

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**IN RE PAPST LICENSING GMBH & CO.
KG LITIGATION**

This Document Relates To:

Casio, No. 06-cv-1751

**Misc. Action No. 07-493 (RMC)
MDL Docket No. 1880**

PROPOSED DISCOVERY PLAN

Casio Inc. and Casio Computer Co., Ltd. (collectively "Casio"), hereby provide this proposed discovery plan pursuant to the Order of the Court dated April 24, 2008 (docket #77). The parties met and conferred, pursuant to paragraph 4 of the Court's April 24 Order, and were able to agree on few issues. There are, however, issues for which Casio requests the Court's assistance.¹

I. REQUESTED CLARIFICATION OF THE APRIL 24 ORDER

Paragraph 6(b) of the Court's April 24 Order (docket #77) stated that each party is limited to twenty-five interrogatories, twenty-five document requests, and twenty-five requests for admission. Casio and Papst disagree as to

¹ A draft of this report was sent to counsel for Papst on the morning of May 7, but despite urging from Casio's counsel, counsel for Papst did not provide any edits or text until 6:00 p.m. on May 8 – the day it was due. The revision Papst provided at that time had removed all of the Casio text. Counsel for Casio scrambled to put its text back in the report, and provided its revisions to counsel for Papst at 7:45 p.m. (6:45 p.m. for Papst's counsel). But counsel for Papst, Mr. Schnayer, left the office, sending an email that said he would not provide any additional revisions to the report and asking Casio to obtain an extension (something Casio had previously expressly declined to do, as we are ordered to report to the Court today). Therefore, Casio cannot file a joint report and submits this report containing only its positions.

whether this means that Papst may now serve additional discovery requests on Casio.

On April 8, 2008, in response to thorough briefing and a hearing that addressed the issue, this Court expressly held that “no further written discovery requests shall be allowed between Casio and Papst.” Docket #36, ¶4. This effectively reconfirmed the May 14, 2007 Order of Judge Kessler that there would be no further written discovery requests between Casio and Papst after July 1, 2007 – a deadline that passed long ago. As the April 24 Order does not vacate either the Court’s April 8, 2008 Order, or the earlier Order of Judge Kessler, Casio does not believe the Court intended to again open up written discovery for Casio and Papst.² Indeed, if Papst and Casio were to serve discovery requests all over again, it would have been inconsistent for the Court to order them to meet and confer now for the purpose of determining the specific scope of further discovery. April 24 Order, ¶4 (docket #77).

Casio has already been forced to deal with 148 document requests from Papst, many very detailed interrogatories served on both Casio Japan and Casio America, and 130 requests for admission. Dealing with the Papst discovery requests was a painful and expensive experience. The Court found the Papst discovery requests “outrageously over the top” and “stunning” in their over breadth, served in “bad faith,” and struck them in their entirety. *Id.* ¶2; May

² See Exhibit C at 27 (to counsel for Papst: “you’re dangerously close to being so grossly overbroad and you’re too late to change it now and now what are you going to do? How can I enforce it? I mean, you’ve let yourself get to the end of a limb”) (emphasis added).

6 Order, fn 2 (docket #82). If the Court now combines that ruling with an order effectively allowing Papst to simply start the written discovery process anew, the only party that will have been punished as a result of Papst's discovery abuse is Casio because it would have to bear the additional burden and costs associated with responding to additional written discovery served ten months after the deadline.

Casio does not understand the Court to have intended to reverse itself on this issue, and Casio again urges the Court to deny Papst's request to reopen this Pandora's Box and the substantial expense associated with it.

Casio has produced over 100,000 pages of documents, including tens of thousands of pages directly on the technology at issue. After Papst has reviewed those documents in detail, if it believes there are additional documents needed and has good reason for this belief, Casio will supplement its production. The approach Papst wants to take – serving another overbroad set of requests for documents before it even bothers to review the documents it already has – will only add additional layers of expense and burden for both Casio and the Court. Papst has what it needs, and if its counsel would simply review the Casio production documents that should become clear.

Papst claims that Casio should respond to the discovery requests that are attached as Exhibit A. Those requests were only served on counsel for Casio at 3:00 p.m. on the same afternoon this submission was due. Counsel for Casio was not given sufficient time to comment on these new requests, except to state

that Papst should not be allowed any additional written discovery. Indeed, counsel for Casio has spent the last several days focusing on a different “narrowed” set of Papst requests that counsel for Papst served on Casio and presented as its proposed compromise on the Casio document production. See Exhibit B and fn 3, *infra*.

II. DISCOVERY RESPONSES

Papst document Production: Casio has not received any documents from Papst since the stay was lifted. While Papst now states that some documents will be produced this week, they concede that this will not be all the Papst documents, and there is no deadline for them to complete the production. Accordingly, Casio requests an order that Papst produce all its documents within ten days.

Papst Responses to Interrogatories: Papst has agreed to provide, this week, full responses to Casio’s outstanding interrogatories, as ordered in paragraphs 6(k) – 6(o) of the April 24 Order.

Casio’s Production: Pursuant to paragraph 5 of the Court’s Order, Casio produced additional documents on May 6. Approximately 69,000 additional documents, or about an additional 23 boxes worth, were produced that day.

With regard to the scope of the Casio production, the parties agreed that Casio would produce a number of additional documents, including things like service manuals and documents sufficient for an understanding of the specific relevant technology. Casio’s plan was to include in this joint submission a

specific list of what the parties would jointly agree to be the scope of any future Casio production.

But after working with Papst to reach agreements per the Court's Order, Papst rendered the agreements entirely meaningless by serving new document requests. Exhibit B. Casio had provided concessions on what it was willing to produce, in order to reach a final, amicable resolution, only to find out two days later that Papst was still demanding an outrageous scope of production.³

³ Papst claimed that the new requests (Exhibit B) were "narrowed" per the Court orders and instructions. Despite the numbering on the actual requests, they were not even close to the 25 request limit ordered by the court, as was clear from the vast array of documents demanded in the "instructions" to the requests (instructions 21-30). While purporting to limit some of the requests to certain features of the cameras, they nevertheless continued to demand documents from every Casio-related company all over the world (definition number 1) that had any mention of any of these features, including every technical document virtually ever written or created anywhere in the world (see, e.g., instructions 21 and 25), every document on the development history of every such feature (*id.*); every marketing plan, advertisement, brochure, bulletin, and market study, all over the world, making any reference to any of the features (instruction 23); every document from every "patent related" federal or state lawsuit, administrative proceeding, ITC proceeding, Patent Office proceeding, and "international cases and proceedings filed in any tribunal" anywhere in the world, that involves the cameras (request 12, instruction 13); every document related to prosecution of every patent and application all over the world that even partially mentions any of the features (request 17); etc. According to the requests, the documents identified in these "instructions" (obviously in large part simply copied from Papst's first set of requests) were only "examples" of what must be produced. Papst even expanded its requests in some respects, insisting that, for every responsive document that has ever been destroyed by any Casio related company worldwide in the last 23 years (instructions 1 and 17), Casio must identify the person who destroyed it, the date it was destroyed, the reasons for and circumstances surrounding the destruction (instruction 7). Papst also demanded that Casio produce every document relating to every review or analysis of any competitor product with these features (instruction 21), every document showing every tweak to any related software that has been made over the past 23 years (*id.*), every communication between every Casio employee from every country of the world with manufacturers or suppliers of integrated circuitry (*id.*), etc. At the April 22 telephonic hearing, the Court expressly warned Papst about using discovery "as a weapon" and told counsel for Papst: "don't do it again" (Exhibit C at 5). The message did not sink in.

III. THE PENDING MOTIONS

In paragraphs 2 and 3 of the Court's April 24 Order (docket #77), the Court held the sanctions issues from the pending Casio motions in abeyance. The resolution of the issues in these pending motions will significantly impact on the discovery between Casio and Papst, and Casio respectfully requests early resolution of these outstanding issues. Casio also understands that Papst intends to request early resolution of these issues.

Resolution of Casio's motion for sanctions related to Papst's responses to Casio's interrogatories (docket #37) will dictate whether Casio and Papst need to address discovery related only to topics that may, as a result of the motion, no longer be in issue between Casio and Papst. That is, Casio has requested in that motion sanctions that, if ordered by the Court, would narrow the scope of needed discovery. Resolution of the sanctions portions of the Motion to strike (docket #38) may be relevant to the question of whether Papst may serve additional discovery requests, as one of the requested sanctions was that Papst's "bad faith" should preclude them from serving more requests.

Accordingly, Casio respectfully request early resolution of these pending issues.⁴

Counsel for Casio has been grappling with this outrageous set of document requests – Papst's proposal for "compromise" and formally served on Casio pursuant to Federal Rule 26(g) – for the last several days. Only after counsel for Papst learned that Casio would show these requests to the Court did Papst serve another set, allegedly further narrowed. Counsel for Casio has not had the opportunity to focus on the new set, as they were not served until 3:00 p.m. on the day of this submission.

⁴ The sanctions requests in the Motion to Strike are also important because Casio incurred very substantial expenses in dealing with those requests, the Motion to Strike, and the two Papst motions to compel (which were denied in their entirety). Casio

Dated: May 8, 2008

Respectfully submitted,

/s/ J. Kevin Fee

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**Attorneys for Plaintiff and Counter-
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Defendant Casio Computer Co., Ltd.**

requested reimbursement of its fees and costs associated with these tasks that were all necessitated only by the Papst overbroad approach to its discovery requests. The Court has already held that the Papst discovery requests were “outrageously over the top,” “hugely overbroad,” and “absolutely stunning” in their over-breadth (Exhibit C, tr. at 4, 17, 33), warned Papst about “playing those games” and “using discovery as a weapon....” (*id.* at 4-5), and has also held that they were “propounded in bad faith” (May 6 Order, fn 2, docket #82). Casio therefore respectfully suggests that the expenses Casio incurred with regard to these requests must be borne by Papst. See Fed. R. Civ. P. 26(g) (“If a certification violates this rule without substantial justification, the court . . . must impose an appropriate sanction” and the sanction may include “reasonable expenses, including attorney’s fees”); Fed. R. Civ. P. 37(a)(5)(B) (“If the motion [to compel] is denied, the court . . . must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney’s fees.”); see also Exhibit C (page 45: “It is so overwritten, so overbroad. It is so incredibly expensive and burdensome. . . .”; and page 8: “I will be really rough with somebody that I think is only playing delay and expense games.”).

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ALL CASES

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**PAPST LICENSING GMBH & CO. KG'S
THIRD REVISED FIRST SET OF REQUESTS FOR THE PRODUCTION OF
DOCUMENTS AND THINGS TO THE DEFENDANTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Papst Licensing GmbH & Co. KG ("Papst") requests that each of the Defendants or Camera Manufacturers (defined below) produce the following documents and things for inspection and copying in accordance with the Definitions and Instructions set forth herein. If the manner of production is not otherwise agreed upon, production shall be at the offices at Welsh & Katz, Ltd., 120 South Riverside, 22nd Floor, Chicago, Illinois 60606, within thirty (30) days after service hereof, or as the parties may otherwise agree.

DEFINITIONS AND INSTRUCTIONS

1. As used herein, "Camera Manufacturer, " "Defendant," "You" or "Your" means Casio Inc., Casio Computer Co., Ltd., Fujifilm Corporation, Fujifilm U.S.A., Inc., Matsushita Electric Industrial Co., Ltd., Victor Company of Japan, Ltd., Olympus Corp., Olympus Imaging America, Inc., Samsung Techwin Co., Samsung Opto-Electronics America, Inc., Panasonic Corporation of North America, JVC Company of America, Ricoh Company, Ltd., Ricoh Americas Corporation, Ricoh Corporation, Hewlett-Packard

any other Product manufacturer or seller subsequently added to this MDL, all of their predecessor(s) and successor(s) in interest, and any person employed by or for any or all of these entities, and all of their attorneys, accountants, and consultants.

2. As used herein, the term “document” shall have the full meaning ascribed to it under Rule 34 of the Federal Rules of Civil Procedure. Defendants shall search for and the produce any responsive documents written in English, in whole or in part, regardless of whether a Defendant also produces the same or similar document written in a foreign language.

3. If any of the information requested to be produced is available in machine-readable form (such as punch cards, paper or magnetic tapes, drums, disks, or core storage), state the form in which it is available and describe the type of computer or other machinery required to access the information. If the information requested is only available in machine-readable form, indicate whether you possess any existing program which will print the records in some form, and identify the person(s) who is/are familiar with the program. If no program exists, state whether you could develop one or whether an existing program could be modified to print records in a readable form.

4. The terms “concerning,” “relating to,” or “related to” in regard to a particular subject shall mean, without limitation, assessing, analyzing, constituting, containing, comprising, describing, discussing, embodying, reflecting, evidencing, identifying, mentioning, memorializing, stating, referring directly or indirectly to or in any way relevant to such subject.

5. In the event any information, document, or thing responsive to these requests is not provided by reason of a claim of privilege or work product, or for any other reason,

then the following shall be provided with respect to such information, document, or thing: (a) a brief description of the subject matter of the information, document, or thing; (b) the identity of the author or creator of the information, document, or thing; (c) the source of the information, document, or thing; (d) all recipients of the information, document, or thing (including, but not limited to those receiving copies and blind copies); (e) the date the information, document, or thing (or any copy or draft thereof which is not identical to the original) was created; and (f) the basis upon which the information, document, or thing is being withheld. With respect to any information that is redacted, the redacting party must in addition to the requirements above identify all pages by Bates Number where any redaction has occurred.

6. As used herein, “and” or “or” shall be construed conjunctively or disjunctively, or both conjunctively and disjunctively, so as to acquire the broadest meaning possible.

7. As used herein, “person” shall include, but is not limited to, any natural person, business, partnership, corporation, or other entity, and any employee, agent, attorney, or representative of any of the foregoing.

8. As used herein, the term “Product” shall mean all Digital Cameras made or sold by each Defendant. As to the Olympus parties and the Hewlett-Packard parties, the term “Product” shall also include all products made or sold by each Defendant (whether or not a Digital Camera) that acquire external light images and/or sound, and then process the external light images or sound into digital electrical signals representative of the external light images and/or sound, and then transfer those digital electrical signals to an

electronic memory, and then transfer those digital electrical signals to a personal computer, and wherein the Product also communicates with a personal computer.

9. As used herein, “Patents-in-Suit” refers to United States Patent No. 6,895,449 (“the ‘449 patent”) and United States Patent No. 6,470,399 (“the ‘399 patent”).

10. As used herein, “Specific Features” means those Product features concerning (1) how the Products electronically connect to and interact with various types of computers, (2) what standards and/or command sets are used by the Products to communicate with computers, (3) how digital information (including digital information representative of pictures and sounds) is transmitted back and forth between the Products and a computer to which they are connected, (4) the file systems used to store digital information in Products (including digital information representative of pictures and sounds), and (5) how the master boot record (MBR) and any boot sector(s) are generated by each Product during formatting of a memory chip and/or in response to an inquiry from a host computer.

11. Where appropriate, the singular form of a word should be interpreted in the plural and *vice versa*, and the masculine form of a word shall be interpreted to also include the feminine and *vice versa*, to obtain the broadest possible meaning.

12. These document requests are continuing in nature. If after making its initial response hereto (and up until the time of any hearing or trial), each of the Defendants or their attorneys, agents, or representatives obtain or become aware of any further information or documents responsive to these requests that was unavailable at the time of the initial response hereto, each of the Camera Manufacturers are requested to produce such information and documents.

13. Unless indicated otherwise, these requests apply to all documents and materials from 1985 to the present date.

14. The methods and format of each of the Camera Manufacturers' production shall be as follows:

15. Format of Production

(a) With respect to all responsive paper documents, each Defendant shall serve concurrently with its responses to these requests its estimated costs to produce to Papst all responsive hard copy documents in single-page Tagged Image File Format ("TIFF") with an accompanying Summation load file. To the extent available, the load file shall contain for each document the beginning Bates number, the ending Bates number, a description of the source for the document. Each page of a produced document shall have a legible, unique page identifier ("Bates Number") and confidentiality legend (where applicable) on the face of the image at a location that does not obliterate, conceal, or interfere with any information from the source documents. No other legend or stamp will be placed on the document image other than the Bates Number, confidentiality legend (where applicable), and redactions.

Should any Defendant convert any or all paper documents into any electronic format (such as TIFF or .pdf) at its own cost at any time, each such Defendant shall inform Papst of that fact, describe the electronic format that the documents exist in, and inform Papst of the estimated costs to obtain copies of these electronic files all within five days of any conversion.

In addition, hard copies shall be produced as they were kept in the ordinary course of business. This shall include stapling of documents, segregating individual file folder

and ordering groups of file folders and documents as they were kept in the ordinary course of business. The parties shall also provide for each group of documents to the extent known (1) the name of the person(s) and/or group(s) whose file each group of documents came from, and (2) an identification of the custodian(s) of each group of documents, all as the documents were kept in the ordinary course of business. Hard copies and things shall be maintained at a document depository in the United States and shall be reasonably accessible to all parties upon reasonable notice.

(b) The parties shall produce all responsive electronic documents as they are kept in the usual course of business, or as otherwise agreed between the parties. Should any Defendant convert any or all electronic documents into any other electronic format (such as TIFF or .pdf) at their own cost at any time, each such Defendant shall inform Papst of that fact, describe the electronic format that the documents exist in, and inform Papst of the estimated costs to obtain copies of these electronic files all within five days of any conversion.

Each Defendant shall serve concurrently with its responses to these requests its estimated costs to produce to Papst all responsive electronic documents in single-page Tagged Image File Format ("TIFF") with an accompanying Summation load file. To the extent available, the load file shall contain for each document the beginning Bates number, the ending Bates number, a description of the source from which the document came, a description of the computer from which the document came, the associated file name, and the associated directory path for the document. Documents that present imaging or formatting problems shall be promptly identified and the Parties shall meet and confer to attempt to resolve the problems. Each page of a produced document shall

have a legible, unique page identifier (“Bates Number”) and confidentiality legend (where applicable) on the face of the image at a location that does not obliterate, conceal, or interfere with any information from the source documents. No other legend or stamp will be placed on the document image other than the Bates Number, confidentiality legend (where applicable), and redactions. Each party will bear the burden and cost of any OCR post-processing. Papst is willing to mutually agree that during the first round of exchanging documents the parties need not exchange metadata, except as referenced above. If any party should later desire to obtain additional metadata, the parties will attempt to work it out amicably. An extracted text file of electronic documents shall be made part of the load file associated with each electronic document.

REQUESTS FOR DOCUMENTS AND THINGS

1. All documents relating to the development history of each Specific Feature¹ in each and every Product² of the Defendants.
2. Documents sufficient to show the monthly sales (in revenues and in units) for each Product in each country from January 1, 1999 to present.
3. Two functional samples of each and every Product used, manufactured, sold, offered for sale or imported into the United States since October 22, 2002.
4. All advertising, marketing and promotional documents in the United States that address and/or discuss, in whole or in part, the Specific Features in any and all Products of the Defendants since January 1, 1999.

¹ The term “Specific Feature” is defined in the Definitions and Instructions section above.

² The term “Product” is defined in the Definitions and Instructions section above.

5. Documents sufficient to show the overall construction and/or operation of each and every Product of the Defendant that has been used, manufactured, sold, offered for sale, or imported into the United States since October 22, 2002, including but not limited to, all user manuals, service manuals, overall product specifications, overall software requirements, and overall source code.

6. All documents primarily concerning the subject matter, construction and/or operation of one or more of the Specific Features in each and every Product of the Defendants that has been used, manufactured, sold, offered for sale, or imported into the United States since October 22, 2002.

7. All documents relating to the Defendants' alleged invalidity and/or unenforceability of the Patents-In-Suit.

8. All documents relating to the Defendants' alleged non-infringement of the Patents-In-Suit.

9. All documents relating to the interpretation, scope and meaning of the claims in the Patents-In-Suit.

10. Documents sufficient to show the identification of those entities and/or individuals who are the most knowledgeable concerning the research, development, and design of one or more of the Specific Features for each and every Product of the Defendants.

11. All documents relating to the Patents-In-Suit, Papst, LT Tasler, Michael Tasler and/or Labortechnik Tasler GmbH, including but not limited to, all documents relating to any and all work done by and/or products of Michael Tasler and/or Labortechnik Tasler GmbH.

12. All transcripts, discovery responses and expert reports in the United States wherein a Defendant or its expert witness has described and/or discussed, in whole or in part, how its Products operate with respect to any or all of the Specific Features.

13. All documents and things identified in, the identification of which is requested in, responsive to, or reviewed in formulating a response to Papst Licensing's First Joint Set of Interrogatories to the Defendants.

14. All documents relating to the level of ordinary skill in the art pertaining to the Patents-In-Suit.

15. All documents relating to any secondary considerations of non-obviousness or obviousness, including but not limited to, the following: (1) the commercial success of the Products attributable to the claimed inventions, rather than something else, such as innovative marketing, (2) the claimed inventions satisfied a long felt need, (3) the attempt and failure of others to make the claimed inventions, (4) skepticism of the claimed inventions by experts, (5) praise by others of the claimed inventions, (6) teaching away of the claimed inventions by others, (8) copying of the claimed inventions by others, (9) experts or persons of ordinary skill in the field of the inventions expressing surprise at the making of the claimed inventions, (10) the inventor proceeded contrary to accepted wisdom, and (11) the claimed inventions achieved unexpected results.

16. All document retention policies in place from the time each Defendant first started its research and development of the Specific Features up until today's date.

17. All patents, patent applications and file histories of any of the Defendant's U.S. patents or patent applications that address, in whole or in part, the Specific Features of the Defendants' Products.

18. Documents and things sufficient to show the details of the operation of each Product that has been used, manufactured, sold, offered for sale, or imported into the United States since October 22, 2002 with respect to how sound waves and/or light images are converted to representative analog signals, and how those electrical signals are converted to representative digital signals.

Dated: May 8, 2008

/s/ Jerold B. Schnayer

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PAPST LICENSING GMBH & CO. KG'S THIRD REVISED FIRST JOINT SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO THE CAMERA MANUFACTURERS was served on this the 8th day of May, 2008 upon the attorneys for the Camera Manufacturers as follows:

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/s/ Jerold B. Schnayer

Attorney for Papst Licensing GmbH & Co.
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1. As used herein, "Camera Manufacturer, " "Defendant," "You" or "Your" means Casio Inc., Casio Computer Co., Ltd., Fujifilm Corporation, Fujifilm U.S.A., Inc., Matsushita Electric Industrial Co., Ltd., Victor Company of Japan, Ltd., Olympus Corp., Olympus Imaging America, Inc., Samsung Techwin Co., Samsung Opto-Electronics America, Inc., Panasonic Corporation of North America, JVC Company of America, Ricoh Company, Ltd., Ricoh Americas Corporation, Ricoh Corporation, any other

Product manufacturer or seller subsequently added to this MDL and all of their predecessor(s) and successor(s) in interest, parent(s), subsidiaries, related and affiliated persons or entities, and any person employed by or for any or all of these entities, and all agents or representatives (including but not limited to their attorneys, accountants, and consultants).

2. As used herein, the term “document” shall have the full meaning ascribed to it under Rule 34 of the Federal Rules of Civil Procedure including, without limitation, the original (and every copy of the original which differs in any way from it) of any written or graphic matter or any medium of any type or description upon which intelligence or information is recorded or from which intelligence or information can be perceived, which is or has been in the possession, custody, or control of each Defendant, or of which each Defendant has knowledge, including, without limitation: electronic mail; correspondence; memoranda; stenographic or handwritten notes; technical literature; specifications; plans; blueprints; drawings, charts; computer tapes, print-outs, and any other computer or electronic data capable of being produced in document form or displayed electronically; advertising or promotional materials; laboratory notebooks; financial records; contracts; drafts; agreements; instructions; studies; publications; films; prints; voice recordings; reports; surveys; forecasts; minutes; statistical compilations; and every copy of such writing, record, or graphic matter where such copy is a draft or not identical to the original document or where such copy contains any commentary or notation whatsoever, handwritten or otherwise, that does not appear on the other copies or on the original. The term “document” shall include any document in any language. Defendants shall search for and the produce any responsive documents written in

English, in whole or in part, regardless of whether a Defendant also produces the same or similar document written in a foreign language.

3. If any of the information requested to be produced is available in machine-readable form (such as punch cards, paper or magnetic tapes, drums, disks, or core storage), state the form in which it is available and describe the type of computer or other machinery required to access the information. If the information requested is only available in machine-readable form, indicate whether you possess any existing program which will print the records in some form, and identify the person(s) who is/are familiar with the program. If no program exists, state whether you could develop one or whether an existing program could be modified to print records in a readable form.

4. As used herein, the term “relate” (or variants thereof such as “relating” or “related”), when used in connection with a document or thing, shall mean, without limitation, any document or thing that constitutes, contains, embodies, evidences, concerns, reflects, identifies, states, refers directly or indirectly to, or is in any way relevant to the particular subject matter identified.

5. In the event any information, document, or thing responsive to these requests is not provided by reason of a claim of privilege or work product, or for any other reason, then the following shall be provided with respect to such information, document, or thing: (a) a brief description of the subject matter of the information, document, or thing; (b) the identity of the author or creator of the information, document, or thing; (c) the source of the information, document, or thing; (d) all recipients of the information, document, or thing (including, but not limited to those receiving copies and blind copies); (e) the date the information, document, or thing (or any copy or draft thereof which is not

identical to the original) was created; and (f) the basis upon which the information, document, or thing is being withheld. With respect to any information that is redacted, the redacting party must in addition to the requirements above identify all pages by Bates Number where any redaction has occurred.

6. As used herein, “and” or “or” shall be construed conjunctively or disjunctively, or both conjunctively and disjunctively, so as to acquire the broadest meaning possible.

7. In the event a responsive document has been destroyed: (a) identify the person(s) who destroyed it; (b) the date it was destroyed; (c) the reasons why it was destroyed; and (d) the circumstances under which it was destroyed.

8. As used herein, the term “day” or “date” shall mean the exact day, month, and year. If the exact date is not ascertainable, the best available approximation should be provided.

9. As used herein, “person” shall include, but is not limited to, any natural person, business, partnership, corporation, or other entity, and any employee, agent, attorney, or representative of any of the foregoing.

10. As used herein, “Product” shall mean all designs, implementations, models, and versions of all products made, sold or offered for sale by each Defendant (whether or not a Digital Camera) that acquire external light images and/or sound, and then process the external light images or sound into digital electrical signals representative of the external light images and/or sound, and then transfer those digital electrical signals to an electronic memory, and then transfer those digital electrical signals to a personal computer, and wherein the Product also communicates with a

personal computer.

11. As used herein, “Patents-in-Suit” refers to United States Patent No. 6,895,449 (“the ‘449 patent”) and United States Patent No. 6,470,399 (“the ‘399 patent”).

13. As used herein, “Lawsuit” means any type of legal action where any and all of the Camera Manufacturers were parties or participants of any kind including, but not limited to, lawsuits filed in federal or state courts, administrative proceedings, ITC proceedings, USPTO proceedings and any international cases or proceedings filed in any tribunal.

14. As used herein, “Specific Features” means those Product features concerning (1) how the Products electronically connect to and interact with various types of computers, (2) what standards and/or command sets are used by the Products to communicate with computers, (3) how digital information (including digital information representative of pictures and sounds) is transmitted back and forth between the Products and a computer to which they are connected, (4) the file systems used to store digital information in Products (including digital information representative of pictures and sounds), and (5) how the master boot record (MBR) and any boot sector(s) are generated by each Product during formatting of a memory chip and/or in response to an inquiry from a host computer.

15. Where appropriate, the singular form of a word should be interpreted in the plural and *vice versa*, and the masculine form of a word shall be interpreted to also include the feminine and *vice versa*, to obtain the broadest possible meaning.

16. These document requests are continuing in nature. If after making its initial response hereto (and up until the time of any hearing or trial), each of the Camera Manufacturers or their attorneys, agents, or representatives obtain or become aware of

any further information or documents responsive to these requests that was unavailable at the time of the initial response hereto, each of the Camera Manufacturers are requested to produce such information and documents.

17. Unless indicated otherwise, these requests apply to all documents and materials from 1985 to the present date.

18. The methods and format of each of the Camera Manufacturers' production shall be as follows:

19. Format of Production

(a) With respect to all responsive paper documents, each Defendant shall serve concurrently with its responses to these requests its estimated costs to produce to Papst all responsive hard copy documents in single-page Tagged Image File Format ("TIFF") with an accompanying Summation load file. To the extent available, the load file shall contain for each document the beginning Bates number, the ending Bates number, a description of the source for the document. Each page of a produced document shall have a legible, unique page identifier ("Bates Number") and confidentiality legend (where applicable) on the face of the image at a location that does not obliterate, conceal, or interfere with any information from the source documents. No other legend or stamp will be placed on the document image other than the Bates Number, confidentiality legend (where applicable), and redactions.

Should any Defendant convert any or all paper documents into any electronic format (such as TIFF or .pdf) at its own cost at any time, each such Defendant shall inform Papst of that fact, describe the electronic format that the documents exist in, and

inform Papst of the estimated costs to obtain copies of these electronic files all within five days of any conversion.

In addition, hard copies shall be produced as they were kept in the ordinary course of business. This shall include stapling of documents, segregating individual file folder and ordering groups of file folders and documents as they were kept in the ordinary course of business. The parties shall also provide for each group of documents to the extent known (1) the name of the person(s) and/or group(s) whose file each group of documents came from, and (2) an identification of the custodian(s) of each group of documents, all as the documents were kept in the ordinary course of business. Hard copies and things shall be maintained at a document depository in the United States and shall be reasonably accessible to all parties upon reasonable notice.

(b) The parties shall produce all responsive electronic documents as they are kept in the usual course of business, or as otherwise agreed between the parties. Should any Defendant convert any or all electronic documents into any other electronic format (such as TIFF or .pdf) at their own cost at any time, each such Defendant shall inform Papst of that fact, describe the electronic format that the documents exist in, and inform Papst of the estimated costs to obtain copies of these electronic files all within five days of any conversion.

Each Defendant shall serve concurrently with its responses to these requests its estimated costs to produce to Papst all responsive electronic documents in single-page Tagged Image File Format ("TIFF") with an accompanying Summation load file. To the extent available, the load file shall contain for each document the beginning Bates number, the ending Bates number, a description of the source from which the document

came, a description of the computer from which the document came, the associated file name, and the associated directory path for the document. Documents that present imaging or formatting problems shall be promptly identified and the Parties shall meet and confer to attempt to resolve the problems. Each page of a produced document shall have a legible, unique page identifier (“Bates Number”) and confidentiality legend (where applicable) on the face of the image at a location that does not obliterate, conceal, or interfere with any information from the source documents. No other legend or stamp will be placed on the document image other than the Bates Number, confidentiality legend (where applicable), and redactions. Each party will bear the burden and cost of any OCR post-processing. Papst is willing to mutually agree that during the first round of exchanging documents the parties need not exchange metadata, except as referenced above. If any party should later desire to obtain additional metadata, the parties will attempt to work it out amicably. An extracted text file of electronic documents shall be made part of the load file associated with each electronic document.

20. The following list of subject matters are collectively referred to as “Product Limitations”:

20.1 The acquisition and processing of light images, sound waves and/or analog signals by Products including, for example, the conversion of light images into electrical signals representative of the light images.

20.2 The processing by Products of electrical signals representative of light images, sound waves and/or analog signals including, for example, the conversion of analog signals representative of light images into digital electrical signals, and the transfer of those digital electrical signals to an electronic memory.

20.3 The operation of any computer program stored in a memory of a Product as it concerns any of the other subject matters set forth in this list.

20.4 The storage of digital signals representative of light images, sound waves and/or analog signals in the memory of Products, including but not limited to the

storage of such digital signals in external memory cards and other electronic memory capable of being operatively attached to Products

20.5 The interconnection of Products to a personal computer.

20.6 The transfer of digital electrical signals representative of light images, sound waves and/or analog signals from a Product to a personal computer including, for example, the process by which the personal computer recognizes how to communicate with and receive data from the Product.

20.7 The process by which Products communicate with and transfer information to and/or from a personal computer attached to Products.

20.8 The memory of a Product where digital signals are stored, the file system used to store digital signals in the Product's memory, and the process by which the memory of a Product is formatted.

To the extent a responsive document only relates to a very specific engineering subject matter not included in one of the Product Limitations defined above, that responsive document need not be produced. For example, a Defendant need not produce a document if the document only relates the engineering specifications of a zoom lens. However, if a document is responsive to a request generally and/or contains any information relevant to any one of the Product Limitations, in whole or in part, the entire document shall be produced. For example, responsive documents to be produced would include documents describing the overall operation of a Product, a schematic diagram showing some or all of the components of a Product, and/or a specification describing the overall operation of a Product, even though one of the Product Limitations is not expressly discussed.

21. Examples of the types of documents that are responsive to Request No. 1, but only to the extent the documents address one or more of the Specific Features, in whole or in part, include, but are not limited to, the following: all documents relating to

the research, development, design, re-design, prototype production and/or testing of any and all of the Specific Features in each of the Defendants' Products; all engineering specifications, assembly drawings, production drawings, parts drawings, schematic drawings, block diagrams, parts lists, bills of material, prototypes, specification sheets, sales manuals, brochures, instruction or operating manuals, service manuals, user manuals, technical publications, technical documentation, white papers, or technical bulletins relating to any and all of the Specific Features in each of Defendants' Products; all documents relating to any attempt to design around the Patents-in-Suit; all documents concerning the issue of why a Defendant chose any of the Specific Features for use in any and all Products; all documents that describe and/or discuss at least in part the development history of each of the Specific Features in Defendants' Products; all documents concerning a Defendant's review and/or analysis of any and all Specific Features in a Product manufactured by a Defendant's competitor; all documents concerning and/or comprising source code related to any firmware, executable code, and/or any computer program used in connection with any and all of the Specific Features; all documents describing and/or concerning the operation of the source code related to any firmware, executable code, and/or computer program used in connection with any and all of the Specific Features; all documents concerning and/or used during the development of the source code related to any firmware, executable code, and/or computer program, including but not limited to software requirements, documents and specifications, used in connection with any and all of the Specific Features; all documents that describe or concern how information is transferred from any and all Products to an external personal computer when attached to each such Product; all documents that

describe how digital data representative of an image captured by a Product is stored in the digital memory of any and all Products; all documents that describe how digital data representative of a sound recording is stored in the digital memory of any and all Products; all documents that concern and/or describe the design or operation of the PictBridge and/or USB DirectPrint features of each Product, including but not limited to the Casio Digital Camera as described in CAP-000694, Exhibit A hereto; all documents that concern and/or describe the “USB DIRECT-PRINT ... standard proposed by Seiko Epson Corporation” as referred to on CAP-000694, Exhibit A hereto; all documents relating to any and all Specific Features of a Product as used with a computer with a Microsoft Windows operating system; and all documents that concern any and all Specific Features of Product as used with an Apple computer; all documents that describe any and all details of how to download pictures and/or the operation of downloading pictures stored in any and all Products to an external computer when connected to each such camera; all documents that concern and/or describe the DCF (Design rule for Camera File system) protocol, an example for which is described on page CAP-001691, Exhibit B hereto; all documents which describe and/or discuss how visual images are processed into digital images, and/or how those digital images are processed by any and all Products, so that they are stored in a digital memory; all documents commenting on the value, usefulness and/or desirability of the specific features of any and all Products; all specifications concerning any and all Specific Features, and/or individual parts included in any Specific Features; and all documents concerning and/or comprising communication between employees, agents and/or representatives of a Defendant and any employees, agents and/or representatives of Microsoft, Apple, manufacturers and/or

any suppliers of integrated circuitry addressing the connection of Products to a personal computer and/or transfer of digital information between a Product and a personal computer.

22. Examples of the types of documents that are responsive to Request No. 2, include, but are not limited to, the following: documents identifying each Product by each corresponding model name, model number and/or part number such that Papst can easily identify each Product in the responsive documents and the corresponding number of units sold and revenues earned by region and country (including the United States) on a month by month basis for each Product.

23. Examples of the types of documents that are responsive to Request No. 4, but only to the extent the documents address one or more of the Specific Features, in whole or in part, include, but are not limited to, the following: any and all marketing plans or internal marketing reports that refer to or address any and all of the Specific Features of each Defendant's Products; all advertisements, brochures, bulletins, and other advertising a Defendant has prepared or has had others prepare that refer to or address any and all of the Specific Features of each Defendant's Products; a sample of each advertisement, brochure, or press release used by a Defendant that refers to or addresses any and all Specific Features, and market studies and/or focus groups that relate to or address, at least in part, any of the Specific Features.

24. Examples of the types of documents that are responsive to Request No. 5, include, but are not limited to, the following: two functional samples of each and every Product; documents sufficient to show the overall construction, operation, use, intended use or potential use of any and all Products; overall engineering specifications,

assembly drawings, production drawings, parts drawings, schematic drawings, block diagrams, parts lists, bills of material, specification sheets, instruction manuals, operating manuals, service manuals, or user manuals for each Product.

25. Examples of the types of documents that are responsive to Request No. 6, but only to the extent the documents address one or more of the Specific Features, in whole or in part, include, but are not limited to, the following: all documents which refer to or discuss, in whole or in part, to the properties, characteristics, advantages and/or disadvantages of any and all the Specific Features; all documents relating to the construction, operation, use, intended use or potential use of any and all the Specific Features; all documents relating to technical descriptions, operating instructions, repair instructions or consumer instructions for any and all of the Specific Features; all engineering specifications, assembly drawings, production drawings, parts drawings, schematic drawings, block diagrams, parts lists, bills of material, prototypes, specification sheets, sales manuals, brochures, instruction or operating manuals, service manuals, user manuals, technical publications, technical documentation, white papers, or technical bulletins relating to any and all of the Specific Features; all documents concerning and/or comprising source code related to any firmware, executable code, and/or any computer program used in connection with any and all of the Specific Features; all documents describing and/or concerning the operation of the source code related to any firmware, executable code, and/or computer program used in connection with any and all of the Specific Features; all documents concerning and/or used during the development of the source code related to any firmware, executable code, and/or computer program, including but not limited to software requirements, documents and

specifications, used in connection with any and all of the Specific Features; all documents that describe or concern how information is transferred from any and all Products to an external personal computer when attached to each such Product; all documents that describe how digital data representative of an image captured by a Product is stored in the digital memory of any and all Products; all documents that describe how digital data representative of a sound recording is stored in the digital memory of any and all Products; all documents that concern and/or describe the design or operation of the PictBridge and/or USB DirectPrint features of each Product, including but not limited to the Casio Digital Camera as described in CAP-000694, Exhibit A hereto; all documents that concern and/or describe the “USB DIRECT-PRINT ... standard proposed by Seiko Epson Corporation” as referred to on CAP-000694, Exhibit A hereto; all documents relating to any and all Specific Features of a Product as used with a computer with a Microsoft Windows operating system; and all documents that concern any and all Specific Features of Product as used with an Apple computer; all documents that describe any and all details of how to download pictures and/or the operation of downloading pictures stored in any and all Products to an external computer when connected to each such camera; all documents that concern and/or describe the DCF (Design rule for Camera File system) protocol, an example for which is described on page CAP-001691, Exhibit B hereto; all documents which describe and/or discuss how visual images are processed into digital images, and/or how those digital images are processed by any and all Products, so that they are stored in a digital memory; all documents commenting on the value, usefulness and/or desirability of the specific features of any and all Products; all specifications concerning any and all Specific Features, and/or individual parts

included in any Specific Features; and all documents concerning and/or comprising communication between employees, agents and/or representatives of a Defendant and any employees, agents and/or representatives of Microsoft, Apple, manufacturers and/or any suppliers of integrated circuitry addressing the connection of Products to a personal computer and/or transfer of digital information between a Product and a personal computer.

26. Examples of the types of documents that are responsive to Request No. 7 include, but are not limited to, the following: all documents and things that support, contradict or otherwise provide the basis, in whole or in part, for a Defendant's Complaint, Counterclaim, Answer, or Affirmative Defenses in this action as they relate to the issues of invalidity or unenforceability; all documents, including all legal opinions of counsel, recording, or evidencing a Defendant having ever made a study of the patentability, validity or unenforceability of the Patents-in-Suit and/or any related patents and/or patent applications relating thereto; all documents constituting, recording, or evidencing any of Defendants' alleged prior art, including, but not limited to, all documents that provide written corroboration that any actual product constituting alleged prior art was or was not on sale or sold anywhere in the world; all documents and things supporting or refuting any and all alleged secondary indicia of non-obviousness relevant to a Defendant's invalidity contentions; all legal opinions, conclusions, and work product concerning whether or not the Patents in Suit are valid and/or enforceable; and all documents relating to the development history, sales, testing, construction and/or operation of any of Defendants' alleged prior art devices as those documents relate to any or all of the Specific Features.

27. Examples of the types of documents that are responsive to Request No. 8 include, but are not limited to, the following: documents and things that support, contradict or otherwise provide the basis, in whole or in part, for a Defendant's assertion or belief that a Defendant does not or has not infringed the Patents-in-Suit in any manner; documents which establish or tend to establish that a Defendant has or has not induced others to infringe or contributed to others' infringement of any claim of the Patents-in-Suit; documents and things concerning whether Products infringe or do not infringe the Patents-in-Suit; documents and things concerning whether any and all non-Defendant Products infringe or do not infringe the Patents-in-Suit; and all legal opinions, conclusions, and work product concerning whether or not any and all Products infringe or do not infringe the Patents-in-Suit.

28. Examples of the types of documents that are responsive to Request No. 9 include, but are not limited to, the following: all documents, including all legal opinions of counsel, recording or evidencing a Defendant having ever made a study of the claim scope of the Patents-in-Suit; and all documents that a Defendant, its employees, consultants, or experts have considered, consulted, or relied upon in interpreting or construing the claims of the Patents-in-Suit, including but not limited to excerpts from books, dictionaries, treatises and the like. The examples of development history documents described in paragraph 21 above are also responsive and are incorporated herein.

29. Examples of the types of documents that are responsive to Request No. 10 include, but are not limited to, the following: documents sufficient to identify a Defendant's personnel structure relating to the Specific Features of the Products,

including a person's name, general involvement in, and job title for each of the Defendant's management, research, development, manufacture, design and engineering personnel involved with the research, development and design of any and all Specific Features in Defendants' Products; representative documents that show the involvement of a Defendant's parent companies, sister companies or related entities that are or were involved in the conception, design, research, development, or manufacture of any and all Specific Features in Defendants' Products; and representative organizational charts showing the persons at a Defendant who worked on the design, development, and/or manufacture of each of the Specific Features in Defendants' Products.

30. Examples of the types of documents that are responsive to Request No. 11 include, but are not limited to, the following: documents sufficient to show a Defendant's knowledge or awareness of the Patents-in-Suit; documents sufficient to show the contents of any discussion at any board of directors, management, or similar control group meeting concerning the Patents-In-Suit; and documents sufficient to show all of Defendant's communications with any person or entity (except for legal counsel) concerning the Patents-in-Suit; and all documents relating to any and all work done by and/or products of Michael Tasler and/or Labortechnik Tasler GmbH.

REQUESTS FOR DOCUMENTS AND THINGS

1. All documents relating to the development history of each Specific Feature¹ in each and every Product² of the Defendants. See, Instruction No. 21.

¹ The "Specific Feature" term is defined in paragraph 14 of the Definitions and Instructions section above.

² The "Product" term is defined in the Definitions and Instructions section above.

2. Documents sufficient to show the monthly sales (in revenues and in units) for each Product in each country from 1985 to present. See, Instruction No. 22.

3. Documents that discuss whether any advertising, marketing and/or promotional efforts have impacted the sales of any Product of the Defendants.

4. All advertising, marketing and promotional documents that address and/or discuss, in whole or in part, the Specific Features in any and all Products of the Defendants since January 1, 1999. See, Instruction No. 23

5. Documents sufficient to show the overall construction and/or operation of each and every Product of the Defendant that has been used, manufactured, sold, offered for sale, or imported into the United States since October 22, 2002. See, Instruction No. 24.

6. All documents relating to or referring to, at least in part, the construction and/or operation of each of the Specific Features in each and every Product of the Defendants that has been used, manufactured, sold, offered for sale, or imported into the United States since October 22, 2002. See, Instruction No. 25.

7. All documents relating to the Defendants' alleged invalidity and/or unenforceability of the Patents-In-Suit. See, Instruction No. 26.

8. All documents relating to the Defendants' alleged non-infringement of the Patents-In-Suit. See, Instruction No. 27.

9. All documents relating to the interpretation, scope and meaning of the claims in the Patents-In-Suit. See, Instruction No. 28.

10. Documents sufficient to show the identification of those entities and/or individuals who have been involved in the research, development, design, construction,

testing, manufacture and engineering of each of the Specific Features for each and every Product of the Defendants. See, Instruction No. 29.

11. All documents referring to or addressing the Patents-In-Suit, Papst, LT Tasler, Michael Tasler and/or Labortechnik Tasler GmbH. See, Instruction No. 30.

12. All documents, from any and all patent related Lawsuits to which a Defendant has been a party, wherein a Defendant has described and/or discussed, in whole or in part, how its Products operate with respect to any or all of the Specific Features.

13. All documents and things identified in, the identification of which is requested in, responsive to, or reviewed in formulating a response to Papst Licensing's First Joint Set of Interrogatories to the Defendants.

14. All documents relating to the level of ordinary skill in the art pertaining to the Patents-In-Suit.

15. All documents relating to any secondary considerations of non-obviousness or obviousness, including but not limited to, the following: (1) the commercial success of the Products attributable to the claimed inventions, rather than something else, such as innovative marketing, (2) the claimed inventions satisfied a long felt need, (3) the attempt and failure of others to make the claimed inventions, (4) skepticism of the claimed inventions by experts, (5) praise by others of the claimed inventions, (6) teaching away of the claimed inventions by others, (8) copying of the claimed inventions by others, (9) experts or persons of ordinary skill in the field of the inventions expressing surprise at the making of the claimed inventions, (10) the inventor

proceeded contrary to accepted wisdom, and (11) the claimed inventions achieved unexpected results.

16. All document retention policies in place from the time each Defendant first started its research and development of the Specific Features up until today's date.

17. All documents relating to the patent prosecution of any of the Defendant's U.S. or non-U.S. patents or patent applications that address, in whole or in part, the Specific Features of the Defendants' Products.

18. Documents and things sufficient to show the details of the operation of each Product with respect to how sound waves and/or light images are converted to representative analog signals, and how those electrical signals are converted to representative digital signals.

Dated: May 2, 2008

/s/ Jerold B. Schnayer

James P. White

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**Attorneys for Defendant/Counter-
Plaintiff Papst Licensing GmbH & Co.
KG**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PAPST LICENSING GMBH & CO. KG'S SECOND REVISED FIRST JOINT SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO THE CAMERA MANUFACTURERS was served on this the 2nd day of May, 2008 upon the attorneys for the Camera Manufacturers as follows:

For The Casio Parties (via e-mail in both Microsoft Word and .pdf format):

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For The Samsung Parties (via e-mail in both Microsoft Word and .pdf format):

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For The Fujifilm Parties (via e-mail in both Microsoft Word and .pdf format):

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Sten A. Jensen
John R. Inge
Robert Wolinsky

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For the Olympus Parties (via e-mail in both Microsoft Word and .pdf format):

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rmcappoccia@hhlaw.com

For The Matsushita and Victory Company of Japan Parties (via e-mail in both Microsoft Word and .pdf format):

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For the Ricoh Parties:

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/s/ Jerold B. Schnayer
Attorney for Papst Licensing GmbH & Co.
KG

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE: PAPST LICENSING
GMBH & CO. KG LITIGATION

Misc. Action No. 07-493
MDL Docket No. 1880

Washington, D.C.
Tuesday, April 22, 2008
2:30 p.m.

-x

TRANSCRIPT OF TELECONFERENCE
BEFORE THE HONORABLE ROSEMARY M. COLLYER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:

Robert F. Muse, Esquire
Kerri Dent, Esquire
STEIN, MITCHELL & MEZINES
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1 THE DEPUTY CLERK: Miscellaneous Action 07-493, Papst
2 Licensing Digital Camera Patent Litigation versus Casio
3 America, Incorporated, et al.

4 Counsel, please identify yourselves for the record.

5 MR. STIMPSON: For Casio is Scott Stimpson and with
6 me is Kevin Fee, Laura Krawczyk and Kevin He, all of Morgan
7 Lewis.

8 MR. WHITE: For Papst it's Jim White, Jerry Schnayer,
9 and Joseph Swik.

10 MR. STIMPSON: Actually, I'm advised that Kevin Fee
11 was lost for some reason.

12 Your Honor, I can conference him back in, if that's
13 okay.

14 THE COURT: Yes.

15 MR. STIMPSON: I think I can.

16 You're back on the conference call?

17 MR. FEE: Thank you. Sorry about that, Your Honor.

18 THE COURT: Alrighty. We're going to make an
19 experiment today to do this by telephone so that people don't
20 have to travel for purposes of arguing what are discovery
21 motions.

22 What it means though is that only one person can speak
23 at a time because only one person can be heard at a time.

24 I don't usually use a gavel because I don't need it in
25 court. But I do have a gavel and I will use it if people are

1 talking over each other because sometimes the noise of the
2 gavel is loud enough to sort of break through.

3 Do you understand what I'm saying?

4 MR. STIMPSON: Yes, Your Honor.

5 MR. WHITE: Yeah, Your Honor.

6 MR. SCHNAYER: Yes, Your Honor.

7 THE COURT: Now, Papst if Mr. White is going to speak
8 for Papst, then Mr. White is going to speak for Papst. If
9 Mr. Schnayer wishes to speak to a specific issue, he can speak
10 to a specific issue. He cannot argue the same points or issues
11 that Mr. White is arguing.

12 MR. WHITE: Understood, Your Honor.

13 THE COURT: All right. Now I'm going to start with,
14 I have four motions here to discuss. One is Papst's motion to
15 compel production. One is Papst's motion to compel
16 interrogatory answers.

17 One is Casio's motion for sanctions and to strike
18 Papst's discovery request and one is Casio's motion for
19 sanctions. These are all kind of related and wrapped up as
20 kind of joint issues.

21 Let me start with the concept that I have three points
22 to make. One is that the initial Papst's discovery requests
23 were outrageously over the top. And I don't know about
24 sanctions at the moment. But I do know that they were
25 outrageously over the top, and I am hopeful that Papst will not

1 be playing those games with the other defendants who are in
2 this case and coming. I got notice today that Hewlett-Packard
3 would be joining us soon.

4 So I just want to tell Papst's lawyers that we are doing
5 a streamlined piece of litigation here and we are not using
6 discovery as a weapon. It is a tool of discovery, and so don't
7 do it again. Now let's move on.

8 The bifurcation which I have ordered it seems to me
9 omits or takes care of 35 requests for production of documents.
10 If you go through it you can figure out which ones they are.
11 And so I think that we don't have to worry about those and we
12 don't have to talk about them.

13 The real question is, the problem that I have is that
14 each of you has filed with me documents that were timely when
15 you filed them last June. They're not actually timely right
16 now because events have proceeded.

17 Now Papst in its original requests which I said were
18 outrageously over the top says no, no, we've limited them. And
19 on page 3 of their motion to compel which is document 45 on
20 this docket, Papst lists the eight areas in which it says it
21 really needs discovery.

22 Casio responds and says no, no, no, they say they've
23 narrowed it, but it's not really narrowed and in any event,
24 it's far too broad but we will produce some things.

25 Then if I move forward to document 51 in this docket, I

1 find that Papst redefines what it's seeking on page 1 of that
2 document. So if I look at document 45 it says number one,
3 Papst is asking about the acquisition and processing of light
4 images by cameras including for example, the conversion of
5 light images into electrical signals representative of the
6 light images.

7 But on page 1 of Papst's reply, Papst tells me no, we've
8 only sought quote, the processing by a camera of electrical
9 signals representative of light signals including the
10 conversion of analog signals representative of light images, et
11 cetera.

12 So you see, I don't know what Papst has asked for. I
13 can't tell you what Casio has responded. Casio said last
14 spring we're going to produce some documents. You haven't told
15 me what documents, if any, Casio has produced in the meantime.
16 I mean, you guys are caught up in litigating something that is
17 half a year or more old.

18 Really, do we need to litigate this? Do you absolutely
19 have to have an answer to these ancient questions? Can't I
20 just say listen, this is a patent litigation suit and it's time
21 that we stop playing games and moved forward.

22 Papst has to redo its discovery and it has to redo it in
23 simple English. But more than that, more than that, Papst
24 maybe this is the way to do this, that Papst should be required
25 to submit a statement to contain a detailed explanation of its

1 infringement contentions which everybody has been asking for
2 since this began. I assume that Papst has been acting in good
3 faith as it wandered around the world approaching Digital
4 Camera manufacturers, demanding royalties, that Papst has an
5 idea as to how these Digital Cameras infringe its patent. So I
6 think the thing to do now is to say okay, Papst, put them up.

7 In Papst's briefs because these were filed way last
8 spring, it's still arguing as if Casio is the plaintiff and
9 it's the poor defendant. After all, Casio came into this
10 litigation let them be prepared to move first.

11 I've already told you Papst is going to be treated as
12 the plaintiff. Casio and all of the other manufacturers as
13 defendants because that's really the reality of the situation.
14 So Papst has to speak first. And it's time that Papst did so.

15 Now, let me get back to these motions. Do you really
16 need me to rule on them all?

17 MR. STIMPSON: Your Honor, this is Scott Stimpson
18 speaking for Casio.

19 I think three of the motions are very closely related,
20 the motion to strike and two Papst's motions to compel.

21 Actually, Your Honor, our motion to strike might resolve
22 a lot of these issues, I am hopeful, because we have proposed
23 that we produce documents relating and sufficient to show the
24 structure and operation of the camera, and I would hope that
25 that would be enough.

1 I mean, one of the things Your Honor mentioned was the
2 possibility of Papst redoing this discovery and serving
3 additional requests.

4 From Casio's perspective, I mean, we've been through
5 this and it's been an absolute nightmare.

6 THE COURT: Well, the question is has Casio responded
7 to Papst's discovery? Well, the first question is what is
8 Papst's discovery? I mean, I cannot tell you from looking at
9 the documentation you've given me and all of the briefs exactly
10 what it is that Papst is currently asking for or was currently
11 asking for let's say pick a time period last August. I have no
12 way of knowing because this is a moving bobble.

13 Now this is not the way that you guys should be
14 litigating and it's certainly not the posture you want to be in
15 front of a Court. You look like you're all playing delay games
16 and expense games instead of serving your clients.

17 Now, I will not allow delay and expense games. I will
18 be really rough with somebody that I think is only playing
19 delay and expense games. But this is when the case was before
20 two other judges.

21 So if Papst, if you're confident that Casio knows what
22 Papst has been asking for and if Papst is happy with the
23 information it's received from Casio, well then, fine. That's
24 great.

25 If you don't know what Papst was asking for, you're in

1 the same position I am and Papst hasn't even told me. All
2 Papst tells me is well, we've backed up a little. We started
3 in a simply outrageous place and we've backed up some, but I
4 don't know how far.

5 And I mean, I know that telling Papst that they started
6 in an outrageous place is delivering any new news to any of
7 you. So that's, you know, and besides which Magistrate Judge
8 Robinson already ruled on this.

9 MR. SCHNAYER: Your Honor, this is Schnayer.

10 May I speak, please?

11 THE COURT: Yes, sir.

12 MR. SCHNAYER: Can I start -- this may take a bit of
13 time too.

14 THE COURT: I do not want any history. Mr.Mr.
15 Schnayer, you wasted my time at the last hearing. Do not waste
16 my time again by positing your client as a really good
17 wonderful group of guys.

18 Now I want you to address the issues we're talking about
19 today.

20 MR. SCHNAYER: Yes, Your Honor.

21 Let me start by then getting very specific if I can with
22 the issues, the things that are at issue here. Your Honor, we
23 sent a letter to the opposing counsel dated June 12th, 2007
24 which is part of our filing document 52, I guess it's actually
25 45.

1 The document is Exhibit E to our motion to compel and
2 what we do is we tried to make a list of items that were items
3 that were relevant to the claim language at issue involved in
4 the lawsuit.

5 What we did if you look at our Exhibit F, we take
6 exactly those claim language and we refer specifically to claim
7 one of the patent. We describe in there with regard to claim
8 one exactly where in the patent claim that it calls for that
9 particular element. So we tried to be very specific so we can
10 show the Court where that occurred.

11 So each one of our eight elements we showed support in,
12 support in the patent claim. Recently, Your Honor, Casio --
13 not recently -- but in the end of the last case that was down,
14 when it was down before the prior Judge, they answered
15 supplemental interrogatory answers. And in those answers they
16 raised the elements of two of the claims that were at issue.
17 Claim one of one patent and claim two is the other patent.

18 If you go through it, it's several pages long, they
19 exactly contest the meaning of claim elements that relate to
20 those particular, the eight items that we included on our list.
21 So they have hotly contested. They have put those at issue in
22 the case.

23 Then that is one reason why we decided that if we were
24 going to limit things to relate to the issues in the case, the
25 things that they put at issue are things that we should direct

1 our attention to. They have contested what the claims mean and
2 whether they're, the devices are covered by those claim
3 elements. So what we tried to do is to say let's limit what
4 we're asking for to those particular elements.

5 Those are the ones that they put at issue. Those are
6 the ones that they're going to complain about. Those are the
7 ones that they're addressing in their interrogatory answers so
8 let's put those at issue.

9 By the way, Your Honor, Papst recently filed in
10 accordance with, we had a conference a few weeks ago, we filed
11 our contentions responding very specifically to those claim
12 elements that they had. We put in a lot of detail. We're
13 trying to comply with our discovery obligations.

14 We addressed all of, they had pieces of prior art they
15 claim were relevant, we addressed every single piece of prior
16 art. We explained prior art, we explained why it wasn't
17 invalidating and all of the claim elements, all of their
18 interpretations we explained in great detail why they're wrong
19 and why we don't agree they're correct.

20 THE COURT: What is the file docket number of the
21 document you're talking about?

22 MR. SCHNAYER: I'm looking at -- where these
23 attachments are?

24 THE COURT: Your contentions in a lot of detail and
25 all of that, what docket number is that?

1 MR. SCHNAYER: It's not filed, it was discovery that
2 was served. We certainly can send you a copy of it.

3 THE COURT: Well, filed and served are different.
4 You make me feel better, keep going.

5 MR. SCHNAYER: You don't have a copy. We agreed not
6 to, I think we're not suppose to file those.

7 THE COURT: Correct.

8 MR. SCHNAYER: Unless it becomes an issue.

9 So we actually provided them with a lot of detail.
10 We're trying to comply with our discovery obligations. We
11 exactly addressed the issues that they addressed. But those
12 are the questions that are at issue in this case.

13 And there's a lot of, there's a lot of issues now that
14 that raises under the patent law. Number one, when you got to
15 know what the level of skill and the art is you got to know
16 what the claim language means. You got to know what there's,
17 what they call secondary abuse and ability.

18 Secondary dependability are more significant then other
19 issues to the patentability. What they are attempting --
20 failure by others. Skepticism by people skilled in the art,
21 long felt need, commercial success. These are very well
22 defined patent law concepts and we tried to address in our
23 papers, in our document requests those issues and then when
24 Casio complained about it and we understand it's a fair amount
25 of documents, but how do you get the documents that are

1 relevant to the patent issues that are in this case without
2 getting them?

3 We limited it, to try to limit it to the issues that
4 we felt were the technical issues that are involved
5 specifically with the claims and with which Casio agreed with
6 because that's the exact issues they raised in their papers.

7 And so we did try and limit the discovery that we had in
8 this case. And I don't know how to deal with these issues.
9 Unfortunately, some of these are very broad issues. We tried
10 to cite case law to show you these were issues that are
11 relevant in the patent law.

12 I was involved in a case recently --

13 THE COURT: I don't need -- wait, wait. Stop, stop.
14 I don't need to hear more about that.

15 MR. SCHNAYER: Yes, ma'am.

16 THE COURT: What I'm trying to do is figure out where
17 we go from here. Let me just take you through the Papst motion
18 to compel the production of documents.

19 MR. SCHNAYER: Yes, ma'am.

20 THE COURT: The first thing is you argue on page 3,
21 this is document number 45 in the docket which is the only way
22 I can keep track of what we're doing, is that here we've
23 limited our requests for documents and we've limited them to
24 these eight issues that are listed there.

25 And then you say Casio must produce documents for

1 products that may yet be accused of infringement. If things
2 were not used, manufactured, sold or offered for sale, licensed
3 or imported into the United States, they're not relevant and I
4 don't see that Casio has to produce information about them. I
5 know you have an argument about that. I'm just telling you I
6 don't see where that comes from.

7 Then we have Casio must produce documents relating to
8 activities outside of the United States. Communications with
9 customer sales, revenues, profits and marketing materials.
10 These are activities outside of the United States, I don't see
11 that they're relevant. I literally don't see how
12 communications with customers anywhere else in the world are
13 relevant. And you haven't limited that request in any fashion
14 to allow it to be relevant. So all of that gets stricken at
15 the moment.

16 Casio cannot withhold documents on the basis of
17 confidentiality. I think we have resolved that with a
18 protective order.

19 Casio must, request documents on a date certain. Casio
20 has agreed to produce all responsive and non-privileged
21 documents.

22 Has that been done?

23 MR. STIMPSON: Your Honor, we have produced
24 additional documents but they have not all been produced, the
25 reason being that we had a protective order which is now

1 resolved. They are all going to be produced. We can start
2 that production as early as maybe this week or next week. And
3 we have not received many, many documents.

4 THE COURT: Well, don't talk about what you haven't
5 received. Talk about what you're going to do.

6 So this is not completed yet and your answer is well, we
7 needed a protective order. You now have a protective order,
8 you will get this done within two weeks.

9 MR. STIMPSON: We will, Your Honor. Thank you.

10 THE COURT: All right, Casio must produce all other
11 relevant documents.

12 Then we turn the page. Casio's financial documents. We
13 don't need financial documents because we've bifurcated.

14 Papst has requested documents on the legal control issue
15 to show that Casio Japan and Casio U.S.A. do have control over
16 other Casio entities. Just on the face of it since Casio Japan
17 is a defendant, we don't give a damn, excuse the French, for
18 whether Casio U.S.A. has control. And we will assume that it
19 does not. If you find any reason to believe that it might,
20 then it might and you can follow that through. But your
21 request for documents to Casio U.S.A. for documents from some
22 place in Hong Kong or anywhere else is inappropriate and
23 improper. You can ask Casio Japan about those things and then
24 Casio Japan can argue about their relevance.

25 Now we get down to the details of the information

1 systems. We have been around and around about the information
2 systems. I still don't understand why you want it or need it.
3 And I'm striking it unless you come up with a better reason.

4 Then we move on to documents regarding other lawsuits.
5 You want a previous admissions on claim interpretations and the
6 operation of its cameras. I'm not quite sure what documents --
7 I'm sorry, I have actually read through all of this but right
8 now I can't recall right now. What documents, what kinds of
9 other documents are you looking for?

10 MR. SCHNAYER: We know of one particular case, Your
11 Honor, which was recent we referred to in our papers and the,
12 there were cases where Casio was sued for patent infringement
13 we understand and of these very same product and the issue is
14 if they have documents that were produced or information from
15 that lawsuit that's relevant to this lawsuit, we think it's
16 appropriate that they produce it.

17 These are very, the issues involved in the cases I think
18 are similar. They involve the electronics of the devices that
19 are at issue here. And I think we'll probably find it will
20 tell us a lot of details about it.

21 THE COURT: Okay, but you didn't tell me what
22 documents did you ask for.

23 MR. SCHNAYER: Well, we asked for the pleadings, and
24 if they produced documents in the case if there was document
25 requests where we can see what kind of documents were produced

1 or things of that nature, then we would like to --

2 THE COURT: So what you want is for Casio to produce
3 in this litigation everything it produced in another litigation
4 with another party?

5 MR. SCHNAYER: Yes, Your Honor.

6 THE COURT: Well that, I mean, that's just grossly
7 overbroad. I'm sorry, you can't ask things like that. You
8 have to figure out what your claims are, and then identify
9 whatever kinds of documents you think might be in another piece
10 of litigation and you limit your requests to those kinds of
11 documents. You don't know the precise document, you know, the
12 one with Bates stamp number 1242, of course not. But you can't
13 ask for every document ever produced in response to somebody
14 else's document requests.

15 If you think there's something relevant in there to the
16 electronics of the camera operation, then figure out a way to
17 ask for that unless you're already too late. But that, I mean,
18 that's just, this is the problem we have with the way that you
19 put together your discovery.

20 You did it, I don't know swarth dearth, is that the way
21 you describe this kind of thing? But it's simply stunning,
22 absolutely stunning and I'm sorry I didn't have the case to
23 begin with because I would have addressed it a long time ago.
24 Here we are a year later and it's long over, water over the dam
25 and I'm still fussing about this nonsense.

1 All right, prior art. You asked for prior art and Casio
2 said only the prior art on which it intends to rely.

3 How do you defend that position?

4 MR. SCHNAYER: Here's the problem, Your Honor.

5 THE COURT: No, no, that's Mr. Schnayer, right?

6 MR. SCHNAYER: This is Mr. Schnayer.

7 THE COURT: I don't need to hear from Mr. Schnayer.

8 I misspoke, forgive me if I indicated I did.

9 Who I need to hear from is Mr. Stimpson.

10 MR. STIMPSON: Yes, Your Honor.

11 If we're not relying on prior art, I don't see how it's
12 relevant. I mean, Papst has not put forth any position that
13 would -- what I'm really concerned about here is for example,
14 their request is every piece of prior art. Now on the face of
15 that that may not seem so bad.

16 For example, Casio has I don't know, maybe hundreds of
17 patent applications relating to the technology and every one of
18 those you get prior art cited against every patent application.
19 I mean, we literally read the Papst requests which requires us
20 to prove all that. It would just be an enormous undertaking.

21 And if there's anything specific that Papst needs for
22 whatever reason, certainly any prior art that we're relying on
23 it is after all a defense, I mean, we'll give it to them.

24 THE COURT: Read to me because I don't have it -- oh,
25 I do have it but it's hard for me to find -- the exact request

1 for documents here.

2 MR. STIMPSON: Let me see, this is 51?

3 THE COURT: Fifty, 51 and 53.

4 MR. STIMPSON: Fifty-one says all documents
5 constituting recording, evidencing or referring to any alleged
6 prior art relevant. All documents provide written
7 corroboration.

8 I'm just referring to one more time. So they refer
9 first of all, it says anything relevant to the fact in the suit
10 and that's a problem because how do we define that. But if
11 there's anything we're going to rely on of course we're going
12 to give it to them. If there's anything else that they
13 specifically need, then we would be happy to consider that by
14 just telling us anything relevant to the patent which Papst is
15 interpreting to be relevant to Digital Cameras that is just an
16 enormous undertaking.

17 THE COURT: Well, now the patents, Mr. Schnayer, what
18 would you tell me because you referenced electronics, what
19 would you tell me these patents actually cover in English?

20 MR. SCHNAYER: The only way really for me to tell you
21 that is to go through the claims the way I did before. They
22 cover and I can do this from memory. But they cover, it's a
23 combination of elements including, and they put this all at
24 issue in recent interrogatory.

25 THE COURT: No, answer my question. Don't get

1 argumentative, just answer my question.

2 MR. SCHNAYER: Could you repeat it, please?

3 THE COURT: Yeah, tell me what these patents actually
4 cover?

5 MR. SCHNAYER: I'll do the best I can without patent,
6 the claim in front of me. They cover variations of a transmit
7 receive device attached to a device called an interface device.
8 The interface device has a circuitry which some of the claims
9 require circuits that sample, signals that come from the data
10 transmit receive device, and then there's an A P converter
11 which converts the analog signal to digital. Then there is a
12 processor which processes the information, and typically can
13 store the information in a memory that then also this interface
14 device can be hooked up to a standard computer which has
15 software drivers which are customary in device -- excuse me --
16 they have software drivers which are for input output devices
17 customary for example, like a hard disk drive.

18 What happens is the device sends a signal, the computer
19 you connect this interface device to the, to the computer, and
20 the computer sends a signal out saying what are you. It sends
21 out an inquiry. There's generally first an interpreter which
22 is a software/hardware function. In other words, it's a
23 computer operating a certain way which will then send a signal,
24 will send a signal back generally indicating that is it for
25 example, a hard disk drive when in fact it's really connected

1 to a camera.

2 Then the computer is then able to communicate with the,
3 with the interface device by way of that specific driver which
4 typically is a very efficient driver to transport the
5 information which was originally downloaded to the memory for
6 example, and it transmits it to the computer.

7 Now there's some claims directed for example, to exactly
8 how it transmits that information. Some of the claims require
9 hard disk drives. The particular information, we generated
10 some very, very, specific interrogatories to these what are
11 called identifiers in computer language. They're particular
12 pieces of information that you look for and if you know they're
13 there then it goes a long way to tell you whether there's an
14 infringing device.

15 Those are interrogatories we addressed to everybody but
16 Casio because this issue came up about whether we can serve
17 more requests on them. Those interrogatories we were going to
18 actually propose off the record to Casio, haven't had a chance
19 yet that if they would agree to answer those, those would go a
20 long way to get us a lot of the information we need.

21 But that's a generality of what this patent concerns.
22 It's this interface device with particular circuitry that
23 operates in a certain way and it could be connected to a
24 computer that operates in a certain way. And the data transmit
25 receive device is for example, a lens. And it's the way

1 information data like a picture image could come in and then
2 it's made into signals that can then be processed by this
3 interface device.

4 THE COURT: What does this have to do with the
5 conversion of light images into electrical signals?

6 MR. SCHNAYER: Because the issue of converting light
7 images into a particular signal is exactly, they claim that
8 the, that is not present in their device and they claim that
9 the data transmit receive device, there's several issues.

10 One is they claim that it doesn't have to be connected
11 to the interface device, they say it could be interchangeable.
12 And they claim that that word doesn't cover their device, their
13 camera. But the issue of how the light comes in and how it's
14 processed is very significant and how it's processed internally
15 by the micro processor of the control circuit of the camera
16 tells us whether it infringes or not.

17 THE COURT: Okay. So then how would you better
18 define your requests for all documents about prior art relevant
19 to the patents in suit? What does that mean? What are you
20 asking for?

21 MR. SCHNAYER: Your Honor, to the extent that they
22 are going to assert prior art against our patents, certainly
23 they should be required to identify those.

24 THE COURT: Well, yes. They say, Casio says that any
25 prior art that they're going to rely upon they're going to

1 produce and you're unhappy with that limitation.

2 So I'm saying well, what did you mean when you said
3 prior art relevant to the patents? I mean, you just described
4 to me what the patents do.

5 MR. SCHNAYER: If they're going to -- it's the rest
6 of the request that we're concerned about. It's not the
7 beginning part.

8 If they say we're going to give you all prior art that
9 we consider to be relevant and that we're going to be using,
10 that's fine. As long as they're limited to that. But the rest
11 of it is what is important.

12 It says including all documents that provide written
13 corroboration that any actual product constituting alleged
14 prior art was not on sale or sold anywhere in the United
15 States.

16 Prior art doesn't have to be a patent. It could be
17 somebody invented something. One of the problems is that if
18 you want to, if you want to be able to cross-examine their
19 prior art, you need all of the background details of that prior
20 art. So what they may have done for example, and I can tell
21 you I'm sure they did regarding some Kodak prior art.

22 If they have any information about that prior art or
23 devices built in accordance with that prior art, then that's
24 the information we may need to cross-examine that prior art to
25 show what it really meant. They may say oh, look at what this

1 prior art teaches and they may have documents in their file
2 that show that's not what it teaches, it teaches something
3 different.

4 THE COURT: Wait, wait, let me go back and read that
5 to me agin.

6 You said written corroboration that any, keep going, any
7 product that was prior art was not on sale? Is that what you
8 said?

9 MR. SCHNAYER: Right. One of the issues is if you
10 had documents concerning prior art one of the issues is whether
11 there was a device on sale in the United States, more than one
12 year, there's a period of time but specifically about the time
13 that patent, he came up with this invention.

14 And they could come in with some documents trying to
15 show that this device was on sale and I have had this happen in
16 cases where they present some of the evidence and not all of
17 the evidence. There may be other evidence to show that what
18 was sold didn't work. And all we want to do is make sure that
19 they don't give us part of the information, they give us all
20 the information so we can cross-examine it. And that's what
21 and that's real clear, that's what we meant by this. They got
22 to give us all of the information about the prior art so that
23 they can't argue it being something different and we can't
24 cross-examine it.

25 If it's on sale, they assert it's on sale, they got to

1 give us the good documents and bad documents, everything about
2 that document that is on sale so we're not surprised.

3 Otherwise, we have no way of cross examining.

4 THE COURT: But what you said was written
5 corroboration that any product that was prior art was not on
6 sale. You didn't say was on sale, you said was not on sale.

7 MR. SCHNAYER: Right. And that would be for example,
8 documents -- they may say oh, look, this device was sold. And
9 here's a document, here's the sales brochure or something that
10 shows that it's on sale.

11 And we may say, wait a minute. Here's another document
12 to show that it never was delivered, to show it wasn't on sale.
13 They want to show it was on sale. We want to show it wasn't on
14 sale.

15 THE COURT: Okay. Mr. Stimpson, do you understand
16 that?

17 MR. STIMPSON: I think so, Your Honor. I think it's,
18 there's no particular prior art I'm thinking of right now, but
19 what they're saying I think is if we're saying a piece of prior
20 art is prior art because it was on sale and we got documents
21 showing it wasn't in fact on sale, then we got to give it to
22 them. And that's okay, if we're going to do that, we'll give
23 them documents showing that it was on sale. If we have
24 documents showing that it wasn't on sale, then we'll give them
25 that too.

1 THE COURT: Alrighty.

2 MR. SCHNAYER: In addition, Your Honor, if there's
3 any evidence about prior art which relates to the subject
4 matter relevant to the patents in suit, then I think they
5 should be required to produce it. For example --

6 THE COURT: I'm afraid that your language is
7 overbroad. Subject matter that was relevant to the patents in
8 suit.

9 Now, sir, you have to ask for things with more clarity
10 than that if you want to get your request enforced. I mean,
11 that is a bunch of words that has no meaning, except in your
12 mind, it has no meaning to a reader. It's too broad.

13 I mean, you just, you can't ask me to enforce that
14 request. Who knows what you mean? It's not possible to
15 discern from the words themselves.

16 You know, you're going to have to learn to do this, at
17 least in this case, you're going to have to learn to do this
18 with a lot more specificity than that kind of stuff. Because I
19 cannot say to Casio you got to produce it because I don't know
20 what you're even asking for. And I can't ask Casio to spend
21 time on the telephone repeatedly so you can explain to us what
22 it was you meant.

23 MR. SCHNAYER: Your Honor, may I raise one issue,
24 please?

25 THE COURT: Yes.

1 MR. SCHNAYER: One of the things that I would expect
2 to happen with regard to these particular requests counsel for
3 Casio is an experienced patent attorney. And if we were to sit
4 down and review these together and really had a good faith
5 discussion about these particular requests, I think that he
6 knows what would be appropriate and what he understands, he
7 understands what these are about. And I think that would be
8 one way for us to try and resolve these matters, and, you know,
9 try and reach agreement on some of this.

10 THE COURT: Well, you submitted these to the Judge in
11 June of 2007 which means you submitted them to Casio longer ago
12 than that. And there's been a whole lot of time to talk about
13 and all you managed to do, and this is not directed to you
14 personally, Mr. Schnayer, is just argue about things, the two
15 of you, you're having a great time.

16 Now let me go on. I think I've gone through Papst's
17 original motion pretty much except for the documents
18 demonstrating the identity of individuals and businesses
19 involved in Casio's infringing activities.

20 Again, I think that you're dangerously close to being so
21 grossly overbroad and you're too late to change it now and now
22 what are you going to do? How can I enforce it? I mean,
23 you've let yourself get to the end of a limb.

24 I mean, I just have to tell you now I think Casio has
25 been overly protective. Don't get me wrong, Casio has played

1 its own games. They're just not quite as over the top because
2 they don't start with the requests from Papst. But I mean,
3 Casio can't pretend that none of the requests from Papst are
4 relevant, that they don't understand any of them, that they've
5 never litigated a patent case before.

6 So gentlemen, you have to act as professionals in this
7 matter. I don't want any more gamesmanship. I have a booklet
8 here, a big thick three ring booklet with all of your
9 pleadings. I complained at lunch that in this case nobody
10 knows how to speak in less than a hundred pages.

11 I mean, I'm not going to do this this way. If you
12 insist on litigating this way, you're going to have to come to
13 court about once a week while I pound at you until I figure out
14 how not to do it. We've got to get this case to the point
15 where something is able to happen. And we're not going to be
16 able to play discovery games.

17 Now the problem that I have is Papst said I narrowed, I
18 narrowed, I narrowed. I still don't know where you are. I
19 still don't know quite what you've asked for. I can't enforce
20 anything that you have asked for because you haven't told me
21 what you've literally asked for now. And then Casio says well,
22 we're going to produce, we're going to produce, we're going to
23 produce and then lo and behold it hasn't produced at all.

24 And then Papst comes back and says but the order that we
25 want you to issue, Judge, is on our first request as they were

1 written not as we've changed them.

2 Now do you understand the problem that I'm having with
3 all of this?

4 MR. STIMPSON: Yes, Your Honor, Scott Stimpson, I do.

5 MR. SCHNAYER: Yes, Your Honor, it's Mr. Schnayer.

6 THE COURT: Good, good.

7 And have we had enough conversation or should we proceed
8 through the motion to compel interrogatory answers which of
9 course was written before this became an MDL? It was written
10 at a time when Casio was a plaintiff. Casio is no longer the
11 plaintiff.

12 There are a lot of arguments in the motion to compel
13 interrogatory answers which aren't particularly relevant
14 anymore. I don't know why you're giving me all of this old
15 stuff to read. And then I came to Casio's motion to strike
16 Papst's discovery requests and for sanctions. Some of this
17 discovery requests are properly stricken. Some of them are
18 not. I think we've gone through a lot of them already.

19 Have we resolved this issue of what should be stricken
20 and what should not?

21 MR. SCHNAYER: Your Honor, can I raise one issue with
22 you?

23 THE COURT: Yes.

24 MR. SCHNAYER: If I can?

25 You've indicated that financial documents aren't

1 relevant because they don't, they relate to the issue of what's
2 been bifurcated. I will just tell you that each of the
3 requests that we have we cited case law in our brief that shows
4 that there is case authority to support our requests. I just
5 want to talk about this one.

6 There are two issues involving financial documents. One
7 is damages and the second issue is commercial success. One
8 indicia of patentability is whether a patent is commercially
9 successful. The commercial success can come from a product of
10 the plaintiff or come from the product of a defendant. So the
11 issue is in order to show commercial success is an important
12 issue in patent law because if I can prove commercial success,
13 it's an indicia of the patent being patentable. It's something
14 that's under federal circuit, standard federal circuit law
15 something that is relevant to the issue of patentability of the
16 claims.

17 What you must do in deciding this issue is you must look
18 to see if there's a nexus between the commercial success of the
19 device and sales. But for example, Casio may have marketing
20 documents. And they may, and we've seen some of them already.
21 I've seen a number of them that they've produced to us that
22 talk about the features and attributes of their device.

23 If they talk about the features and attributes and some
24 of those relate to the claims of patent in suit, then you've
25 shown a nexus between the commercial success and the claim

1 mentioned.

2 And therefore, in connection with that you need to have
3 financial documents that would show how successful they were
4 when they switched to this technology. Then you need to have
5 documents which would show marketing issues and things of that
6 nature which could then relate to the issues of the patent in
7 suit.

8 THE COURT: Do you need that for the Markman hearing?

9 MR. SCHNAYER: Your Honor, you gave us 25 documents
10 -- the answer is do I need it for the Markman hearing? I don't
11 need it for the Markman hearing.

12 THE COURT: Okay.

13 MR. SCHNAYER: But the problem is if I don't get it,
14 I only have 25 document requests. It's a very limited number
15 with many different subjects involved in patent law. So if I
16 try to be specific, too specific, I can't possibly cover all of
17 the subject matters that I have.

18 In this particular one with the financial documents, it
19 is a highly relevant piece of information. Cases have been
20 overturned on appeal when parties have not been allowed
21 discovery on the issues of connection of the nexus between the
22 intervention and the commercial success and the commercial
23 success itself.

24 THE COURT: Okay. And we are right now aiming for
25 the Markman hearing. And we are not aiming for the full

1 discovery of the entire matter. Because the first thing that
2 we do is figure out a claims construction. And then once the
3 claims have been construed, then the parties continue with
4 their discovery and unless and until the claims are construed,
5 it's very difficult for you to know what to ask for with any
6 precision and for Casio or any other defendant to respond as to
7 whether or not there's a nexus between the commercial success
8 and one of the as construed claims of the patent.

9 But it's interesting that you -- and so therefore, I
10 think that it's not that you're not going to get discovery on
11 these issues, it's that it's premature. It's a very expensive
12 proposition that we don't have to do now.

13 Now one of the things that you said is that one indicia
14 of patentability is commercial success. As I understood it,
15 your inventor has no products.

16 MR. SCHNAYER: Well, no, he -- that's not the case,
17 Your Honor.

18 Can I explain?

19 THE COURT: Yes.

20 MR. SCHNAYER: Mr. Tasler who is the inventor is,
21 actually started a company and went into the business of
22 manufacturing these products. A product that are covered by
23 the patent.

24 Mr. Tasler doesn't have a lot of money. And couldn't,
25 but he does have products and he does sell products in his

1 area.

2 THE COURT: Then that's fine. That's the only answer
3 I need. I don't need the rest of it.

4 But did you understand my response to your plea for
5 information on commercial success?

6 MR. SCHNAYER: I understand. I guess the question is
7 that I'm, I didn't understand that from your prior orders that
8 we were to break discovery down.

9 I understood that we were to break discovery down with
10 regard to damages and willful infringement, but I didn't
11 understand based on the procedural orders that you wanted us to
12 break it down even further. So --

13 THE COURT: Well, perhaps my own understanding of
14 this is maturing along with yours, but I think that what I'm
15 trying to do is figure out a way to manage a case in which
16 you've started with these hugely overbroad requests.

17 To this moment sitting here I don't know what the status
18 of your actual discovery between the two of you is and what
19 remains to be decided. But you started with these hugely
20 overbroad requests and now I'm just trying to figure out a way
21 to get this under control so that you stop quibbling about it,
22 you get what you need and we can get to a Markman hearing.

23 And you are telling me, and this is my understanding of
24 the way it works as well, that commercial success has no
25 bearing on the Markman hearing. So let's not worry about that

1 now, let's worry about the things that count. Because of
2 course, there will be more discovery if the Markman hearing
3 doesn't resolve things.

4 MR. SCHNAYER: The problem that I think most
5 everybody has here is that we directed our discovery under the
6 25 Rule limit to matters that relate to all the issues except
7 for infringement -- excuse me -- except for damages and willful
8 infringement.

9 And I know that our discovery requests were directed to
10 every issue besides that. We, I think that's my confusion
11 here. And if the Court wants us to do something, then we'll
12 try and comply with it certainly. But there was nothing in the
13 practice order that talked about limiting the discovery in the
14 first part of the case to any particular issues except that.

15 So if you want us to do that certainly we'll try and
16 comply with your requests, but it's going to take some time
17 because we have document requests out that are broader than
18 what, than what you talked about now.

19 The other side has document requests that are broader
20 because we were all directing it to broader issues.

21 Then the other problem is how do we keep Casio in line
22 with this and make it consistent because they're being treated
23 differently.

24 We've learned a lot more since the time of Casio's case
25 that we were able to focus some of the issues on real important

1 critical things. And the problem is that we can't, you know,
2 we were going to talk to Casio whether they would agree to
3 respond to some of that discovery requests and raise it with
4 you if they didn't.

5 THE COURT: Why don't we just cut to the chase here.

6 Tell me, Mr. Schnayer, what of your requests to Casio
7 you don't have complete answers to today. I don't care what
8 about last June. Tell me as of today?

9 MR. SCHNAYER: I didn't understand the question.

10 THE COURT: What remains to be produced? What
11 requests for production and interrogatories do you think you
12 have not yet received full responses?

13 MR. SCHNAYER: Well, I can go through the
14 interrogatories they basically gave us.

15 THE COURT: Back up to the documents because we spent
16 more time on documents so far than interrogatories.

17 MR. SCHNAYER: Your Honor, they only produced to us
18 very limited documents in the case. They produced to us some
19 manuals that are publicly available that I could have gotten
20 off the internet that aren't sufficiently detailed with the
21 information I need. They produced a few financial documents to
22 me. They have not given me any documents on the computer
23 program and how it operates, some of the things I mentioned and
24 what we would need. I haven't received hardly anything.

25 There's a lot of pages of things because they produced a

1 lot of these manuals that are several hundred pages long, but
2 it's basically nothing. I don't have anything, I don't have
3 hardly any documents. They produced recently a few more
4 manuals of publicly available manuals, but I just don't have
5 any documents.

6 THE COURT: Okay. Mr. Stimpson, you said you were
7 going to produce everything in the next two weeks, right?

8 MR. STIMPSON: Well, Your Honor, I can. In fact, as
9 we speak people are reviewing documents to give them out.

10 If I can, please, just respond to Mr. Schnayer's
11 comments?

12 THE COURT: Yes.

13 MR. STIMPSON: We produced marketing materials, we
14 produced mail summaries, we produced all of the manuals for all
15 of the Casio's products and we supplemented that after the stay
16 was lifted.

17 The other stuff we're working on are the documents that
18 show how the Casio cameras operate which is something we agreed
19 to produce. We're going to produce documents subject to
20 privilege and work product on the patent and I'm sorry it has
21 not been produced as quickly as you would have liked, but we
22 were waiting for that for the protective order but now that
23 it's done we are moving ahead on it.

24 Just -- well, that's it for Casio.

25 THE COURT: Tell me about the information about

1 commercial success.

2 MR. STIMPSON: Well, there's a couple of responses to
3 that, Your Honor.

4 The first response is Mr. Schnayer has had Casio sale
5 summaries, he has accused Casio of infringing and Magistrate
6 Judge Robinson ordered him to provide a complete response to
7 our interrogatory commercial success and he completely failed
8 to do that.

9 So as part of our other motion what we have asked for is
10 that he shouldn't be able to assert commercial success now. It
11 was a direct order and he just completely refused to comply
12 with it.

13 Secondly, we produced sale summaries and produced
14 marketing materials that Mr. Schnayer is talking about and
15 lastly, I fully agree with your suggestion, Your Honor. It
16 doesn't make any sense to go, if we're going to go down the
17 commercial success road at all it doesn't make any sense to
18 plow down that road when the Court is going to construe the
19 claims and then we'll all have a better idea of what, if
20 anything, needs to be produced.

21 THE COURT: But what about the fact that Mr. Schnayer
22 says that the parties in the other cases is limited to 25
23 interrogatories have used them to cover all areas including
24 commercial success. What you're really basing your in action
25 on is your motion to strike, right?

1 MR. STIMPSON: Well, first of all, Your Honor, we
2 really, we haven't had in action because we produced the sales
3 summaries. We produced all of the stuff they need on the
4 cameras and we have produced all of the marketing deals. I
5 frankly don't know what else they're going to need.

6 But yes, the answer is I don't think that they should be
7 able to assert commercial success based on their failure to
8 comply with Judge Robinson's order.

9 MR. SCHNAYER: Your Honor, may I respond, please?

10 THE COURT: Yes.

11 MR. SCHNAYER: Your Honor, the only way to know
12 whether there's commercial success is for me to have the
13 documents from the files from all of defendants to show that
14 their products actually infringe and to show what their sales
15 have been. That comes from the files of the camera
16 manufacturers, not from Papst.

17 The only documents that was produced that I am aware of
18 that of sales summaries, and I went through all documents just
19 to check it out was I think one document and I can't tell
20 which, it doesn't list them out. It doesn't say model A, model
21 B or C. And it's half projected.

22 If that's what they mean by producing sales documents,
23 Your Honor, I would like to send it in to you to show you, you
24 wouldn't make heads or tails of it if you see it. And besides,
25 they haven't produced anything based on the prosecution bar

1 issues. They gave us nothing that was confidential except for
2 a very few minor documents.

3 Anything that had to do with the details of the device
4 that was not, that was not public, anything, they haven't given
5 us.

6 THE COURT: Wait, wait, wait. That's because there
7 wasn't a protective order in place.

8 MR. SCHNAYER: I agree.

9 THE COURT: And they were arguing as you recall that
10 your firm shouldn't even be in here and be able to see any of
11 these documents.

12 MR. SCHNAYER: Yes, Your Honor.

13 THE COURT: So until we got that all wrapped up they
14 weren't going to produce anything which is another one of the
15 reasons why I have to keep asking why am I looking at these old
16 pleadings that aren't up to date? Why did nobody even update
17 these by two minutes worth of saying oh, and by the way, Judge,
18 this is where we are today.

19 MR. SCHNAYER: Your Honor, if I can answer.

20 Your Honor, they filed this motion to strike and after
21 they filed the motion to -- we had filed the papers saying that
22 we should start fresh and catch up with everybody else;
23 otherwise, we're going to be doing this twice with everybody.
24 It's going to get very confusing. We said let's start fresh,
25 new day, let's put everybody in line; otherwise, it's going to

1 get confusing which is what it has done now.

2 THE COURT: No, no, stop, stop, stop.

3 No, you missed my point. And so you missed the point.

4 And never mind, I don't need that argument.

5 All right. So we're going to say that certain of Papst
6 requests as identified here today are going to, are going to be
7 stricken and do not need to be responded to by Casio.

8 The issue of commercial success I think that if there's
9 more information that is specific to the different models of
10 camera and I'm sure that Casio has those things, then Casio
11 must produce those. You can't just produce commercial success
12 for Casio Digital Cameras world wide or something. And what's
13 relevant I think is their success in the United States.

14 As a general proposition Papst has to understand that it
15 can only ask for information that a specific corporation would
16 have within its control.

17 Do you understand that? You can't ask Casio U.S.A. for
18 something it doesn't have.

19 MR. SCHNAYER: Yes, Your Honor.

20 THE COURT: It has no obligation to produce something
21 it doesn't have or control. And we're going to assume that
22 Casio Japan controls its subsidiaries in some fashion or other.
23 But there's no reason to assume that Casio U.S.A. does.

24 MR. STIMPSON: Your Honor, may I be heard on that
25 issue?

1 THE COURT: Yes.

2 MR. STIMPSON: On the control by Casio Japan, first
3 of all, my first thought on that is that there's nothing in
4 these foreign countries, I think you've indicated that already
5 today, in these foreign countries and these foreign Casio
6 related countries that Papst really needs because Casio Japan
7 has the documents that's going to be able to show how the
8 cameras operate and Casio America has sales and all of these
9 other sales subsidiaries or whatever they are all over the
10 world. I can't imagine there would be anything there that
11 Papst would really be entitled to in the first place.

12 THE COURT: The only question I had in that regard
13 was whether or not Papst mentioned that it learned that Casio
14 sold some of these cameras I think to Pentax and that Pentax
15 was going to be selling them in the United States. Is that
16 true?

17 MR. STIMPSON: Casio sold models to Pentax in 2002
18 and 2004 and those dates are important because Casio Japan
19 didn't know the patent in 2002 or 2003. And I don't think even
20 in 2004, well, no, they didn't know the patent at all then. So
21 there's no way Casio, there's no way that Papst could possibly
22 have that could catch those cameras.

23 THE COURT: I'm sorry, I missed that last statement.
24 There's no way what?

25 MR. STIMPSON: There's no possible theory of

1 infringement of those cameras because I don't know what Papst
2 is thinking, they haven't articulated any theory, but even if
3 the Court were to allow them to serve things like inducement
4 and contributory infringement despite their refusal to comply
5 with Judge Robinson's order, I mean, you have to have knowledge
6 of the patents and Casio didn't have knowledge of the patents
7 at that time.

8 So there's no conceivable way that those products could
9 ever be accused of infringement that I can see. So I just
10 can't see how anything from any of these other companies could
11 be relevant.

12 THE COURT: Mr. Schnayer, before you get too excited
13 about that fact, what information do you have that would
14 suggest that they do have -- let me ask you first.

15 Do agree with the statement by Mr. Stimpson as a matter
16 of law that you must have knowledge of the patents and that if
17 Casio Japan can demonstrate it had no knowledge by an
18 intelligent witness who so swears or otherwise, do you agree
19 that therefore, none of that is relevant?

20 MR. SCHNAYER: I do agree that in order to show
21 inducement you must have knowledge of patent, I do agree, that
22 is correct. We need discovery on that issue. It's a
23 corporation and we've asked some interrogatories and document
24 requests directed to that issue.

25 THE COURT: Well, I know that that's a theory of

1 patent infringement. And the question is whether you have any
2 indicia of fact that would suggest that your theory has a basis
3 in fact or whether it's a theory that is in the cross claim,
4 cross complaint but at the moment you just need full discovery
5 to find out whether it is a fact?

6 MR. SCHNAYER: Your Honor, in approximately 2003 or
7 2004 Mr. Tasler before he got connected with Papst Licensing
8 had people to check the market place to see if there was
9 infringement of these, people wanted to license the patent. He
10 was actually doing what's called secured licensing if you're
11 interested in this technology.

12 He had somebody look and go around to several different
13 companies and I don't recall offhand if Casio was one, but he
14 had, he sent this out to various companies, Hewlett-Packard was
15 certainly one. And what he got back from these people were
16 yes, you know, everybody in the industry uses these patents
17 from one particular company but we're not interested in paying
18 you any money for it, go away. And that's when they came to
19 Papst Licensing.

20 So we do have some evidence to indicate that Mr. Tasler
21 went around and it was a representative of his, went around and
22 tried to see if people were interested in this patent and sent
23 copies of the patent to various companies including a number of
24 the named parties to this lawsuit.

25 I don't recall offhand if Casio was one of those, but it

1 very well could be that they were one of them because he went
2 to a bunch of different companies trying to see if they were
3 interested in it.

4 THE COURT: Well, you would bear the burden of proof
5 on that point, would you not?

6 MR. SCHNAYER: Yes, but we would also have the right
7 to do discovery on the issue of whether they have any documents
8 that show that. If they don't, if they don't have any
9 documents, I mean, they have to make a good faith search to go
10 out there to their facilities in different places to see if
11 they have that information. If they do, then they would
12 produce it to us.

13 Yes, we ultimately would have the burden because it's
14 infringement but we would need to do discovery on the issue.

15 THE COURT: Well, but you don't have, from the
16 description you just gave me, you don't have even a small fact
17 toyed to suggest that Casio had knowledge.

18 Now I agree with you that you're allowed to discover,
19 but you're not allowed to discover when you have no basis for
20 your claim. If you tell me that Mr. Chancellor's agent
21 approached Casio, well then, you know, you are sort of golden,
22 but then you know who he approached and which company.

23 And that's where you start. You don't ask everybody
24 around the world in every Casio entity. I mean, this is the
25 problem with the way that you've approached your discovery.

1 You've made these so broad that they are totally impossible of
2 enforcement. I just, I don't know what you expect me to do for
3 you.

4 MR. SCHNAYER: Your Honor, I just would like to point
5 out, you know, you were looking at the document requests that
6 was against Casio. I would say, if you look further on in the
7 exhibits you will see that there's almost an identical document
8 request against Casio Japan. So that was also the subject of
9 this too.

10 THE COURT: Yes. But it's, it is almost an identical
11 and it suffers from the same flaws. It is so overwritten, so
12 overbroad. It is so incredibly expensive and burdensome that
13 you haven't given me anything that I can really enforce. I
14 can't require Casio Japan to require every single Casio entity
15 to produce, this is only an example, every single letter to
16 every single customer about every single Digital Camera that's
17 ever been written about since the beginning of time. I mean,
18 how could you possibly expect me to be able to enforce that?

19 MR. SCHNAYER: Your Honor, we've tried to limit that
20 to the issues of the patents in suit.

21 THE COURT: Well, yes, but then when you say what are
22 the issues in the patents in suit you tell me that they're
23 eight of them and they're eight of them that aren't yet even in
24 English.

25 I'm sorry, Mr. Schnayer, your requests are not limited.

1 They are not reasonable. And they're not enforceable.

2 Now that doesn't mean that I'm going to let Casio Japan
3 or U.S.A. get away without reasonable responses. Just because
4 your discovery is not reasonable does not mean that they're
5 going to be able to not respond at all. But I can't enforce
6 things that are on their face not reasonable that violate the
7 rules of discovery.

8 MR. SCHNAYER: May I make a suggestion, Your Honor,
9 that might save your time?

10 THE COURT: Yes.

11 MR. SCHNAYER: Your Honor has your views known about
12 a number of items in this case. Maybe the parties could sit
13 down and try and work something out and see if they can come to
14 an agreement after the discussion that we've had here with you
15 here today.

16 THE COURT: Well, I think that would be the best of
17 all possible worlds. And I want to assure Mr. Stimpson that I
18 really mean it, that Casio U.S.A. and Casio Japan cannot give a
19 flip of their hands to what are the legitimate aspects to these
20 requests.

21 Now I'm not ruling on sanctions and everything. I'm not
22 ruling on those right now. I'm just trying to get a handle on
23 this because you're all swimming around in this deep water
24 getting no where.

25 MR. STIMPSON: Your Honor, this is Scott Stimpson, I

1 fully appreciate that. I just want to assure the Court that we
2 are not giving this just a flip of the hand. We have many,
3 many thousands of documents that we are reviewing and producing
4 right now.

5 THE COURT: Well, I'm glad for that. I say go to it
6 and it's time to get it done. So keep the presses rolling and
7 maybe you should start producing those that are ready to be
8 produced even if you're not ready to produce everything so that
9 Mr. Schnayer at least has something to keep his mind occupied.
10 He's sitting in Chicago being very concerned that he's never
11 getting anything.

12 MR. STIMPSON: Your Honor, maybe this isn't, since
13 we're talking about the Papst discovery requests, perhaps this
14 isn't the time. But I should also mention that since this day,
15 Mr. Schnayer will please correct me if I'm wrong, but I don't
16 think we've received any documents from Papst. I don't think
17 we've received anything on their invention.

18 Papst withheld documents post, anything post complaint
19 for some reason they withheld all of that. We haven't received
20 any of it. So while we're talking about dates for production,
21 maybe it might be a good time for me to raise that.

22 THE COURT: Yeah, because I don't want any more
23 motions to compel.

24 Mr. Schnayer?

25 MR. WHITE: Your Honor, this is Jim White. If I

1 could respond to that?

2 THE COURT: Yes.

3 MR. WHITE: With respect to the documents to be
4 produced by Papst, there's three categories of documents or two
5 categories of documents to produce as I understand it. And
6 that would be those documents that were covered by attorney
7 client privilege work client document and some other applicable
8 privilege based upon our filing with the Judge Kessler of our
9 objections to the Magistrate's report and the recommendation.

10 It seemed to be prudent to do that and not turn over
11 those documents prior to getting a ruling on that. So that has
12 been, those have not been produced.

13 The other category of documents that Mr. Stimpson is
14 referring to is we limited them to the complaint. And that is
15 all of the 408 negotiations with all of the third parties that
16 dealt with licensing, et cetera, et cetera, those types of
17 settlement negotiations. And those were withheld based upon
18 the fact that we had a situation where we had indicated to
19 Casio that those documents were confidential with respect to
20 the third parties. And they in fact in a paper that they filed
21 conceded that point, that they were confidential. So those
22 haven't been produced.

23 In light of Your Honor's recent scheduling order to the
24 extent they relate to damages or at least a reasonable royalty,
25 those are no longer at issue at this particular point in time

1 in any event.

2 So that would be Papst's response to that at this
3 particular point in time in light of the scheduling order and
4 the previous orders in terms of discovery.

5 THE COURT: So it's your position that Papst doesn't
6 owe Casio any documents?

7 MR. WHITE: Well, if Your Honor is going to rule for
8 example, on the motion that's pending before Judge Kessler and
9 said we have lost every privilege that we were ever entitled
10 to, then of course we would have to produce documents.

11 THE COURT: No, I understand that. But other than --

12 MR. WHITE: Other than that, I would say given that
13 my understanding is, and Mr. Schnayer can correct me if I'm
14 wrong or Mr. Swik, that would be the case.

15 THE COURT: So how many pieces of paper has Papst
16 produced to Casio?

17 MR. WHITE: I don't know the answer to that and I
18 would have to defer to one of my colleagues.

19 THE COURT: I mean, are we talking tens or hundreds?

20 MR. WHITE: We're talking about tens of thousands.

21 THE COURT: What were they?

22 MR. SCHNAYER: Documents that --

23 THE COURT: Could you just say who is speaking
24 because we can't see you.

25 MR. SCHNAYER: Mr. Schnayer, I'm sorry.

1 THE COURT: Oh, I didn't catch your voice this time,
2 Mr. Schnayer. I'm sorry.

3 MR. SCHNAYER: I am sorry, I apologize, Your Honor.
4 I was standing a little bit back from the phone.

5 We've produced documents about early developing history
6 documents to the extent that we had them. We produced a number
7 of documents. The, before the case was, before the case was
8 filed we produced documents concerning negotiations. Nothing
9 afterwards.

10 THE COURT: And why no documents afterwards?

11 MR. SCHNAYER: I'm sorry, Your Honor?

12 THE COURT: Why no documents afterwards?

13 MR. SCHNAYER: Because those are extremely highly
14 confidential and we had an agreement, I think Mr. White
15 mentioned, that anything that was confidential and subject to
16 the protective order and we can read to you the portion where
17 they agreed to it, then those documents were withheld until we
18 got a ruling on the protective order issue.

19 We produced documents to the file history. We produced
20 all of the prior art we were aware of. We produced any kind of
21 manuals that we had that related to their products. We were
22 able to obtain data sheets and things like that. There were a
23 number of different documents produced that would be relevant
24 to what we do have of their products.

25 THE COURT: What about what's the impact of the

1 protective order on the confidential documents?

2 MR. SCHNAYER: Well, first of all, the documents
3 number one relate to the issue of, relate to the issue of
4 damages. To the extent that it relates to the issue of damages
5 they don't have to be produced.

6 We've given them all of prior art documents we've been
7 able to find. Anything that relates to the prior art issues
8 we've produced them and to the extent we haven't produced them
9 we're going to update them and give them whatever we have. But
10 we've given them tens of thousands of documents. It's been a
11 pretty significant collection.

12 THE COURT: What about documents that would exist
13 that were part of the negotiations leading up to the
14 settlements with other parties, would not those documents
15 discuss the particulars of the patent in suit and how they
16 related to the cameras of other manufacturers? Would not those
17 documents be relevant even if confidential?

18 MR. SCHNAYER: Some of the documents would discuss
19 how they operated, but they never really got into, nobody ever
20 really gave us any information on their cameras. Everybody,
21 nobody wanted to including Casio wanted to give us much
22 information on anything.

23 THE COURT: So Papst was able to walk up to camera
24 manufacturer X and say we think that your camera infringes our
25 patent and have camera manufacturer X say we disagree, but

1 we'll sign a royalty agreement because we don't want to show
2 you our secret information?

3 MR. SCHNAYER: No. Your Honor, they really never
4 showed us confidential information like that.

5 What they did was they argued more that there was
6 discussions about their claim language and things of that
7 nature.

8 THE COURT: Right and isn't that relevant? It's not
9 privileged, isn't that relevant and not confidential?

10 MR. SCHNAYER: The problem with the information that
11 we're concerned about is to the extent that this related to any
12 prior art, we certainly produced any of that prior art to
13 everybody.

14 My concern is this that we're, to the extent that they
15 want to get into one party wants to find out what the other
16 party did about licensing, the general licensing issues and the
17 conditions of licensing, we don't think it's fair that they
18 should be allowed to get that information and then use one
19 licensing negotiation against us to argue, you know, hey, why
20 did you offer them this deal or why did you offer them this
21 deal?

22 Those are really highly significant from the standpoint
23 of giving them in the negotiations unreasonable our
24 negotiations from one party to the next, everybody wants to
25 maintain those highly confidential.

1 THE COURT: I can understand that. And I understand
2 that in a certain sense given the business that Papst is in
3 enforcing patents instead of products that would be sort of the
4 crown jewels as to how you negotiated these things. But you
5 haven't come, you asked for a protective order. The protective
6 order is in place. It requires Casio to reveal innards, the
7 other manufacturers to reveal things about the innards of their
8 camera that they think are their crown jewels and now this is
9 the business Papst is in and isn't it relevant to how you
10 enforce the patents and what you really think they mean?

11 MR. SCHNAYER: Your Honor, this is Rule 408. And in
12 fact, in the District of Columbia there's case authority that
13 says this may be privileged and not producible. There are some
14 jurisdictions that indicate that 408 material should not even
15 be produced concerning negotiations.

16 On the other hand, the Court in Washington, the only
17 case that I'm aware of that deals with that issue says we're
18 not ruling on that issue whether it's privileged or not.

19 We intended to raise this issue with the parties to
20 discuss it with them and see if there's some way we can work
21 this out where we can reach a solution that they can accept and
22 we can accept also.

23 THE COURT: Well, I really think you should because
24 it seems to me that at best you might be able to redact some
25 documents so that the specific financial terms of your royalty

1 agreements and the financial terms as the negotiations
2 proceeded would not be revealed. That's really what the crown
3 jewels are all about.

4 But a position that Papst has taken in the past as to
5 the meaning and the scope and the rights that its patents give
6 it, those positions are relevant if you have any writings that
7 speak to that. And if you've written them to somebody whose an
8 opposing counsel, it's not written to your clients and it's not
9 giving legal advice, it's advocacy.

10 MR. SCHNAYER: I understand, Your Honor. And what we
11 will try to do if it's okay with Your Honor is work that out
12 with the other side and there's a number of issues that we
13 really need to address and what we intended to try to set up a
14 conference with everybody to deal with these and a number of
15 other issues.

16 THE COURT: Okay. So why don't we do this. Of
17 course my courtroom deputy has stepped out so I can't do this
18 now.

19 But what we'll do is send you guys back to, back to talk
20 to each other informed if you will by this conversation. I
21 really need you to start working amicably to resolve these
22 issues.

23 I am more than happy to get involved in the middle and
24 if you can't, I will. To the extent you can, that's great. I
25 have as I think I told you other lawsuits where people are just

1 frantic and they can't agree and so we spend a lot of time
2 together. And I can do that here as well.

3 But you've both started from positions that this is
4 going to be the traditional throw the kitchen sink at each
5 other and we're not going to do that anymore.

6 So what we need is maybe do you think six weeks would be
7 enough time for you to work things out and just sort of have a
8 status call?

9 MR. STIMPSON: This is Scott Stimpson.

10 That's fine, Your Honor, and if there's time I would
11 like to very briefly respond to a couple of points they made
12 about the document production.

13 THE COURT: Yes, you can but hold on.

14 Is six weeks sufficient time for you, Mr. Schnayer?

15 MR. SCHNAYER: Six weeks, I think we have a
16 conference set for June.

17 THE DEPUTY CLERK: You do.

18 MR. SCHNAYER: June 5th.

19 THE COURT: That's a conference with everybody.

20 MR. SCHNAYER: Okay, I'm sorry.

21 THE COURT: I'm just talking about a conference with
22 this group of people to address the issues that we've had under
23 discussion today to see if the discovery from Casio has
24 actually arrived, et cetera, et cetera, to see if Papst and
25 then Casio have been able to work out issues concerning the

1 productions because I just, I think the only way that we're
2 going to do this is to have you folks talk to each other and
3 make sense together.

4 If six weeks is when we have our next large conference
5 then let's set this for a little closer in. That was early
6 June?

7 MR. SCHNAYER: I think it was June 5th.

8 THE COURT: June 5th. So can we back up to before
9 Memorial Day which is I think the last weekend in May and see
10 if there's a time that prior week?

11 THE DEPUTY CLERK: The week of May 27, Memorial Day
12 is the 26th.

13 THE COURT: Memorial Day is on the 26th. How do your
14 days in the week of May 27 look?

15 I'm trying to give you time but I don't want to take
16 time on the day when everybody is gathered.

17 MR. SCHNAYER: Your Honor, as I told you before I
18 have to be in Germany for a wedding. I think if it would be
19 the 29th or the 30th, that would work for me. I'm just part of
20 the wedding festivities, and extend that for a few weeks.

21 THE COURT: No, I can't do that.

22 THE DEPUTY CLERK: What if we did it early the week
23 before?

24 THE COURT: Mr. Schnayer, when do you leave?

25 MR. SCHNAYER: Right now my wife and daughter are

1 coming out with me. We leave on the 22nd.

2 THE COURT: Okay. So we need to do something before
3 the 22nd. So look back to the 19th. I don't know what day of
4 the week that is.

5 MR. SCHNAYER: Monday, Your Honor.

6 THE COURT: Will you be in your office on Monday the
7 19th?

8 MR. SCHNAYER: Yes, I will be.

9 THE COURT: What am I doing on Monday, the 19th?

10 THE DEPUTY CLERK: You're available all afternoon.

11 THE COURT: I'm available in the afternoon. Can you
12 gentlemen pick a time when Mr. Schnayer and Mr. White at least
13 can be representing Papst and Mr. Stimpson and whomever else he
14 chooses for Casio?

15 MR. STIMPSON: That's fine, Your Honor. We can pick
16 one now, I'm free the entire day.

17 MR. SCHNAYER: This is Mr. Schnayer. If we can have
18 it maybe 3 o'clock, your time, Eastern time, we can do it, it
19 will be 2 o'clock Chicago time?

20 THE COURT: Can I make it 2:30 because 3 o'clock gets
21 pushed into something else. So 2:30 we should be able to do
22 it.

23 What's the date?

24 THE DEPUTY CLERK: May 19th.

25 MR. SCHNAYER: Is that 2:30 Eastern time?

1 THE COURT: Yes, that's 2:30 Eastern time so that's
2 1:30 your time, it rushes your lunch.

3 MR. SCHNAYER: That's fine. We'll have a meeting
4 we'll work around. I'm sorry, Your Honor, we'll deal with it.

5 THE COURT: Okay, so let's take a deep breath. We'll
6 step back.

7 You guys talk to each other about this set of issues, do
8 some of the discovery, the bifurcation and stuff that's outside
9 of the United States and other things as we discussed here.

10 And I will continue and finally rule on the motions
11 for sanctions and what amounts to a question of enforcing Judge
12 Robinson's order. I'm treating Casio's -- I'm sorry -- Papst
13 filing as a motion to the judge to consider the Magistrate
14 Judge's ruling, right, sort of like an appeal?

15 MR. SCHNAYER: Yes, Your Honor. No objection.

16 THE COURT: Alrighty. Thank you.

17 MR. STIMPSON: Your Honor --

18 THE COURT: I'm sorry, I promised you you could talk,
19 Mr. Stimpson, and then I cut you off.

20 MR. STIMPSON: I hate to have everybody walk out of
21 the room and suddenly I stop, I'm sorry. But just very briefly
22 on the Papst document request.

23 THE COURT: Yes.

24 MR. STIMPSON: On all of these negotiations they have
25 had with other people and they have cut them off at the filing

1 date of the complaint, they're saying because they're
2 confidential, they're saying, you know, Mr. Schnayer says it's
3 not fair for them to get this and he's got 408 objections.

4 I mean, I know that's an order that's still pending
5 before you, Your Honor. But all Magistrate Judge Robinson
6 ordered them to provide a complete response so that they waive
7 those objections. I have seen those documents. I have not
8 seen any real confidentiality agreements.

9 In fact, some of these companies said no way, we're not
10 keeping this confidential. Papst would say at the end of their
11 first letter by the way, we consider this all confidential. I
12 think that's what Mr. Schnayer is referring to, to hold all of
13 this stuff back.

14 We haven't received that I know of anything on the
15 invention, anything on the inventor. Mr. Schnayer was very
16 careful to say that he gave it to us to the extent that he had
17 them so apparently we are not getting anything from the
18 inventor. So, I mean, we can raise these issues later if you
19 like.

20 THE COURT: No, don't raise them later.

21 Mr. Schnayer, we already talked about the inventor.
22 Papst is deemed to control the inventor. He is required to
23 work with you. You have to get stuff from the inventor, you
24 cannot hide behind the fact that he is not Papst.

25 MR. STIMPSON: And the rest of it I guess, Your

1 Honor, we can just wait and see how the other motions come out.

2 THE COURT: Okay.

3 MR. STIMPSON: Thank you very much.

4 THE COURT: Mr. Schnayer, are you still there?

5 MR. SCHNAYER: Yes, I am, Your Honor.

6 THE COURT: Okay, I just want to make sure.

7 MR. SCHNAYER: I was here, Your Honor.

8 THE COURT: All right. We'll talk to you later.

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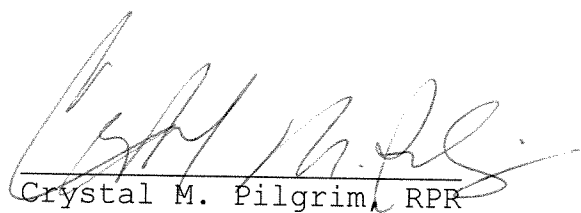
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1 CERTIFICATE

2 I certify that the foregoing is a true and correct
3 transcript, to the best of my ability, of the above pages, of
4 the stenographic notes provided to me by the United States
5 District Court, of the proceedings taken on the date and time
6 previously stated in the above matter.

7 I further certify that I am neither counsel for, related
8 to, nor employed by any of the parties to the action in which
9 this hearing was taken, and further that I am not financially
10 nor otherwise interested in the outcome of the action.

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13 Crystal M. Pilgrim, RPR

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