



November 29, 2018

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VIA CM/ECF

The Hon. Maryellen Noreika
United States District Court
844 North King Street, Unit 26
Wilmington, DE 19801

**HIGHLY CONFIDENTIAL-
ATTORNEY'S EYES ONLY-
FILED UNDER SEAL**

Re: *Godo Kaisha IP Bridge 1 ("IPB") v. OmniVision Technologies, Inc. ("OVT")*

Dear Judge Noreika:

Pursuant to Your Honor's leave, IPB submits this response to OVT's November 28, 2019 letter brief. First, the only issue properly before the Court is whether there is a legal basis to compel IPB to translate Japanese-language financial reports and investor materials produced in response to OVT's document request under Rule 34. Because there is not, OVT's request should be rejected. Second, OVT's demand for IPB's counsel to provide all of their discovery-related communications with third parties—i.e., the very end-customers that OVT refuses to identify—is another attempt by OVT to prevent IPB from obtaining evidence of direct infringement. Given that counsel for IPB is following the Federal Rules of Civil Procedure and providing notice as soon as they confirm when and where third party depositions will take place, the Court need not facilitate further obstruction by OVT's counsel. Third, the parties *never conferred* concerning the substance of IPB's amended '677 patent claim chart or IPB's supplemental responses to OVT's ROG Nos. 8 and 14. During the parties' November 9 conference, OVT asked IPB to supplement these responses, and as promised IPB did so by November 16. OVT's attempt to raise new complaints without so much as an attempt to conference is a blatant violation of Your Honor's directive regarding discovery disputes.

There is no basis to compel translation of foreign-language documents in this case. On page 3 of its letter, OVT asks the Court to compel translation of Japanese-language financial reports and investor materials IPB produced "at Bates nos. 290-IPB-OVT004967-004968, 290-IPB-OVT005413-005414, 290-IPB-OVT007874-007904, and 290-IPB-OVT007919-008068." For at least two reasons, this request must be denied. First, IPB produced the at-issue documents on February 26, 2018 under Rule 34 in response to OVT's RFP No. 72, which seeks financial reports and investor materials. *See* Ex. 1 (attached to the enclosed Declaration of Chijioke E. Offor) at 1; Ex. 2. IPB *never invoked Rule 33(d)*, implicitly or implicitly, when it identified these documents in its answer to ROG 15, which explicitly calls for an answer that "include[s] a specific identification of the relevant documents (by production number)." Ex. 1 at 2. Identifying documents in an answer to an interrogatory that explicitly calls for such identification is not an invocation of Rule 33(d). *Brown v. Bridges*, No. 12-4947, 2015 WL 410062, at *14 (N.D. Tex.

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Jan. 30, 2015) (“The interrogatory calls for Defendant to point to and describe documents, but, regardless, Defendant did not invoke Rule 33(d), explicitly or implicitly.”).

Second, OVT identifies no special circumstance (because none exist) warranting the relief sought. The table attached to Exhibit 1 makes clear that IPB produced the at-issue Japanese-language financial reports and investor materials in response to OVT’s RFP. No. 72 and has never invoked Rule 33(d), explicitly or implicitly, when identifying these documents in its answers to OVT’s ROG 15. Thus, there is no basis to compel translation. *See In re Puerto Rico Elec. Power Auth.*, 687 F.2d 501, 506-07 (1st Cir. 1982) (holding district court lacked the authority to order plaintiffs to pay to translate documents produced in response to document requests absent special circumstances); *Invensas Corp. v. Rensas Elecs. Corp.*, No. 11-448, 2013 WL 12146531, *5-6 (D. Del. May 8, 2013) (recognizing “there is a clear difference between a party moving to compel translation of foreign-language documents simply produced in response to requests for those specific documents, and a party moving to compel translation of foreign-language documents produced in response to interrogatories, where such production is an alternative ‘option’ to answering the questions under the dictates of Rule 33(d)”); *Nature’s Plus Nordic A/S v. Nat. Organics, Inc.*, 274 F.R.D. 437, 440-442 (E.D.N.Y. 2011) (granting at shared cost to both parties defendant’s motion to compel translation of documents produced pursuant to Rule 33(d), but denying defendant’s motion to compel translation of documents produced pursuant to Rule 34); *Contretas v. Isuzu Motors, Ltd. of Japan*, No. 98-442, 1999 WL 33290667, at *1 (W.D. Tex. Apr. 2, 1999) (“Therefore, the Court finds that, absent special circumstances, there is no authority for compelling the defendants to translate discovery documents.”); *In re Fialuridine (FIAU) Prod. Liab. Litig.*, 163 F.R.D. 386, 387 (D.D.C. 1995) (recognizing that under *Puerto Rico Electric*, “a requesting party cannot impose translation costs on the producing party”). As this case does not involve Rule 33(d) or any special circumstances, there is no basis to compel translation of Japanese-language financial reports and investor materials produced in response to OVT’s Rule 34 requests.

OVT is attempting to prevent IPB from obtaining evidence of direct infringement. As an initial matter, IPB has not attempted to subpoena documents from any third party—only testimony. OVT cites no rule (because none exist) requiring IPB to provide prior notice before attempting to subpoena testimony from a third party. Rule 45(a)(4)’s prior notice requirement applies only where a subpoena “**commands the production of documents**, electronically stored information, or tangible things.” Nor is there any rule requiring that IPB’s counsel keep OVT’s counsel informed of discussions with a third party who has not agreed to make itself available for a deposition. Here, IPB has immediately notified OVT when a third party has agreed to be deposed, and promptly provided OVT with a copy of the testimony only subpoena to be enforced, at the same time providing OVT counsel with contact information for the third party’s attorney. *See* Ex. 3 at 1; D.I. 122 (Dep. Not., attaching Huawei Subpoena, identifying Huawei outside counsel); *see also* D.I. 127 (Dep. Not., attaching Apple Subpoena, identifying Apple outside counsel). Further, IPB

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counsel has attempted to work with OVT counsel to negotiate dates. *See, e.g.*, Ex. 4. This is effectively what OVT asks the Court to compel IPB to do. Yet, OVT does not assert that it attempted to contact the third party's attorney to negotiate the date, time, or place of such deposition.

More importantly, OVT's complaint is nothing but another attempt by OVT's counsel to obstruct IPB's inducement case by preventing IPB from determining the identity of the companies that sell or import into the U.S. end products that contain accused sensors, and whether OVT provides technical support to them or takes any other actions to encourage their direct infringement. To date, OVT has produced only limited information concerning alleged "U.S. sales." Further, OVT is refusing to fully answer discovery on the purported grounds that it has no idea where its products go after they are sold. *See* D.I. 129 at 2. And OVT's witnesses are following suit. For example, John Li—who has been OVT's top executive responsible for applications engineering and customer support for the past decade—testified **REDACTED**

REDACTED

REDACTED. For these reasons, the Court should not compel IPB's counsel to "provide [OVT's counsel with] a list of the third parties to whom it has directed a subpoena, provide an update as to dates that have been proposed for the deposition, and keep OmniVision informed of dates as they are finalized." Counsel is already doing so.

OVT violated this Court's discovery procedures and failed to confer on issues 1-3 raised in its letter brief. The parties did not conference concerning the first, second, and third alleged issues raised for the first time in OVT's letter brief. *See* Ex. 6. During the parties' November 9 conference, OVT asked IPB to supplement its '677 patent claim chart, and its responses to OVT's ROG Nos. 4, 8, and 14, and IPB promised to do so by November 16. *See* Ex. 5 at 1, 2-3. IPB complied its promise. *Id.* OVT's attempt to raise new complaints about these supplemental disclosures is a blatant violation of the Court's rules.

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Respectfully Submitted,

STAMOULIS & WEINBLATT LLC

/s/ Stamatios Stamoulis

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Encl.—Declaration of Chijioke E. Offor

cc: All Counsel of Record (via CM/ECF)(with encl.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GODO KAISHA IP BRIDGE 1,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 16-290 (MN)
)	
OMNIVISION TECHNOLOGIES, INC.)	
)	
Defendant.)	

DECLARATION OF CHIJOKE E. OFFOR

I, Chijioke E. Offor, make this declaration and certify as follows:

1. My name is Chijioke E. Offor. I am more than twenty-one years old, of sound mind, and fully capable of making this declaration. I am a graduate of the University of Michigan, College of Engineering at Ann Arbor, Michigan and the University of Wisconsin Law School at Madison, Wisconsin, and I received my law license from the State Bar of Texas in November 2008. I am a partner at the law firm of Shore Chan DePumpo LLP in Dallas, Texas, and I am one of the attorneys representing plaintiff Godo Kaisha IP Bridge 1 in the action styled *Godo Kaisha IP Bridge 1 v. OmniVision Technologies, LLC*, No. 1:16-cv-00290 (MN), in the United States District Court for the District of Delaware. I have personal knowledge of the facts set forth in this declaration and am competent to testify thereto.

2. A true and correct copy of each of the documents identified in the table below is attached hereto (in Exhibits 1-6).

Exhibit 1	A summary, prepared by IP Bridge’s counsel, of IP Bridge’s response and production in response to OmniVision RFP No. 72 and IP Bridge’s answers to OmniVision Interrogatory No. 15
Exhibit 2	February 26, 2018 Letter from IPB counsel to OVT counsel enclosing Production 290-IPB-OVT002636 – 290-IPB-OVT008912
Exhibit 3	November 5, 2018 Email correspondence between IPB counsel and Huawei outside counsel

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