

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CYPRESS LAKE SOFTWARE, INC.,

Plaintiff,

v.

ZTE (USA) INC.,

Defendant.

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CIVIL ACTION NO. 6:17-CV-00300-RWS

ORDER

Before the Court is Plaintiff Cypress Lake Software, Inc.’s Emergency Motion to Quash the Noticed Deposition of Rahul Vijh and for a Protective Order (Docket No. 105) filed on July 30, 2018. Also before the Court is Defendant HP Inc. Emergency Motion to Compel Plaintiff to Produce its Expert Witness for Deposition (Docket No. 103), filed the same day. The Court ordered the parties to file their expedited responses by 3 p.m. on Friday, August 3, 2018. Both motions pertain to HP’s noticed deposition of Plaintiff’s claim construction expert, Rahul Vijh, which was scheduled to take place on July 31, 2018.

The Court’s Model Docket Control Order sets the deadline for claim construction discovery to be completed eight weeks before the *Markman* hearing. The *Markman* hearing is set for August 8, 2018, and the claim construction discovery deadline was originally set for June 13, 2018. *See* Amended Docket Control Order, Docket No. 82. Plaintiff’s opening claim construction brief was originally due on June 27, 2018 and HP’s responsive brief was due July 18, 2018. *Id.*


On June 20, 2018, the parties agreed to modify these deadlines so that the opening claim construction brief would be due on July 3, 2018, the response brief would be due on July 25, 2018,

and claim construction discovery would close on August 1, 2018. *See* Second Amended Docket Control Order, Docket No. 90. The parties now dispute whether, at the time of filing their joint motion to amend the claim construction discovery deadline, they intended for HP to be able to depose Mr. Vjih after HP had already filed its responsive claim construction brief.

The Court is not willing to speculate on what the parties intended when they agreed to modify the Court's deadlines. Given the facts before the Court: that Mr. Vjih is currently out of the country because his spouse is imminently expecting their child, that HP has already filed its responsive claim construction brief and should have raised all of the arguments it intends to present at the *Markman* hearing, that HP intends to "only use Mr. Vjih's testimony at oral argument at the *Markman* hearing" for elaborative purposes, and that the *Markman* hearing is five days away, the Court does not find that it would be appropriate to compel Mr. Vjih to appear for a deposition at this time. Beyond a general assertion that Mr. Vjih's deposition testimony would "elaborate the basis for opinions he has already expressed," HP has not stated that this testimony would bear any substantive or probative value at the *Markman* hearing that would warrant the undue burden of deposing a witness who is currently out of the country.

Accordingly, HP's Motion to Compel (Docket No. 103) is **DENIED**, the Motion to Expedite Briefing is **DENIED-AS-MOOT**, and Plaintiff's Motion to Quash (Docket No. 105) is **GRANTED**. However, Plaintiff shall produce Mr. Vjih for a deposition within 30 days from the date of this order.

So ORDERED and SIGNED this 3rd day of August, 2018.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE