

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

BLITZSAFE TEXAS, LLC,

Plaintiff,

v.

HONDA MOTOR CO., LTD., ET AL,

Defendants.

§
§
§
§
§
§
§
§
§
§
§
§

Case No. 2:15-cv-01274-JRG-RSP

JURY TRIAL DEMANDED

LEAD CASE

JOINT MOTION FOR ENTRY OF OPPOSED DISCOVERY ORDER

Pursuant to the Court’s Order of November 2, 2015 (Dkt. 29), Plaintiff and Defendants submit competing forms of Proposed Discovery Order. Plaintiff’s Proposed Discovery Order is attached as Exhibit 1 and Defendants’ Proposed Discovery Order is attached as Exhibit 2. The Parties were able to reach agreement on almost all provisions of the Discovery Order, but two provisions remain in dispute: (1) limits on party depositions (section 5(d)); and (2) the total time that Defendants may collectively depose the inventor of the patents-in-suit in his individual capacity (section 5(e)).

I. Party Depositions (Section 5(d))

A. Plaintiff’s Position

Plaintiff proposes to depose each Defendant (defined in section 5(a) as a group of defendants separately accused of infringement) for 50 hours. This total deposition time for each *group* of defendants is 20 hours less than would be permitted under the Federal Rules of Civil Procedure (which allows for 10 depositions of up to 7 hours each under Rule 30(a)(2)(A)(i)) for

each *individual* defendant. Fifty hours of deposition time is necessary because Plaintiff will need to explore numerous issues in depositions, including identification and development of the accused products, technical aspects and functionality of the accused products, identification of the entities that make and import the accused products, sales and marketing of the accused products (relevant to damages and obviousness), revenues and costs generated by the accused products, knowledge of the patents-in-suit, and identification and locations of relevant documents and electronically stored information.

This discovery will be substantial because each Defendant sells accused automobile infotainment systems that are found in multiple makes and models of millions of automobiles sold over a period of several years. For example, one Defendant, Toyota, is believed to sell at least thirteen models of Toyota automobiles since as early as the 2010 model year, and at least 10 models of Lexus automobiles since as early as the 2009 model year, that contain infotainment systems accused of infringing the patents-in-suit. Although these infotainment systems are believed to share common functionality relevant to the patents-in-suit, there are potentially over 100 iterations of infotainment systems for each Defendant into which Plaintiff will need depositions from multiple witnesses in order to prove its case.

Plaintiff is unlikely to realize significant efficiencies in discovery that will minimize deposition time because the Defendants do not appear to make or sell common accused products. Based on its research to date, which includes purchasing and tearing down infotainment systems, the structure and components of the accused infotainment systems vary from Defendant to Defendant. Moreover, each Defendant will also have unique information concerning manufacturing, sales and marketing, revenues and costs, knowledge of the patents-in-suit, and storage of relevant documents and electronically stored information. Therefore, Plaintiff's

depositions of Defendants will have little substantive overlap. Defendants' argument that Plaintiff is seeking 250 hours of depositions is obviously misleading, as no Defendant would be subject to more than 50 hours, nor would any Defendant be required to attend any other Defendant's depositions.

Defendants' proposal that depositions of Defendants be limited to 28 hours is unrealistic given the scope and complexity of this case, and their argument that a typical patent case involves one day of 30(b)(6) depositions directed to infringement is baseless and contrary to practical experience. For example, the likelihood that each Defendant will designate a single witness who will be able to testify in a single day regarding all of the technical aspects of the dozens of accused infotainment systems sold by a Defendant in two separate products lines in each case (e.g., Honda and Acura in the Honda case, Volkswagen and Audi in the Volkswagen case, etc.), is remote at best. At minimum, Plaintiff expects that two to three days of depositions will be necessary solely to explore the technical aspects of the accused products.

Defendants' proposal to afford themselves 28 hours to depose the Plaintiff in the name of "proportionality" is specious. While the Defendants are all far-flung, multi-billion dollar conglomerates with thousands of employees, Plaintiff is a small company with a single employee, Ira Marlowe, its principal and the inventor of the patents-in-suit. By Defendants' own admission that 28 total hours of depositions of a party should be sufficient, Defendants should require only 14 hours of deposition time of Plaintiff and 14 hours of individual time with Mr. Marlowe as the inventor. Instead, Defendants seek *28 hours* of party depositions and, as set forth below, *21 additional hours* with Mr. Marlowe personally. Therefore, Defendants' idea of proportionality is to depose Plaintiff for 49 hours while each Defendant is required to give only 28 hours of depositions. By Defendants' analysis, 21 hours of depositions of Plaintiff, above and

beyond the personal deposition of Mr. Marlowe, is more than sufficient to meet Defendants' discovery needs.

Accordingly, Plaintiff respectfully requests that the Court allow it to take 50 hours of depositions per Defendant, and permit Defendants to collectively depose Plaintiff for 21 hours.

B. Defendants' Position

Plaintiff seeks to limit five defendant groups to a total of 21 hours of deposition time of plaintiff, while demanding a total of 250 hours with defendants' witnesses. Plaintiff's demand is unreasonable and unduly burdensome for the defendants. The defendants propose a reciprocal limitation on party depositions of 28 hours:

Plaintiff may take up to 28 total hours of deposition testimony (inclusive of both 30(b)(1) and 30(b)(6) depositions) of each Defendant. The Defendants collectively may take up to 28 hours of deposition testimony of plaintiff (inclusive of both 30(b)(1) and 30(b)(6) depositions).

This 28-hour proposal gives plaintiff, for example, two full days of Rule 30(b)(6) testimony, i.e., one day on liability and one day on damages which is customary in patent cases, plus an additional 14 hours for individual depositions, if necessary. And, of course, the plaintiff can always request more deposition time in the unlikely event the 28-hour limit is reached.

Plaintiff has not provided any reason why 28 hours with each defendant would be insufficient, let alone any justification for subjecting each defendant to 50 hours of deposition time, which converts to over seven full days of depositions of each defendant for a total of over 35 days of depositions. Instead, plaintiff simply claims to be entitled to 70 hours per defendant under the federal rules. In a consolidated case such as this one, however, plaintiff is limited to 10 depositions total under Rule 30(a)(2)(A)(i) ("A party must obtain leave of court...[if] the deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs..."), and, in any event, 250 hours of deposition time in a case with only two patents

does not meet the revised federal rules' proportionality requirement: "Rule 30 is amended in parallel with Rules 31 and 33 to reflect the recognition of proportionality in Rule 26(b)(1)." Advisory Committee Notes to 2015 Amendment of Rule 30.

The information that plaintiff seeks – identification and development of the accused products, technical aspects of the accused products, identification of the entities that make and import the accused products, sales and marketing of the accused products, revenues and costs generated by the accused products, knowledge of the patents-in-suit, and identification and locations of relevant documents and electronically stored information – is routinely covered by document productions and two Rule 30(b)(6) depositions (on liability and damages). There is no need for "multiple witnesses", as plaintiff contends, when a Rule 30(b)(6) deposition is available. Plaintiff claims that defendants' proposal "is unrealistic given the scope and complexity of this case"; however, plaintiff fails to explain why this case, involving only two patents, has an exceptionally large scope. Furthermore, the burden on each defendant associated with plaintiff's plan to depose "multiple witnesses" for up to 50 hours would outweigh any likely benefit.

Plaintiff states that two to three days of depositions will be necessary to explore technical issues, but plaintiff is demanding over seven days of depositions for each defendant and does not provide any reasonable justification for the additional four to five days of depositions. Plaintiff claims that it is "remote" that defendants, such as VW/Audi, would designate a single witness able to testify in a single day regarding all of the technical aspects the accused infotainment systems. But VW/Audi have often done exactly that in other cases related to its infotainment systems, without complaint from the plaintiffs, and there are only two patents-in-suit in this case, four accused systems, and significant overlap in technology amongst the accused vehicles, all of which is demonstrated by the document productions. In other similar cases with several more

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.