

Judge Albright Resolves Discovery Disputes Covering Comparable Licenses and Litigation Finance

JANUARY 9, 2023

Judge Albright recently resolved discovery disputes between Plaintiff WSOU Investments LLC d/b/a Brazos Licensing and Development (“WSOU”) and Defendant OnePlus (Shenzhen) Co., Ltd. (“OnePlus”) over comparable licenses and litigation financing.

Issue 1: Comparable Licenses

OnePlus requested that the Court compel WSOU to fully respond to its interrogatory covering comparable licenses by identifying any licenses WSOU found comparable and explaining the basis for that contention. OnePlus stated it had complied with WSOU’s similar interrogatory by providing certain licenses covering comparable patents.

WSOU objected to OnePlus’s interrogatory because it prematurely sought expert opinion and/or testimony, and said that WSOU would provide such information in forthcoming expert reports on damages.

During a discovery hearing on December 9, 2022, Judge Albright “strongly recommended that WSOU provide a 30(b)(6) witness who would speak for the company” with respect to comparable licenses. Otherwise, Judge Albright denied OnePlus’s request to compel WSOU to produce licenses ahead of the expert’s report on damages.

Issue 2: Litigation Finance

OnePlus also requested that the Court compel WSOU to produce documents relevant to any loan or security interest agreements with a third party, because OnePlus believed “their terms and/or whether WSOU has met and complied with them may affect WSOU’s rights and ownership of the asserted patents and, consequently, its ability to bring and maintain the lawsuit.” WSOU objected on the basis that its loan and security agreements with the third party were not relevant or responsive to OnePlus’s requests for production, and WSOU noted that the Court had denied motions to compel similar documents in other cases.

In the same December 9, 2022 discovery hearing, Judge Albright stated that (1) “WSOU should provide a 30(b)(6) witness to be prepared to answer questions regarding loan or security interest agreements,” including those with the third party, and (2) “if the witness was unable to provide OnePlus with the information that it needs that OnePlus

would be able to obtain from the documents, OnePlus was permitted to re-raise the issue.” OnePlus’s request was then denied.

After WSOU provided its 30(b)(6) witness and the deposition took place, OnePlus re-raised the issue, asking the Court to compel production and stating that WSOU’s witness had been unprepared to address the loan and security issues. OnePlus noted that WSOU’s witness could not answer “basic questions” on the agreements, and OnePlus emphasized that “the Court’s order did not impose any limitations on what OnePlus could ask about these agreements.” WSOU objected, citing a hearing transcript in which the Court ordered it would allow “OnePlus to question WSOU’s corporate witness regarding whether there had been a default and whether Brazos had complied with the terms of the agreements.” WSOU also provided excerpts from the deposition transcript to the Court.

After assessing the deposition transcript, Judge Albright found that WSOU had complied with the previous discovery order and denied OnePlus’s request to compel WSOU to produce loan or security agreements.

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