduly burdensome. Id. at 22-23.

6 Defendants explain that they have agreed to produce all relevant license agreements, but
7 that due to their size and the large number of licenses, the scope of the search should be
8 narrowed. Oppo. at 22. Defendants contend that Plaintiff’s objection to their proposed
9 narrowing conflicts with Plaintiff’s own verified definition of the field of art.⁴ Id. at 22-23. Finally,
10 Defendants contend that Plaintiff’s motion to compel the production of license is premature and
11 should be denied. Id. at 24-25.

12 Plaintiff replies that Defendants’ opposition fails to state why it should not provide licenses
13 relating “to any of the LG product components that are involved in providing the relevant
14 functions in this case” or its multi-patent and portfolio-wide licenses. Reply at 9. Plaintiff
15 reiterates that a “full scope of relevant licenses should be produced” and that at a minimum
16 Defendants should respond identifying “the counterparty, the patent technology, the royalty
17 dollar amount, and the date so that potential relevance can be determined.” Id. at 10.

18 Plaintiff’s motion to compel further response to Interrogatory No. 12 is **GRANTED IN**
19 **PART**. Plaintiff’s request is overbroad, as it acknowledges since it merely states that it believes
20 that Defendants’ multi-patent and portfolio-wide licenses are “likely [to] include patents
21 directed to relevant phone features and functionalities.” MTC at 22. Defendants, therefore,
22 may limit their response to the interrogatory to the “motion sensing, positioning, and navigation”
23

24
25 ⁴ In response to that contention, Plaintiff states that the definition Defendants are referring to
26 “was provided in a different legal context and addresses a different legal issue: the level of
27 ordinary skill in the relevant art is very different from the scope of patent licenses that may be
28 relevant to this case. Notably, LG’s proposed field of art is much narrower than what LG proposed
in the context of its request for a prosecution bar and acquisition bar in its protective order
motion, which was “motion sensing, positioning, mapping, and navigation technology.” Mot. at
n.5.

1 field of art. Id. at 21. Defendants must supplement their response on or before **January 5,**
2 **2018.**

3 **CONCLUSION**

4 Plaintiff's request to have Defendants' objections waived is **DENIED**. Regarding
5 Defendants' "Preliminary Responses" Defendants must (1) specifically state the applicable time
6 frame that they are utilizing for each RFP response, (2) provide Plaintiff with a log identifying
7 which documents are being withheld based on privilege and/or agreements with third parties,
8 and (3) must produce supplemental responses for all accused products, not just the three
9 representative products identified by Plaintiff in its infringement contentions, although they may
10 provide representative responses to the representative charts. Defendants must serve their
11 supplemental responses by **December 29, 2017.**

12 Plaintiff's motion to compel supplemental responses to:

13 1. RFPs 4, 7, 8, 11-12, 14, and 20-21 is **GRANTED**. Defendants are ordered to
14 provide their supplemental responses to RFPs 4, 7, 8, 11-12, 14, and 20-21 on or before
15 **December 22, 2017.**

16 2. Interrogatory No. 1 is **GRANTED**. Defendants must supplement their responses
17 on or before **January 5, 2018.**

18 3. Interrogatories No. 4-9 is **GRANTED**. Defendants must supplement their
19 responses on or before **December 29, 2017.**

20 4. Interrogatories No. 19 and 20 is **DENIED**.

21 5. Interrogatory No. 12 is **GRANTED IN PART**. Defendants may limit their
22 responses to the "motion sensing, positioning, and navigation" field of art. Defendants must
23 supplement their response on or before **January 5, 2018.**

24 **IT IS SO ORDERED.**

25 Dated: 12/18/2017

26 
27 Hon. Barbara L. Major
28 United States Magistrate Judge