IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBOTICVISIONTECH, INC.,

                Plaintiff,

      v.

ABB INC.,

                Defendant.

C.A. No. 22-1257-GBW

MEMORANDUM ORDER

Pending before the Court are (1) Plaintiff RoboticVISIONTech, Inc.'s ("RVT") motions to (a) show cause and compel document production (D.I. 60); and (b) strike or, in the alternative, compel supplemental infringement contentions (D.I. 81); and (2) Defendant ABB, Inc.'s motions to (a) compel RVT to identify additional custodians and produce their documents (D.I. 61); (b) limit the number of asserted claims (D.I. 80); and (c) compel supplemental infringement contentions (*id.*).

I.   DISCUSSION

A.   RVT's Motion to Show Cause And Compel Document Production.

RVT asks the Court to compel ABB to (1) produce core technical documents and source code for the machine vision products charted in RVT's infringement contentions, (2) list all of ABB's machine vision products and describe those products' functionalities (i.e., RVT's Interrogatory I), (3) supplement ABB's responses to Interrogatories 2–4, 8, 11, 12, and 14 (commensurate with the scope of the accused products), and (4) respond to RVT's document

requests for the machine vision products charted in RVT's contentions. D.I. 60 at 2. For the reasons stated below, the Court denies RVT's motion.

RVT previously moved to compel document production on all of ABB's robotic vision products. *Id.* at 1. The Court granted RVT's motion to compel after holding a hearing on that motion. *Id.* During that hearing, the Court explained that "what [RVT] accused … go[es] to the functionality of the ABB FlexVision product, even if the brand-name of another product is something different than FlexVision." *Id.* (citing Aug. 16, 2023 Tr. at 28:19–25). Accordingly, the Court gave ABB additional time to determine whether, in light of the Court's order, it had an obligation to produce documents related to any other ABB products. D.I. 64 at 1-2. ABB concluded that it did not. *Id.* RVT disagrees, and contends that ABB should have disclosed technical documents and source code related to, at least, ABB's PickMaster, YuMi, Integrated Vision, 3DQI, and FlexLoader products—products that, according to RVT, relate to "machine vision technology." *Id.* at 2.

The Court, however, is not convinced that its Order required ABB to produce the technical documents and source code of those products because the Court's Order was limited to products that incorporate the "functionality of the ABB FlexVision product." Aug. 16, 2023 Tr. at 28:19–25. RVT, in its initial motion to compel document production (D.I. 38), explained its position that ABB incorporated aspects of RVT's robotic vision technology software, eVF, into ABB's product, FlexVision. Before ABB had access to eVF, "ABB did not have 3D robotic vision technology of its own"—i.e., the technology to which the Accused Patents in this case (U.S. Patent Nos. 8,095,237, 7,336,814, and 6,816,755) are directed. *Id.* at 1.

As a result, the Court is not convinced that RVT has shown that the products developed by ABB prior to the events that formed the basis for RVT's complaint—namely, ABB's licensing of

eVF—incorporate the allegedly infringing core functionality of FlexVision. For example, ABB has sold PickMaster since 1999, but did not license eVF until 2006. D.I. 64 at 2; D.I. 1 ¶ 11-12. RVT argues that PickMaster, among other products, "appear[s] to incorporate or build upon the core FlexVision functionality" because ABB has described that product "as a vision system[] for robots that enhance robotic motion in factory environments." D.I. 60 at 2 (internal citations omitted). However, the alleged functionality of FlexVision does not extend to every type of robotic vision system. *See* D.I. 38. Instead, the alleged functionality of FlexVision is "3D robotic vision software"—i.e., a specific type of robotic vision software.

Accordingly, because RVT has not presented evidence that elements of the accused FlexVision functionality were incorporated into the products for which RVT seeks discovery— such as a shared development team, or a showing that a specific ABB product incorporates features of FlexVision—the Court is not convinced that RVT has shown that it is entitled to discovery into those products at this time.

ABB licensed eVF in 2006. D.I. 1 ¶ 11-12. As a result, RVT may be able to show that ABB, after 2006, updated its products with the allegedly infringing aspects of FlexVision. However, based on the current record before the Court, RVT has not made such a showing. *See, e.g.,* D.I. 60, Ex. 8 ("The [Integrated Vision] system may be used as an alternative to mechanical fixtures to find the location and angle of the part *in 2D*") (emphasis added). Thus, the Court denies RVT's motion to compel the production of additional documents along with its related motion to show cause.

RVT also asks the Court to compel ABB to supplement its production of its "core technical document[s]" and external libraries.[1] D.I. 60 at 2-3. Specifically, RVT contends that ABB has not produced (1) the source-code specifications for FlexVision or any documents that explain the development or authorship of that source code, (2) any technical documents disclosing the functionalities of the various robots and vision systems into which the FlexVision code (or its functionality) are incorporated, and (3) any sales information for those robots and vision systems. *Id.*

ABB·contends that it does not have "source code specifications for FlexVision," and that the Cognex external library is in the possession of Cognex, a third party. D.I. 97. ABB states that it has produced documents responsive to the remainder of RVT's request for documents, namely: (1) "git mirrors that show the date and person responsible for every change to the FlexVision code to the extent ABB has that information," and (2) "a spreadsheet providing financial information for every FlexVision sale, along with purchase orders and invoices for each of those sales." *Id.*

RVT has not shown that ABB has the "legal right or ability" to obtain the Cognex libraries from Cognex. *See Mercy Catholic Med. Ctr. v. Thompson*, 380 F.3d 142, 160 (3d Cir. 2004) ("In the context of Fed. R. Civ. P. 34(a), so long as the party has the legal right or ability to obtain the documents from another source upon demand, that party is deemed to have control."). Accordingly, the Court denies RVT's motion to compel ABB to produce that source code. Also, given ABB's representations to this Court that it has produced what responsive information it has to the remainder of RVT's requests, the Court denies the remainder of RVT's motion.

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[1] Including the Cognex software library, which RVT contends is partially incorporated into FlexVision and is responsible for performing certain machine-vision tasks. D.I. 60, Ex. 2.

B.   RVT's Motion to Strike or, In The Alternative, Compel Supplemental Invalidity Contentions.

RVT asks the Court to strike ABB's initial invalidity contentions. D.I. 81. That motion is denied. Among other reasons, RVT's motion makes no mention of the *Pennypack* factors that govern the resolution of its motion and why the Court should strike ABB's initial contentions—if the Court finds that those contentions are deficient— instead of granting ABB leave to amend. *See id.* Considering that "each party shall be permitted to supplement" its initial disclosures, D. Del. Default Standard (the Default Standard), ¶ 4, n.3, the Court is not convinced that RVT has shown that ABB's initial disclosures are so deficient that striking those disclosures is an appropriate remedy. *See, e.g., First Quality Tissue, LLC v. Irving Consumer Prods. Ltd.*, C.A. 19-428-RGA, D.I. 149 at 3, 5-6 (D. Del. Oct. 27, 2020) (denying motion to strike contentions that were supplemented after the close of fact discovery as exclusion of those supplementations would be an extreme sanction) (quoting *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 791-92 (3d Cir. 1994).

In the alternative, RVT asks the Court to compel ABB to identify the prior-art references and combinations on which it intends to rely, and explain how those combinations satisfy the limitations of the asserted claims. D.I. 81 at 3. RVT argues that ABB's invalidity contentions are deficient because those contentions (1) list over a hundred alleged prior-art references that do not appear in the claim charts, (2) list ABB's own products as prior-art references without explaining how those products meet the limitations of the asserted claims, (3) note that additional references could be substituted for the references detailed in the charts without explaining why those substitutions could be made, and (4) reserve ABB's right to identify other invalidating combinations "as appropriate." *Id.* at 1-2. For the reasons stated below, the Court denies RVT's motion.

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