

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MOTOROLA SOLUTIONS, INC., and  
MOTOROLA SOLUTIONS MALAYSIA  
SDN. BHD.,

Plaintiffs,

v.

HYTERA COMMUNICATIONS  
CORPORATION LTD.,  
HYTERA AMERICA, INC., and  
HYTERA COMMUNICATIONS  
AMERICA (WEST), INC.,

Defendants.

Case No. 1:17-CV-01973

Honorable Martha M. Pacold

**DEFENDANT HYTERA COMMUNICATIONS CORPORATION LTD.'S OPPOSITION  
TO MOTOROLA'S MOTION TO OPEN CONTEMPT PROCEEDINGS  
AND ENTER AN ANTI-SUIT INJUNCTION (Dkt. 1482)**

**Table of Contents**

I. Factual Background ..... 2

    A. Trial & Judgment ..... 2

    B. Royalty ..... 3

    C. Prior Royalty Order Contempt Proceedings ..... 6

    D. Seventh Circuit Appeal ..... 7

    E. Proceedings in China ..... 8

II. Argument ..... 9

    A. There Is No Basis to Open Contempt Proceedings Regarding Hytera’s H-Series Products..... 9

        1. It is Motorola’s Burden to Make a *Prima Facie* Showing that the H-Series Products Fall Within the Scope of the Royalty Order .....11

        2. Motorola Has Failed to Make a *Prima Facie* Case that the H-Series Products Lack Colorable Differences From the Adjudicated Products .....13

    B. There is No Basis for This Court to Grant an Anti-Suit Injunction..... 19

        1. The Parties Are Not Litigating the Same Issues in China, Nor is the US Suit Dispositive of the Chinese Action .....19

        2. Nothing about the Chinese Action is “vexatious” or “oppressive” .....21

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Ist Source Bank v. Neto</i> , 861 F.3d 607 (7th Cir. 2017) .....	19, 22
<i>Allied Van Lines, Inc. v. Beaman</i> , No. 07C2407, 2008 WL 4866052 (N.D. Ill. July 21, 2008) .....	21
<i>Am. Can Co. v. Mansukhani</i> , 742 F.2d 314 (7th Cir. 1984) .....	12
<i>Arbek Mfg., Inc. v. Moazzam</i> , 55 F.3d 1567 (Fed. Cir. 1995).....	10, 12
<i>AU New Haven, LLC v. YKK Corp.</i> , No. 15-CV-3411, 2018 WL 2128373 (S.D.N.Y May 8, 2018) .....	20
<i>Bianco v. Globus Med., Inc.</i> , No. 2:12-CV-00147-WCB, 2017 WL 3895921 (E.D. Tex. Sept. 6, 2017) .....	9, 10
<i>Cal. Artificial Stone Paving Co. v. Molitor</i> , 113 U.S. 609 (1885).....	9
<i>Cal. Expanded Metal v. Klein</i> , No. C18-0659JLR, 2020 WL 9182723 (W.D. Wash. Oct. 19, 2020).....	11
<i>China Trade and Dev. Corp. v. M.V. Choong Yong</i> , 837 F.2d 33 (2d Cir. 1987).....	23
<i>Computer Associates Int’l, Inc. v. Altai, Inc.</i> , 950 F. Supp. 48 (E.D.N.Y. 1996), <i>aff’d</i> , 126 F.3d 365 (2d Cir. 1997).....	19
<i>DSC Commc’ns Corp. v. DGI Techs., Inc.</i> , 898 F. Supp. 1183 (N.D. Tex. 1995), <i>aff’d</i> , 81 F.3d 597 (5th Cir. 1996).....	12
<i>Eagle View Techs., Inc. v. Xactware Sols., Inc.</i> , No. CV 15-7025, 2021 WL 4206291 (D.N.J. Sept. 16, 2021) .....	11
<i>H. K. Porter Co. v. Nat’l Friction Prod. Corp.</i> , 568 F.2d 24 (7th Cir. 1977) .....	12
<i>H-D Michigan, LLC v. Hellenic Duty Free Shops S.A.</i> , 694 F.3d 827 (7th Cir. 2012) .....	25

<i>Ingersoll Mill. Mach. Co. v. Granger</i> , 833 F.2d 680 (7th Cir. 1987) .....	23
<i>Laker Airways Ltd. v. Sabena, Belgian World Airlines</i> , 731 F.2d 909 (D.C. Cir. 1984).....	22, 23
<i>N.W. Controls, Inc. v. Outboard Marine Corp.</i> , 349 F. Supp. 1254 (D. Del. 1972).....	11
<i>Parasoft Corp. v. Parasoft S.A.</i> , No. CV 14-9166 DMG, 2015 WL 12645754 (C.D. Cal. Feb. 19, 2015) .....	22
<i>Proveris Sci. Corp. v. Innovasystems, Inc.</i> , 739 F.3d 1367 (Fed. Cir. 2014).....	4
<i>Rosenbloom v. Barclays Bank PLC</i> , No. 13-CV-04087, 2014 WL 2726136 (N.D. Ill. June 16, 2014).....	23
<i>Sing Fuels Pte Ltd. v. M/V Lila Shanghai</i> , No. 4:20-CV-58, 2023 WL 3506466 (E.D. Va. May 17, 2023).....	22
<i>TiVo Inc. v. EchoStar Corp.</i> , 646 F.3d 869 (Fed. Cir. 2011).....	4, 9, 10, 11, 12, 18, 21
<i>Wal-Mart Stores, Inc. v. Cuker Interactive, LLC</i> , No. 5:14-CV-5262, 2020 WL 6498655 (W.D. Ark. Sept. 21, 2020), <i>aff'd</i> , 27 F.4th 662 (8th Cir. 2022) .....	11
<i>Weyerhaeuser Co. v. Hiscox Dedicated Corp. Members Ltd.</i> , No. C19-1277RSL, 2019 WL 4082976 (W.D. Wash. Aug. 29, 2019).....	22
<i>Zokaites v. Land-Cellular Corp.</i> , 424 F. Supp. 2d 824 (W.D. Pa. 2006).....	22
<b>Other Authorities</b>	
Fed. R. Civ. P. 7(b)(1).....	6, 7
Fed. R. Civ. P. 65(d) .....	11, 12

There is but one reason Motorola filed a joint motion to re-open discovery in support of contempt proceedings at the same time as it filed its motion for an antisuit injunction: because without this Court initiating a new proceeding, Motorola has no grounds for an antisuit injunction.

At base, Motorola is a party in search of a reason to reopen a closed case that is pending appeal, so as to evade the legitimate jurisdiction of a Chinese court. The “urgency” in Motorola’s motion is tied to its obligations in that other case. There is no new information that has suddenly come to light supporting US contempt proceedings now.

If the issues in the two cases truly overlapped, Motorola would not need to gin up a reason to be back in front of this Court. It could simply point to this existing US case and seek an antisuit injunction based on that. But that is not possible here, where this Court already expressly held that this case does *not* concern the H-Series products that are the subject of Hytera’s declaration of non-infringement action in China.

Hytera launched the H-Series products in October 2021—well over two years ago, and long before the Royalty Order was finalized. This Court’s Royalty Order does not cover Hytera’s H-Series products. Dkt. 1338 at 8; Dkt. 1349 § 1.2. Indeed, Motorola expressly asked this Court to include the H-Series products within the scope of that Order, and this Court refused. Dkt. 1338 at 8. Hytera is thus not in contempt of the Royalty Order by failing to pay a royalty on products it does not cover.

After this Court’s April 2022 order (Dkt. 1338) excluding the H-Series from the definition of “Covered Products,” Hytera filed a declaratory judgment of non-infringement suit in China, in the town where Hytera is based and its products are developed, for a formal determination that its H-Series redesigned products do not infringe Motorola’s trade secrets. There is nothing inappropriate or vexatious about Hytera seeking a judicial determination in its home country about

the propriety of its conduct.

What is vexatious is the present motion. The parties and this Court spent nearly a year litigating Motorola's allegation of contempt under the Royalty Order, and Motorola never raised applying it to the H-Series. Last fall, after conducting a full-scale evidentiary proceeding on issues related to the Royalty Order, this Court admonished the parties against further proceedings. Dkt. 1474 at 2. The case remains closed and on appeal.

Motorola's actual remedy, which was potentially available upon the launch of Hytera's H-Series products if Motorola really had grounds to pursue it, was to file a new lawsuit and allege trade secret misappropriation based on the H-Series products. Where, as here, Hytera redesigned those products to modify, remove, or replace every single allegedly offending module that Motorola had identified as infringing during the prior trial, there is no question that any further allegations of misappropriation belong in a new trial for a new jury to decide—or a new Court to dismiss.

For all of the reasons discussed herein, Motorola offers no legitimate basis to open discovery in support of contempt proceedings or to obtain an anti-suit injunction. Its motion should be denied.

**I. FACTUAL BACKGROUND**

**A. Trial & Judgment**

Motorola's trade secret allegations were a moving target in discovery and at trial—ultimately presenting only 21 to the jury, with significant testimony elicited on cross-examination required to distinguish the trade secrets from readily ascertainable, well-known information. The trial evidence on alleged misappropriation of those trade secrets was necessarily tied to certain accused products. Hytera's H-Series products were not among those adjudicated at trial—because

they did not yet exist. *E.g.*, Ex. 1<sup>1</sup> (Trial Tr. 1431:5–13 (Wicker), 5383:4–9 (Malackowski)).

After a four-month trial, the jury rendered a verdict on February 14, 2020. Dkt. 894.<sup>2</sup> *See* Ex. 2. The jury was not asked to determine the existence of specific alleged trade secrets, whether Hytera had misappropriated specific trade secrets, or how Hytera’s products had benefited from specific trade secrets. *See* Ex. 2. Instead, the only question on the jury’s verdict form on misappropriation was whether the jury found that Hytera had misappropriated “one or more” of Motorola’s trade secrets. *Id.* at 1.

<p><b><u>Trade Secret Claims</u></b></p> <p><b>1. Do you find that Motorola proved that it possessed one or more trade secret(s) that was/were misappropriated by Hytera?</b></p> <p>Yes <input checked="" type="checkbox"/> (for Motorola)</p> <p>No <input type="checkbox"/> (for Hytera)</p>
---

**B. Royalty**

Following the verdict, the Court denied Motorola’s request for a permanent injunction and instead granted an ongoing royalty. Dkt. 1097. The Court then ordered the parties to submit proposals regarding the terms of that ongoing royalty (*id.* at 6), which terms the parties heavily disputed. As relevant here, Motorola sought to require Hytera to provide advanced notice of alleged redesigns, with a 180-day waiting period before Hytera could launch a new product. Dkt. 1119 at 14.

---

<sup>1</sup> For the Court’s convenience, Exhibit 1 hereto is a collection of the excerpts from the trial transcript cited herein and in the McDonald Declaration. References to Trial Tr., therefore, are references to Exhibit 1.

<sup>2</sup> The jury’s damages verdict, however, was deemed advisory, because it concerned equitable issues properly tried to the Court. Dkts. 1088, 1100. The extent to which Hytera’s radios actually benefited from protectable aspects of Motorola’s trade secrets is at the heart of Hytera’s arguments concerning apportionment on appeal.

Hytera objected, explaining that Motorola’s proposal for prior restraint regarding redesigns circumvented the proper procedures for challenging a redesign, namely, “contempt or a ‘future suit’” Dkt. 1131 at 14–15. Hytera explained that in the context of patent infringement, the law provides two paths for challenging redesigns. *Id.* at 15. For products that are essentially identical to the products that have already been adjudicated, contempt may be an appropriate remedy. *Id.* (quoting *TiVo Inc. v. EchoStar Corp.*, 646 F.3d 869, 879 (Fed. Cir. 2011)). But for products that have been meaningfully redesigned, such that their differences are more than merely colorable, contempt is “*not* the appropriate remedy.” *Id.* (quoting *Proveris Sci. Corp. v. Innovasystems, Inc.*, 739 F.3d 1367, 1371 (Fed. Cir. 2014)) (emphasis added). Rather, in that circumstance, the redesigned product may only be challenged in a new lawsuit. *Proveris*, 739 F.3d at 1371.

The Court ultimately denied Motorola’s request for prior notice regarding redesigns, noting it would “transform the reasonable royalty into an injunction.” Dkt. 1289 at 40. The Court also noted that Motorola was not without recourse, as the royalty license would “include dispute resolution procedures,” and Motorola had the “ability to initiate contempt proceedings against Hytera for willful violations of court orders, including this one . . . .” Dkt. 1289 at 40.

Contrary to Motorola’s misstatements in its present motion, Mot. at 4, nothing in the Court’s December 14, 2021 Order (Dkt. 1289) remotely suggests that disputes over a redesign should automatically be resolved by way of contempt proceedings, nor did Hytera advocate for contempt proceedings as the appropriate vehicle to resolve all redesign disputes (which Motorola wrongly alleges numerous times in its Motion). Indeed, this initial order was not even the final word on the royalty.

The parties filed subsequent briefs, outlining additional disputes over defined terms, including, notably, the term, “Covered Products.” Motorola argued that “the definition should

reference an appendix and specify, ‘which for the avoidance of doubt, [includes] *any product* based in whole or in part, on or from or incorporating any of the Motorola Trade Secret Information or Motorola Copyrighted Works (or any portion thereof) in any manner whatsoever, as defined in Appendix A to this Agreement.’” Dkt. 1338 at 7 (quoting Motorola’s brief) (emphasis added). Hytera objected to this proposal because the proposed appendix was “meaningfully different from Motorola’s list of ‘Accused Products’ from its previous submissions,” and because this was an “improper attempt to prejudge new Hytera products that *have not been adjudicated* to incorporate Motorola’s trade secrets or copyrights.” Dkt. 1338 at 7 (emphasis added).

In its April 2022 Order (Dkt. 1338), the Court agreed with Hytera, explaining that “the royalty applies to the products specifically identified by Motorola” and that “Motorola identified those products by product number.” *Id.* at 7. Motorola had argued that Hytera would be able to evade its royalty obligations by renaming or renumbering its products (*see* Dkt. 1318 at 3), but the Court held that “Hytera cannot avoid its royalty obligations merely by renumbering its products: if a renumbered product *is identical to* a product for which Hytera owes royalties, Hytera owes royalties all the same.” Dkt. 1138 at 7 (emphasis added). The Court also rejected Motorola’s specific request to include the H-Series products in the definition of Covered Products, finding the request an improper effort “to shift the burden to Hytera to disprove that its products that have not been adjudicated in this case incorporate Motorola’s trade secrets or copyrights . . . .” *Id.* at 8.

In other words, the end result was a defined list of accused products that are within the scope of the Royalty Order. And that defined list does *not* include the H-Series products (over Motorola’s objection) and does *not* include amorphous language expanding Covered Products to include any product that incorporated Motorola’s alleged trade secrets (also over Motorola’s objection).

**C. Prior Royalty Order Contempt Proceedings**

In November 2022, nearly a year after the H-Series products were launched, and while Hytera’s motion to modify or stay the royalty was pending (Dkt. 1352), Motorola filed a motion for contempt against Hytera for failure to pay all amounts due under the Royalty Order. The Court “conducted a comprehensive process” to resolve that motion. Dkt. 1474 at 1. Specifically:

The process on the motion included extensive prehearing briefing, a full-day evidentiary hearing and argument, and supplemental briefing requested by the court after the hearing. **The process gave the parties more than enough opportunity to ventilate all issues surrounding the motion for contempt.** With the 7/11/23 order [1429], 8/26/23 opinion [1461], and 9/8/23 minute entry [1470], the court addressed the motion [1384] in full. See Fed. R. Civ. P. 7(b)(1).

*Id.* at 1 (emphasis added).

Thereafter:

In a series of filings between 8/30/23 and 9/8/23, the parties litigated the terms of the proposed injunction, but also informed the court of various payments that HCC had made into escrow. [1462], [1463], [1464], [1466], [1467], [1468], [1469]. Ultimately, on 9/8/23, the parties informed the court that HCC had fully complied with its obligations under the royalty order to make the royalty payment due July 31, 2022, together with interest, such that the injunction need not be entered at that time. [1469]. Thus, in the 9/8/23 minute entry, the court concluded that Hytera had purged the civil contempt and declined to enter the injunction. [1470]. The court thereby fully resolved the motion for contempt.”

*Id.* Nevertheless, in subsequent filings, “the parties raised additional requests for relief not previously raised in the extensive process already conducted on the motion. [1466], [1467], [1469].” Dkt. 1474 at 1–2. In response, this Court specifically stated that:

[T]o the extent that these filings attempted to raise new requests for relief—requests that (1) went beyond the specific information the parties were directed to provide (i.e., whether Hytera had fully complied with the royalty order, which was information necessary for the court to determine whether to enter the injunction contemplated in the 8/26/23 opinion) and (2) had not been

previously raised in the substantial process already conducted on the motion—these requests for relief were untethered to any pending motion, see Fed. R. Civ. P. 7(b)(1), and were not properly raised. Motorola's motion requested specific relief, see Rule 7(b)(1), and the process on the motion afforded plentiful opportunities to raise both Motorola's specific requests for relief raised in the motion and Hytera's arguments raised in response to the motion. **Again, the process on the motion (in terms of both briefing and argument) was considerable and gave the parties ample opportunity to ventilate all issues surrounding the motion; and the court fully resolved all issues properly and timely raised in that process.** There is no pending motion or need for a status report. **Further, the fact that this case remains closed and on appeal (as at the time of reassignment), as well as the amount of judicial resources that both the prior judge and this judge have devoted to the matter, counsel strongly against further proceedings.**

*Id.* at 2 (emphasis added).

Notably, at no point during any of the nearly year-long contempt-related briefing (pre- and post-evidentiary hearing), or during the evidentiary hearing before the Court, did Motorola ever seek to include the H-Series products within the scope of the Royalty Order, or argue that discovery was needed to determine *whether* to include the H-Series within that Order.<sup>3</sup>

#### **D. Seventh Circuit Appeal**

Hytera appealed various aspects of this case, and Motorola cross-appealed. *See* Dkts. 1356, 1365. Motorola did not argue to the Seventh Circuit that Judge Norgle erred in excluding the H-Series from the royalty order or otherwise suggest that the H-Series should have been part of this case.<sup>4</sup> And at oral argument before the Seventh Circuit in December, Motorola's counsel

---

<sup>3</sup> Motorola and Dr. Wicker could have analyzed the binary files included in Hytera's H-Series radios—the same analysis it relies on now—at any point once those radios became publicly available in late 2021. *See* McDonald Decl. ¶ 12; *see also infra* at 17–18.

<sup>4</sup> To that end, Motorola's suggestion that the H-Series is “already part of Motorola's pending appeal to the Seventh Circuit” is demonstrably false. Mot. at 14 n.1.

confirmed to the Panel that Motorola “ha[d] not yet brought [a dispute about the H-Series] to the court’s attention.” *Id.*, Hr’g. Tr. at 43:21–44:3.

#### **E. Proceedings in China**

In June 2022, Hytera filed a statement of claim in Shenzhen, China, seeking a determination to confirm that its redesigned products did not use Motorola’s intellectual property. *See* Dkt. 1482-6. This was six months after Judge Norgle determined that the ongoing royalty would apply only to the products “specifically identified by Motorola,” which did not include the H-Series radios. Dkt. 1289 at 2, 5; *see also* Dkt. 1338 (April 2022) at 8 (confirming the Royalty Order would not include the H-Series). Hytera’s statement of claim stated, among other things, that Hytera is a company headquartered in Shenzhen, China, and that its redesigned products are developed, manufactured, and sold in China. Dkt. 1482-6 at 6. It also stated that Motorola had repeatedly tried to take “shortcuts” to avoid a full examination of Hytera’s new product, and delayed in bringing a new suit. *Id.* at 7.

The Shenzhen Court accepted Hytera’s claim on February 28th, 2023 and subsequently served Motorola Malaysia and Motorola US in November, 2023. Chen Decl. ¶ 21. The Shenzhen Court has also issued two protective orders to guard the confidentiality of the parties’ materials produced in the case, and discovery is now under way. Chen Decl. ¶¶ 9–10. On January 25, 2024, Hytera submitted evidence to the Shenzhen Court regarding its H-Series redesign, including the underlying source code. Chen Decl. ¶ 20.<sup>5</sup> Motorola was ordered to produce evidence of its accusation that the H-Series radios use its trade secrets by April 1, 2024. Chen Decl. ¶ 21.

---

<sup>5</sup> Some of Hytera’s submission was provided under seal. Motorola has had the opportunity to examine and analyze all of the information not filed under seal. Motorola’s attorneys will have the opportunity to examine all of the sealed information as soon as Motorola authorizes them to do so. Chen Decl. ¶ 10.

Normally, the Shenzhen Court would give Motorola one week or less to respond, but Motorola sought and received an unusually long extension of more than two months to April 1. Chen Decl. ¶ 21 and Ex. C.

## II. ARGUMENT

Rank speculation—even when spouted by an expert—does not convert falsehoods into facts. As discussed below, Motorola presents no legitimate basis to open discovery supporting contempt proceedings or grounds for an antisuit injunction. For all of the reasons discussed herein, the motion should be denied.

### A. **There Is No Basis to Open Contempt Proceedings Regarding Hytera’s H-Series Products**

Motorola does not yet seek a finding of contempt, because it cannot. Contempt requires clear and convincing evidence of a violation of an unambiguous order, and this Court has already ruled that the H-Series products *do not fall* within the scope of the Royalty Order. Dkt. 1338 at 8. So there is no basis for finding Hytera in contempt of that Order for failing to pay a royalty on products it does not cover. That alone should be dispositive.

Contempt is only appropriate with regard to sales of new products where there is *no* “fair ground of doubt” as to the wrongfulness of those sales. *TiVo*, 646 F.3d at 882 (quoting *Cal. Artificial Stone Paving Co. v. Molitor*, 113 U.S. 609, 618 (1885)). Where there are no “colorable differences”<sup>6</sup> between the expressly enjoined products and the new product, contempt may be appropriate. *TiVo*, 646 F.3d at 882. But where there *are* colorable differences, such as

---

<sup>6</sup> Courts have used various verbal formulations of the test, though they generally “capture the same concept,” namely, looking for whether the products are “meaningfully different,” rather than merely “trivially different.” *Bianco v. Globus Med., Inc.*, No. 2:12-CV-00147-WCB, 2017 WL 3895921, at \*2 n.1, \*5 (E.D. Tex. Sept. 6, 2017) (Bryson, J., sitting by designation).

differences that require “expert and other testimony subject to cross-examination” in order to evaluate whether they still infringe, “the modifying party generally deserves the opportunity to litigate” the disputed issue “at a new trial . . . .” *Arbek Mfg., Inc. v. Moazzam*, 55 F.3d 1567, 1570 (Fed. Cir. 1995) (citation omitted) (“Contempt . . . is not a sword for wounding a former infringer who has made a good-faith effort to modify a previously adjudged or admitted infringing device to remain in the marketplace.”).

Whether the new product “would have given rise to liability if it had been at issue at the trial” is irrelevant to the inquiry of contempt. *Bianco*, 2017 WL 3895921, at \*3; *TiVo*, 646 F.3d at 884 (noting the ultimate question of liability is “irrelevant” to the question of contempt); *see also Ultimate Combustion Co. v. Fuecotech, Inc.*, No. 1260545CIVDIMITROULE, 2014 WL 12493339, at \*7 (S.D. Fla. May 6, 2014) (Even if “it is possible [that] a fact finder could conclude that a redesigned device continues to infringe . . . that is not something that should be decided in a contempt proceeding.”), *report & recommendation adopted*, No. 12-60545-CV, 2014 WL 12495257 (S.D. Fla. June 13, 2014).

Here, Motorola seeks to open *discovery* to find a reason to claim contempt—a reason that it cannot otherwise substantiate—five months after this Court concluded extensive contempt proceedings related to the Royalty Order (and during which Motorola never once raised this issue). Indeed, Motorola is only now seeking this relief at this exact juncture because it faces an April 1<sup>st</sup> deadline in a Chinese proceeding in which Hytera appropriately seeks declaratory relief about its H-Series products.

As outlined below, Motorola has failed to meet its burden to warrant opening discovery in support of contempt proceedings, and the motion should accordingly be denied.

**1. It is Motorola’s Burden to Make a *Prima Facie* Showing that the H-Series Products Fall Within the Scope of the Royalty Order**

To support re-opening discovery in this presently closed case that is pending on appeal, Motorola must make a “detailed accusation . . . setting forth the alleged facts constituting the contempt.” *TiVo*, 646 F.3d at 881; *see also Wal-Mart Stores, Inc. v. Cuker Interactive, LLC*, No. 5:14-CV-5262, 2020 WL 6498655, at \*2 (W.D. Ark. Sept. 21, 2020) (not reported) (citing *N.W. Controls, Inc. v. Outboard Marine Corp.*, 349 F. Supp. 1254, 1256 (D. Del. 1972) (“[B]efore a court initiates a contempt proceeding or permits extensive discovery of suspected violations of its judgment, there should be at least a *prima facie* showing by the aggrieved party of disobedience of the order.”), *aff’d*, 27 F.4th 662 (8th Cir. 2022)). It is not sufficient to state a *prima facie* case by showing that a new product has some similarities to a previously adjudicated product, since the question on contempt is whether there are *no colorable differences* between the products. *See Wal-Mart Stores*, 2020 WL 6498655, at \*1–\*2 (declining to open discovery for contempt proceedings based on an expert’s “hunch” that “proprietary source code *might* still be embedded somewhere in [plaintiff’s] website” even though he had “not yet had the opportunity to analyze the underlying code”).<sup>7</sup>

Here, the Royalty Order was appropriately very specific as to which products it covered. Rule 65(d) requires a court to expressly delineate “the act or acts sought to be restrained” in an

---

<sup>7</sup> Motorola’s cited decisions (*see* Mot. at 5–6) set forth an exacting standard that Motorola plainly has not met here. *Eagle View Techs., Inc. v. Xactware Sols., Inc.*, No. CV 15-7025 (RMB/SAK), 2021 WL 4206291 (D.N.J. Sept. 16, 2021), opened contempt proceedings based on the infringer’s detailed “descriptions of the functions and technical processes” underlying the redesigned products, which matched the accused functionality. *Cal. Expanded Metal v. Klein*, No. C18-0659JLR, 2020 WL 9182723, at \*4 (W.D. Wash. Oct. 19, 2020), involved evidence that the defendant told customers its redesign was the “same product” and “nothing more than a ‘rebrand.’”). Motorola’s other cited decisions, *Shure*, *Blackberry*, and *Leavitt*, do not involve new products or redesigns at all.

injunctive order, including a royalty order. Fed. R. Civ. P 65(d). This specificity is an “indispensable” element of due process. *H. K. Porter Co. v. Nat’l Friction Prod. Corp.*, 568 F.2d 24, 27 (7th Cir. 1977); *see also Am. Can Co. v. Mansukhani*, 742 F.2d 314, 321, 324–25 (7th Cir. 1984). The Royalty Order applies only to an enumerated set of Hytera’s products, identified by product numbers, that were presented to the jury, as well as any product that is “identical” to one adjudicated by the jury, but merely “renumbered.” Dkt. 1338 at 7. As noted above, at the time the Royalty Order was issued, the parties specifically litigated whether the H-Series products were covered by that Order, and the Court expressly held that they were not. Dkt. 1338 at 8. Motorola’s continued failure to show that the H-Series radios are not merely “renumbered” alone defeats Motorola’s *prima facie* case.

Even past that threshold issue, Motorola’s submission falls far short of stating a *prima facie* case of contempt. At this stage, whether the H-Series actually infringes Motorola’s trade secrets is not at issue. Instead, Motorola must make a *prima facie* showing that the H-Series products *lack colorable differences* from the accused products, and the inquiry must be focused on that purported evidence. *TiVo*, 646 F.3d at 882 (requiring comparison between aspects of accused products that were the basis for infringement and modifications in newly accused products).<sup>8</sup> If the H-Series products *are* more than colorably different, due process requires that Hytera be permitted to litigate those issues before a jury. *Arbek Mfg., Inc.*, 55 F.3d at 1570.

---

<sup>8</sup> To that end, Motorola’s arguments about the lack of evidence that Hytera used a “clean room” to develop its H-Series code has no relevance here. Mot. at 11. The use of a clean room is one way in which a developer can demonstrate that it did not misappropriate another’s trade secrets—because use of a clean room (with engineers walled off from stolen technology) prevents misappropriation. *DSC Commc’ns Corp. v. DGI Techs., Inc.*, 898 F. Supp. 1183, 1189 n.3 (N.D. Tex. 1995) (describing a cleanroom as an evidentiary tool to disprove “access” to the intellectual property at issue, but holding plaintiff to the burden to show actual infringement), *aff’d*, 81 F.3d

For the reasons discussed below, Motorola has failed to meet that burden here.

**2. Motorola Has Failed to Make a *Prima Facie* Case that the H-Series Products Lack Colorable Differences From the Adjudicated Products**

Motorola attempts to make a *prima facie* showing in support of discovery for contempt proceedings through a flawed and belated expert analysis, and a gross mischaracterization of a separate patent litigation. Its evidence is both incomplete and irrelevant and falls far short of its burden.

Dr. Wicker opines that the “H-Series code files that Hytera produced show that the H-Series products are using Motorola’s trade secrets and copyrights in the same and/or similar ways that the products that were adjudicated at trial used Motorola’s trade secrets and copyrights.” Wicker Decl. ¶ 4. But Dr. Wicker never reviewed the H-series source code, much less compared it to the source code he identified in the adjudicated products as using Motorola trade secrets and copyrights. Indeed, a careful review of his opinion makes crystal clear that his conclusion is nothing but a guess—and an incorrect one.

Dr. Wicker does not have and did not review, H-Series source code. Instead, Dr. Wicker reviewed so-called “binary files.” A binary file contains the 1s and 0s that source code is “compiled” into so that a computer can read it. McDonald Decl. ¶ 8. Dr. Wicker used a text editor to open the binary files, but that does not reproduce the human readable “source” code. *See* McDonald Decl. ¶ 9. In fact, most of the binary code cannot be rendered in text at all and appears as “NUL.” McDonald Decl. ¶ 9. Text that is rendered is mostly meaningless and unreadable symbols and characters. McDonald Decl. ¶¶ 9–10. And what little readable text there

---

597 (5th Cir. 1996). Here, actual misappropriation (and thus any evidence about a clean room) would be for a jury to decide (if ever), because the inquiry in a contempt proceeding involves only a comparison between the adjudicated products and the redesigned products.



above example). Based on this, Dr. Wicker concluded that “Hytera’s H-Series products appear to contain” and are “still using the same files from the adjudicated products that copied Motorola’s trade secrets and copyrights.” Wicker Decl. ¶¶ 52, 55.

Of course, that is no more than a guess. It is true that the H-Series contains source code files with the same name as source code files in the adjudicated products. But that says nothing about whether the actual source code in those named files has been redesigned, which cannot be determined from simply seeing a superficial reference to a file name in a binary file, which, as Dr. Wicker admits, is largely unreadable by humans. Thus, Dr. Wicker does not (and cannot) render any opinion on whether the actual source code files (beyond their names) have been redesigned. Again, his opinion to the contrary is no more than a guess based on the file’s name, not that file’s content.

In fact, Dr. Wicker’s guess is dead wrong. In developing the H-Series, Hytera modified, redesigned, or outright replaced every component of its code that Motorola had identified at trial as benefitting from Motorola’s trade secrets, and much more. Da Decl. ¶ 4. Hytera formed new teams with engineers from other departments, hired new engineers, licensed new third-party solutions, and otherwise incurred millions of dollars in R&D expenses. Da Decl. ¶ 5. Hytera’s H-Series product is the result of that significant and good faith effort to launch a product that was not derived from Motorola’s trade secrets. Da Decl. ¶ 5. And, in fact, for *each* file or module that Dr. Wicker speculates is unchanged between the adjudicated products and the H-Series radios, the underlying code has been substantially redesigned. *See* McDonald Decl. ¶¶ 16–36. Examples of these changes are described in significant detail in the declaration of Hytera’s expert, Cameron McDonald,<sup>10</sup> and described briefly below.

---

<sup>10</sup> HAL (¶¶ 16–20); Applications & Framework (¶¶ 21–28); Peripheral Protocol (¶¶ 29–36).

Dr. Wicker observed that Hytera’s H-Series binaries include references to a module called “HAL,” which was also the name of a module in the adjudicated products. Wicker Decl. ¶¶ 103–104. Hytera has entirely replaced its implementation of HAL in the H-Series, replacing it with a public, open-source<sup>11</sup> solution. McDonald Decl. ¶ 20. Dr. Wicker’s superficial references to the term “HAL” ignore these substantial differences in the underlying code compared to the adjudicated products. Dr. Wicker’s references show nothing more than that Hytera’s H-Series include the general concept of a HAL, which Motorola acknowledges is not its trade secret. *See* McDonald Decl. ¶ 19 (citing Trial Tr. at 791:16–20 (Corretjer)).

Similarly, Dr. Wicker observed that Hytera’s H-Series binaries include references to “applications” with names like AppPowerUp or AppScan, which are names that also appeared in the adjudicated products. Wicker Decl. ¶¶ 52–55. And he observed that the binaries included a reference to “AMF” which was the name of an “application framework” module in one model of the adjudicated products. Wicker Decl. ¶¶ 80–81. The version of AMF in Hytera’s H-Series radios, however, has been completely overhauled and rearchitected, including by adopting a completely different design principle that was not available in the programming language that Motorola used in its code. McDonald Decl. ¶ 28. And Hytera’s applications have similarly been overhauled and rearchitected to work with that new framework. McDonald Decl. ¶ 22. Dr. Wicker’s superficial references to the names of applications and to a module called “AMF” ignore these substantial differences too. They show nothing more than that Hytera’s H-Series radios include the general concepts of applications and a framework for those applications,

---

<sup>11</sup> “Open source” means that the full source code for the project is available for review by the public. Many open source projects include permissive licenses that allow even wholesale copying of that code, free-of-charge.

which Motorola disclaimed as its trade secret. McDonald Decl. ¶¶ 23–27 (citing Trial Tr. at 866:2–10, 936:4–9 (Zetzl)).

Finally, Dr. Wicker observed that Hytera’s H-Series binaries include references to a module called “HRCP,” which was also the name of a module in the adjudicated products. Wicker Decl. ¶ 87. And he observed references to generic terms like “msg” and “opcode” (common abbreviations for “message” and “operational code”). *Id.* The version of HRCP in Hytera’s H-Series radios, however, has been completely overhauled and rearchitected too, including by removing entirely the “hrcp\_msg\_hdr” that drew the focus of Dr. Wicker’s accusations at trial relating to HRCP. McDonald Decl. ¶ 36. And Hytera has completely changed its structure for routing messages via HRCP. McDonald Decl. ¶ 36. Dr. Wicker’s superficial references to the generic terms “msg” and “opcode”—which are used even in public literature about Motorola’s XCMP—and the simple name “HRCP,” yet again ignore these substantial differences. McDonald Decl. ¶¶ 35–36. They show nothing more than that Hytera’s H-Series radios include a general peripheral protocol, which Motorola acknowledged is not a trade secret. McDonald Decl. ¶¶ 35–36.

In short, Hytera has substantially redesigned *every* module Dr. Wicker described in his declaration herein. Moreover, it has addressed *the very same* aspects of the adjudicated products that Dr. Wicker cites now as evidencing Hytera’s use of the trade secrets. *Compare* McDonald Decl. ¶¶ 20, 28, 35 (describing redesigns of application template, messaging, HAL “complete replacement,” and HRCP message header), *with* Wicker Decl. ¶¶ 44, 75, 87, 96–101 (reciting evidence on application template, messaging, HAL, and HRCP message header). The H-Series radios are *far more* than colorably different from the radios adjudicated at trial.

Motorola also presents Dr. Wicker’s findings as though they are new revelations that were just made available through hard-fought discovery in the patent case. That is wrong. As a Motorola engineer has previously testified, binary code is available by taking apart the physical radio—and thus, Motorola has had this information available to it since the H-Series launched in December 2021. McDonald Decl. ¶ 12 (citing Trial Tr. at 589:7–14 (Boerger)). If Motorola believed this data was remotely probative of contempt (which it plainly is not), it could have brought this to the Court’s attention at any point over the last two years by simply examining the binary in Hytera’s H-Series radios that were available for sale.

Finally, Motorola relies on drive-by allegations about discovery disputes in a different pending patent case—where another fully qualified federal judge sits ready to decide those disputes before him. Motorola’s blatant mischaracterizations of Hytera’s conduct in that patent case and its development of the H-Series products (including, inter alia, the baseless suggestion that “Hytera’s refusal [to produce certain discovery in the patent case] strongly indicates it is hiding its ongoing theft,” Mot. at 8, and that “Hytera’s recently filed brief opposing contempt in the patent case further confirms there were no clean room procedures,” Mot. at 12)—are not “evidence” of anything but its own gross overreaching.

\*\*\*

Contempt is “inappropriate,” and “the inquiry into whether the newly accused product actually infringes is irrelevant,” where, as here, “one or more of the elements previously found to infringe ha[ve] been modified, or removed,” and “that modification is significant.” *TiVo*, 646 F.3d at 882. The evidence Motorola submits shows no more than that the H-Series radios include generic technologies that Motorola has already disclaimed as constituting its trade secrets. Motorola does nothing to show that the underlying implementations are materially the same as

the adjudicated products; in fact, they have been completely overhauled. Motorola's motion should be denied.

**B. There is No Basis for This Court to Grant an Anti-Suit Injunction**

Motorola's request for an antisuit injunction ("ASI") is premised on a proceeding that does not yet exist—*i.e.*, this Court agreeing to open discovery in support of contempt proceedings related to Hytera's purported failure to pay a royalty on the H-Series products, that are not covered by the Royalty Order. That alone is grounds to deny the motion.

In seeking an ASI, Motorola must show that: (1) the same parties are litigating the same issues in China as they are in this Court, and (2) the U.S. action is dispositive of the Chinese Action. *See Ist Source Bank v. Neto*, 861 F.3d 607, 613 (7th Cir. 2017). Only if both of those factors are met does the Court proceed to the second inquiry—whether letting the two suits proceed would be "vexatious and oppressive." *Id.* (citations omitted). Motorola has failed to satisfy all of those factors here.

**1. The Parties Are Not Litigating the Same Issues in China, Nor is the US Suit Dispositive of the Chinese Action**

Hytera seeks a declaratory judgment in the Chinese Action that its H-Series products do not use Motorola's trade secrets or copyrights. The existing US suit (now closed and pending appeal) does not cover the H-Series products because they did not exist at the time of the trial—they were never adjudicated and are not part of the case. Indeed, this Court previously ruled that even the post-trial Royalty Order does not cover them. Dkt. 1338 at 8. As such, the issues between the two suits are not the same, and the US suit will not be dispositive of the Chinese Action. *Computer Associates Int'l., Inc. v. Altai, Inc.*, 950 F. Supp. 48, 54 (E.D.N.Y. 1996) (a "U.S. action cannot be deemed dispositive of [the foreign] action [when] the latter action involves issues that were neither raised, nor could have been raised, in the U.S. action"), *aff'd*,

126 F.3d 365 (2d Cir. 1997). Indeed, the Chinese Action is the first-filed lawsuit to address whether the H-Series uses Motorola’s trade secrets or copyrights.<sup>12</sup>

That is why in the same breath as its request for an antisuit injunction, Motorola asks this Court to open discovery in support of contempt proceedings—because it has no other grounds to claim that a pending matter in the US currently litigates the same issues in the Chinese Action. As outlined above, it now seeks to expand the scope of the Royalty Order to cover the H-Series products. Notably, the discovery Motorola seeks, and the facts on which it relies to support that current motion, were all available to it since Hytera launched its H-Series products at the end of 2021—but it chose not to pursue them. McDonald Decl. ¶ 12; *see also supra* at 17–18.

Motorola contends that Hytera’s Chinese Action “blatantly attempts to evade this Court’s jurisdiction by raising issues that are already part of this case” (Mot. at 13)—but that is wrong. Hytera filed the Chinese Action only after this Court squarely held in April 2022 that the H-Series products were not within the scope of the Royalty Order. Dkt 1338 at 8. And even after that ruling came down, until now, Motorola never sought discovery through contempt proceedings to challenge the H-Series redesign, and never filed a new lawsuit alleging trade secret misappropriation.

Moreover, even if this Court were to grant Motorola’s request for discovery in support of contempt proceedings, the outcome of that dispute would still not necessarily be dispositive of the Chinese Action. If this Court ultimately held contempt proceedings and determined that the

---

<sup>12</sup> Compare *AU New Haven, LLC v. YKK Corp.*, No. 15-CV-3411, 2018 WL 2128373, at \*3 (S.D.N.Y. May 8, 2018) (cited by Motorola, Mot. at 13) (finding that “[r]esolution of the present action will require the Court to decide the same underlying dispute” as the foreign action, where the court was asked to address whether the *same* products were covered by a specific patent and a specific licensing agreement). In contrast, here, the US action and the Chinese Action concern *different* products and thus the issues between the two suits are not the same.

H-Series products were more than colorably different than the adjudicated products, the inquiry would stop there and no infringement analysis would take place. *TiVo*, 646 F.3d at 882 (where the differences between the old and new products are significant, “whether the newly accused product actually infringes is irrelevant”). In that instance, Motorola would have to file a new lawsuit if it believed that the redesigned H-Series products misappropriated its trade secrets. In contrast, the issue squarely before the Chinese Action now is exactly that: whether the H-Series products infringe Motorola’s trade secrets, which necessarily involves an analysis of intellectual property and not just a comparison of changes made to specific products.

**2. Nothing about the Chinese Action is “Vexatious” or “Oppressive”**

Motorola further argues that the Chinese Action is both “oppressive and vexatious.” Although the Court need not reach these allegations at all—because an ASI is inappropriate where, as here, the suits do not concern the same issues—Motorola’s protests fall flat. Apart from facially raising every textbook argument against participating in a foreign proceeding, Dkt. 1483 at 15–18, Motorola fails to articulate specifically how it is vexed or oppressed by the Chinese Action. *See Allied Van Lines, Inc. v. Beaman*, No. 07C2407, 2008 WL 4866052, at \*4 (N.D. Ill. July 21, 2008) (“a party’s characterization of a foreign suit as frivolous does not necessarily entitle it to an anti-suit injunction”).

To be clear, as a Shenzhen-based, publicly traded Chinese company, Hytera has good reason to file suit there, where a Chinese court will apply the Chinese law that governs a substantial portion of Hytera’s business. Shenzhen, as the third-largest city in China, is a geographic hub for technology companies, and the H-Series is a marquee product line. Chen Decl. ¶ 24. The Shenzhen Court routinely hears complex disputes regarding trade secrets and other intellectual property cases. Chen Decl. ¶ 25. If issues of international law were to arise, the Shenzhen Court is well-equipped to deal with them. Chen Decl. ¶ 25. As such, an ASI is not

appropriate here. *See Ist Source Bank*, 861 F.3d at 614–15 (finding “antisuit injunctive relief was not appropriate” where the filer of the foreign action had “legitimate reasons” for filing the foreign suit).

Motorola’s arguments against the Chinese Action moving forward universally lack merit. It cites the risk of inconsistent judgments, Mot. at 18, but there is no such risk as things currently stand—because no US proceeding is actively reviewing whether the H-Series products infringe Motorola’s trade secrets. Moreover, the Shenzhen Court has already determined that the Chinese Action is proper there. Chen Decl. ¶¶ 8, 21. Motorola accuses Hytera of forum shopping, Mot. at 16–17, but that also presumes duplicative litigation, which is not the case here. Nor has Motorola identified anything about Chinese law or the Shenzhen Court that is more favorable to Hytera (other than geography<sup>13</sup>), much less outcome-determinative, in a dispute regarding the provenance of the H-Series source code. *See* Chen Decl. ¶¶ 25–26; *see also Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 932 n.73 (D.C. Cir. 1984) (“slight advantages in the substantive or procedural law to be applied in the foreign court” do not justify an ASI).<sup>14</sup>

---

<sup>13</sup> Selecting a forum due to geographical convenience is not “forum shopping.” *See generally Zokaites v. Land-Cellular Corp.*, 424 F. Supp. 2d 824, 839 (W.D. Pa. 2006) (“The act of forum shopping is the selection of a court with an eye towards gaining an advantage based on the forum’s favorable substantive law or the avoidance of unfavorable law in an alternative forum. Selecting a forum for convenience is not a form of forum shopping.”) (internal citations omitted).

<sup>14</sup> Motorola’s citations on this point all contain clear examples of litigants filing foreign suits in search of more favorable law, and only further illustrate that there are no similar “forum shopping” concerns here that would justify an ASI. *Parasoft Corp. v. Parasoft S.A.*, No. CV 14-9166 DMG, 2015 WL 12645754 (C.D. Cal. Feb. 19, 2015) (defendant sought to circumvent a California forum selection clause by first filing suit in Paris, France to declare the clause unenforceable); *Weyerhaeuser Co. v. Hiscox Dedicated Corp. Members Ltd.*, No. C19-1277RSL, 2019 WL 4082976 (W.D. Wash. Aug. 29, 2019) (insurer filed second suit in the U.K. court, where it identified favorable precedent); *Sing Fuels Pte Ltd. v. M/V Lila Shanghai*, No. 4:20-CV-58, 2023 WL 3506466, at \*5 (E.D. Va. May 17, 2023) (plaintiff “engaged in extensive discovery,” “went to trial; lost the trial; lost an appeal and only then, threatened to bring identical claims in a more favorable jurisdiction.”).

Motorola’s instant motion is what seeks to manufacture the jurisdictional tension of which it warns—tension which currently does not exist. Nothing about the Chinese Action could possibly interfere with this Court’s jurisdiction. *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 927 (D.C. Cir. 1984) (“The mere filing of a suit in one forum does not cut off the preexisting right of an independent forum to regulate matters subject to its prescriptive jurisdiction.”); *see also China Trade and Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33, 37 (2d Cir. 1987) (finding issuance of an ASI an abuse of discretion where there was “no threat to the jurisdiction of the district court”).

As a result, even if this Court were to initiate contempt discovery regarding the H-Series, there is no need to issue an ASI. *See Rosenbloom v. Barclays Bank PLC*, No. 13-CV-04087, 2014 WL 2726136, at \*4 (N.D. Ill. June 16, 2014) (“the Seventh Circuit has explicitly recognized the possibility of a United States court and a foreign court simultaneously exercising concurrent jurisdiction.”); *Ingersoll Mill. Mach. Co. v. Granger*, 833 F.2d 680, 684 (7th Cir. 1987) (noting that it is usually proper for United States district court and foreign court to exercise concurrent jurisdiction until there is a preclusive judgment).<sup>15</sup>

Motorola also raises the specter of its inability to safeguard its trade secrets in the context of the Chinese Action or to defend itself procedurally and through access to discovery mechanisms. Mot. at 17. But Motorola has litigated in Chinese dozens of times, as both plaintiff

---

<sup>15</sup> To that end, on March 4, 2024, Hytera sought relief from the Shenzhen Court by asking it to enjoin Motorola from pursuing the present ASI in this Court, so that Hytera’s Chinese Action could proceed. Because Motorola seeks immediate relief in the form of an ASI from this Court, Hytera followed procedures in China to seek immediate relief there. To be clear, Hytera’s request applies only to Motorola’s request for an ASI; it does not ask the Shenzhen Court for any relief relating to Motorola’s request to open contempt proceedings, which, for the reasons stated above, this Court should deny.

and defendant, with a very high success rate of 90%. Chen Decl. ¶ 26. Having itself made ample use of the Chinese court system, its concerns are both duplicitous and unfounded.

Here, the Shenzhen Court has already entered protective orders, as is required practice in China for trade secret disputes, that largely mirrors the type of protections afforded to the parties in this Court. Chen Decl. ¶¶ 9–11 and Ex. B. For example, confidential information is provided to the court (rather than directly to the other party) and maintained under seal where only attorneys and technical experts (but not the parties) will be allowed to view it. Chen Decl. ¶ 17 and Ex. B. Alleged differences in discovery tools are likewise form over substance. In China, discovery is requested and retained by the court, rather than the parties. Chen Decl. ¶¶ 16–18. Motorola is perfectly able to obtain oral, written, and documentary evidence to support its claims (or refute those made by Hytera). Chen Decl. ¶¶ 16–18.<sup>16</sup> Indeed, for all of these reasons, Motorola’s express plea for immediate relief in light of imminent harm—for being required to comply with legitimate court-ordered discovery covered by protective orders—is simply wrong. Mot. at 19–20.

Finally, Motorola’s accusation of bad faith is similarly baseless. Mot. at 18. Hytera did not initiate the Chinese Action until *after* this Court expressly ruled that the H-Series products were not within the scope of the Royalty Order. And Hytera never suggested that this Court should exclude the H-Series products in the Royalty Order because those products should instead be the subject of contempt proceedings. *Contra* Mot. at 18; *see supra* at § I.B (describing two paths to addressing new products: contempt for mere “renumbering” and a new case for products with colorable differences). That mischaracterization is truly absurd. Nor did Hytera lie in wait to

---

<sup>16</sup> Motorola also fails to acknowledge that the Chinese Action is akin to a declaratory judgment action which, even in the U.S., do not typically involve extensive discovery.

serve Motorola a year and a half after filing the Chinese Action. The timing of service on Motorola was entirely dependent on the Chinese court—which must first accept the case and then effect service of process. Decl. ¶ 8.

Contrary to Motorola’s dismissal of comity concerns, they are very much at stake here. *See H-D Michigan, LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 848 (7th Cir. 2012) (“International comity (the mutual respect of sovereigns) requires the courts of one nation to avoid, where possible, interfering with the courts of another.”). Motorola has raised no valid ground for seeking to block this legitimate foreign proceeding. For all of the foregoing reasons, its motion should be dismissed.

Date: March 6, 2024

Respectfully submitted,

/s/ Boyd Cloern

Boyd Cloern (*pro hac vice*)

bcloern@steptoe.com

Chris Suarez

csuarez@steptoe.com

John William Toth (*pro hac vice*)

btoth@steptoe.com

STEPTOE & JOHNSON LLP

1330 Connecticut Avenue NW

Washington, DC 20036

Telephone: (202) 429-3000

Facsimile: (202) 429-3902

**CERTIFICATE OF SERVICE**

I, Boyd Cloern, an attorney, hereby certify that on March 6, 2024, I caused a true and correct copy of the foregoing submission to be served via the Court's ECF system upon all counsel of record.

*/s/ Boyd Cloern* \_\_\_\_\_  
Boyd Cloern