ORAL ORDER: The Court, having reviewed the parties' discovery dispute motion, (D.I. 63), and the briefing related thereto, (D.I. 64; D.I. 66), having heard oral argument on July 6, 2021, and having already resolved one of the two disputed issues, (Minute Entry, July 6, 2021; D.I. 70), hereby ORDERS as follows with regard to the remaining disputed issue, which relates to Plaintiff's request that the TCL Defendants ("Defendants") be compelled to respond to Plaintiff's Interrogatories 1-4 with information "for all mobile phones, tablets and charging adapters that TCL has sold in the U.S. since December 2015" that are not specifically identified in Plaintiff's operative complaint or infringement contentions, but that are "reasonably similar" to products that Plaintiff has previously specifically identified (hereafter, "unaccused products"). (D.I. 64 at 1; see also D.I. 66 at 1) In order to resolve this issue, the Court has considered the three factors set out in Invensas Corp. v. Renesas Elecs. Corp., 287 F.R.D. 273 (D. Del. 2012), which are drawn from Federal Rule of Civil Procedure 26. With regard to the first factor, which analyzes the "specificity with which the plaintiff has articulated how the unaccused products are relevant to the existing claims of infringement (and how they are thus 'reasonably similar' to the accused products at issue in those claims)," id. at 282, Plaintiff's showing could have been stronger. Plaintiff states that it is accusing "all TCL phones and tablets with USB battery charging capability and USB adapters for providing power to devices via a USB port." (D.I. 64 at 2 (emphasis omitted)) So in that way, Plaintiff has at least been pretty clear about identifying the type of "component, characteristic or element" that the products at issue must have in order to render that product allegedly infringing. Invensas Corp., 287 F.R.D. at 285 (internal quotation marks and citation omitted). But the Court needs to understand not just what types of unaccused products are at issue, but also why it is that those products are "related to [Plaintiff's] existing infringement allegations[,]" id. at 284i.e., why it is, in light of the asserted claims and Plaintiff's infringement contentions, that "all TCL phones and tablets with USB battery charging capability and USB adapters for providing power to devices via a USB port" can credibly be said to infringe those asserted claims. On that front, Plaintiff's explanation in its briefing was sparse, (D.I. 64 at 2), and Defendants contend that Plaintiff is overreaching with regard to how all unaccused products could possibly infringe the asserted claims, (D.I. 66 at 2 (asserting that "[n]o asserted claim is [as] broad" as Plaintiff's infringement allegations)). In light of the fact that there are six patents-in-suit here and many different asserted claims, the Court simply did not come away from the hearing with a good enough handle on how the sought-after discovery fits into Plaintiff's theories of infringement. So this factor does not favor Plaintiff's request. The second factor, which focuses on "whether the plaintiff had the ability to identify such products via publicly available information prior to [its] request[,]" Invensas Corp., 287 F.R.D. at 282, seems to go Defendant' way. Though the record is not entirely clear, from the parties' letters it appears that most, if not all, of the unaccused products at issue are described in and available for sale in the public realm (even if it might take some time to identify all of them). (D.I. 64 at 2-3; D.I. 66 at 2) And with regard to the third factor, which looks to "the nature of the burden on [the] defendant[] to produce the type of discovery sought[,]" Invensas Corp., 287 F.R.D. at 282, Defendants have put forward a declaration from their IP Manager. (D.I. 67) While the declaration is not a model of clarity, it does at least convey that (assuming there were a significant number of further unaccused products at issue) it could take over 100 hours (and perhaps hundreds of hours) for Defendants to identify those products, locate relevant discovery

and produce that discovery. (Id.; see also D.I. 66 at 2-3) So this factor also militates in favor of Defendants position. In the end, with none of the factors particularly favoring Plaintiffs position, the Court DENIES Plaintiff's request for this broad discovery of unaccused products. That said, Defendants have offered to identify and produce discovery at least as to additional variations of specifically identified products, (D.I. 66 at 3), and the Court ORDERS that they do so in a timely fashion. Ordered by Judge Christopher J. Burke on 8/18/2021. (dlb) (Entered: 08/18/2021)
As of August 19, 2021, PACER did not contain a publicly available document associated with this docket entry. The text of the docket entry is shown above.

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