

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

**COMCAST CABLE  
COMMUNICATIONS, LLC, ET AL.**

**Plaintiffs,**

**v.**

**BT AMERICAS, INC., ET AL.,**

**Defendants.**

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**No. 3:12-CV-1712-M**

**MEMORANDUM ORDER**

In this patent infringement case, Plaintiffs Comcast Cable Communications, LLC, Comcast MO Group, Inc., and National Digital Television Center (dba Comcast Media Center) have filed a joint motion to compel Defendants BT Americas, Inc., BT Conferencing, Inc., and Radianz Americas, Inc. to produce documents responsive to Plaintiffs' Requests for Production Nos. 14-56, including core technical documents relating to Defendants' accused products and services. Plaintiffs contend that, despite a prior agreement to produce responsive documents, Defendants have refused to substantially complete production or commit to a date by which such documents will be produced.<sup>1</sup> *See* Plf. Mot. at 2. Defendants do not dispute the relevance of the requested documents to the present litigation or their obligation to produce those documents to Plaintiffs. Def. Resp. Br. at 6. Indeed, Defendants represent that they are working to collect, process, and produce documents as quickly as possible, but that their efforts have been impaired by Plaintiffs' failure to clearly

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<sup>1</sup> Plaintiffs initially sought to compel production no later than May 17, 2013 so the documents could be reviewed before the parties' opening claim construction briefs were due. Plf. Reply at 6. Plaintiffs also sought to shorten the normal timeframe for Defendants to respond to their motion so the briefing on the discovery dispute would be completed in advance of the due date for the claim construction briefs. *See* Plf. *Ex Parte* Application to Shorten Time on the Motion to Compel Production (Doc. 94). Because both parties filed their opening claim construction briefs on July 1, Plaintiffs' requests for expedited briefing and consideration are denied as moot.

articulate their infringement contentions. *See id.* at 2, 4-5. Defendants further argue that Plaintiffs' motion to compel is premature because the deadline for fact discovery does not expire until October 15, 2013. *Id.* at 4. The issues have been fully briefed by the parties, and the matter is ripe for determination.

Contrary to Defendants' assertion, Plaintiffs' motion is not premature. Nothing in the Federal Rules of Civil Procedure or the Scheduling Order entered in this case requires Plaintiffs to wait until after the close of fact discovery to file a motion to compel. *See* FED. R. CIV. P. 37; Patent Scheduling Order (Doc. 84). Nor is Defendants' promise to continue to search for documents and supplement their responses an adequate response to Plaintiffs' proper discovery request. *See Kinetic Concepts, Inc. v. ConvaTec Inc.*, 268 F.R.D. 226, 246-47 (M.D. N.C. 2010) (vague assurances that properly requested documents will be produced constitutes "a completely inadequate response"). Especially now that the June 3, 2013 deadline for both sides to complete claim construction discovery has passed, *see* Patent Scheduling Order at 4, Plaintiffs are entitled to the responsive documents Defendants previously agreed to produce by a date certain.

Accordingly, Plaintiffs' motion to compel is granted. Defendants shall produce documents responsive to Plaintiffs' Requests for Production Nos. 14-56 no later than **July 31, 2013**. To the extent Defendants still contend that they do not understand Plaintiffs' infringement contentions, lead counsel for both parties shall confer by telephone in an attempt to resolve Defendants' confusion on or before **July 17, 2013**. The attorneys should focus their discussions on the *substantive* information and documents requested by Plaintiffs. Defendants should fully answer each discovery request, subject to any objections, and affirmatively indicate whether any responsive information or documents have been withheld. A privilege log must be produced for any documents, communications, or other materials withheld from production on the grounds of attorney-client, work


product, or other privilege or immunity. *See* FED. R. CIV. P. 26(b)(5)(A). Counsel for both parties are reminded of their obligations under *Dondi Props. Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 289-90 (N.D. Tex. 1988) (en banc), and are admonished to participate in *meaningful discussions* in an attempt to resolve any future discovery dispute prior to seeking court intervention.

### CONCLUSION

Plaintiffs' Motion to Compel Production (Doc. 91) is GRANTED. Defendants shall substantially complete production of documents responsive to Plaintiffs' Requests for Production Nos. 14-56 no later than **July 31, 2013**.

Plaintiff's *ex parte* application for an expedited briefing schedule (Doc. 94) is DENIED as moot.

SO ORDERED, July 10, 2013.

  
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PAUL D. STICKNEY  
UNITED STATES MAGISTRATE JUDGE