

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01257-PAB-MEH

BIAX CORPORATION,

Plaintiff,

v.

NVIDIA CORPORATION,
SONY COMPUTER ENTERTAINMENT AMERICA, INC.,
SONY COMPUTER ENTERTAINMENT, INC.,
SONY ELECTRONICS, INC.,
SONY CORPORATION OF AMERICA, and
SONY CORPORATION,

Defendants.

ORDER ON STIPULATED MOTION

Michael E. Hegarty, United States Magistrate Judge.

Pending before the Court is the Stipulated Motion Regarding Dismissal of Certain Sony Defendants and Discovery [[filed August 20, 2009; docket #56](#)]. The District Court referred the Motion to this Court to the extent that it pertains to discovery in this action, namely, with respect to the relief requested in paragraphs 2, 3, 5, and 6. (Docket #64 at 2.) The District Court also ordered the parties to submit notice of whether they request the Court to enter this order not under seal. (*Id.*) The parties then noticed the Court to enter the order not under seal [[filed September 9, 2009; docket #69](#)]. Accordingly, and after review of the parties' request, the Court **GRANTS** the Motion to the extent referred and **ORDERS** the following stipulations:

1. The remaining Sony defendants in the case, Sony Electronics Inc. ("SEL") and Sony Computer Entertainment America Inc. ("SCEA"), shall provide the disclosures specified by Federal Rule of Civil Procedure 26 and respond to all discovery requests that Plaintiff BIAx serves upon them with all information, including but not limited to documents and witnesses, in the possession, custody or control of Sony Corporation ("SC"), Sony Computer Entertainment Inc.

("SCEI") and Sony Corporation of America ("SCA"); that is, SEL and SCEA shall not be permitted to withhold otherwise discoverable information solely on the ground that it is in the possession, custody or control of SC, SCEI or SCA. Further, BIAX shall have the full range of remedies available under the Federal Rules against SCEA and SEL relating to information in the possession, custody or control of SC, SCEI or SCA. SCEA and SEL in turn shall have the full range of remedies, including but not limited to objections, that would have been available under the Federal Rules to SC, SCEI or SCA had they remained parties to this case.

2. In the event that BIAX becomes aware of facts which warrant its assertion of the claims asserted in the Amended Complaint for Patent Infringement filed on July 14, 2009, against either SC, SCEI, or SCA, BIAX may file a motion seeking leave to amend its complaint in this case to assert such claims, and in that event none of SC, SCEI, SCEA, SEL, or SCA shall oppose that motion.

3. If BIAX notices the deposition of any employee of any Sony company, SCEA and SEL shall produce that employee without the necessity for a subpoena, court order, or other judicial or governmental order or proceeding; provided, however, that if any such employee lives and works in Japan and does not regularly travel in the ordinary course of that person's business to the United States, BIAX will depose that person in Japan.

4. In the event that BIAX files a motion seeking leave to amend its Complaint in this case pursuant to Paragraph 2, *supra*, NVIDIA shall not oppose that motion if it is filed on or before March 1, 2010, and may oppose that motion if it is filed after that date, but only on grounds related to scheduling and case deadlines established by the Court and not on any other grounds including, but not limited to, any substantive grounds related to the claims asserted in the proposed Amended Complaint or the reasons asserted by BIAX for seeking to file that Amended Complaint.

Dated at Denver, Colorado, this 10th day of September, 2009.

BY THE COURT:



Michael E. Hegarty
United States Magistrate Judge