

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

SanDisk3D IP Holdings Ltd., et al. v. Viasat, Inc.

SanDisk3D v. Viasat · No. 22-cv-04376-HSG (PHK) · Decided April 28, 2025

SUMMARY

The United States District Court for the Northern District of California denied SanDisk’s motion to strike Viasat’s supplemental responses to interrogatories concerning noninfringement contentions and noninfringing alternatives. The court also denied SanDisk’s motion to shorten time as moot and granted the parties’ motions to seal materials containing sensitive business information.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Peter H. Kang
JURISDICTION	United States District Court for the Northern District of California
DECIDED	April 28, 2025
DOCKET	22-cv-04376-HSG (PHK)
DISPOSITION	other
PROCEDURAL POSTURE	Discovery referral proceeding addressing SanDisk's motion to strike Viasat's third supplemental response to Interrogatory No. 8 and second supplemental response to Interrogatory No. 14, SanDisk's motion to shorten time, and the parties' motions to seal.
STANDARD OF REVIEW	Discovery-management and discovery-sanction decisions are reviewed for abuse of discretion; the court possesses broad discretion and authority to manage discovery.
PRECEDENTIAL VALUE	Unknown; district court discovery order
PARTIES	SanDisk3D IP Holdings Ltd., et al. v. Viasat, Inc.

TOPICS

- discovery dispute
- patent infringement
- intellectual property
- commercial litigation
- civil procedure

PRACTICE AREAS

- civil procedure
- patent litigation
- discovery
- sealing of judicial records

QUESTIONS PRESENTED

1. Whether Viasat's final supplemental responses to SanDisk's contention interrogatories should be stricken because they were served late in the discovery period and allegedly prejudiced SanDisk.
2. Whether SanDisk's motion to shorten time should be denied as moot after the underlying motion was decided on the submitted briefing.
3. Whether portions of the parties' motion papers and supporting exhibits should be sealed based on confidential source code and sensitive business information.

HOLDINGS

1. The motion to strike Viasat's Third Supplemental Response to Interrogatory No. 8 was denied because SanDisk did not demonstrate diligence in seeking more detailed responses earlier, material prejudice, or a material shift in Viasat's noninfringement contentions.
2. The motion to strike Viasat's Second Supplemental Response to Interrogatory No. 14 was denied because SanDisk did not show diligence, material prejudice, a surprise issue, or a material shift in Viasat's contentions regarding noninfringing alternatives and damages.
3. SanDisk's motion to shorten time was denied as moot because the briefing and hearing deadlines had passed and the underlying motion to strike was decided on the submitted papers.
4. The parties' motions to seal were granted because the materials contained source code and highly confidential business information whose disclosure could cause competitive harm, satisfying the compelling-reasons standard.

KEY QUOTATIONS

“For the reasons discussed herein, SanDisk’s Motion to Strike is DENIED, SanDisk’s Motion to Shorten Time is DENIED as MOOT, and the Parties’ Motions to Seal are GRANTED.” (at 3)

“District courts have wide latitude in controlling discovery, and their rulings will not be overturned in the absence of a clear abuse of discretion.” (at 4)

“A party seeking to seal court documents “bears the burden of overcoming th[e] strong presumption [of public access] by meeting the ‘compelling reasons’ standard.” (at 13)

FACTUAL BACKGROUND

SanDisk served Interrogatory No. 8 seeking Viasat's noninfringement contentions and Interrogatory No. 14 seeking contentions concerning noninfringing alternatives, including related documents and witnesses. Viasat initially provided brief responses and later served supplemental responses, with the challenged final supplemental responses served near the close of fact discovery. SanDisk did not move to compel more detailed responses after receiving the earlier responses, but instead sought to strike the final supplemental responses on the ground that their timing prejudiced its ability to conduct discovery and depositions. The parties also sought to seal portions of their motion papers and exhibits containing source code and highly confidential business information.

PROCEDURAL HISTORY

SanDisk filed this patent dispute on July 28, 2022. During discovery, SanDisk served contention interrogatories concerning Viasat's noninfringement contentions and noninfringing alternatives. Viasat served successive supplemental responses, including the responses challenged here. Discovery was referred to Magistrate Judge Peter H. Kang on February 14, 2025. The presiding district judge denied SanDisk's requests to amend its infringement contentions and extend fact discovery, after which the magistrate judge denied the motion to strike, denied the motion to shorten time as moot, and granted the motions to seal.

DISPOSITION

other

CASES CITED

- U.S. Fidelity & Guar. Co. v. Lee Inv. LLC, 641 F.3d 1126, 1136 n.10 (9th Cir. 2011)
- Laub v. U.S. Dep't of Int., 342 F.3d 1080, 1093 (9th Cir. 2003)
- Crawford-El v. Britton, 523 U.S. 574, 598 (1998)
- McCormick-Morgan, Inc. v. Teledyne Indus., Inc., 134 F.R.D. 275, 286-87 (N.D. Cal. 1991)
- In re Williams-Sonoma, Inc., 947 F.3d 535, 539 (9th Cir. 2020)
- Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 350-51 (1978)
- In re Facebook, Inc. Consumer Privacy User Profile Litig., No. 18-MD-2843 VC (JSC), 2021 WL 10282215, at *4 (N.D. Cal. Sept. 29, 2021)
- Champion Fiberglass, Inc., 309 F.R.D. 527, 531 (N.D. Cal. 2015)
- Lexington Ins. Co. v. Commonwealth Ins. Co., 1999 WL 33292943, at *7 (N.D. Cal. Sept. 17, 1999)
- Looksmart Grp., Inc., 386 F. Supp. 3d at 1227
- Netfuel, Inc., 2020 WL 4381768, at *1
- Crystal Semiconductor Corp. v. Tritech Microelectronics Int'l, Inc., 246 F.3d 1336, 1353 (Fed. Cir. 2001)
- Micro Chem., Inc. v. Lextron, Inc., 317 F.3d 1387, 1393 (Fed. Cir. 2003)
- Zygo Corp. v. Wyko Corp., 79 F.3d 1563, 1571-72 (Fed. Cir. 1996)
- Yuntek Int'l, Inc. v. Xiamen JXD Elec. Com. Co., No. 20CV07201JSWRMI, 2022 WL 2288936, at *1 (N.D. Cal. Apr. 4, 2022)
- Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 597 n.7 (1978)
- Folz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1133, 1135 (9th Cir. 2003)
- Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006)
- Times Mirror Co. v. United States, 873 F.2d 1210, 1219 (9th Cir. 1989)
- Apple, Inc. v. Samsung Elecs. Co., Ltd., No. 11-cv-01846-LHK, 2012 WL 6115623, at *2 (N.D. Cal. Dec. 10, 2012)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6
SAN FRANCISCO DIVISION 7 8 SANDISK3D IP HOLDINGS LTD., et al., Case No. 22-cv-
04376-HSG (PHK) 9 Plaintiffs, ORDERS DENYING PLAINTIFF SANDISK’S MOTION TO
STRIKE 10 v. INTERROGATORY RESPONSES; DENYING PLAINTIFF’S MOTION TO 11
VIASAT, INC., SHORTEN TIME AS MOOT; GRANTING MOTIONS TO SEAL 12 Defendant.

Re: Dkts. 167, 168, 171, 177, and 178 13 14 On February 14, 2025, all discovery in this matter,
including the motions at Dkt. 168 and 15 171, between Plaintiff SanDisk Technologies, Inc.
(“SanDisk”) and Defendant Viasat, Inc. 16 (“Viasat”) was referred to the undersigned. [Dkt. 173].
Now before the Court is SanDisk’s Motion 17 to Strike Viasat’s Third Supplemental Response to
Interrogatory No. 8 and Second Supplemental 18 Response to Interrogatory No. 14, along with a
Motion to Shorten Time for briefing and hearing on 19 the instant Motion to Strike.

[Dkts. 168 and 171]. Additionally, the Parties both filed Motions to 20 Seal certain portions of the
briefing and underlying exhibits, in connection with the Motion to Strike. 21 Dkts. 167, 177, and
178. After considering all relevant briefing and accompanying documents, the 22 Court finds this
dispute appropriate for adjudication without oral argument. Civil L.R.

7-1(b). 23 For the reasons discussed herein, SanDisk’s Motion to Strike is DENIED, SanDisk’s
Motion 24 to Shorten Time is DENIED as MOOT, and the Parties’ Motions to Seal are
GRANTED. 25 RELEVANT BACKGROUND 26 SanDisk filed this patent dispute against
Defendant Viasat, Inc. (“Viasat”) on July 28, 2022. 27 [Dkt. 1].

The following relevant background is taken from the Parties’ briefs and the Court docket 1
Interrogatory No. 8: On April 7, 2023, SanDisk served Interrogatory No. 8, which 2 essentially
asked Viasat to set forth its noninfringement contentions. [Dkt. 168 at 4].

On December 3 8, 2023, Viasat served its initial response to Interrogatory No. 8. Id. SanDisk avers
that the response 4 consisted of “three paragraphs with no substantive content[.]” Id. “[T]he first
paragraph set forth 5 objections; the second paragraph argued that the interrogatory was
premature; and the third 6 paragraph stated that Viasat’s investigation was ongoing and it reserved
the right to supplement.” 7 Id. (citation omitted).

8 On December 30, 2024, Viasat served its First Supplemental Response to Interrogatory No. 9 8.
Id. SanDisk indicates that the First Supplemental Response to Interrogatory No. 8 “(1) 10
complained that Plaintiffs’ infringement contentions were deficient; (2) provided, without further
11 explanation, a simple bullet list of limitations that Viasat contended were not met, consisting of
12 essentially every limitation of every asserted claim; and (3) listed, again without explanation, a
13 series of letters between counsel and document production numbers pursuant to Rule 33(d).”
Id. at 14 4–5 (citation omitted).

15 On January 16, 2025, SanDisk sought leave to serve amended infringement contentions 16 (provided to Viasat on January 3). [Dkt. 146]. On March 12, 2025, the presiding District Judge 17 denied the motion for leave to amend infringement contentions. [Dkt. 182]. 18 On January 24, 2025, SanDisk began taking depositions of various Viasat witnesses. [Dkt. 19 168 at 5].

The following day, Viasat served its Second Supplemental Response to Interrogatory No. 20 8. Id. SanDisk avers that “[t]his response was similar to the prior response, except after each 21 allegedly missing claim limitation Viasat listed, without further explanation, one or more document 22 production numbers.” Id. (citation omitted). 23 On February 6, 2025, Viasat served its Third Supplemental Response to Interrogatory No. 24 8.

Id. The following day, fact discovery closed. Id. 25 Interrogatory No. 14: On October 2, 2024, SanDisk served Interrogatory No. 14, which in 26 essence sought Viasat’s contentions on non-infringing alternatives to the asserted patents, including 27 identification of documents and witnesses relating to this issue. Id. at 6.

On November 1, 2024, 1 consisted of “three paragraphs with no substantive content[.]” Id. “[T]he first paragraph set forth 2 objections; the second paragraph argued that the interrogatory was premature and generically denied 3 infringement; and the third paragraph stated that Viasat’s investigation was ongoing and it reserved 4 the right to supplement.” Id. (citation omitted).

5 On January 8, 2025, Viasat served its First Supplemental Response to Interrogatory No. 14. 6 Id. SanDisk indicates that the First Supplemental Response to Interrogatory No. 14 “(1) referenced 7 prior art systems that Viasat contended would be non-infringing alternatives, (2) contended that the 8 accused products themselves were non-infringing alternatives because they lacked certain claim 9 elements, providing no explanation and referencing the response to Interrogatory No. 8—which, as 10 noted above, did not contain any explanation either, and (3) argued without any detail that ‘to the 11 extent’ Plaintiffs identified a claim limitation in Viasat’s accused products, Viasat could design its 12 systems to remove it.” Id. (citation omitted).

13 On February 6, 2025, Viasat served its Second Supplemental Response to Interrogatory No. 14 14. Id. 15 On February 7, 2025, the day fact discovery closed, SanDisk filed a motion seeking to extend 16 the deadline for the close of fact discovery and extend the case schedule. [Dkt. 158].

On March 17 10, 2025, the presiding District Judge denied that request. [Dkt. 181]. 18 On February 11, 2025, SanDisk filed the instant motion to strike Viasat’s interrogatory 19 responses. [Dkt. 168]. Concurrently, SanDisk moved to seal certain portions of the Motion to 20 Strike. [Dkt. 167].

The following day, SanDisk moved to shorten the time for briefing and hearing 21 on its Motion to Strike. [Dkt. 171]. On February 25, 2025, Viasat filed its opposition, and 22 concurrently, moved

to file certain portions of its opposition under seal. [Dkts. 176, 177, and 178]. 23 LEGAL STANDARD 24 The Court has broad discretion and authority to manage discovery.

U.S. Fidelity & Guar. 25 Co. v. Lee Inv. LLC, 641 F.3d 1126, 1136 n.10 (9th Cir. 2011) (“District courts have wide latitude 26 in controlling discovery, and their rulings will not be overturned in the absence of a clear abuse of 27 discretion.”); Laub v. U.S. Dep’t of Int., 342 F.3d 1080, 1093 (9th Cir. 2003).

The Court’s discretion 1 Crawford-El v. Britton, 523 U.S. 574, 598 (1998) (holding trial courts have “broad discretion to 2 tailor discovery narrowly and to dictate the sequence of discovery”). 3 As discussed long ago by Judge Brazil, it is appropriate for a party such as patentee SanDisk 4 to take discovery on an opponent’s contentions using appropriately framed and timed contention 5 interrogatories.

See McCormick-Morgan, Inc. v. Teledyne Indus., Inc., 134 F.R.D. 275, 286–87 6 (N.D. Cal. 1991), overruled on other grounds, 765 F. Supp. 611 (N.D. Cal. 1991). 7 In a patent case like this, the bases for contentions do not consist exclusively of relatively straightforward facts or evidence, as might 8 be true, by contrast, in a case arising out of a traffic accident.

In other words, to set forth the bases for contentions in this case, it is not 9 enough to describe real world facts and events, even in considerable detail. Rather, determining what the bases for contentions are in this 10 environment involves complex judgments about the relationship between at least three kinds of things: (1) evidence/facts/events in the 11 real world (outside litigation), (2) “claims” as particularly set forth in the patent in issue and in other patents or other material presented to 12 the patent office, and (3) principles of intellectual property law set forth in statutes and in judicial opinions....

Patent cases turn 13 peculiarly on a conceptually dense dynamic between physical objects, words in claims, and principles of law. Understanding that dynamic, 14 and describing the relationships that serve as the bases for a given parties’ contentions, is something best done by patent lawyers, and 15 best done after at least most other discovery has been completed.

After all, in cases like these, a substantial part of “the bases for 16 contentions” really consists of quasi-legal argument. 17 Id. at 287 (emphasis in original and added). 18 Federal Rule of Civil Procedure 26(b)(1) provides that “[p]arties may obtain discovery 19 regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional 20 to the needs of the case.” Information need not be admissible to be discoverable.

Id. Relevancy 21 for purposes of discovery is broadly defined to encompass “any matter that bears on, or that 22 reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” In 23 re Williams-Sonoma, Inc., 947 F.3d 535, 539 (9th Cir. 2020) (quoting Oppenheimer Fund, Inc. v. 24 Sanders, 437 U.S. 340, 350–51 (1978)); see also In re Facebook,

Inc. Consumer Privacy User 25 Profile Litig., No. 18-MD-2843 VC (JSC), 2021 WL 10282215, at *4 (N.D.

Cal. Sept. 29, 2021) 26 (“Courts generally recognize that relevancy for purposes of discovery is broader than relevancy for 27 purposes of trial.”) (alteration omitted). 1 *Champion Fiberglass, Inc.*, 309 F.R.D. 527, 531 (N.D. Cal. 2015) (“Relevancy, for the purposes of 2 discovery, is defined broadly, although it is not without ultimate and necessary boundaries.”).

3 Information, even if relevant, must be “proportional to the needs of the case” to fall within the scope 4 of permissible discovery. Fed. R. Civ. P. 26(b)(1). The 2015 amendments to Rule 26(b)(1) 5 emphasize the need to impose reasonable limits on discovery through increased reliance on the 6 common-sense concept of proportionality: “The objective is to guard against redundant or 7 disproportionate discovery by giving the court authority to reduce the amount of discovery that may 8 be directed to matters that are otherwise proper subjects of inquiry.

The [proportionality 9 requirement] is intended to encourage judges to be more aggressive in identifying and discouraging 10 discovery overuse.” In evaluating the proportionality of a discovery request, a court should consider 11 “the importance of the issues at stake in the action, the amount in controversy, the parties’ relative 12 access to the information, the parties’ resources, the importance of the discovery in resolving the 13 issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” 14 Fed.

R. Civ. P. 26(b)(1). 15 DISCUSSION 16 I. MOTION TO STRIKE RESPONSE TO INTERROGATORY NO. 8 17 SanDisk seeks to strike Viasat’s last-served responses to SanDisk’s Interrogatories. 8 and 18 14. SanDisk’s arguments are identical for both interrogatory responses. SanDisk argues that “[b]y 19 [Viasat] concealing its non-infringement and non-infringing alternatives arguments until the close 20 of fact discovery, Viasat has severely prejudiced SanDisk by preventing SanDisk from testing those 21 arguments in discovery.” [Dkt.

168 at 8]. “SanDisk had already deposed three of Viasat’s technical 22 witnesses, including Viasat’s Chief Technical Officer for Content Delivery, regarding nearly 50 23 technical 30(b)(6) deposition topics before it could digest Viasat’s new arguments.” *Id.* (citation 24 omitted). 25 As noted, SanDisk’s Interrogatory No. 8 seeks Viasat’s noninfringement contentions.

Under 26 this Court’s Patent Local Rules, there is no requirement for a defendant to disclose noninfringement 27 contentions. Accordingly, it is common practice for plaintiffs in patent lawsuits to serve a 1 SanDisk’s argument that the most-recently served Third Supplemental Response to this 2 interrogatory is prejudicial because it was served late in the discovery period is not persuasive.

The 3 timing of an updated or supplemental contention interrogatory response is not viewed in a vacuum: 4 as noted, Viasat served earlier responses to Interrogatory No. 8 which SanDisk now

complaints were 5 insufficiently detailed at the time. [Dkt. 168 at 4–5].

However, there is insufficient indication in 6 the record as to why SanDisk failed to move to compel a more fulsome response to Interrogatory 7 No. 8 upon receipt of these earlier responses. Specifically, SanDisk has been aware of Viasat’s 8 original response to this interrogatory since December 2023, as well as Viasat’s First Supplemental 9 Response (which post-dated the Court’s claim construction Order [Dkt.

120]) since December 30, 10 2024. [Dkt. 168 at 4]. SanDisk did not file a motion to compel more detailed responses to 11 Interrogatory No. 8 after receiving either response. 12 Indeed, SanDisk attempted to amend its infringement contentions by serving amendments 13 on January 3, 2025, for which SanDisk filed a motion for leave on January 16, 2025. [Dkt. 146].

14 Until that motion was decided, it is evident that there was at least some uncertainty as to which of 15 SanDisk’s infringement contentions would be operative in this case. Viasat can hardly be faulted 16 for some delay while this uncertain situation (caused by SanDisk’s attempt to amend) existed. 17 Nevertheless, SanDisk has had notice of Viasat’s Second Supplemental Response to Interrogatory 18 No. 8 since January 25, 2025.

Id. at 5. Again, SanDisk did not move to compel a more detailed 19 response to Interrogatory No. 8 after receiving this supplemental response. Thus, while SanDisk 20 now complains that these earlier responses to Interrogatory No. 8 were deficient (as compared to 21 the final Third Supplemental Response served on February 6, 2025, which SanDisk argues has more 22 detail “for the first time”), SanDisk has failed to demonstrate diligence in seeking that additional 23 information from Viasat during the fact discovery period.

24 Further, as noted, it is common for contention interrogatory responses in patent cases to be 25 served towards the end of the fact discovery period. See McCormick-Morgan, 134 F.R.D. at 287 26 (“these [contention] interrogatories need be answered only after all other substantive discovery has 27 been completed[.]”). “Courts are reluctant to allow contention interrogatories prematurely, that is, 1 interrogatories.

However, courts have also recognized that properly timed contention interrogatories 2 ‘may in certain cases be the most reliable and cost-effective discovery device[.]’” Lexington Ins. 3 Co. v. Commonwealth Ins. Co., 1999 WL 33292943 at *7 (N.D. Cal. Sept. 17, 1999) (citation 4 omitted). SanDisk’s argument about the timing of the Third Supplemental Response to 5 Interrogatory No. 8 is not persuasive because ultimately SanDisk’s prejudice argument focuses 6 primarily on the timing issue and the allegedly generalized concern that SanDisk could have sought 7 other or different discovery (or asked different deposition questions) had SanDisk known of this 8 Third Supplemental Response earlier.

9 This is not a situation where SanDisk has identified specific discovery it now seeks because 10 the final contention interrogatory response contained a surprise disputed claim term. Indeed, 11 SanDisk admits that the earlier responses to Interrogatory No. 8 denied infringement as to all or 12 most limitations of the asserted claims, and thus it is unlikely that SanDisk's presumably able 13 counsel failed to take any discovery directed to its infringement theory for each such denied claim 14 limitation.

The fact that SanDisk now, in retrospect, would have liked the chance to perhaps ask 15 some different or additional deposition questions to shore up its infringement assertions is not a 16 sufficient basis to strike Viasat's final supplemental response to Interrogatory No. 8. Every attorney 17 would surely relish the chance to see their opponents' final arguments and then get a chance for a 18 do-over to retake depositions, but that is not a basis for striking responses.

In the context of Rule 19 26, such a desire to retake depositions or seek more discovery would likely be held to be not 20 proportional to the needs of the case. And if taking more discovery in light of a supplemental 21 interrogatory response were not appropriate, then striking the interrogatory responses which are the 22 alleged motivation for seeking more discovery is equally unwarranted.

23 Moreover, because noninfringement is a rebuttal to infringement, it is difficult to see how 24 SanDisk's claim of prejudice is supportable here. By definition, a rebuttal responds to an existing 25 contention or issue already present in the case. Presumably Viasat's Third Supplemental Response 26 to Interrogatory No. 8 was rebutting SanDisk's infringement theories, and thus the fact that Viasat's 27 final supplemental response provided more details to that rebuttal does not mean that Viasat raised 1 new or surprise disputed issues that were raised in the Third Supplemental Response to Interrogatory 2 No. 8.

If anything, the fact that Viasat provided additional detail and citation to evidence for its 3 noninfringement contentions should be expected to have the beneficial effect of allowing SanDisk's 4 infringement expert report to be prepared with even more focus and specificity. 5 In light of the record presented to the Court, SanDisk has not demonstrated a material shift 6 in contentions by Viasat on this issue justifying granting SanDisk's Motion to Strike.

Fed. R. Civ. 7 P. 26(e)(1)(A); Looksmart Grp., Inc., 386 F. Supp. 3d at 1227; Netfuel, Inc., 2020 WL 4381768, at 8 *1. 9 II. MOTION TO STRIKE RESPONSE TO INTERROGATORY NO. 14
10 For essentially the same reasons, SanDisk's motion to strike Viasat's Second Supplemental 11 Response to Interrogatory No. 14 is unavailing. SanDisk's argument that the most-recently served 12 Second Supplemental Response to this interrogatory is prejudicial because it was served late in the 13 discovery period is not persuasive.

The timing of an updated or supplemental contention 14 interrogatory response is not viewed in a vacuum: as noted, Viasat served earlier responses to 15 Interrogatory No. 14 which SanDisk now complains were insufficiently detailed at the time. [Dkt. 16 168 at 6–7].

However, there is insufficient indication in the record as to why SanDisk failed to 17 move to compel a more fulsome response to Interrogatory No. 14 upon receipt of these earlier 18 responses. Specifically, SanDisk has been aware of Viasat’s original response to this interrogatory 19 since November 1, 2024, as well as Viasat’s First Supplemental Response since January 8, 2025.

20 [Dkt. 168 at 6]. SanDisk did not file a motion to compel more detailed responses to Interrogatory 21 No. 14 after receiving either of these responses. Thus, while SanDisk now complains that these 22 earlier responses to Interrogatory No. 14 were deficient (as compared to the final Second 23 Supplemental Response served on February 6, 2025, which SanDisk argues has more detail “for the 24 first time”), SanDisk has failed to demonstrate diligence in seeking that additional information from 25 Viasat during the fact discovery period.

26 As noted, Interrogatory No. 14 seeks Viasat’s contentions on noninfringing alternatives to 27 the asserted patent claims. The issue of noninfringing alternatives is generally raised in patent 1 Co., 185 F.3d 1341, 1350–51 (Fed. Cir. 1999) (For lost profits analysis: “a rational would-be 2 infringer is likely to offer an acceptable noninfringing alternative, if available, to compete with the 3 patent owner rather than leave the market altogether.”); *Micro Chem., Inc. v. Lextron, Inc.*, 317 F.3d 4 1387, 1393 (Fed.

Cir. 2003) (For reasonable royalty analysis, “one of the Georgia–Pacific factors 5 [is]”—“[t]he utility and advantages of the patent property over the old modes or devices, if any, that 6 had been used for working out similar results[.]”); *Zygo Corp. v. Wyko Corp.*, 79 F.3d 1563, 1571– 7 72 (Fed. Cir. 1996) (For reasonable royalty analysis: “the fact that [defendant] Wyko could have 8 continued marketing the [noninfringing alternative] SIRIS is a factor relevant to the determination 9 of a proper royalty during hypothetical negotiations.

[Defendant] Wyko would have been in a 10 stronger position to negotiate for a lower royalty rate knowing it had a competitive noninfringing 11 device ‘in the wings.’”). Thus, the context of Interrogatory No. 14 is relevant to the analysis here. 12 Under this Court’s Patent Local Rule 3-8, a patentee is required to make disclosure of its 13 damages contentions within 50 days after service of invalidity contentions.

See Patent L.R. 3-8. 14 Specifically, the damages contentions must: “identify each category of damages [the party] is 15 seeking for the asserted infringement (e.g., lost profits, reasonable royalty, price erosion, convoyed 16 sales, etc.) and for each category of damages sought, provide a good faith explanation of the theory 17 of damages and the factual basis for damages.” Id. 18 In

turn, Patent Local Rule 3-9 requires that (within 30 days after service of the Damages 19 Contentions) “each party denying infringement shall disclose in good faith material facts of which 20 it is aware that are relevant to a category of damages disclosed under Rule 3-8.” It has been 21 recognized that “Rules 3-8 and 3-9 involve rather different requirements[.]” *Yuntek Int’l, Inc. v. 22 Xiamen JXD Elec.*

Com. Co., No. 20CV07201JSWRMI, 2022 WL 2288936, at *1 (N.D. Cal. Apr. 23 4, 2022). Rule 3-8 requires the patentee to provide both a good faith explanation of the theories of 24 damages and also the “factual basis for damages.” Rule 3-9 is facially worded differently and 25 requires a defendant to disclose “material facts of which it is aware that are relevant to a category 26 of damages” asserted by the plaintiff.

Further, Rule 3-9 provides the following example: “if a party 27 is aware of material facts regarding an existing non-infringing alternative... or other damages 1 belief.” However, Rule 3-9 does not impose an obligation that a defendant provide a factual basis 2 for denying all damages contentions.

For this reason, it has been held improper to impose Rule 3- 3 8’s requirements onto Rule 3-9. *Yuntek Int’l, Inc.*, 2022 WL 2288936, at *1. Significantly, there is 4 no indication in the record submitted to the Court that SanDisk ever moved to compel a more 5 detailed Patent Local Rule 3-9 disclosure from Viasat. 6 Because of the difference between Patent Local Rule 3-8 and 3-9, it is common in patent 7 lawsuits for plaintiffs to serve one or more contention interrogatories (like Interrogatory No. 14 8 here) seeking a defendant’s contentions relating to rebutting damages.

And as noted, it is common 9 for contention interrogatory responses in patent cases to be served towards the end of the fact 10 discovery period. See *McCormick-Morgan*, 134 F.R.D. at 287; *Lexington Ins.*, 1999 WL 33292943 11 at *7. SanDisk’s argument about the timing of the Second Supplemental Response to Interrogatory 12 No. 14 is not persuasive because ultimately SanDisk’s prejudice argument focuses primarily on the 13 timing issue and the allegedly generalized concern that SanDisk could have sought other or different 14 discovery (or asked different deposition questions) had SanDisk known of this Second Supplemental 15 Response earlier.

16 This is not a situation where SanDisk has identified specific discovery it now seeks because 17 the final contention interrogatory response contained a surprise issue. Indeed, SanDisk has 18 explicitly linked this motion to its request to extend the fact discovery deadline, *dk.* 168 at 12, 19 which Judge Gilliam has already denied. Instead of identifying specific new issues or new 20 discovery, SanDisk would have taken in light of the final supplemental response to Interrogatory 21 No. 14, SanDisk merely argues that it would like to retake a large number of depositions.

Id. The 22 fact that SanDisk would like to “redo” a whole series of depositions to shore up its damages theories 23 is not a sufficient basis to strike Viasat’s final supplemental response to

Interrogatory No. 14. In 24 the context of Rule 26, such a desire to retake depositions or seek more discovery would likely be 25 held to be not proportional to the needs of the case.

And if taking more discovery in light of a 26 supplemental interrogatory response were not appropriate, then striking the interrogatory response 27 which is the alleged motivation for seeking more discovery is equally unwarranted. Ultimately, 1 supplemental interrogatory responses are moot because Judge Gilliam has already denied the request 2 to extend the fact discovery period or extend the overall case schedule.

3 Moreover, because Interrogatory No. 14 sought rebuttal contentions on a damages issue, it 4 is difficult to see how SanDisk's claim of prejudice is supportable here. By definition, a rebuttal 5 responds to an existing contention or issue already present in the case.

The fact that Viasat's final 6 supplemental response provided more details to that damages-related rebuttal does not mean that 7 Viasat raised new issues that were not already disputed in the case. In the briefing, SanDisk does 8 not identify any new or surprise disputed issues that were raised in the Second Supplemental 9 Response to Interrogatory No. 14. If anything, the fact that Viasat provided additional detail and 10 citation to evidence for its noninfringing alternatives contentions should be expected to have the 11 beneficial effect of allowing SanDisk's damages expert report to be prepared with even more focus 12 and specificity.

13 In light of the record presented to the Court, SanDisk has not demonstrated a material shift 14 in contentions by Viasat on this issue justify granting SanDisk's Motion to Strike. Fed. R. Civ. P. 15 26(e)(1)(A); Looksmart Grp., Inc., 386 F. Supp. 3d at 1227; Netfuel, Inc., 2020 WL 4381768, at *1. 16 III. MOTION TO SHORTEN TIME 17 SanDisk's Motion to Shorten Time for briefing and hearing on this Motion to Strike, dkt.

18 171, is DENIED as MOOT. The deadline for briefing and hearing has passed, and the Court is 19 addressing the underlying Motion to Strike on the briefs and materials submitted, as discussed 20 herein. 21 IV. MOTIONS TO SEAL 22 "[T]he courts of this country recognize a general right to inspect and copy public records 23 and documents, including judicial records and documents." Nixon v. Warner Commc'ns, Inc., 435 24 U.S. 589, 597 n.7 (1978); see also Folz v. State Farm Mut.

Auto. Ins. Co., 331 F.3d 1122, 1133 (9th 25 Cir. 2003) ("In this circuit, we start with a strong presumption in favor of access to court records."). 26 "This right is justified by the interest of citizens in 'keep[ing] a watchful eye on the workings of 27 public agencies.'" Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) 1 sufficiently compelling reasons for doing so." Folz, 331 F.3d at 1135; see, e.g., Times Mirror Co. 2 v. United States, 873 F.2d 1210, 1219 (9th Cir.

1989). 3 A party seeking to seal court documents “bears the burden of overcoming th[e] strong 4 presumption [of public access] by meeting the ‘compelling reasons’ standard.” Kamakana, 447 5 F.3d at 1178 (citation omitted).

Accordingly, a party seeking to seal court documents must articulate 6 “compelling reasons supported by specific factual findings” that “outweigh the general history of 7 access and the public policies favoring disclosure.” Id. at 1179. Such compelling reasons include 8 “the use of records to gratify private spite, promote public scandal, circulate libelous statements, or 9 release trade secrets.” Id. (citations omitted). “The mere fact that the production of records may 10 lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, without 11 more, compel the court to seal its records.” Id. (citation omitted).

12 Here, SanDisk moves to file certain portions of its motion and supporting exhibits under 13 seal. [Dkt. 167]. Viasat moves to file certain portions of its exhibits supporting its opposition under 14 seal. [Dkts. 177 and 178]. Both Parties make the same arguments that the portions that are sealed 15 are designated as “Highly Confidential – Attorneys’ Eyes Only” material under the Protective Order, 16 which includes source code and highly confidential business information.

See Dkts. 167, 177, and 17 178. The Court FINDS that these materials contain sensitive business information that, if disclosed, 18 could result in competitive harm. Courts in this district have routinely found that the potential for 19 competitive harm constitutes a compelling reason to seal. See *Apple, Inc. v. Samsung Elecs. Co., 20 Ltd.*, No. 11-cv-01846-LHK, 2012 WL 6115623, at *2 (N.D.

Cal. Dec. 10, 2012) (citations omitted). 21 // 22 // 23 // 24 // 25 // 26 // 27 // 1 CONCLUSION 2 For all the reasons discussed herein, SanDisk’s Motion to Strike Viasat’s final supplemental 3 // responses to Interrogatories 8 and 14 is DENIED; SanDisk’s Motion to Shorten Time is DENIED 4 as MOOT; and the Parties’ Motions to Seal are GRANTED. 5 This RESOLVES Dkts.

167, 168, 171, 177, and 178. 6 7 // ITIS SO ORDERED. 8 // Dated: April 28, 2025 C | | 9 é PETER H. KANG 10 United States Magistrate Judge 1] as 12 13 «14 16 17 Oo Z 18 19 20 21 22 23 24 25 26 27 28