UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:22-cv-22706-SCOLA/GOODMAN

BELL NORTHERN RESEARCH, LLC,

Plaintiff,

v.

HMD AMERICA, INC., HMD GLOBAL OY, SHENZHEN CHINO-E COMMUNICATION CO. LTD., TINNO MOBILE TECHNOLOGY CORP., SHENZHEN TINNO MOBILE CO., LTD., TINNO USA, INC., UNISOC TECHNOLOGIES CO. LTD., WINGTECH TECHNOLOGY CO. LTD., WINGTECH INTERNATIONAL, INC., BEST BUY CO., INC., BEST BUY STORES L.P., TARGET CORP., WALMART INC.,

Defendants.
_____/

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STAY CERTAIN PATENT CONTENTION AND CLAIM CONSTRUCTION DEADLINES, AND REQUEST FOR EXPEDITED BRIEFING SCHEDULE

Plaintiff Bell Northern Research LLC's ("Plaintiff") opposition to Defendants' Stay Motion (ECF No. 140) does little more than attempt to argue the merits of the parties' discovery dispute pending before Judge Goodman (i.e., the sufficiency of Plaintiff's Infringement Contentions under P.R. 3-1). Opp. at 2, ECF No. 143. Indeed, Plaintiff faults Defendants for not fully briefing that discovery dispute in the opening Stay Motion, even though doing so is in direct contravention of the no-motion rule for discovery disputes. *See* Magistrate Judge Goodman's Discovery Procedures Order ("Discovery Order") at 2-3; ECF No. 9. The discovery dispute was properly brought under Judge Goodman's procedures and Defendants will address the merits of the insufficiencies of the Infringement Contentions at the March 15 hearing before Judge Goodman.

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Next, Plaintiff posits in a footnote that it "is available to amend [Plaintiff's Infringement Contentions] and that could be done in parallel with Defendants' compliance with their obligations for making Invalidity Contentions." Opp. at 2 n.1. However, this presupposes (wrongly) that Plaintiff is entitled to such amendment as a matter of right. Not so. Patent Rule ("P.R.") 3-6 provides, in part: "Amendment of the Infringement Contentions or the Invalidity Contentions may be made only with leave of the Court upon a timely showing of good cause." ECF No. 125 at 14. That is, absent good cause, a party is not entitled to amend its contentions and even upon a showing of good cause, leave of the Court is required.

Plaintiff acknowledges but dismisses the fact that the parties do *actually* dispute the sufficiency of the Infringement Contentions, a dispute that was aired out in the parties' meet-and-confer for that issue. Opp. at 2. Then, Plaintiff suggests that Defendants can undertake responsive contentions even though, Defendants submit, Plaintiff's infringement contentions are incomplete at best. *Id.* However, in the Stay Motion, Defendants stated that they are unable to respond to Plaintiff's Infringement Contentions and further that a resolution of the sufficiency dispute in Defendants' favor may impact (i.e., narrow) the entire scope of this litigation. Mot. at 4; ECF No.140. Moreover, Defendants' notice of hearing before Judge Goodman asks the Court to consider the very question of whether – in view of the deficiencies Defendants intend to argue at the hearing – "Plaintiff's February 7, 2023 Infringement Contentions should be (a) stricken entirely or (b) deemed limited to cover only the devices charted and only the acts of direct and literal infringement of system claims identified therein." Notice of Hearing; ECF No. 142.

It would be wasteful for Defendants to proceed with responsive contentions concerning patent claims and/or accused devices prior to addressing the sufficiency of Plaintiff's Infringement Contentions in the first instance. Plaintiff alleges infringement of the thirteen asserted patents by

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over 70 products. Yet, for example, for multiple asserted patents, Plaintiff provided only one claim chart for one allegedly infringing product. These and more deficiencies permeate the Infringement Contentions, leaving Defendants and the Court to guess exactly what Plaintiff's infringement allegations are and the scope and meaning Plaintiff applies to its patent claims.

Finally, Plaintiff argues that "a stay would be prejudicial to Plaintiff as it would halt the initial, critical disclosure phase of this patent litigation." Opp. at 3. But Plaintiff offers merely a conclusory statement about the supposed prejudice to Plaintiff if the contention and claim construction deadlines are briefly stayed. In fact, Plaintiff's infringement claims have been pending since at least April 2022 with the filing of Plaintiff's complaint in the predecessor action that Plaintiff itself voluntarily dismissed.[1] A brief stay will delay the case no more than Plaintiff itself already has. Moreover, on January 23, 2023, Plaintiff joined in submitting a discovery plan that allowed for *thirteen weeks* between service of Plaintiff's and Defendants' contentions. ECF No. 120. Plaintiff's newfound cry of prejudice from a far shorter delay rings hollow.

A stay of the patent contention and claim construction deadlines are within the powers of the Court. *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."); *Johnson v. Bd. of Regents of Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2001). For the reasons set forth in the Stay Motion, the stay should be granted.

[1] *See* 22-cv- 21035-SCOLA, ECF No. 55 (Plaintiff's Notice of Voluntary Dismissal without Prejudice).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of March, 2023, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which served a copy to counsel of record.

/s/ Jodi-Ann Tillman

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