IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

DODOTS LICENSING SOLUTIONS LLC,	§	
	§	
Plaintiff,	§	Case No. 6:22-cv-00533-ADA
v.	§	
	§	
APPLE INC., BEST BUY STORES, L.P., BESTBUY.COM, LLC, and BEST BUY TEXAS.COM, LLC	§	
	§	
Defendants.	§	

ORDER REGARDING THE APRIL 11, 2023 DISCOVERY DISPUTE HEARING

Pursuant to the Standing Order Governing Proceedings (OGP) 4.3 - Patent Cases, the Minute Entry for proceedings held on April 11, 2023 (Dkt. 87), and to the Court's Standing Order for Discovery Hearings in Patent Cases, the parties jointly submit the below proposed order reflecting the Court's rulings at the April 11, 2023 Discovery Dispute Hearing.

I. Issue One: Whether DoDots may arbitrarily limit Defendants' venue deposition of Plaintiff's 30(b)(1) witness to specific topics.

Defendants' Position

DoDots apparently believes venue discovery is a one-way street. So far, DoDots has served four 30(b)(6) notices on Apple containing a total of 53 topics, eleven additional 30(b)(1) deposition notices, and three Rule 45 subpoenas.

In contrast, DoDots improperly seeks to limit the scope of questioning of its only Rule 30(b)(1) deponent, DoDots' CEO David White. DoDots initially offered Mr. White for a one-hour deposition, then withdrew its arbitrary time limitation, but still is trying to place material limitations on the questioning to only identifying the names and locations of people and documents relevant to the topics at issue. But the scope of a 30(b)(1) deposition is limited only by Rule 26(b)(1), not by DoDots' unilateral limitations. *See Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) ("The party resisting discovery must show how each discovery request is not relevant or otherwise objectionable.").

Defendants' Relief Requested

Therefore, DoDots should be compelled to offer Mr. White for up to seven hours of testimony on topics that are fairly within the scope of venue discovery.

Plaintiff's Position

DoDots agreed to produce Mr. White for 7 hours of deposition provided that the scope of the deposition is limited to only venue discovery issues and will not encompass any litigation

funding related issues. Litigation funding issues are irrelevant to this case and have no relevance to venue. And Apple has no basis to assert that it is relevant.

It appears that Apple believes it should be able to explore litigation funding related issues.

Relief Requested

Order that "Mr. White's deposition shall be limited to venue discovery issues and he shall not be questioned on litigation funding related issues."

The Court's Ruling:

It is hereby ORDERED that Defendants' motion to compel Mr. White for up to seven hours of testimony on topics that are fairly within the scope of venue discovery is GRANTED-IN-PART AND DENIED-IN-PART. In light of Plaintiff's agreement on the record to offer Mr. White for up to seven hours on topics that are within the scope of venue discovery, Defendant's motion for Mr. White to be offered for up to seven hours of Rule 30(b)(1) deposition testimony on topics limited to venue discovery issues is GRANTED. However, Defendants' request to inquire into litigation funding or company funding of Plaintiff during Mr. White's Rule 30(b)(1) venue deposition is DENIED. To the extent Plaintiff seeks a protective order preventing the portion of venue discovery relating to litigation funding or company funding of Plaintiff, that is GRANTED.

II. Issue 2: Whether DoDots' refusal to offer a witness on several of Defendants' 30(b)(6) topics is proper.

Defendants' Position

Defendants' Rule 30(b)(6) notice contains eight topics. *See* Ex. 1. DoDots refuses to offer a witness on Topic No. 2 and separately, improperly seeks to limit the testimony for the other

seven topics, Topic Nos. 1 and 3-8. However, all eight of Defendants' topics are relevant to venue.

Topic No. 1 concerns the founding of DoDots in Northern California. DoDots initially stated it would offer a witness on this topic (Ex. 2), but then reneged on that agreement (Ex. 3). The history of DoDots' founding in Northern California is relevant to venue. Thus, this topic goes directly to the sources of proof and potential witnesses to support Defendants' transfer motion.

Topic No. 2 concerns the sources and locations of funding of DoDots, in particular where the funders were located and where funding agreements were negotiated. Testimony on this topic is relevant for the same reasons as Topic No. 1.

Topic No. 3 concerns the identity and location of current or former customers of DoDots. Although DoDots denies it had any customers, Defendants are entitled to explore this topic at a deposition.

Topic No. 4 concerns the location of any named inventor of the asserted patents—unquestionably a relevant topic for venue discovery.

Topic No. 5 concerns the relationship between DoDots and Mainstream Scientific LLC ("MSL"), a former owner of the asserted patents. Defendants are entitled to explore DoDots' past and current relationship with MSL, which is based in Northern California.

Topic No. 6 concerns DoDots' relationship with Innovation Management Sciences ("IM Sciences"), which DoDots alleges will support its indirect infringement claims. IM Science's role in this case, including the location of potential witnesses and documents, is relevant to venue, particularly because the company is based in Northern California.

Topic Nos. 7 and 8 concern the content and location of communications between DoDots and Defendants (No. 7) and third parties (No. 8) related to the asserted patents, Defendants, or this lawsuit. Defendants are entitled to explore any potential witnesses or sources of proof that arise out of these communications.

Relief Requested

Therefore, DoDots should be compelled to offer a witness on all noticed topics, which are all relevant to venue.

Plaintiff's Position

Apple ignores that this is venue discovery. At this time, depositions are for the purpose of uncovering sources of proof - the location of relevant witnesses and documents. Apple, however, seeks to go beyond this and use venue depositions for early fact discovery.

Unlike Apple, DoDots does not dispute that witnesses (including the inventors as well as Mainstream Scientific LLC (MSL) and Innovation Management Sciences (IM Sciences) - the former owners of the asserted patents) have relevant information. Thus, all that is relevant is the location of witnesses and documents. Accordingly, DoDots has agreed to provide a witness on Apple's topics within the following scope.

Topic 1 - the former and current office or other place of business of DoDots Licensing; the former office or other place of business of DoDots Inc.

Topic 3 - the identity and locations of current or former customers of DoDots Licensing and identity of individuals that may have information concerning any DoDots Inc. customers.

Topic 4 - the current locations of the named inventors.

Topic 5 - the general relationship between DoDots Licensing and MSL and the identity and current location of involved individuals and location of documents.

Topic 6 - the general relationship between DoDots Licensing and IM Sciences and the identity and current location of involved individuals and location of documents.

Topics 7 and 8 - the location of documents related to communications between DoDots Licensing and Defendants concerning the Asserted Patents.

With regard to Topic 2, which relates to litigation funding related issues, DoDots has declined to provide a witness because such issues are irrelevant to any issue in this case.

Relief Requested

Order that "The deposition of DoDots' 30b6 witness(es) shall be limited to sources of proof as well as the general relationship between DoDots Licensing and MSL and IM Sciences. DoDots' 30b6 witness shall not be questioned on litigation funding related issues."

The Court's Ruling:

It is hereby ORDERED that Defendants' motion to compel DoDots to offer a 30(b)(6) DoDots witness on all noticed topics is GRANTED-IN-PART and DENIED-IN-PART. Defendants' request to compel DoDots to offer a witness on noticed Topics Nos. 1 and 3-8, is GRANTED. Defendants' request to compel DoDots to offer a witness on noticed Topic No. 2, related to funding, is DENIED.

IT IS FURTHER ORDERED that if during the deposition DoDots believes Apple is wasting the witness's time and cannot tether its questions in any reasonable way to venue, or is repeatedly asking questions outside the scope of venue discovery, DoDots may either instruct the witness not to answer or contact the Court. Tr. at 25:6-21, 26:10-11.

III. Issue 3: Whether MSL's refusal to offer a witness on several of Defendants' subpoena topics is proper.

Defendants' Position

Defendants' subpoena to MSL contains eight topics, all of which are relevant to venue. *See* Ex. 4. MSL (which is represented by DoDots' counsel) refuses to offer a witness on Topic No. 7 and separately, improperly seeks to limit the testimony for six other topics, Topic Nos. 1-6. The only topic MSL agrees to offer a witness on, without any improper limitations, is Topic No. 8. However, Defendants are entitled to explore all eight of their subpoena topics.

Topic No. 1 concerns the locations where MSL has maintained an office at any time. MSL owned several of the asserted patents and is based in Northern California, so its potential witnesses and sources of proof are relevant to Defendants' transfer motion.

Topic No. 2 concerns agreements between MSL and DoDots related to the asserted patents or this litigation. Because this inquiry is likely to reveal sources of proof and potential witnesses, Defendants are entitled to explore this topic in venue discovery.

Topic No. 3 concerns communications between DoDots and MSL related to the asserted patents, Defendants, or this litigation. MSL claims no such communications exist, but Defendants are entitled to explore this topic at a deposition.

Topic No. 4 concerns any work performed by MSL regarding DoDots, the asserted patents, or this litigation. Again, this topic likely will reveal sources of proof and/or potential witnesses, so Defendants are entitled to explore it.

Topic No. 5 concerns MSL's past or current financial interest in DoDots, which will again reveal sources of proof and/or potential witnesses for purposes of Defendants' motion to transfer.

Topic No. 6 concerns the identity and location of entities with a financial interest in the asserted patents or this litigation. For the same reasons as Topic No. 5, this topic is relevant to venue.

Topic No. 7 concerns products that allegedly embody any of the asserted patents. This topic is relevant to venue because Defendants are entitled to explore who developed such products and, importantly, where they were developed.

Topic No. 8 concerns the identity and location of MSL employees who have knowledge of the asserted patents or this litigation. Again, this topic is relevant to venue because Defendants are entitled to explore potential witnesses and sources of proof.

Relief Requested

MSL should therefore be compelled to provide testimony on all eight of Defendants' subpoena topics.

Plaintiffs' Position

MSL is a third party to this litigation.

Apple ignores that this is venue discovery. At this time, depositions are for the purpose of uncovering sources of proof - the location of relevant witnesses and documents. Apple, however, seeks to go beyond this and use venue depositions for early fact discovery.

Unlike Apple, MSL does not dispute that witnesses have relevant information. Thus, all that is relevant is the location of witnesses and documents. Accordingly, MSL has agreed to provide a witness on Apple's topics within the following scope.

Topic 1 - the former and current office or other place of business of Mainstream

Topic 2-5 - the identity and location of witnesses with knowledge of Mainstream's agreements with, communications with, work or other business activity performed for, and financial/pecuniary interest in DoDots Licensing related to the Asserted Patents

Topic 6 - the identity and location of persons or entities with a financial/pecuniary interest in the Asserted Patents

Topic 8 – scope set forth by Apple is acceptable

With regard to Topic 7, which relates to contentions about products covered by the asserted patents, MSL is a third-party and as such will never have to provide contentions about the scope of the patents and whether or not products of another company might be covered by those patents. Thus, third-party MSL has declined to provide a witness because this topic relates to contentions about products covered by the asserted patents and requires expert opinions.

Relief Requested

Order that "The deposition of third-party Mainstream's 30b6 witness(es) shall be limited to sources of proof."

The Court's Ruling

It is hereby ORDERED that Defendants' motion to compel third-party witness, Mainstream Scientific, LLC, to designate a witness on Topic Nos. 1-8 is GRANTED.

IT IS FURTHER ORDERED that if during the deposition DoDots believes Apple is wasting the witness's time and cannot tether its questions in any reasonable way to venue, or is repeatedly asking questions outside the scope of venue discovery, DoDots may either instruct the witness not to answer or contact the Court. Tr. at 25:6-21.

SIGNED this 20th day of April, 2023.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE