

UNITED STATES DISTRICT COURT
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 SURREPLY REGARDING APPLE'S MOTION TO COMPEL
FURTHER RESPONSES TO INTERROGATORY NOS. 19-22**

INTRODUCTION

In its reply brief, Apple for the first time raises new arguments concerning Motorola's Second Supplemental Responses, none of which have merit. Apple seeks information beyond what is called for in the interrogatories and beyond what Apple expressly agreed would be appropriate for discovery. *See* Ho Decl. Ex. E at 2-3 (J. Lang e-mail). Accordingly, Apple's new arguments should be rejected and its motion to compel¹ should be denied.

ARGUMENT

1. None of the new information Apple seeks is required for a response to Interrogatory Nos. 19-22, and Apple never sought it from Motorola until after filing the Motion.

Interrogatory No. 19: Apple does not dispute that, in response to Interrogatory No. 19, Motorola now has provided extensive descriptions of its commercial relationships with cable providers, including (1) two lists, totaling 13 pages, of hundreds of customers, (2) narrative descriptions summarizing the commercial relationships between Motorola and each of those customers, and (3) an extensive description, running 21 pages, of the commercial relationships of Motorola's largest customers, which collectively total more than 85 percent of Motorola's sales regarding the accused set-top boxes.

Nonetheless, Apple in its reply tells the Court that Motorola should provide such detailed descriptions for the other 15 percent of its customers, no matter how small they are—even though Motorola already did provide a brief description of its relationships with each one of its customers—as well as further information on "*training* provided to cable providers," a "*description of the documentation*" of software kits provided to customers, and "*historical information on IPGs used by each cable provider.*" (Reply at 2-3.) But Apple's assertion is

¹ Apple's Motion to Compel was filed under seal on March 26, 2012. Motorola's response was filed on April 2. Apple's reply was filed under seal on April 5.

contrary to its specific representation, made during the meet and confer process, that it was only seeking descriptions of:

for each cable provider (or representative groupings): (a) the installation of IPGs on Motorola STBs and the respective roles (e.g., Motorola itself installs the IPG on the DACs, provides a download on its server, etc.); (b) testing of the cable provider's STBs with IPGs before deployment (e.g., validation before deployment); (c) assistance in resolving IPG issues for the cable providers; and (d) service, maintenance, and support (e.g., post-deployment support of Motorola's STBs). (Ho Decl. Ex. E at 2-3.)

Just as Apple asked, Motorola has provided this information for a representative grouping comprising Motorola's largest set-top customers. Further, Interrogatory No. 19 does not mention—as Apple now seems to contend—"training," "documentation," or "IPGs," but rather "relationships." Motorola has sufficiently described, in narrative form, each such relationship.

Interrogatory No. 20: In accordance with its agreement with Apple, Motorola was to "confirm that the IPGs identified in certain produced documents were all tested by Motorola." (Ho Decl. Ex. E at 3.) Motorola did so in its Second Supplemental Responses. Duchemin Decl. Ex. 4 at 28 ("each of the listed versions of IPG were used in the testing of one or more of the accused set-top platforms"). Now, Apple demands information on remote controls; "an explanation of the spreadsheets related to the IPGs installed on the accused STBs;" and identification of which IPGs Motorola has used at tradeshow. (Reply at 3-4.) Again, this is not information that Apple had previously requested be included in the Second Supplemental Response to Interrogatory No. 20. (Ho Decl. Ex. E at 2-3.) Nor does the interrogatory text call for an explanation of any spreadsheets or information on tradeshow.

Even more egregiously, Apple asserts that "one of the accused products is a remote control." (Reply at 3.) This is false. All of the accused products are set-top boxes. *See*

Declaration of John Duchemin in Support of Motorola's Surreply ("Duchemin Surreply Decl.") at ¶1 and Ex. 1.

Interrogatory No. 21: As for Interrogatory No. 21, Apple in its reply has no specific complaints about Motorola's Second Supplemental Response to this interrogatory, and offers no explanation for why it continues to press a motion to compel further supplemental responses to that interrogatory.

Interrogatory No. 22: Motorola had agreed to, and did, identify the APIs that a third-party programming guide would typically access. Apple now demands in its reply that Motorola identify "which hardware and firmware...were designed or modified at the request of the IPG makers," and "identify the APIs that IPG makers requested Motorola's assistance with implementing or using IPGs." (Reply at 4-5.) Again, this is far beyond what Interrogatory No. 22 calls for. That interrogatory merely calls on Motorola to identify various components that "implement[], support[], or provide[] interactive programming guide functions." (Declaration of John Duchemin in Support of Motorola's Opposition to Apple's Motion to Compel ("Duchemin Opposition Decl.") Ex. 1 at 4.) Apple's assertion that Motorola should be obligated to provide more information simply has no basis in the text of the interrogatory.

CONCLUSION

For these reasons, Apple's additional arguments presented for the first time in its reply brief are without merit. Apple's motion to compel supplemental interrogatory responses should be denied.

Dated: April 9, 2012

Respectfully submitted,

MOTOROLA MOBILITY, INC.

By: /s/ Edward M. Mullins

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 9, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF filing system. I also certify that the foregoing document is being served this date on all counsel of record or pro se parties on the Service List below in the manner specified, either via transmission of Notices of Electronic Filing generated by the CM/ECF system or; in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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Case No.: 1:10-CV-23580-RNS

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