

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION

4 HUAWEI TECHNOLOGIES CO., LTD.,  
5 HUAWEI DEVICE USA, INC., and  
6 HUAWEI TECHNOLOGIES USA, INC.,

7 Plaintiff(s)/Counterclaim  
8 Defendants,

9 vs.

10 SAMSUNG ELECTRONICS CO., LTD,  
11 SAMSUNG ELECTRONICS AMERICA,  
12 INC.

13 Defendants / Counterclaim-  
14 Plaintiffs

15 and

16 SAMSUNG RESEARCH AMERICA,

17 Defendant,

18 v.

19 HISILICON TECHNOLOGIES CO., LTD.,

20 Counterclaim-Defendant.

) Case Number: 3:16-cv-2787-WHO

) STIPULATION & ORDER RE:  
) DISCOVERY OF ELECTRONICALLY  
) STORED INFORMATION FOR PATENT  
) LITIGATION

21 Upon the stipulation of the parties, the Court ORDERS as follows:

22 1. This Order supplements all other discovery rules and orders. It streamlines  
23 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and  
24 inexpensive determination of this action, as required by Federal Rule of Civil Procedure 1.”

25 2. This Order may be modified in the Court’s discretion or by stipulation. The  
26 parties shall jointly submit any proposed modifications within 30 days after the Federal Rule of  
27 Civil Procedure 16 Conference.

28 3. As in all cases, costs may be shifted for disproportionate ESI production  
requests pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or  
diligent discovery tactics are cost-shifting considerations.

1           4.     A party’s meaningful compliance with this Order and efforts to promote  
2 efficiency and reduce costs will be considered in cost-shifting determinations.

3           5.     The parties are expected to comply with the District’s E-Discovery Guidelines  
4 (“Guidelines”) and are encouraged to employ the District’s Model Stipulated Order Re: the  
5 Discovery of Electronically Stored Information and Checklist for Rule 26(f) Meet and Confer  
6 regarding Electronically Stored Information.

7           6.     General ESI production requests under Federal Rules of Civil Procedure 34 and  
8 45 shall not include email or other forms of electronic correspondence (collectively “email”).  
9 To obtain email parties must propound specific email production requests.

10          7.     Email production requests shall only be propounded for specific issues, rather  
11 than general discovery of a product or business.

12          8.     Email production requests shall be phased to occur after the parties have  
13 exchanged initial disclosures and basic documentation about the patents, the prior art, the  
14 accused instrumentalities, and the relevant sales, marketing, finances, and license agreements.  
15 While this provision does not require the production of such information, the Court encourages  
16 prompt and early production of this information to promote efficient and economical  
17 streamlining of the case.

18          9.     Email production requests shall identify the custodian, search terms, and time  
19 frame. The parties shall meet and confer upon receiving any email production requests to  
20 identify and agree upon the proper custodians, proper search terms and proper timeframe as set  
21 forth in the Guidelines.

22          10.    Each requesting party<sup>1</sup> shall limit its email production requests to a total of ten  
23 custodians per producing party for all such requests. The parties may jointly agree to modify  
24 this limit without the Court’s leave. The Court shall consider contested requests for additional  
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26 <sup>1</sup> For purposes of this order, Huawei Technologies Co., Ltd, Huawei Device USA, Inc.,  
27 Huawei Technologies USA Inc., and HiSilicon Technologies Co., Ltd., collectively, shall be a  
28 single “requesting party” and “producing party.” Likewise, Samsung Electronics Co., Ltd.,  
Samsung Electronics America, Inc., and Samsung Research America, collectively, shall be a  
single “requesting party” and “producing party.”

1 custodians, upon showing a distinct need based on the size, complexity, and issues of this  
2 specific case. Cost-shifting may be considered as part of any such request.

3 11. Each requesting party shall limit its email production requests to a total of five  
4 search terms per custodian per party. The parties may jointly agree to modify this limit without  
5 the Court's leave. The Court shall consider contested requests for additional search terms per  
6 custodian, upon showing a distinct need based on the size, complexity, and issues of this  
7 specific case. The Court encourages the parties to confer on a process to test the efficacy of the  
8 search terms. The search terms shall be narrowly tailored to particular issues. Indiscriminate  
9 terms, such as the producing company's name or its product name, are inappropriate unless  
10 combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A  
11 conjunctive combination of multiple words or phrases (*e.g.*, "computer" and "system") narrows  
12 the search and shall count as a single search term. A disjunctive combination of multiple words  
13 or phrases (*e.g.*, "computer" or "system") broadens the search, and thus each word or phrase  
14 shall count as a separate search term unless they are variants of the same word (*e.g.*, a  
15 translation). Use of narrowing search criteria (*e.g.*, "and," "but not," "w/x") is encouraged to  
16 limit the production and shall be considered when determining whether to shift costs for  
17 disproportionate discovery. If requested by the producing party, the parties shall work  
18 cooperatively to revise search terms and other search restrictions (such as date ranges) to limit  
19 the resulting email "hits" to no more than 1000 per custodian. The parties agree that they will  
20 work together in good faith to resolve disputes arising when search terms yield more than 1000  
21 hits with the goal of minimizing the burden on the producing party. Should a party serve email  
22 production requests with search terms beyond the limits agreed to by the parties or granted by  
23 the Court pursuant to this paragraph, this shall be considered in determining whether any party  
24 shall bear all reasonable costs caused by such additional discovery.

25 12. Nothing in this Order prevents the parties from agreeing to use technology  
26 assisted review and other techniques insofar as their use improves the efficacy of discovery.  
27 Such topics should be discussed pursuant to the District's E-Discovery Guidelines.

28 13. If, after review of the produced email documents commences, a party believes

1 that additional search terms are necessary, the parties shall meet and confer in good faith to  
2 determine what, if any, additional searches should be run. Similarly, if after reviewing  
3 produced email documents a party has good reason to believe that additional production of  
4 non-email documents is necessary, the parties shall meet and confer in good faith to determine  
5 what, if any, additional searches should be run. Such additional searches and production shall  
6 be performed with the consent of the other party or upon a showing of good cause, provided  
7 that the request for additional discovery shall be limited to the extent necessary to supplement  
8 the email ESI production.

9 14. The parties will produce documents as searchable pdfs or single-page TIFF files  
10 with load file, or as native files if production in pdf or TIFF format is impractical. The parties  
11 will produce the following metadata for email: BegBates, EndBates, BegAttach, EndAttach,  
12 Custodian, DateSent, Language, To, From, CC, BCC, Email Subject, and Attachments. The  
13 parties will produce the following metadata for non-email ESI: BegBates, EndBates,  
14 Custodian, Filename, Language, and Date Last Modified (to the extent available).

15  
16 **IT IS SO STIPULATED**, through Counsel of Record.

17 Dated: December 1, 2016 /s/ Michael J. Bettinger


18 Counsel for Plaintiffs/Counterclaim-Defendants

19 Dated: December 1, 2016 /s/ Marissa Ducca

20 Counsel for Defendants/Counterclaim-Plaintiffs

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22 **IT IS ORDERED** that the forgoing Agreement is approved.

23 Dated: December 2, 2016

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The Honorable William H. Orrick  
25 UNITED STATES DISTRICT JUDGE  
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**LOCAL RULE 5-1 ATTESTATION**

I, Michael J. Bettigner, am the ECF User whose ID and password was used to file this STIPULATION RE DISCOVERY OF ELECTRONICALLY STORED INFORMATION FOR PATENT LITIGATION. In compliance with Local Rule 5-1(i)(3), I hereby attest that, counsel for Defendants/Counterclaim-Plaintiffs, concurred in this filing.

Dated: December 2, 2016

By: /s/ Michael J. Bettinger  
Michael J. Bettinger