

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:10cv023580-Civ-RNS-TEB

MOTOROLA MOBILITY, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

JURY TRIAL DEMANDED

APPLE INC.,

Counterclaim Plaintiff,

v.

MOTOROLA, INC. and
MOTOROLA MOBILITY, INC.,

Counterclaim Defendants.

**MOTOROLA'S OPPOSITION TO APPLE'S MOTION
TO COMPEL PRODUCTION OF DOCUMENTS AND TESTIMONY
REGARDING SET-TOP BOX COMPONENTS**

INTRODUCTION

With its motion to compel, Apple demands production of documents that add nothing beyond what Motorola has already produced. Apple purports to seek documents that reveal the structure and function of the hardware components in Motorola's accused set-top boxes. Yet Motorola has already provided extensive documentation that, for each accused product, identifies and reveals the function of the very components that Apple asserts would be revealed by the new sets of documents that it seeks. The discovery Apple seeks is therefore irrelevant because it is unnecessarily cumulative and, because it would involve the production of highly confidential third-party materials, imposes a significant burden on Motorola for no discernible benefit.

Additionally, Apple's motion was premature. Apple only attempted to meet and confer after filing its motion, and therefore violated the local rules. In fact, Motorola agreed to enter into the evidentiary stipulation that Apple, in its motion, indicated would be sufficient to satisfy its purported need for information.

Yet Apple has simply ignored the draft stipulation that Motorola sent. Apple apparently is intent on maintaining the present motion for strategic reasons. Otherwise, it would not be pursuing its motion now that Motorola has agreed to the very stipulation Apple proposed.

For all these reasons, the present motion should be denied.

FACTUAL BACKGROUND

Motorola's Production of Documents. Motorola has produced more than 1.7 million documents in this case, including tens of thousands of documents dealing with the accused set top products. (Duchemin Decl. at ¶1.) Among the production is a large quantity of documents that identify and describe the hardware components of each of the 27 accused set top boxes. (Duchemin Decl. at ¶2.) Such documents include, among other things, product functional specifications, specification sheets, firmware source code and related release notes, and detailed

schematic diagrams. Motorola produced such documents to respond to, among other things, Apple's document requests numbers 5 and 6, which are at issue in the present motion. The schematic diagrams, which typically include between [REDACTED] [REDACTED] are particularly useful in explaining the physical composition of the set-top boxes. These schematics identify each hardware component by name and/or product number, reveal each electrical connection between each such hardware component, show the electrical in and out ports for each component and the device as a whole, and further provide block diagrams that show physically how multiple components interconnect. (Duchemin Decl. at ¶3; *see also id.* Exs. 1-15.)

The schematic titled "DCT34xx Dual Tuner Main Board Schematic," produced at the bates range MOTO-APPLE-0007471697-713, is typical of the schematics produced by Motorola. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (*Id.* Ex. 1.)

Apple's Stated Plan to Extend the Trial Schedule. The parties recently stipulated to an extended discovery schedule, with Motorola agreeing to add more than one month of discovery.

(D.E. 277.) Apple, however, has said that it will separately file a motion seeking to push the discovery cutoff and trial date further into the future. (*Id.* at 2.)

Apple's Recent Demands For Additional Documents. Motorola produced most of these schematics in late 2011, and additionally located and produced another set of schematics on February 23, 2012. (Duchemin Decl. Ex. 19.) Despite having had dozens of schematic documents covering every accused product for weeks, Apple in March suddenly professed an urgent need for additional hardware-related documents, namely the bills of materials and Broadcom documentation that are the topic of the present motion to compel. (Ho Decl. Ex. J at 4.)

Despite Motorola's requests, Apple has not articulated why it needs those particular documents, or how they provide additional information beyond the schematics and other technical documents already produced by Motorola. (*Id.*) In fact, Apple indicated, and continues to indicate, that it does *not* need those documents if Motorola is willing to designate representative schematics for each accused set-top box. (Mot. at 5.)

Apple's Failure To Raise Its New Demands During The Parties' Lengthy Conferences. Although the parties engaged in e-mail correspondence on the subject of the Broadcom documentation and bills of material, Apple never raised this subject in any meet-and-confer with Motorola, even though the parties held several telephone conferences on closely related discovery issues throughout the month of March. (Duchemin Decl. at ¶21.) Apple filed its motion to compel on Monday March 26 without any prior indication that it was seeking to move to compel on this issue, and never attempted to contact Motorola to attempt to work through the parties' differences. (*Id.*)

Apple's Belated Attempts To Meet and Confer. On March 27, the day *after* filing its motion, Apple belatedly contacted Motorola and sought to meet and confer regarding production of the Broadcom documentation and bills of material, among other issues. (Duchemin Decl. Ex. 17.) Among other things, Apple demanded Motorola enter into a stipulation designating a representative schematic for each accused set-top box. (*Id.*)

Motorola, after noting that Apple had never meet and conferred on this issue, offered to meet and confer and also explained that it had produced representative schematics for each set-top box. (Duchemin Decl. Ex. 18.) In response, Apple asked Motorola to “[p]lease confirm that Motorola is now willing to stipulate to representative schematics for each of the accused products.” (Duchemin Decl. Ex. 19.)

Motorola's Draft Stipulation. Motorola responded by (1) confirming that it had already produced schematics that cover each accused product, and (2) presenting Apple with a draft stipulation in which Motorola agreed on representative schematics for each accused product (save one, the DTA100, which Apple has represented in meet-and-confer will likely be dropped from the case). (Duchemin Decl. Ex. 20.) The proposed stipulation contained a list of the schematics, including their title, bates ranges, and the accused product or products for which the schematic is representative. (Duchemin Decl. Ex. 21.) The stipulation further indicated that the schematics contain material that identify specific hardware components at issue in this case. (*Id.*)

Although Motorola submitted that stipulation to Apple nearly 4 days ago, Apple did not respond until the very morning of this filing. (Duchemin Decl. Ex. 22.) Despite the fact that Apple has indicated the stipulation is a viable alternative to the document production it seeks in its motion to compel, Apple refused to withdraw its motion to compel, even while stating that

“we are willing to agree to this stipulation as currently worded” and “would like to continue to work with Motorola on an accurate stipulation identifying the components for each of the accused Motorola products.” (*Id.*)

ARGUMENT

I. Apple’s motion to compel is premature and moot because it failed to meet and confer and Motorola has agreed to provide Apple’s requested stipulation

Civil Local Rule Apple 7.1(a)(3) states that before filing “any motion” (with exceptions not relevant here), “counsel for the movant

shall confer (orally or in writing), or make reasonable effort to confer (orally or in writing), with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve by agreement the issues to be raised in the motion. Counsel conferring with movant’s counsel shall cooperate and act in good faith in attempting to resolve the dispute.”

(Civil L.R. 7.1(a)(3).) Here, Apple failed to meet and confer with Motorola on any of the issues in the present motion. Even though the parties exchanged a small number of e-mails on the subject, Apple did nothing more to attempt to resolve the issues, and never informed Motorola that it was planning to move to compel. (Duchemin Decl. at ¶21.) Even though the parties held a number of meet and confer telephone conferences in recent weeks, Apple never brought up either the Broadcom documents or the bills of material. (*Id.*) Such a conference doubtless would have been productive, since Motorola quickly accepted Apple’s post-motion offer to substitute an evidentiary stipulation for production of the documents sought. (Duchemin Decl. ¶20 & Ex. 21.) Apple skipped this step and jumped straight to the motion to compel—a practice forbidden by the Local Rules—meanwhile falsely certifying that the parties *had* met and conferred. (Mot. at 10.)

The fact that Apple has not agreed to withdraw its motion to compel, now that it has in possession the proposed stipulation that it sought, speaks volumes about Apple’s motives in

filing this motion. Were Apple legitimately interested in collecting information, Apple would accept Motorola's stipulation and withdraw its motion to compel. Instead, Apple says it would agree to the stipulation and is willing to "work with" Motorola--but still wants to maintain its motion to compel. (Duchemin Decl. Ex. 22.)

This is further evidence that Apple did not adequately meet and confer with Motorola before filing its motion to compel, since there is obviously ground for compromise between the parties. It is also evidence that Apple did not file its motion to seek legitimate discovery. Apple has a different agenda. Apple has made clear that it is going to seek to push back the trial date. Evidently, Apple has decided that it would rather point to its pending (though unnecessary) motion to compel--as an ostensible excuse to seek further extensions in the schedule--than actually resolve that motion.¹ This Court should see Apple's tactics for what they are, and deny Apple's motion.

II. Apple's motion would require the unnecessary production of documents cumulative of those already produced

Apple's extremely broad Request for Production ("RFP") 5 calls for Motorola to produce documents "concerning the structure, function, operation, uses, and features" of the accused products. Similarly, RFP 6 calls for Motorola to produce documents "concerning the design, development, manufacture, fabrication, testing, installation, and assembly" of the accused

¹ Similarly, Apple has (1) noticed *nine* individual depositions of Motorola employees, and is currently demanding more, despite already having taken three 30(b)(6) depositions and two individual depositions regarding the set-top products (Duchemin Decl. Ex. 23); (2) demanded production regarding products not even accused of infringing Apple's patents, such as a demonstration programming guide developed by Motorola and a smartphone programming guide application developed by Motorola and Google (Ho Decl. Ex. J); and (3) demanded extensive information regarding third parties' development, testing, and validation of interactive programming guides. (Duchemin Decl. Ex. 24.)

products. Motorola has produced thousands of pages of documents that respond to each of these requests.

Apple vaguely asserts that Motorola's documents produced to date do not describe the "function and operation" of the accused set-top boxes. (Mot. at 2.) To the contrary, as detailed above, Motorola has produced large quantities of schematics and other documents, including product functional specifications and specification sheets, that are sufficient to identify and describe the function of every major component within the accused set-top boxes.

Motorola has produced at least one schematic for every set-top box, [REDACTED]
[REDACTED] The schematics identify each hardware component, reveal each electrical connection between each such component, show in and out ports for the components, and provide block diagrams showing the interconnection and the flow of information between the hardware components. (Duchemin Decl. at ¶3.) In addition, Motorola has produced firmware source code, product functional specifications and specification sheets that further describe and explain the electronic hardware of the accused set-top boxes. (*Id.*)

In fact, Apple tacitly acknowledges that the schematics are sufficient for this purpose—otherwise Apple would not have indicated a stipulation as to "representative schematics" would suffice in lieu of the production of bills of material and the Broadcom documents.

Apple also has been unable to articulate how the Broadcom documentation and bills of material would advance its case beyond the information provided in those documents even when asked point-blank by Motorola. For instance, in a March 29 e-mail responding to one such question, Apple stated that "[a]s to the relevance of the documents, Apple has addressed this topic in multiple emails as well as the motion to compel" (Duchemin Decl. Ex. 25), which

ignores the fact that those prior e-mails and motion themselves do nothing to explain the relevance of the documents other than to simply assert that they are “relevant.” *See also* Duchemin Decl. Ex. 19 (“Apple has explained the need for, and the relevancy of, documents describing the Broadcom chips and the bills of materials.”). Apple’s motion to compel continues the tautology, using only vague and conclusory language to describe the purported utility of these documents. For example, Apple states that the documents are “essential to proving Apple’s counterclaims” (Mot. at 1); are “relevant because they identify the components of the accused STBs and describe the functions provided by these components” (*Id.* at 2); “may be used to identify the components in the accused products” (*Id.* at 4); “are relevant to the asserted STB patent claims” (*Id.* at 5); “satisfy one or more structures identified in the Court’s Markman order and are undeniably relevant” (*Id.* at 8); and are “highly relevant and not redundant” (*Id.*). None of these remarks articulate how the documents sought by Apple reveal any information or category of information that is not already disclosed or discernible from Motorola’s previously produced schematics.

CONCLUSION

For the above reasons, Apple’s motion to compel production of documents and deposition testimony regarding set-top components is improper, moot, and without merit, and Motorola respectfully requests that it be denied.

Dated: April 2, 2012

Respectfully submitted,

MOTOROLA MOBILITY, INC.

By: /s/ Edward M. Mullins

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 2, 2012, I served the foregoing document via electronic mail on all counsel of record identified on the attached Service List.

/s/ Edward M. Mullins

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