IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

SUMMIT 6, LLC,

Plaintiff, **Case No. 3:11-CV-0367-O-BK**

v.

RESEARCH IN MOTION CORP., et al.,

Defendants.

ORDER

This cause is before the Court on Plaintiff's *Motion to Take Additional and Necessary Depositions of Research in Motion Corp. and Research in Motion Limited*. (Doc. 192). For the reasons that follow, Plaintiff's motion is **GRANTED IN PART**.

In February 2011, Plaintiff filed a complaint, alleging that Defendants had infringed two of its patents. (Doc. 1 at 9-11). Plaintiff now requests that it be granted additional hours of deposition time to obtain discovery from the Research in Motion Defendants (collectively, "RIM"). In particular, in response to its Federal Rule of Civil Procedure 30(b)(6) notice, Plaintiff states that RIM designated (and Plaintiff has deposed) five witnesses on a small subset of the noticed topics, and RIM expects to designate at least three more Rule 30(b)(6) witnesses to address the 19 topics that remain. (Doc. 192-3 at 4). Plaintiff argues that RIM's decision to designate so many witnesses in response to a single Rule 30(b)(6) notice has effectively run Plaintiff out of the total of 30 hours it was given to depose the RIM Defendants. Plaintiff contends that it could not have foreseen that RIM would designate so many Rule 30(b)(6) witnesses that Plaintiff could not complete its discovery in the 30 hours allotted. *Id.*

Plaintiff requests that the Court grant it 20 additional hours to take the depositions of (1) the three RIM witnesses to be designated on the remaining Rule 30(b)(6) topics and (2) the

witness RIM designates in response to Plaintiff's Rule 30(b)(1) trial witness notice. *Id.* Plaintiff maintains that the remaining Rule 30(b)(6) topics address important issues in this action, including prior art, licensing practices, non-infringing alternatives, the factual basis for RIM's defenses, and facts related to RIM's willful infringement, and RIM has yet to designate corporate representatives to speak on these topics. As such, Plaintiff contends that its request for more time to take these depositions is neither cumulative nor duplicative. *Id.* at 10-11. Plaintiff asserts that any burden associated with the extra deposition hours is outweighed by its need for the testimony. *Id.* at 14-15.

RIM responds that Plaintiff cannot account for all of the time it has spent taking depositions from RIM's witnesses, which it should be required to do in order to prove that it is entitled to additional time. (Doc. 203 at 10-11). RIM requests that if any additional time is granted to Plaintiff, the Court should also (1) grant RIM four additional hours that can be used to extend the per deponent and total time limits imposed on the non-common hours Rule 30(b)(6) deposition of Plaintiff; and (2) grant Plaintiff no more than 13 additional hours to use in deposing RIM above the original 30 hours permitted. *Id.* at 12. RIM points out that it currently must share with the other Defendants the 14 total hours of Rule 30(b)(6) deposition time it has been allotted to depose Plaintiff. *Id.* at 13.

In reply, Plaintiff argues that it has been judicious with its time, and all of its depositions have been justified. (Doc. 207 at 1-9). Further, Plaintiff states that RIM's suggested allowance of 13 hours is not sufficient because there are still four RIM witnesses left to depose and a

minimum 3.5 hours is automatically assigned to each deposition, which totals 14 hours.[1] *Id.* at 9-10. Plaintiff maintains that RIM's request that it be granted several additional hours of deponent time is abusive because RIM is asking the Court to allow it to have the additional hours with the same two Summit 6 employees who will already be providing a collective total of 37 hours of deposition time. *Id.* at 10.

Rule 30(a)(2) provides that a party must obtain leave of court if a proposed deposition would result in more than ten depositions being taken. This rule is applicable by way of analogy to this case, in which Plaintiff seeks leave of court to secure additional hours of deposition time. The court will grant such leave to the extent that doing so is consistent with the principles stated in Rule 26(b)(2). FED. R. CIV. P. 30(a)(2). Rule 26(b)(2) provides, in relevant part, that the court must limit the extent of discovery if it determines that:

> (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

In this case, Plaintiff has made the showing necessary to overcome any concerns grounded in Rule 26(b)(2). In particular, the discovery sought is not unreasonably duplicative, as Plaintiff points out that it will address the topics of prior art, licensing practices, non-infringing alternatives, the factual basis for RIM's defenses, and facts related to RIM's alleged infringement, none of which have been covered in the prior depositions. RIM has not suggested

[1] The District Court's *Discovery Order* provides that "[a]ny fact deposition of a party witness, once started, will be counted as at least 3.5 hours." (Doc. 89 at 2).

that this information is obtainable from some other source that is more convenient, less burdensome, or less expensive. Moreover, Plaintiff has not had ample opportunity to obtain this information because RIM does not dispute that it has not yet designated the individuals who can testify to those topics. Indeed, RIM's designation of numerous individuals (and more to come) in response to a single corporate deposition notice has hampered Plaintiff's ability to make the best use of its time. Finally, considering the magnitude of the case, the interests at issue, and the parties' resources, the Court finds that the burden and expense of the proposed discovery do not outweigh the discovery's likely benefit.

Upon consideration of the parties' arguments and the law, Plaintiff's *Motion to Take Additional and Necessary Depositions of Research in Motion Corp. and Research in Motion Limited* (Doc. 192) is **GRANTED** to the extent that Plaintiff shall have an additional 15 hours of deposition time.[2] RIM's request for additional hours of deposition time is denied for the reasons stated in Plaintiff's motion and reply brief.

SO ORDERED on July 23, 2012.

RENÉE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

[2] The two additional hours by which Plaintiff has already exceeded the original 30-hour limit shall not be counted against the additional 15 hours that the Court now grants.