IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

VERTICAL COMPUTER SYSTEMS, INC.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 2:10-cv-490
v.	§	
	§	Hon. David Folsom
LG ELECTRONICS MOBILECOMM U.S.A., INC., LG ELECTRONICS INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC.,	§	**JURY TRIAL DEMANDED**
	§	
Defendants.	§	

DISCOVERY ORDER

After a review of the pleaded claims and defenses in this action, in furtherance of the management of the court's docket under Fed. R. Civ. P. 16, and after receiving the input of the parties to this action, it is ORDERED AS FOLLOWS:

1. **Disclosures**. Except as provided by paragraph 1(h), and, to the extent not already disclosed, by the date specified in the Docket Control Order, each party shall disclose to every other party the following information:

   (a) the correct names of the parties to the lawsuit;

   (b) the name, address, and telephone number of any potential parties;

   (c) the legal theories and, in general, the factual bases of the disclosing party's claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial);

   (d) the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection

with the case, and a brief, fair summary of the substance of the information known by any such person;

(e) any indemnity and insuring agreements under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment;

(f) any settlement agreements related to the patents in suit;

(g) any statement of any party to the litigation;

(h) for any testifying expert, by the date set by the court in the Docket Control Order, each party shall disclose to the other party or parties:

a. the expert's name, address, and telephone number;

b. the subject matter on which the expert will testify;

c. if the witness is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the disclosing party regularly involve giving expert testimony:

(a) subject to Fed. R. Civ. P. 26(b)(4)(c), all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, prepared by or for the expert in anticipation of the expert's testimony; and

(b) the disclosures required by Fed. R. Civ. P. 26(a)(2)(B) and Local Rule CV-26.

d. for all other experts, the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them or documents reflecting such information;

2. **Additional Disclosures**. Each party, without awaiting a discovery request, shall provide, to the extent not already provided, to every other party, the disclosures required by the Patent Rules for the Eastern District of Texas;

3. **Email Discovery:** Email production requests shall be phased to occur after the parties have exchanged initial disclosures and basic documentation about the patents, the prior art, the accused instrumentalities, and the relevant finances. While this provision does not require the production of such information, the Court encourages prompt and early production of this information to promote efficient and economical streamlining of the case.

(a) General ESI production requests under Federal Rules of Civil Procedure 34 and 45 shall not include email or other forms of electronic correspondence (collectively "email"). To obtain email parties must propound specific email production requests.

(b) Email production requests shall only be propounded for specific issues, rather than general discovery of a product or business.

4. **Discovery Limitations.** The discovery in this cause is limited to the disclosures described in Paragraphs 1 and 3 and the following:

The parties have agreed that each party shall be limited to **25** interrogatories and **75** requests for admission (excluding requests for authentication) for each opposing party. Depositions shall be limited as follows: each side is allowed

(1) **100** hours total of deposition time on fact witnesses for each opposing party (with the parties agree to accommodate reasonable requests for more time if additional time is warranted),

(2) for each declaration or report submitted by an expert witness, one day of **7** hours of deposition time to depose the expert witness with regard to that declaration or report, except if a single expert provides opinions concerning the infringement/non-infringement of the products of more than one Defendant group, then that expert may be deposed for 7 (seven) hours per Defendant group about whose products the expert opines on (with the parties agreeing to accommodate reasonable requests for more time if additional time is warranted),

(3) one day of **7** hours of deposition time for each 30(b)(6) designee, and

(4) **14** hours of deposition time for the named inventor of the '744 and '629 patents. The parties reserve the right to seek protection from giving a deposition, if necessary.

(5) The deposition of the named inventor and 30(b)(6) witnesses shall count against the 100 hour limit agreed to above, whereas the deposition of expert witnesses shall not.

(6) Depositions taken by any defendant of any other defendant (or its party fact witnesses) shall not count toward the 100 hour limit agreed to above.

(7) With the exception of the foregoing limitations on inventor depositions, the parties agree that, pursuant to Fed. R. Civ. P. 30(d)(1), unless otherwise stipulated or ordered by the Court, the deposition of an

individual fact witness is limited to one day of 7 hours of deposition time, provided that the Court may allow additional time consistent with Fed. R. Civ. P. 26(b)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

5. **Form of Document Production.** Documents and electronically stored information shall be produced electronically (e.g., on compact discs) in an imaged format (e.g., TIFF), with load files. With respect to Plaintiff, Defendants agree to produce single page TIFFs with Summation and Concordance Opticon load files and OCR text. With respect to Defendants, Plaintiff agrees to produce single page TIFFs with Summation and Concordance Opticon load files and OCR text. Electronically stored information need not be produced in native format (or any format other than images as described above), and metadata need not be produced. To the extent either party believes, on a case-by-case basis, that documents should be produced in an alternative format, or that metadata should be produced, the parties have agreed that they will meet and confer in good faith concerning such alternative production arrangements. The parties have further agreed that they will meet and confer in good faith to ensure that the format of each party's production is compatible with the technical requirements of the receiving party's document management system.

6. **Expert Discovery.** Testifying experts shall not be subject to discovery on any draft of their reports in this case, and such draft reports, notes, outlines, or any other writings leading up to an issued report(s) in this litigation, all

communications to and from a testifying expert, and all materials generated by a testifying expert with respect to that person's work in this case are exempt from discovery, unless those materials are relied upon by the expert in forming any opinions in this litigation. No discovery can be taken from any consulting expert except to the extent that consulting expert has provided information, opinions, or other materials to a testifying expert, who then relies upon such information, opinions, or other materials in forming his or her final report, trial or deposition testimony, or any opinion in this case. Materials, communications, and other information exempt from discovery under this Paragraph shall be treated as attorney work product for the purposes of this litigation. Nothing in this Paragraph shall be construed to bar discovery from Plaintiff or Defendants, provided however that their communications with testifying and/or consulting experts will be treated in accordance with this Paragraph. Nothing in this Paragraph shall be construed to be inconsistent with the Federal Rules of Civil Procedure.

7. **Privileged Information.** There is no duty to disclose privileged documents or information. By the date specified in the Docket Control Order, the parties shall exchange privilege logs identifying the documents or information and the basis for any disputed claim of privilege in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection. No party shall be required to identify on its respective privilege log any document or communication dated on or after the filing of the lawsuit which, absent this provision, the party would have

been obligated to so identify on said privilege log. Any party may move the court for an order compelling the production of any documents or information identified on any other party's privilege log. If such a motion is made, the party asserting privilege shall respond to the motion within the time period provided by Local Rule CV-7. The party asserting privilege shall then file with the Court within 30 days of the filing of the motion to compel any proof in the form of declarations or affidavits to support their assertions of privilege, along with the documents over which privilege is asserted for *in camera* inspection.

8. **Pre-trial disclosures.** Each party shall provide to every other party regarding the evidence that the disclosing party may present at trial as follows:

   (a) The name and, if not previously provided, the address and telephone number, of each witness, separately identifying those whom the party expects to present at trial and those whom the party may call if the need arises.

   (b) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony.

   (c) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (1) any objections to the use under Rule 32(a) of a deposition

designated by another party under subparagraph (B), and (2) any objections, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (c). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

9. **Signature.** The disclosures required by this order shall be made in writing and signed by the party or counsel and shall constitute a certification that, to the best of the signer's knowledge, information and belief, such disclosure is complete and correct as of the time it is made. If feasible, counsel shall meet to exchange disclosures required by this order; otherwise, such disclosures shall be served as provided by Fed. R. Civ. P. 5. The parties shall promptly file a notice with the court that the disclosures required under this order have taken place.

10. **Duty to Supplement**. After disclosure is made pursuant to this order, each party is under a duty to supplement or correct its disclosures immediately if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.

11. **Disputes.**

(a) Except in cases involving claims of privilege, any party entitled to receive disclosures may, after the deadline for making disclosures, serve upon a party required to make disclosures a written statement, in letter form or otherwise, of any reason why the party entitled to receive disclosures believes that the disclosures are insufficient. The written statement shall list, by category, the items the party entitled to receive disclosures

contends should be produced. The parties shall promptly meet and confer. If the parties are unable to resolve their dispute, then the party required to make disclosures shall, within 14 days after service of the written statement upon it, serve upon the party entitled to receive disclosures a written statement, in letter form or otherwise, which identifies (1) the requested items that will be disclosed, if any, and (2) the reasons why any requested items will not be disclosed. The party entitled to receive disclosures may thereafter file a motion to compel.

(b) Counsel are directed to contact the chambers of the undersigned for any "hot-line" disputes before contacting the Discovery Hotline provided by Local Rule CV-26(e). If the undersigned is not available, the parties shall proceed in accordance with Local Rule CV-26(e).

12. **No Excuses.** A party is not excused from the requirements of this Discovery Order because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. Absent court order to the contrary, a party is not excused from disclosure because there are pending motions to dismiss, to remand or to change venue.

13. **Filings.** Only upon request from chambers shall counsel submit to the court courtesy copies of any filings.

IT IS SO ORDERED.

SIGNED this 3rd day of November, 2011.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE