

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

WI-LAN INC., <p style="text-align: center;">Plaintiff,</p>	§ § § § § § § § § § §	Civil Action No. 6:10-cv-521-LED JURY TRIAL DEMANDED
v. ALCATEL-LUCENT USA INC., <i>et al.</i> <p style="text-align: center;">Defendants.</p>		

**WI-LAN INC.’S SUR-REPLY IN OPPOSITION TO
THE SONY MOBILE DEFENDANTS’ MOTION FOR PROTECTIVE ORDER**

Sony Mobile’s Reply highlights its failure to meet its discovery obligations in this case. Despite recognizing at least as early as January 20, 2012 that the additional smartphone products were at issue, Sony Mobile chose to refuse to answer interrogatories that would have permitted Wi-LAN to specifically name these products earlier. (ECF No. 220 at 3 (“Reply”).) Indeed, Sony Mobile continues to withhold documents for smartphones it recognized as relevant and discoverable at least as early as January 2012. Sony Mobile has provided no valid reason to excuse its past Discovery Order violation and no good cause to suspend its continuing discovery obligations. Accordingly, Sony Mobile’s motion should be denied.

I. Sony Mobile Has Known That The Additional Products Were Accused Since at Least January 2011, If Not Earlier.

Sony Mobile attempts to explain its failure to comply with its discovery obligations by taking issue with Wi-LAN’s infringement contentions—more than a year and a half after this case was filed—and in the form of a Reply to a motion for protection. Notably, Sony Mobile has never moved the Court for any relief regarding the sufficiency of Wi-LAN’s contentions. As

noted in Wi-LAN's Reply in Support of its Motion for Leave (ECF No. 221), this is unsurprising, given that those same contentions were plainly adequate for Sony Mobile to determine that documents regarding its additional smartphones were responsive when it produced some such documents in late January 2011. Those same contentions have also been adequate to permit this case to develop through claim construction and discovery for more than a year.

Nor is Sony Mobile's suggestion that it did not know what additional smartphones might be at issue (or might be reasonably similar) plausible. (Reply at 4.) Wi-LAN's contentions undisputedly identified not only specifically named smartphones known to Wi-LAN but all others "complying with at least 3GPP rel. 5, et seq., HSDPA, HSUPA, or HSPA." And, in any case, Wi-LAN undisputedly specifically named the additional smartphones in an interrogatory response no later than May 10, 2012, but Sony Mobile still did not provide the required interrogatory response or discovery. Wi-LAN again specifically named these smartphones in infringement contentions dated June 14, 2012, but Sony Mobile again did not provide the interrogatory response or discovery. There was no confusion as to what products were "reasonably similar" to those specifically named. Rather, Sony Mobile simply chose to disregard its discovery obligations with regard to the additional smartphones, yet now complains that Wi-LAN did not act quickly enough to amend its infringement contentions.

II. Sony Mobile Has Provided No Valid Excuse for its Refusal To Provide Discovery.

In the Eastern District, "discovery may be properly extended to products 'reasonably similar' to those accused in [infringement contentions]." *DDR Holding, LLC v. Hotels.com*, No. 2:06-CV-42-JRG, 2012 U.S. Dist. LEXIS 99797, at *10-11 (E.D. Tex. July 18, 2012) (internal quotation omitted). "This is particularly true when, as [the plaintiff] did here, a party specifically

identifies a series of products that may operate in a matter ‘reasonably similar’ to other products specifically identified in the contentions.” *Id.* at *14. Sony Mobile clearly understood from Wi-LAN’s infringement contentions that it had a mandatory disclosure obligation with regard to “reasonably similar” smartphones implementing HSDPA, HSUPA, or HSPA, as it made an initial production of technical information relating to some such additional smartphones on September 21, 2011. Sony Mobile likewise understood the additional smartphones were at issue when it made a second document production of some materials relating to the additional smartphones on January 20, 2012. (Defs’ Mot. at 2.) These productions reflect Sony Mobile’s understanding that information concerning the Additional Products was relevant and discoverable, yet it chose not to identify the products for which it had produced information so that Wi-LAN could specifically name them. Nor has Sony Mobile since provided full discovery relating to those smartphones, as requested by Wi-LAN. Having refused to answer Wi-LAN’s interrogatory seeking the very information that would have permitted Wi-LAN to amend its infringement contentions earlier, but instead having chosen to wait until the eve of depositions to file a motion for protection, Sony Mobile cannot now complain about a delay of its own making.

III. Sony Mobile’s Motion for Protection Should Be Denied.

Because Sony Mobile lacks good cause for its request for protection but rather asks the Court to overlook its failure to meet its own discovery obligations, its motion for protection should be denied. Wi-LAN respectfully requests that Sony Mobile be ordered to comply with the Discovery Order without further delay.

Dated: August 30, 2012

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on this the 30th day of August, 2012. As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Ajeet Pai

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