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

UNILOC 2017 LLC, Plaintiff, v. AT&T SERVICES, INC. and AT&T MOBILITY LLC, Defendants.	§ § § § § § § § §	Case No. 2:18-cv-00514-JRG Jury Trial Demanded

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JOINT MOTION FOR ENTRY OF PROPOSED DISCOVERY ORDER

Pursuant to the Court's Order of February 26, 2019 (Dkt. 15) Plaintiff Uniloc 2017 LLC ("Uniloc") and Defendants AT&T Services, Inc. and AT&T Mobility LLC ("AT&T") hereby jointly submit a Proposed Discovery Order, attached as Exhibit A. The parties have conferred and have agreed to all terms of a proposed Discovery Order except terms regarding:

- ¶ 5(b)(i): The number of hours for party depositions; and
- ¶ 12(f): The number of prior art references Defendants may identify in connection with the Court's Model Order Focusing Patent Claims and Prior Art to Reduce Cost (General Order No. 12-20).

Accordingly, the parties hereby submit the attached proposed Discovery Order with competing provisions regarding the above topics for consideration by the Court. For ease of reference, the disputed language is indicated in ***bold italics***.

Plaintiff's Positions

Plaintiff does not believe the parties should be presenting argument, but Defendants refused to submit this statement without argument included.

While the parties agree on a 100 hour limit in the aggregate, Defendants' limit is a false limit because it caps depositions of parties at 40 hours assuming 30(b)(6) deposition hours also count as hours of party employees. Thus, what Defendants are really saying is 40 hours for party depositions and 60 hours for third parties. The Federal Rules do not impose limits on party depositions versus third party depositions and no such division should be adopted here. Given that there are three unrelated patents-in-suit, 100 total hours for fact depositions is reasonable for this case.

With respect to prior art references, Defendants seek to chart more prior art references than are permitted in the Court's Model Order Focusing Patent Claims and Prior Art to Reduce Cost (General Order No. 12-20). Given there are only 13 asserted claims total (which is far less than the 32 claims allowed at the completion of claim construction discovery), there is no reason for Defendants to need additional prior art references than are provided for in the Court's Model Order.

Defendants' Positions

(1) There should be an hours-based limit on party depositions.

The parties agree on a 100-hour limit on depositions (which is more than the default limit in the Federal Rules of Civil Procedure). The parties dispute whether there should be a limit on how much of those 100 hours can be used take party depositions. Defendants propose a 15-hour limit on 30(b)(6) depositions of each side and a 40-hours limit on individual depositions of party employees. Although Plaintiff initially proposed imposing an hours-based limit on party depositions, Plaintiff then inexplicably shifted positions and now refuses to agree to ***any*** hours-

based limit on party depositions.[1] With no limit, Plaintiff could potentially take up to 100 hours of 30(b)(6) depositions of the AT&T defendants or up to 100 hours of depositions of AT&T employees. This would impose an undue burden on the AT&T defendants.

Defendants' proposed limits are reasonable. Defendants recognize that this patent case involve three patents covering disparate technologies. Thus, rather than limit each side to 7 hours of 30(b)(6) depositions of the other side, Defendants have proposed a higher, 15-hour limit. Likewise, Defendants propose of a limit of 40 hours of individual depositions of party employees. Together, Defendants' proposal will provide Plaintiff more than 55 hours of depositions of the AT&T defendants, giving Plaintiff more than ample opportunity to take discovery of Defendants.

(2) Defendants request a modest expansion in the number of prior art reference allowed under Court's Model Order Focusing Patent Claims and Prior Art to Reduce Cost (General Order No. 12-20).

The Court's Model Order Focusing Patent Claims and Prior Art to Reduce Cost (General Order No. 12-20) imposes limits on the number of prior art reference on which Defendants may rely at different stages of the case. Paragraph 2 sets a limit at the claim construction stage of the case, and that limit is twelve prior art references per patent. Paragraph 3 sets a limit at the expert report stage of the case, and that limit is six prior art references per patent. Defendants requests that the limit in Paragraph 2 be expanded from twelve to sixteen references per patent and that the limit in Paragraph 3 be expanded from six to ten references per patent.[2]

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[1] Plaintiff's draft proposal provided for an hours limit and included blank spaces for the specific numbers, but Plaintiff did not fill in the blanks before sending its draft to Defendants. When Defendants responded with a specific proposal for an hours limit, rather than negotiate as to the specific number of hours that would be appropriate for this case, Plaintiff simply backed away from the concept of an hours limit entirely.

[2] To accommodate these per-patent limits, Defendants also request an expansion of the limit on the total number of prior art references. Given the disparate technology in the three

The Court's Model Rule contemplates that the proposed limits may be expanded in situations such as this case. Footnote 1 of the Model Rule states, "In cases involving several patent families, diverse technologies, disparate claims within a patent, or other unique circumstances, absent agreement of the parties, the court will consider flexibly whether circumstances warrant expanding the limits on asserted claims or prior art references." In this case, the three asserted patents are not related. The patents are from three different patent families. Moreover, the patents cover disparate technology. *See* Dkt. No. 1, Exs. A, B, and C. As Plaintiff states in its Complaint, the '272 Patent is directed to "user interfaces for remote control of portable terminals," Dkt. 1 at ¶ 15; the '005 Patent is directed to "digital video compression" and "motion estimation," Dkt. 1 at ¶ 35; and the '676 Patent is directed to a method of allowing two radio interface standards to use the same frequency band, Dkt. 1 at ¶ 56. Adding to the complexity of this case, Plaintiff is asserting multiple independent claims for two of the three asserted patents. Given the different patent families, disparate technologies, and Plaintiff's assertion of multiple independent claims for two of the patents, Defendants request **a** modest expansion in the number of prior art reference allowed under Court's Model Order Focusing Patent Claims and Prior Art to Reduce Cost (General Order No. 12-20).

asserted patents, Defendants does not anticipate any overlapping prior art between the three patents.

April 1, 2019

Respectfully submitted,

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