

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

CELLULAR COMMUNICATIONS
EQUIPMENT LLC,

Plaintiff,

v.

LG ELECTRONICS, INC., ET AL.,

Defendants.

Civil Action No. 6:14-cv-982-JRG
LEAD CASE

AGREED ORDER REGARDING E-DISCOVERY IN PATENT CASES

The Court ORDERS as follows:

1. This order supplements all other discovery rules and orders. It streamlines Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive determination” of this action, as required by Federal Rule of Civil Procedure 1.
2. This order may be modified in the Court’s discretion or by agreement of the parties. The parties shall jointly submit any proposed modifications within 30 days after the Federal Rule of Civil Procedure 16 conference. If the parties cannot resolve their disagreements regarding these modifications, the parties shall submit their competing proposals and a summary of their dispute.
3. A party’s meaningful compliance with this order and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations.
4. Absent a showing of good cause, general ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure requirement of this Court, shall not include metadata. However, fields showing the date and time that the document was sent and received, as well as the complete distribution list, shall generally be included in the

production if such fields exist.

5. Absent agreement of the parties or further order of this court, the following parameters shall apply to ESI production:

A. General Document Image Format. ESI shall be produced in the form in which it is ordinarily maintained (“native format”) or in single-page Tagged Image File Format (“TIFF”) format. TIFF files shall be single page and shall be named with a unique production number followed by the appropriate file extension. Load files shall be provided to indicate the location and unitization of the TIFF files. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.

B. Text-Searchable Documents. No party has an obligation to make its production text-searchable; however, if a party’s documents already exist in text-searchable format independent of this litigation, or are converted to text-searchable format for use in this litigation, including for use by the producing party’s counsel, then such documents shall be produced in the same text-searchable format at no cost to the receiving party.

C. Production Numbers. Each document image shall contain a footer with a sequentially ascending production number, provided that, if a footer would obstruct any information on the document image, the sequentially ascending production number may be affixed to an alternative location on the document image.

D. Native Files. A party is not required to produce the same ESI in more than one format. After initial production of electronic documents in electronic file format has occurred, a party may request that specific documents or file types be produced in native format by specifically identifying to the producing party the Bates number of the

document sought and the basis for the request for production in native format. The parties should then meet and confer in good faith to determine whether production in an alternative format is necessary. A party shall not make unduly burdensome and unreasonable requests for production of documents in native format, and a party shall not unreasonably refuse a request for the production of documents in native format.

E. No Backup Restoration Required. Absent a showing of good cause, no party need restore any form of media upon which backup data is maintained in a party's normal or allowed processes, including but not limited to backup tapes, disks, SAN, and other forms of media, to comply with its discovery obligations in the present case.

F. Voicemail and Mobile Devices. Absent a showing of good cause, voicemails, PDAs and mobile phones are deemed not reasonably accessible and need not be collected and preserved.

G. Duplicate Documents. If responsive documents are located on a centralized server or network, or on an individual employee's computer, or are otherwise located within a party's possession, custody, or control, the producing party shall not be required to search for or produce additional copies of such responsive documents absent a showing of good cause that the production of such additional copies is necessary.

6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure order of this court, shall not include e-mail or other forms of electronic correspondence (collectively "e-mail").

7. The parties will delay search and production of electronic mail, electronic mail documentation, audio information, or video information ("secondary documents"). If, at such

time as the receiving party has reviewed the contents of the producing party's primary document production, the receiving party determines that secondary documents may be required, the receiving party may indicate such determination to the producing party, and explain why the information sought is not available in a less burdensome manner. Upon such determination, the producing party and receiving party shall meet and confer in good faith to identify which particular documents will be searched and to identify reasonable mechanisms for narrowly tailored searches of, or for, such documents. A party may not request a search of secondary documents absent a showing that the information sought is not available in a less burdensome manner. If, after the aforementioned meet and confer, the parties have not been able to resolve their issue(s) pertaining to the production of secondary documents, the parties agree to submit to the Court for determination (i) their competing positions on whether or not the information sought is available in a less burdensome manner, and (ii) their respective mechanisms for narrowly tailored searches of secondary information, including an identification of a specific number of requests, custodians, and search terms.

8. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a privileged or work product protected ESI is not a waiver in the pending case or in any other federal or state proceeding.

9. The mere production of ESI, including e-mail or other secondary documents, in a litigation as part of a mass production shall not itself constitute a waiver for any purpose.

10. Except as expressly stated, nothing in this order affects the parties' discovery obligations under the Federal or Local Rules.

Aug 6, 2015



K. NICOLE MITCHELL
UNITED STATES MAGISTRATE JUDGE