

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CARNEGIE MELLON UNIVERSITY,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 09-290
)	Judge Nora Barry Fischer
MARVELL TECHNOLOGY GROUP, LTD.)	
et al.,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this 24th day of October, 2012, for the reasons set forth below, IT IS HEREBY ORDERED that the following submissions of the parties are STRICKEN from the record as violative of this Court’s Pretrial Order (Docket No. [315]) as modified by Orders dated February 13, 2012 (Docket No. [335]) and September 24, 2012 (Docket No. [478]):

- Marvell’s Deposition Designations (Docket No. [466 Ex. A]);
- Marvell’s Exhibit B to Pretrial Statement: List of Exhibits Defendants Expect to Offer (Docket No. [468]);
- Marvell’s Exhibit C to Pretrial Statement: List of Exhibits Defendants May Offer (Docket No. [469]);
- Marvell’s Supplemental List of Trial Exhibits (Docket No. [576]);
- CMU’s Objections to Defendants’ Deposition Designations and Counter-Designations (Docket No. 531));
- CMU’s Objections to Defendants’ Trial Exhibits (Docket No. [540]);
- Marvell’s Response to CMU’s Objections to Deposition Designations (Docket No. [581]);

- Marvell's Response to CMU's Objections to Trial Exhibits List (Docket No. [583]);
- CMU's Deposition Designations (Docket No. [461 Ex A]);
- CMU's Exhibit List (Docket No. [462-2]);
- Marvell's Objections to CMU's Exhibit Lists (Docket No. [530]);
- Marvell's Objections to CMU Deposition Designations (Docket No. [535]);
- CMU's Response to Marvell's Objections to Deposition Designations (Docket No. [582]);
- CMU's Response to Marvell's Objections to Exhibits List (Docket No. [584]).

The Court strikes these submissions for the following reasons. In the aforementioned filings, the parties have presented the Court with more than 2,700 separately listed exhibits (approximately 1,900 for CMU and 800 for Marvell) which they claim they will or may enter into evidence at trial. (Docket Nos. 461-2, 468, 469, 576). The parties have also presented the Court with hundreds of deposition designations and counter designations which, again, they claim they will or may enter into evidence at trial. (Docket Nos. 461, Ex A, 466, Ex A).

Through the next series of filings, the parties have objected to nearly every exhibit, deposition designation, and counter designation of their opponent in some fashion. (Docket Nos. 531, 540, 581, 583, 530, 535, 582, 584). They have presented these objections by way of spreadsheets summarizing the objections but have not presented the Court with any of the actual exhibits or depositions along with their submissions. (*Id.*) The Court now strikes all of these filings as the parties have clearly violated both the text and the spirit of the Court's Pretrial Order, as amended, and have also run far afoul of this Court's Practices and Procedures, the Local Rules of Court, and Rule 1 of the Federal Rules of Civil Procedure, all of which set forth rules and procedures

aimed at the timely, expeditious and cost-effective resolution of true disputes between the litigants presently appearing before the Court. *See e.g.*, (Docket Nos. 315, 335, 478); W.D.PA.L.Cv.R. 16, FED. R. CIV. P. 1. The Court has the discretion to control this case and its docket in order to expedite the disposition of this action and to discourage wasteful pretrial activities. *See* FED. R. CIV. P 16(a) (court granted discretion to hold pretrial conference for the purpose of discouraging wasteful pretrial activities); *In re Huertas*, 274 F. App'x. 118, 121 (3d. Cir. 2008) (“how a district court controls its docket is committed to its sound discretion”); cf. *Apple Inc. v. Samsung Elecs. Co. Ltd*, No.11-CV-01846 (N.D. Cal. 2012) (Docket Nos. 1165, 1166, 1197) (where the Court limited both the number of exhibits each party could submit and delayed decisions on exhibit and deposition admissibility until 48hrs prior to use of said exhibit).

The Court's Pretrial Order was entered on October 20, 2011 and, given the Court's ruling on August 24, 2012 granting summary judgment of non-infringement regarding the Group II Claims, provides that the parties are restricted to twenty (20) hours each to present their respective cases at trial. (Docket No. 315 at ¶ E.1, 444). The Pretrial Order further details the Court's trial procedures for the submission of final exhibit lists and deposition designations, objections thereto, orders the parties to meet and confer to resolve disputes, and expresses the Court's intent to rule on disputed exhibits and other disputed matters at the pretrial conference, which is set to commence on November 14, 2012 at 9:00 a.m. and possibly continue through November 16, 2012. (*Id.* at ¶¶ E.2, E.4, E.5); W.D.Pa.L.Cv.R. §§ 16.1.C.1, 16.1.C.2).

The Court initially notes that it is plainly impossible for the parties to enter the hundreds (or thousands) of exhibits and deposition designations into evidence at trial given the restrictions that have been placed on the time for their respective trial presentations. The parties have been on notice for more than a year as to the twenty (20) hour restriction, and this restriction remains

without objection or any attempt at modification from the parties. (Docket No. 315 at ¶ E.1). As trial is now only a month away, the parties are on notice that **the Court will enforce the time limits at trial**. As these time limits include opening statements and closing arguments, for which a total of one hour is allotted, the parties have nineteen hours (1,140 minutes) to present actual evidence at trial. However, CMU has submitted 1,900 potential exhibits and, in order to present all of these exhibits would need to have nearly 2 exhibits entered into evidence ***every minute of the trial***. This is not humanly possible. The presentation of Marvell's 800 submissions is no more practical. In this Court's estimation, the parties' submissions of exhibit lists and deposition designations are not the type of trial-ready final lists required by the Court's Pretrial Order, or by Local Rules 16.1.C.1 and 16.1.C.2, which are expressly incorporated into the Pretrial Order.

In addition, the overzealous submission of exhibit lists and deposition designations has caused the Court to be inundated with unnecessary objections. This Court is not in the business of resolving hypothetical disputes as to exhibits and deposition designations that the parties have no real intent to actually offer at trial and in fact could not actually be presented as a practical matter given the time restrictions. Even so, the parties have failed to meet and confer in an effort to resolve and narrow their disputes as the Pretrial Order required them to do by **September 17, 2012**. (Docket No. 315 at ¶ E.4.C). There is no indication in the record that this meet and confer session has taken place or that the parties have made any real effort to resolve any of the hundreds (or possibly thousands) of disputes which they have presented by way of their filings. Further, given the obvious impossibility of presenting this volume of evidence at trial, it is plainly apparent that lead trial counsel for the parties have not participated in any negotiations or meet and confer sessions as to these disputes in any meaningful way. Considering the parties

failure to meet and confer, all of the parties' objections to exhibit lists and deposition designations are hereby stricken from the record.

The Court further finds that the form of the exhibit lists and objections thereto violate the Court's Pretrial Order which specifically requires that the Plaintiff's exhibits be marked numerically ("P-1, P-2, P-3, etc.") and Defendant's exhibits be marked alphabetically ("A, B, C, etc."), and that the parties present the Court with a chart which provides the "a brief description of the nature of the objection . . . , and a space for the Court's ruling on the objection(s)." (Docket No. 315 at ¶ E.4.c). The spreadsheets which have been provided do not adopt the Court's simple marking conventions. For example, CMU's exhibits are marked ("1, 2, 3, etc."), some of Marvell's exhibits are marked ("1, 2, 3, etc."), others were initially unmarked but have received the numbers of ("1001, 1002, 1003, etc.") in later filings. The spreadsheets further do not contain "a brief description of the nature of the objection"; instead, the objections contain only citations to the Rule of Evidence which is purportedly violated ("Rule 402") or other markings which require reference to a table to decipher and understand. Despite the numerous cells of information set forth in the spreadsheets, there is also no space provided for the Court's rulings.

Finally, the Court recognizes that the Pretrial Order requires that disputed exhibits, "along with any pertinent portions of the record upon which they rely" and which adopt the Court's marking conventions, must be submitted for the Court's consideration in advance of the Pretrial Conference and by no later than **November 1, 2012 at 5:00 p.m.** Given the parties' prior submissions, the Court will consider objections to exhibits at the Pretrial Conference which the parties truly intend, in good faith, to admit into evidence at trial and that their attorneys, as officers of the Court, have certified that they intend to so use at trial. The Court will not hesitate

to sanction counsel and/or the parties for raising objections to exhibits at this juncture which will not be used at trial.

The Court hereby ORDERS that lead trial counsel shall **meet and confer, in person**, to narrow their disputes as to exhibits and deposition designations and counter designations by **October 30, 2012 at 5:00 p.m.** Lead trial counsel shall file a certification by **October 30, 2012 at 5:00 p.m.**, swearing, as officers of the Court, that they have met and conferred, in person, and in good faith and have been unable to resolve the disputes as to exhibits and deposition designations which will be presented to the Court on November 1, 2012.

For these reasons, the Court strikes the aforementioned submissions from the record.

IT IS SO ORDERED.

s/ Nora Barry Fischer
Nora Barry Fischer
U.S. District Judge

cc/ecf: All counsel of record.