UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

e.Digital Corporation,

Plaintiff,

v.

LENOVO (UNITED STATES) INC.,

Defendant.

e.Digital Corporation,

Plaintiff,

v.

SPANSION, INC.; MOUSER ELECTRONICS, INC.,

Defendant.

e.Digital Corporation,

Plaintiff,

v.

ACER AMERICA CORPORATION,

Defendant.

Civil No. 15cv135 H (BGS)
15cv141 H (BGS)
15cv144 H (BGS)
15cv314 H (BGS)

ORDER FOLLOWING IN-PERSON CASE MANAGEMENT CONFERENCE RE: DISCOVERY

e.Digital Corporation,

Plaintiff,

v.

SMART MODULAR TECHNOLOGIES, INC.,

Defendants.

The Court held a joint consolidated Early Neutral Evaluation and Case Management Conference on June 24, 2015, in which the Court addressed issues raised in the parties' Joint Discovery Statement filed on June 18, 2015. [ECF No. 30.] After hearing from the attorneys of record for the various consolidated cases, the Court issues the following orders:

A. Scheduling Order. On May 12, 2015, the Court issued a Scheduling Order listing all pretrial dates up to the final pretrial conference, motion *in limine* hearing and trial. [*See* ECF No. 27 in Case No. 3:15cv135 H (BGS).] This is the operative scheduling order set by Judge Huff in these consolidated cases and will not be changed except for good cause shown as required by the Federal Rules of Civil Procedure.

B. Settlement. The parties are invited to jointly contact Judge Skomal's chambers at (619) 557-2993 to schedule a settlement conference between Plaintiff e.Digital and an individual defendant.

C. Lead Counsel for All Consolidated Defendants. In the interest of judicial efficiency, only one attorney on behalf of all the consolidated defendants will receive permission to contact the Court when a discovery issue or dispute arises. Accordingly, the Court designates Ken Fung, Esq., lead counsel for Defendant Acer America Corporation in individual Case No. 15cv144 H (BGS), to be the defendants' discovery liaison to the Court.

As provided in Judge Skomal's chambers rules, the parties must meet and

confer in-person to attempt to resolve any discovery disputes. For the consolidated cases, however, if an impasse has been reached, the discovery issue *must be raised with all defense counsel first* to determine if common issues exist. After this joint meet-and-confer, only the discovery liaison may contact the Court along with Plaintiff's counsel to receive further instruction on how to request the Court's assistance.

D. Discovery Motions. All parties are limited to a collective total of five joint discovery motions unless good cause is shown for more. This limitation does not apply to motions to compel compliance with subpoenas issued to third parties.

E. Discovery Plan.

1. **Initial Disclosures.** The Court adopts the parties' proposal at page 3 of the Joint Discovery Statement requiring initial disclosures to be served **no later than July 8, 2015.**

2. **Electronically Stored Information ("ESI").** As required by the Court's June 2, 2015 Order, the parties have agreed to the Southern District's E-Discovery Model Order. The Court adopts the parties' joint proposals at pages 5 to 7 of the Joint Discovery Statement regarding: (1) Accessible ESI; and 2) Inaccessible ESI. [ECF No. 30 at 5:26-7:15.]

3. **Protective Order.** As required by the Court's June 2, 2015 Order, the parties have agreed to the Southern District's Model Protective Order and are negotiating modifications for the coverage of source code. [ECF No. 30 at 5:20-23; 11:5-13.]

4. **Privilege Issues.** The Court adopts the parties' proposal regarding privilege issues under Rule 26(f)(3)(D) at page 7 of the Joint Discovery Statement. [ECF No. 30 at 7:17-21.]

IT IS FURTHER ORDERED that:

a) Plaintiff shall prepare, where required under Rule 26(b)(5), a privilege log listing pre-filing privileged communications and work product, but *only*

as to the matters in the instant Consolidated Cases; and

b.) Because parties are generally not required to log communications with counsel after litigation has commenced, and often agree to omit such material without the Court's assistance, [*See Grider v. Keystone Health Plan Central, Inc.*, 580 F.3d 119, 140 n.22 (3rd Cir. 2009)], counsel will not be required to include privileged communications and work product occurring *after* the filing of the complaint on a case-specific basis.

5. **Numerical Limits on Written Discovery**. The Court adopts the parties' proposal regarding limitations on interrogatories and requests for admissions at pages 9 to 10 of the Joint Discovery Plan. [ECF No. 30 at 9:16-10:8.]

6. Limitations on Expert Depositions. Each side (i.e. Plaintiff and the collective[1] Defendants) shall be entitled to take up to 7 hours to depose each testifying expert for each report submitted by that expert on a separate subject. If any expert is providing opinions that are not common, each party that is the subject of such non-common opinions may take an additional 2 hours of deposition testimony from that expert.

The collective Defendants are required to develop a standard procedure for conducting the depositions of Plaintiff's experts so that issues concerning who will take the lead in questioning and on what subject matter will be resolved before the deposition is to take place.

7. **No Modification Absent Court Authorization**. The parties may not modify the discovery limitations set forth herein without seeking court approval.

DATED: June 24, 2015

Hon. Bernard G. Skomal
U.S. Magistrate Judge
United States District Court

[1]"Collective" or "collectively" is defined for the purposes of this Court's Order as involving all lead counsel for the group of cases consolidated by the May 5, 2015 Order of the Honorable Marilyn L. Huff. [ECF No. 21.]