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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 BELL NORTHERN RESEARCH, LLC,
12 Plaintiff,
13 v.
14 HUAWEI DEVICE (DONGGUAN) CO., LTD.;
15 HUAWEI DEVICE (SHENZHEN) CO., LTD.;
16 and HUAWEI DEVICE USA, INC.,
17 Defendants.

Case No.: 18cv1784-CAB(BLM)

**ORDER DENYING DEFENDANTS'
MOTION TO COMPEL PLAINTIFF'S
RESPONSES TO WRITTEN DISCOVERY**

[ECF Nos. 78, 86, 90]

18 On June 6, 2019, in compliance with chambers rules, counsel for Plaintiff ("BNR") and
19 Defendants (collectively "Huawei") contacted chambers regarding several discovery disputes.
20 Counsel for the parties set forth their respective positions and agreed to engage in further meet
21 and confer efforts in an attempt to resolve the disputes informally. On June 24, 2019, counsel
22 for both BNR and Huawei called chambers again and informed the Court that they were unable
23 to resolve the disputes. On June 25, 2019, the Court set a briefing schedule for Huawei's motion
24 to compel BNR's responses to various written discovery. ECF No. 77. In compliance with the
25 briefing schedule, on July 8, 2019, Huawei filed its motion to compel, on July 15, 2019, BNR
26 filed its opposition, and on July 22, 2019, Huawei filed its reply. See ECF Nos. 81, 85, 91. For
27 the reasons set forth below, Huawei's motion to compel BNR's responses to interrogatories and
28 requests for production is **DENIED**.

1 **RELEVANT BACKGROUND**

2 On November 30, 2018, Huawei propounded Common Interrogatories, Set One on BNR,
3 after which BNR replied with responses and objections.¹ ECF No. 78-1 (“MTC”) at 5, Ex. A.
4 Included in Huawei’s Common Interrogatories, Set One were Interrogatory Nos. 2, 7 and 9. Id.
5 at Ex. A. On January 11, 2019, Huawei propounded Requests for Production of Documents
6 (“RFPs”), Set One and on February 11, 2019, BNR replied with responses and objections. Id. at
7 Ex. B. Included in Huawei’s RFPs, Set One were RFP Nos. 23, 28, 57, and 63. Id. at Ex. D.

8 On April 29, 2019—months after Huawei received BNR’s initial responses and objections
9 to Interrogatory Nos. 2, 7, and 9, and RFP Nos. 23, 28, 57, and 63—Huawei’s counsel sent a
10 letter to BNR’s counsel addressing (among other things) BNR’s alleged insufficient responses to
11 RFP Nos. 23, 28, 57, and 63. Id. at Ex. E. Interrogatory Nos. 2, 7, and 9 were not mentioned
12 in the April 29, 2019 letter. See id. On May 9, 2019, BNR’s counsel responded to Huawei’s
13 letter and stated its position as to its responses to RFP Nos. 23, 28, 57, 63; BNR also noted
14 Interrogatory No. 2 in the context of its discussion surrounding RFP No. 23. See id. at Ex. F. In
15 its May 9, 2019 response, BNR indicated that absent Huawei sending BNR applicable authority,
16 it had no further response to the written discovery at issue. See id. On June 3, 2019, BNR sent
17 another letter to Huawei citing authority for its position concerning discovery of
18 settlement/licensing negotiations; BNR did not address any specific Interrogatories or RFPs in
19 its letter. See id. at Ex. G; ECF No. 86 (“Oppo.”) at Ex. 1.

20 On June 6, 2019, the parties contacted the Court regarding the various discovery disputes
21 and agreed to engage in further meet and confer efforts. On June 21, 2019, BNR served its
22 Second Supplemental Responses to Huawei’s Common Interrogatories, Set One. MTC at Ex. C.
23 On June 24, 2019, the parties contacted chambers, informed the Court that their meet and
24 confer efforts had failed, and requested a briefing schedule for Huawei’s motion to compel. ECF
25 No. 77. While additional meet and confer efforts are noted in some of the correspondence, the
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27 ¹ The parties did not provide the date on which Huawei initially responded to BNR’s Common
28 Interrogatories, Set One.

1 discussions noted above are the only communications cited in the parties' briefing. See generally
2 MTC; Oppo.; and ECF No. 90 ("Reply").

3 Huawei now seeks to compel BNR's response to Interrogatory Nos. 2, 7, and 9, as well
4 as RFP Nos. 23, 28, 57, and 63. See generally MTC; Reply. Interrogatory No. 2 seeks
5 "information regarding BNR's licensing negotiations with third parties." MTC at 6, Ex. A. RFP
6 Nos. 23, 28, 57, and 63 seek any settlement documents, licensing documents or licensing
7 negotiation documents involving the patents-in-suit (and involving BNR and its predecessor-in-
8 interest), and any communications (i.e., discussions to assign, license, or enforce) between BNR
9 and its predecessor-in-interest regarding the patents-in-suit and/or any related patents. See id.
10 at 6–7, Ex. D.

11 Interrogatory No. 7 seeks BNR's contentions as to whether any of the patents-in-suit are
12 "essential to practicing any Standard(s)," as well as "the factual and legal bases for such . . .
13 contention[s]," and "whether the respective Patent[s]-in Suit . . . are subject to any limitation
14 on the terms by which it may be licensed" Id. at 7, Ex. A. Huawei claims that despite
15 what information BNR has provided, BNR has failed to "indicate one way or another whether
16 there are any analyses or disclosures about any of the asserted patents being standard-essential
17" Id. at 8.

18 Finally, Interrogatory No. 9 seeks information regarding what BNR contends are "fair,
19 reasonable, and nondiscriminatory royalty rate(s) for the patents that it claims are essential to
20 practicing any standard(s)" Id. at 10, Ex. A. Though BNR has provided some response to
21 this Interrogatory, Huawei alleges that BNR has failed to identify all of the requested information.
22 See id. at 10.

23 **DISCUSSION**

24 In its briefing, Huawei makes several arguments related to BNR's allegedly insufficient
25 responses to the written discovery at issue. See generally MTC; Reply. However, based on
26 Judge Major's Chambers Rules as well as the Court's recent ruling on BNR's untimely motion to
27 compel discovery [ECF No. 96], the Court must first address the timeliness of Huawei's motion
28 to compel. Judge Major's Chambers Rules clearly state:

1 All discovery motions must be filed within 30 days of the event giving rise to the
2 dispute and only after counsel have met and conferred and communicated with
3 the Court as set forth above. The event giving rise to the dispute is **NOT** the date
4 on which counsel reach an impasse in their meet and confer efforts. For written
5 discovery, the event giving rise to the dispute is the service of the initial response
6 or production of documents, or the passage of the due date without a response or
7 document production.²

8 The event giving rise to the dispute surrounding RFP Nos. 23, 28, 57, and 63 occurred on
9 February 11, 2019, because this is the date BNR served its initial responses and objections to
10 Huawei's RFPs, Set One. MTC at Ex. D. As for Interrogatory Nos. 2, 7, and 9, the event giving
11 rise to the dispute occurred on the date BNR served its initial responses and objections to
12 Common Interrogatories, Set One. The parties did not provide the Court with this date in their
13 briefing, so the Court will use the thirty-day time period authorized by the Federal Rules of Civil
14 Procedure and find the dispute arose on December 30, 2018.³ See Fed. R. Civ. P. 33(b)(2).
15 Accordingly, the deadline for filing a motion to compel further response to the Interrogatories
16 was January 29, 2019 and the deadline for filing a motion to compel further response to the
17 RFPs was March 13, 2019. Huawei did not comply with either deadline.

18 Meet and confer efforts do not extend the filing deadline. See JUDGE MAJOR'S CHAMBERS
19 RULES § V.E. Nonetheless, Huawei's delay in its meet and confer efforts supports the Court's
20 finding that its instant motion is untimely. Huawei did not provide the Court with any meet and
21 confer correspondence relating to the three interrogatories. See generally MTC; Reply. Based
22 upon this lack of evidence, it appears that there were no meet and confer efforts and Huawei
23 waited more than five months to contact the Court regarding the interrogatory dispute.
24 Similarly, with regard to the RFPs, the first meet and confer correspondence cited in the parties'

25 ² HONORABLE BARBARA LYNN MAJOR U.S. MAGISTRATE JUDGE, CHAMBERS RULES-CIVIL CASES § V.E.
26 (hereinafter "JUDGE MAJOR'S CHAMBERS RULES"),
27 <https://www.casd.uscourts.gov/judges/major/docs/Chambers%20Rules%20Civil.pdf>.

28 ³ This time period appears to be correct since BNR served its First Supplemental Responses to
Common Interrogatories, Set One on February 7, 2019. See MTC at Ex. C; see also Fed. R. Civ.
P. 33(b)(2).


1 briefing is dated April 29, 2019—forty-seven (47) days after the event giving rise to the dispute.
2 See MTC at Ex. E. BNR’s May and June 2019 responses to the April 2019 letter gave no indication
3 that BNR was going provide the information Huawei seeks, and the parties did not contact the
4 Court to address the dispute until June 6, 2019 (eighty-five (85) days after the event giving rise
5 to the dispute). See id. at Exs. E, F, G. Finally, the fact that BNR served a Second Supplemental
6 Response to Common Interrogatories, Set One on June 21, 2019 does not affect the Court’s
7 analysis. The Court’s dispute definition provides a date certain for motions to compel discovery
8 and requires parties to address discovery disputes in a timely manner. Allowing the deadline to
9 be delayed based upon meet and confer efforts or supplemental responses would undermine, if
10 not eliminate, the goal of timely discovery. See Stoba v. Saveology.com, LLC, WL 5040024, at
11 *5 (S.D. Cal. Aug. 26, 2015) (quoting Guzman v. Bridgepoint Educ., Inc., 2014 WL 3407242, at
12 *4 (S.D. Cal. July 10, 2014)) (affirming the Magistrate Judge’s calculation for the plaintiffs’
13 motion to compel deadline by explaining that “the 30–day clock would never begin to run as
14 long as the opposing party continued to amend or supplement earlier responses.”); In re
15 Ameranth Cases, 2018 WL 1744497, at *2 (S.D. Cal. Apr. 11, 2018) (explaining that if a Court
16 were to accept the proposition that a request to supplement discovery restarts the clock on a
17 motion to compel deadline, “[t]his would render the Court’s deadline meaningless,” because “a
18 party could resurrect an untimely discovery dispute from the grave simply by demanding . . .
19 supplemental discovery responses.”).

20 Huawei’s motion to compel violates the rules of this Court and is **DENIED** as untimely.
21 See Stoba, 2015 WL 5040024, at *6 (affirming a Magistrate Judge’s decision, which denied as
22 untimely the plaintiff’s joint motion to compel further written discovery responses, based on the
23 Magistrate Judge’s chambers rules); Guzman v. Bridgepoint Educ. Inc., 2014 WL 1057417, at
24 *2 (S.D. Cal. Mar. 18, 2014) (denying a joint motion to extend the thirty-day period to bring a
25 discovery dispute—as required by chambers rules—because submission of the joint motion to
26 extend the thirty-day period was untimely); Mir v. Kirchmeyer, 2017 WL 164086, at *4 (S.D.
27 Cal. Jan. 17, 2017) (noting that it is “well within . . . [a Magistrate Judge’s] discretion to reject”
28 a party’s discovery motion as untimely when the party fails to comply with chambers rules);

1 Linlor v. Chase BankCard Servs., Inc., 2018 WL 3611102, at *4 (S.D. Cal. July 23, 2018) (denying
2 an *ex parte* application to compel supplemental discovery “for failure to comply with Chambers’
3 Rule[s].”).

4 **IT IS SO ORDERED.**

5 Dated: 8/29/2019

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7 Hon. Barbara L. Major
8 United States Magistrate Judge
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