

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

MULTIQUIP INC.,

Plaintiff,

v.

ANA, INC.,

Defendant.

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CIVIL ACTION NO. 3:22-cv-2599

JURY TRIAL DEMANDED

RESPONSES TO DEFENDANT’S FIRST SET OF INTERROGATORIES (1-10)

Pursuant to the Federal Rules of Civil Procedure, Multiquip Inc. makes the following Objections and Responses to Alliance North America, Inc., dba ANA, Inc.’s requests for production in the above captioned cases.

PRELIMINARY STATEMENT

Multiquip has not completed its investigation of the facts related to this case, has not completed its discovery, and has not completed its preparation for trial. All objections and responses contained herein are based only upon such information and documents presently known to Multiquip. Further discovery and analysis may supply additional facts and establish new factual or legal contentions that Multiquip may assert. Multiquip will supplement its objections and responses, if necessary, in accordance with the Federal Rules of Civil Procedure. These objections and responses are made solely for the purpose of and in relation to this action.

GENERAL OBJECTIONS

Multiquip makes the following general objections that apply to Defendant’s requests for production. The restatement of any of these objections in the specific responses below shall not be construed to be a waiver of any of the general objections stated in this section and incorporated in full into the responses below.

1. Multiquip objects to each interrogatory to the extent that it is overbroad, unduly burdensome, oppressive, or constitutes an abuse of process, particularly when the interrogatory is unduly burdensome in view of the cost necessary to investigate weighed against the Defendant’s need for the information.

2. Multiquip objects to each interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, the common interest doctrine, or any other applicable law, privilege, or protection. The disclosure of any privileged information by Multiquip is unintentional, and Multiquip does not intend to waive any applicable objection or privilege as a result of such unintentional disclosure. Except for items Multiquip may from time to time decide to include, Multiquip will not log protected items in connection with or in relation to the subject of this litigation dated subsequent to its commencement.

3. Multiquip objects to each interrogatory to the extent that it might be construed as calling for a legal conclusion. Any responses or the production of documents by Multiquip shall not be construed as providing a legal conclusion regarding the meaning or application of any terms or phrases used in the Defendant's requests.

4. Multiquip objects to each interrogatory to the extent that it seeks information already in the possession of the Defendant, or in the public domain and that are as readily available to the Defendant as they are to Multiquip.

5. Multiquip objects to each interrogatory to the extent that it seeks information that the Defendant can obtain from other parties just as readily as from Multiquip.

6. Multiquip objects to each interrogatory to the extent that it seeks information that is cumulative or duplicative of information already provided by Multiquip.

7. Multiquip objects to each interrogatory as overbroad and unduly burdensome to the extent that it is unlimited in temporal scope or otherwise not limited to a time frame relevant to this litigation.

8. Multiquip objects to each interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

9. Multiquip objects to each interrogatory to the extent that it seeks disclosure of confidential information prior to entry of a modified protective order.

10. Multiquip objects to each interrogatory to the extent that it seeks information that Multiquip is not allowed to disclose pursuant to either a court order or pursuant to confidentiality obligations or agreements with third parties.

11. Multiquip objects to each interrogatory to the extent that it is vague and ambiguous.

12. Multiquip objects to each interrogatory to the extent that it is duplicative of any other interrogatory.

13. Multiquip objects to each interrogatory to the extent that it lacks foundation or assumes facts that are incorrect or unknown to Multiquip.

14. Multiquip objects to any request for negotiations. Multiquip will not produce negotiations.

15. Multiquip objects to each interrogatory to the extent that it seeks discovery of material within the scope of Federal Rule of Civil Procedure 26(b)(4), and therefore constitutes an improper and premature attempt to conduct discovery of expert opinion.

16. Multiquip objects to each interrogatory to the extent that it purports to attribute any special or unusual meaning and/or scope to any technical terms or phrases. Multiquip objects to each interrogatory to the extent that it is overbroad, unduly burdensome, oppressive, or constitutes an abuse of process, particularly when the interrogatory is unduly burdensome in view of the cost necessary to investigate weighed against the Defendant's need for the information.

INTERROGATORIES

1. Describe the manner and circumstances in which the subject matter disclosed in the Patent-in-Suit was developed from conception through its commercially (sp) introduction, the description including without limitation each of the activities and dates undertaken in the development and all persons participating and their roles therefor.

RESPONSE:

Plaintiff incorporates by reference its General Objections.

Plaintiff objects to this request to the extent it is overly broad, unduly burdensome, and not proportional to the needs of the case, particularly in view of the high cost necessary to investigate weighed against the Defendant's need for the testimony, information, or documents. Plaintiff objects to this request as overbroad and unduly burdensome to the extent that it is unlimited in temporal scope or otherwise not limited to a time frame relevant to this litigation. Plaintiff objects to this request to the extent it seeks information protected by the attorney client privilege, common interest privilege, attorney work product doctrine, or any other applicable privilege, exemption, law, or rule, or which are otherwise protected from discovery by the Federal Rules of Civil Procedure. Plaintiff objects to the extent this request seeks discovery on pre-suit investigation. *TQP Development, LLC v. 1-800-Flowers.com, Inc.*, Case No. 2:11-cv- 248, Dkt. No. 290 (E.D. Tex. July 22, 2013) (denying motion to compel pre-suit investigation noting that the Patent Case Management Judicial Guide produced by the Federal Judicial Center (2009 ed.), at Section 4.6.1 ("Discovery Regarding Patentee's Pre- Filing Investigation") states that the "best practice is to deny such discovery.").

Subject to and without waiving the foregoing objections and based on its understanding of the request and after a reasonably proportional search and review of relevant documents, Plaintiff responds based upon such information and belief as follows: The inventor, George Fell, originated and developed a new system for use with Multiquip's engine-generator products during the course of his employment with Multiquip. As a result of his services, Multiquip successfully patented the new system in the United States as Patent No. 8,816,651 entitled "Engine Generator With Load Bank and Control System." Multiquip funded 100% of the patenting effort. Plaintiff has not alleged, however, that instrumentalities distributed by or on behalf of Plaintiff are read on by one or more claims of the Patent-in-Suit. Pursuant to Rule 33(d), Plaintiff refers Defendant to the publicly-available prosecution file, which is also responsive to this request. If plaintiff discovers

other relevant, non-privileged documents during discovery that are proportionate to the needs of this case and responsive to this request, Plaintiff will produce and identify them pursuant to Rule 33(d).

2. Identify all prior art to the Patent-in-Suit known to Plaintiff, the identification including but not limited to identifying information, the form of said prior art and date thereof.

Plaintiff incorporates by reference its General Objections.

Plaintiff objects to this request to the extent it seeks information protected by the attorney client privilege, common interest privilege, attorney work product doctrine, or any other applicable privilege, exemption, law, or rule, or which are otherwise protected from discovery by the Federal Rules of Civil Procedure. Plaintiff objects to the extent this request seeks discovery on pre-suit investigation. *TQP Development, LLC v. 1-800-Flowers.com, Inc.*, Case No. 2:11-cv- 248, Dkt. No. 290 (E.D. Tex. July 22, 2013) (denying motion to compel pre-suit investigation noting that the Patent Case Management Judicial Guide produced by the Federal Judicial Center (2009 ed.), at Section 4.6.1 (“Discovery Regarding Patentee’s Pre- Filing Investigation”) states that the “best practice is to deny such discovery.”).

Subject to and without waiving the foregoing objections and based on its understanding of the request and after a reasonably proportional search and review of relevant documents, Plaintiff responds based upon such information and belief as follows: Pursuant to Rule 33(d), Plaintiff refers Defendant to the prior art documents already produced by Plaintiff. If plaintiff discovers other relevant, non-privileged documents during discovery that are proportionate to the needs of this case and responsive to this request, Plaintiff will produce and identify them pursuant to Rule 33(d).

3. Describe in detail all bases for Plaintiffs’ damages claims against Defendant, including, but not limited to, identifying each legal theory under which damages are sought and each event resulting in damages including identification of each sale lost by Plaintiff to Defendant, and the calculations supporting all damages that Plaintiff claims.

Plaintiff incorporates by reference its General Objections.

Plaintiff objects to this request as overly broad, unduly burdensome, and premature. Plaintiff objects to this request to the extent it seeks information protected by the attorney client privilege, common interest privilege, attorney work product doctrine, or any other applicable privilege, exemption, law, or rule, or which are otherwise protected from discovery by the Federal Rules of Civil Procedure. Plaintiff objects to the extent this request seeks discovery on pre-suit investigation. *TQP Development, LLC v. 1-800-Flowers.com, Inc.*, Case No. 2:11-cv- 248, Dkt. No. 290 (E.D. Tex. July 22, 2013) (denying motion to compel pre-suit investigation noting that the Patent Case Management Judicial Guide produced by the Federal Judicial Center (2009 ed.), at Section 4.6.1 (“Discovery Regarding Patentee’s Pre- Filing Investigation”) states that the “best practice is to deny such discovery.”).

Subject to and without waiving the foregoing objections and based on its understanding of the request and after a reasonably proportional search and review of relevant documents, Plaintiff responds based upon such information and belief as follows: Pursuant to Rule 33(d), Plaintiff refers

Defendant to Plaintiff's complaint, the claim chart attached to Plaintiff's complaint, and Plaintiff's initial disclosures. If plaintiff discovers other relevant, non-privileged documents during discovery that are proportionate to the needs of this case and responsive to this request, Plaintiff will produce and identify them pursuant to Rule 33(d). Plaintiff further responds that Plaintiff seeks damages adequate to compensate it for Defendant's infringement of the Asserted Patents, which in any event shall be no less than a reasonable royalty for Defendant's use of the patented inventions, together with interest and costs as fixed by the Court. In addition, these damages should be enhanced pursuant to 35 U.S.C. § 284. Plaintiff also seeks costs and attorneys' fees and such other relief as the Court deems appropriate. The amount of Plaintiff's damages, fees, and costs and the amount of any other relief that may be deemed appropriate is not ascertainable at this time, at least in part because Defendant has not yet produced units sold and the cost of each unit sold. Further, Plaintiff will be relying on a damages expert in support of its claim and will timely comply with expert deadlines.

4. Identify all sales of each Multiquip Covered Instrumentality, the identification including but not limited to the date, the version of Multiquip Covered Instrumentality, volume, location and identification of purchasing entity.

Plaintiff incorporates by reference its General Objections.

Plaintiff objects to this request as overly broad, unduly burdensome, and not proportional to the needs of this case. Plaintiff objects to this request to the extent it seeks information protected by the attorney client privilege, common interest privilege, attorney work product doctrine, or any other applicable privilege, exemption, law, or rule, or which are otherwise protected from discovery by the Federal Rules of Civil Procedure. Plaintiff objects to the extent this request seeks discovery on pre-suit investigation. *TQP Development, LLC v. 1-800-Flowers.com, Inc.*, Case No. 2:11-cv- 248, Dkt. No. 290 (E.D. Tex. July 22, 2013) (denying motion to compel pre-suit investigation noting that the Patent Case Management Judicial Guide produced by the Federal Judicial Center (2009 ed.), at Section 4.6.1 ("Discovery Regarding Patentee's Pre- Filing Investigation") states that the "best practice is to deny such discovery.").

Subject to and without waiving the foregoing objections and based on its understanding of the request and after a reasonably proportional search and review of relevant documents, Plaintiff responds based upon such information and belief as follows: Plaintiff has not alleged that instrumentalities distributed by or on behalf of Plaintiff are read on by one or more claims of the Patent-in-Suit. If Plaintiff makes such an allegation, it will supplement its response to this request.

5. For each version of each Multiquip Covered Instrumentality, explain in detail all actual and projected revenue, income, profits, and costs associated with sale of said Multiquip Covered Instrumentality.

Plaintiff incorporates by reference its General Objections.

Plaintiff objects to this request as overly broad, unduly burdensome, and not proportional to the needs of this case. Plaintiff objects to this request to the extent it seeks information protected by the attorney client privilege, common interest privilege, attorney work product doctrine, or any other applicable privilege, exemption, law, or rule, or which are otherwise protected from

discovery by the Federal Rules of Civil Procedure. Plaintiff objects to the extent this request seeks discovery on pre-suit investigation. *TQP Development, LLC v. 1-800-Flowers.com, Inc.*, Case No. 2:11-cv- 248, Dkt. No. 290 (E.D. Tex. July 22, 2013) (denying motion to compel pre-suit investigation noting that the Patent Case Management Judicial Guide produced by the Federal Judicial Center (2009 ed.), at Section 4.6.1 (“Discovery Regarding Patentee’s Pre- Filing Investigation”) states that the “best practice is to deny such discovery.”).

Subject to and without waiving the foregoing objections and based on its understanding of the request and after a reasonably proportional search and review of relevant documents, Plaintiff responds based upon such information and belief as follows: Plaintiff has not alleged that instrumentalities distributed by or on behalf of Plaintiff are read on by one or more claims of the Patent-in-Suit. If Plaintiff makes such an allegation, it will supplement its response to this request.

6. Describe all objective evidence or secondary consideration of non-obviousness of each claim of the Patent-in-Suit, the description including but not limited to description the alleged bases for nexus between such objective evidence or secondary considerations and each claim.

Plaintiff incorporates by reference its General Objections.

Plaintiff objects to this request to the extent it seeks information protected by the attorney client privilege, common interest privilege, attorney work product doctrine, or any other applicable privilege, exemption, law, or rule, or which are otherwise protected from discovery by the Federal Rules of Civil Procedure. Plaintiff objects to the extent this request seeks discovery on pre-suit investigation. *TQP Development, LLC v. 1-800-Flowers.com, Inc.*, Case No. 2:11-cv- 248, Dkt. No. 290 (E.D. Tex. July 22, 2013) (denying motion to compel pre-suit investigation noting that the Patent Case Management Judicial Guide produced by the Federal Judicial Center (2009 ed.), at Section 4.6.1 (“Discovery Regarding Patentee’s Pre- Filing Investigation”) states that the “best practice is to deny such discovery.”).

Subject to and without waiving the foregoing objections and based on its understanding of the request and after a reasonably proportional search and review of relevant documents, Plaintiff responds based upon such information and belief as follows: Plaintiff’s investigation is ongoing. If plaintiff discovers relevant, non-privileged documents during discovery that are proportionate to the needs of this case and responsive to this request, Plaintiff will produce and identify them pursuant to Rule 33(d).

7. For each Multiquip Covered Instrumentality, explain in an element-by-element fashion how said Multiquip Covered Instrumentality and its operation meets each limitation of each claim and including a claim chart showing the manner in which said Multiquip Covered Instrumentality meets said claim elements.

Plaintiff incorporates by reference its General Objections.

Plaintiff objects to this request as overly broad, unduly burdensome, and not proportional to the needs of this case. Plaintiff objects to this request to the extent it seeks information protected by the attorney client privilege, common interest privilege, attorney work product doctrine, or any

other applicable privilege, exemption, law, or rule, or which are otherwise protected from discovery by the Federal Rules of Civil Procedure. Plaintiff objects to the extent this request seeks discovery on pre-suit investigation. *TQP Development, LLC v. 1-800-Flowers.com, Inc.*, Case No. 2:11-cv- 248, Dkt. No. 290 (E.D. Tex. July 22, 2013) (denying motion to compel pre-suit investigation noting that the Patent Case Management Judicial Guide produced by the Federal Judicial Center (2009 ed.), at Section 4.6.1 (“Discovery Regarding Patentee’s Pre- Filing Investigation”) states that the “best practice is to deny such discovery.”).

Subject to and without waiving the foregoing objections and based on its understanding of the request and after a reasonably proportional search and review of relevant documents, Plaintiff responds based upon such information and belief as follows: Plaintiff has not alleged that instrumentalities distributed by or on behalf of Plaintiff are read on by one or more claims of the Patent-in-Suit. If Plaintiff makes such an allegation, it will supplement its response to this request.

8. Identify all efforts to enforce the Patent-in-Suit, the identification including but not limited to identification of the party against whom enforcement was sought, the form of enforcement (whether by litigation, demand letter or otherwise), the date and outcome of the effort.

Plaintiff incorporates by reference its General Objections.

Plaintiff objects to this request to the extent it seeks information protected by the attorney client privilege, common interest privilege, attorney work product doctrine, or any other applicable privilege, exemption, law, or rule, or which are otherwise protected from discovery by the Federal Rules of Civil Procedure. Further, Plaintiff objects that the breadth of this request in seeks information that has no cognizable relevance basis. In *Uniloc v. Google*, for example, Action No. 2:18-CV-503-JRG-RSP, the Eastern District of Texas denied Google’s motion to compel license negotiations. Recognizing that the EDTX had previously found “unconsummated settlement and licensing negotiations with the patents-in-suit . . . not discoverable” (see *Sol IP, LLC v. AT&T Mobility LLC*, 2-18-cv-00526, Docket No. 291 at 6-7 (EDTX); *Mondis Tech., Ltd. v. LG Elecs., Inc.*, No. 2:07-CV-565, 2011 WL 1714304, at *5 (E.D. Tex. May 4, 2011)). Subject to and without waiving the foregoing objections and based on its understanding of the request and after a reasonably proportional search and review of relevant documents, Plaintiff responds based upon such information and belief as follows: Pursuant to Rule 33(d), Plaintiff refers Defendant to Plaintiff’s communications with Defendant, including pre-suit communications, relating to the Patent-in-Suit and the present lawsuit.

9. Identify all agreements entered into by Plaintiff relating to the Patent-in-Suit, including without limitation all assignments, licenses, settlement agreements, covenants-not-to-sue, technology transfer agreements, or any other agreements or contracts entered into by you.

Plaintiff incorporates by reference its General Objections.

Plaintiff objects to this request to the extent it seeks information protected by the attorney client privilege, common interest privilege, attorney work product doctrine, or any other applicable privilege, exemption, law, or rule, or which are otherwise protected from discovery by the Federal Rules of Civil Procedure. Plaintiff objects to the extent this request seeks discovery on pre-suit

investigation. *TQP Development, LLC v. 1-800-Flowers.com, Inc.*, Case No. 2:11-cv- 248, Dkt. No. 290 (E.D. Tex. July 22, 2013) (denying motion to compel pre-suit investigation noting that the Patent Case Management Judicial Guide produced by the Federal Judicial Center (2009 ed.), at Section 4.6.1 (“Discovery Regarding Patentee’s Pre- Filing Investigation”) states that the “best practice is to deny such discovery.”).

Subject to and without waiving the foregoing objections and based on its understanding of the request and after a reasonably proportional search and review of relevant documents, Plaintiff responds based upon such information and belief as follows: Pursuant to Rule 33(d), Plaintiff refers Defendant to the publicly recorded assignment and the documents attached thereto.

10. Describe the circumstances of how Plaintiff became aware of the Accused Instrumentalities, the identification including without limitation identification of the manner and circumstances in which you became so aware, the dates and persons involved.

Plaintiff incorporates by reference its General Objections.

Plaintiff objects to this request to the extent it seeks information protected by the attorney client privilege, common interest privilege, attorney work product doctrine, or any other applicable privilege, exemption, law, or rule, or which are otherwise protected from discovery by the Federal Rules of Civil Procedure. Plaintiff objects to the extent this request seeks discovery on pre-suit investigation. *TQP Development, LLC v. 1-800-Flowers.com, Inc.*, Case No. 2:11-cv- 248, Dkt. No. 290 (E.D. Tex. July 22, 2013) (denying motion to compel pre-suit investigation noting that the Patent Case Management Judicial Guide produced by the Federal Judicial Center (2009 ed.), at Section 4.6.1 (“Discovery Regarding Patentee’s Pre- Filing Investigation”) states that the “best practice is to deny such discovery.”).

Subject to and without waiving the foregoing objections and based on its understanding of the request and after a reasonably proportional search and review of relevant documents, Plaintiff responds based upon such information and belief as follows: Pursuant to Rule 33(d), Plaintiff refers Defendant to Plaintiff’s communications with Defendant, including pre-suit communications, relating to the Patent-in-Suit.

Dated: February 23, 2023

Respectfully submitted,

/s/ Ryan S. Loveless

James L. Etheridge

Texas State Bar No. 24059147

Ryan S. Loveless

Texas State Bar No. 24036997

Travis L. Richins

Texas State Bar No. 24061296

ETHERIDGE LAW GROUP, PLLC

2600 E. Southlake Blvd., Suite 120 / 324

Southlake, Texas 76092

Telephone: (817) 470-7249

Facsimile: (817) 887-5950

Jim@EtheridgeLaw.com
Ryan@EtheridgeLaw.com
Travis@EtheridgeLaw.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all counsel of record by email on
February 23, 2023.

/s/ Ryan S. Loveless
Ryan S. Loveless