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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DUHN OIL TOOL, INC.,)	1:05-cv-01411 OWW GSA
)	
Plaintiff,)	ORDER REGARDING DEFENDANT
)	COOPER CAMERON CORPORATION'S
v.)	MOTION TO COMPEL DISCOVERY BY
)	PLAINTIFF DUHN OIL TOOL, INC.
COOPER CAMERON CORPORATION,)	(Document No. 368)
)	
Defendant.)	

AND RELATED CROSS-CLAIMS.)	

INTRODUCTION

On November 13, 2009, Defendant Cooper Cameron Corporation ("Cameron") filed a motion to compel discovery from Plaintiff Duhn Oil Tool, Inc. (Doc. 368.) On January 22, 2010, the parties filed a joint statement regarding the discovery dispute. (Doc. 400.) Following significant meet and confer efforts by counsel for both parties on several occasions, the Court signed the parties' Agreed Discovery Order on February 17, 2010. (Doc. 406.) The Court now turns to address the remaining issues in the motion to compel, to wit: (1) Defendant's request that Plaintiff be compelled to produce a privilege log; (2) Defendant's request that this Court order Plaintiff to provide complete answers to Interrogatory Numbers 32, 34 and 37 of Defendant's Fourth Set of Interrogatories; and (3) Defendant's request that this Court order that Plaintiff not

1 interfere with Defendant's attempts to obtain information from non-parties as referenced in
2 Interrogatory Number 36 regarding the number of employees for any party to whom Plaintiff may
3 have assigned, granted, conveyed or licenced any rights in the '925 patent. (See Doc. 405.)

4 ANALYSIS AND ORDER¹

5 The purpose of discovery is to make trial "less a game of blind man's bluff and more a
6 fair contest with the basic issues and facts disclosed to the fullest practicable extent possible."
7 *United States v. Procter & Gamble*, 356 U.S. 677, 683 (1958). Discovery will also serve to
8 narrow and clarify the issues in dispute. *Hickman v. Taylor*, 329 U.S. 495, 501 (1947).

9 Federal Rules of Civil Procedure rule 26(b) establishes the scope of discovery and states
10 in pertinent part:

11 Parties may obtain discovery regarding any matter, not privileged, that is relevant
12 to the claim or defense of any party, including the existence, description, nature, custody,
13 condition, and location of any books, documents, or other tangible things and the identity
14 and location of persons having knowledge of any discoverable matter. For good cause,
the court may order discovery of any matter relevant to the subject matter involved in the
action. Relevant information need not be admissible at trial if the discovery appears
reasonably calculated to lead to the discovery of admissible evidence.

15 "The party who resists discovery has the burden to show that discovery should not be
16 allowed, and has the burden of clarifying, explaining, and supporting its objections." *Oakes v.*
17 *Halvorsen Marine Ltd.*, 179 F.R.D 281, 283 (C.D. Cal. 1998); *Nestle Foods Corp. v. Aetna*
18 *Casualty & Surety Co.*, 135 F.R.D. 101, 104 (D. N.J. 1990).

19 A. The Privilege Log

20 The dispute regarding a privilege log concerns the following discovery request:

21 REQUEST FOR PRODUCTION NO. 46

22 All documents and electronically stored information related to the
statements made by Constantine Marantidis in his Declaration dated December 1,
2008.

23 RESPONSE TO REQUEST FOR PRODUCTION NO. 46

24 Plaintiff incorporates by reference the General Objections set forth as if
fully stated herein. Plaintiff objects to this request on the grounds that it is beyond
25 the scope of permissible discovery as defined by Fed. R. Civ. P. 26 and is
overbroad, unduly burdensome and seeks information neither relevant to the
26 subject matter of this litigation nor reasonably calculated to lead to the discovery

27 ¹ The Court carefully reviewed and considered all relevant pleadings, including oral arguments, points and
28 authorities, declarations, and exhibits. Any omission of a reference to an argument or pleading is not to be construed
that this Court did not consider the argument or pleading.

1 of admissible evidence. Additionally, Plaintiff objects to this request on the
2 grounds that it encompasses documents protected by the attorney client and/or
attorney work product doctrine.

3 Subject to and without waiving its objections Plaintiff responds that it will
4 produce all relevant non-privileged responsive documents in its possession or
control, if any.

5 (Doc. 400 at 18.)

6 At the hearing of January 29, 2010, Cameron indicated that Duhn Oil Tool, Inc. (“Duhn”)
7 has not provided a privilege log regarding Request for Production Number 46. Cameron points
8 out that the joint statement references the fact Plaintiff Duhn has asserted the attorney-client
9 privilege regarding those documents, therefore, a privilege log should be produced. Duhn
10 responded that it had no other documents that were responsive to the request, and while it had
11 produced the documents it was “not taking away” its attorney-client privilege objection “because
12 the scope of some of their questions could snare at some time in the future attorney-client
13 documents, and we have an ongoing obligation to produce, so we want that objection there, just
14 in case there’s a future document that comes, and it does.” (Doc. 409 at 78.)

15 The Court will accept Duhn’s explanation that the reference to privileged documents in
16 the joint statement was remedied by its subsequent production via email, albeit with belated
17 delivery to counsel for Cameron. (*See* Doc. 409 at 5, 77-78.) However, to the degree Plaintiff is
18 withholding *any* other document or documents based upon the attorney-client privilege, it is
19 ordered to produce a privilege log forthwith.

20 **B. The Fourth Set of Interrogatories - Numbers 32, 34 & 37**

21 Cameron propounded its Fourth Set of Interrogatories to Duhn. Duhn has objected to
22 interrogatory numbers 32, 34 and 37:

23 **INTERROGATORY NO. 32:**

24 For each limitation set forth in Claims 4, 6-7, 10-12, 18, 20, 22, 28, 30,
25 and 34-36, and Claims 37, 38-41, 44-46, 50-51 of the ‘925 Patent, identify each
limitation that is not found in the ‘993 Patent.

26 **RESPONSE TO INTERROGATORY NO. 32:**

27 Plaintiff incorporates by reference the General Objections
28 set forth as if fully stated herein. Plaintiff objects to this
interrogatory on the grounds that it calls for a legal conclusion and
is compound and exceeds the permissible number of
interrogatories permitted in this matter by improperly combining
several interrogatories in one. Plaintiff further objects to this

1 interrogatory as being beyond the scope of permissible discovery as
2 defined by Fed. R. Civ. P. 26.

3 Subject to and without waiving its objections Plaintiff
4 responds as follows: The structure to implement the "wherein"
5 clause cannot be found in the '993 figures. See also, Declaration of
6 Phil Terry In Support Of Plaintiffs Reply Regarding Its Motion For
7 Preliminary Injunction, And Request For Leave To Amend Its
8 Complaint and Plaintiffs Memorandum of Points and Authorities
9 in Support of Its Opposition to Defendant's Motion for Summary
10 Judgment of Patent Invalidity in View of the Prior Art (Ct. Docket
11 252-4).

12 **INTERROGATORY NO. 34:**

13 Please state Duhn Oil’s number of employees, including affiliates, as the
14 term “affiliates” is used in 13 C.F.R. § 121.802. In answering this Interrogatory,
15 please specify the number of employees for each particular affiliate.

16 **RESPONSE TO INTERROGATORY NO. 34:**

17 Plaintiff incorporates by reference the General Objections
18 set forth as if fully stated herein. Plaintiff objects to this
19 interrogatory on the grounds that it is overbroad, not relevant, not
20 reasonably calculated to lead to the discovery of admissible
21 evidence, compound and exceeds the permissible number of
22 interrogatories permitted in this matter by improperly combining
23 several interrogatories in one. Plaintiff further objects to this
24 interrogatory on the grounds that it seeks information containing
25 confidential, proprietary and/or trade secret information.

26 Subject to and without waiving its objections Plaintiff
27 responds that Duhn's number of employees pursuant to 13 C.F.R. §
28 121.802 is currently more than 500 persons.

INTERROGATORY NO. 37:

Please describe any actions that Duhn Oil has taken to determine its
eligibility for reduced patent fees under 13 C.F.R. § 121.802 since the filing of the
application that issued as the '925 patent.

RESPONSE TO INTERROGATORY NO. 37:

Plaintiff incorporates by reference the General Objections
set forth as if fully stated herein. Plaintiff objects to this
interrogatory as being vague and ambiguous as to "filing of the
application", beyond the scope of permissible discovery as defined
by Fed. R. Civ. P. 26 and seeking information neither relevant to
the subject matter of this litigation nor reasonably calculated to
lead to the discovery of admissible evidence.

Subject to and without waiving its objections Plaintiff
responds that it investigated its eligibility for reduced fees prior to
making its maintenance fee payment for the '925 patent. Plaintiff
also investigated eligibility for reduced fees prior to making its
large entity payment for the first maintenance fee.

(Doc. 400 at 3, 9, 15.)

1
2 Cameron's efforts to obtain information from these affiliate companies, as Cameron wrongly
3 claims.” (Doc. 400 at 12.)

4 The Court is not persuaded that Duhn cannot identify and ascertain the number of
5 employees of the affiliates of its parent company. Duhn has already indicated the number of
6 employees of certain affiliates is greater than 500; therefore, information is available to Duhn
7 such that it may more fully and completely answer the inquiry. The information is plainly
8 relevant to Cameron’s defense and is thus discoverable. Plaintiff’s objections are overruled.

9 Duhn shall be ordered to provide a full and complete response to the interrogatory. If an
10 exact number of affiliate employees cannot be ascertained, Duhn shall provide a best estimate.
11 Merely indicating whether or not the affiliate has a number of employees greater than 500
12 persons will not suffice.

13 ***Number 37***

14 At the hearing, Duhn argued the interrogatory is overbroad as it seeks any patent
15 application filed by Duhn Oil since November 2002. Duhn sought a limitation to the ‘925 patent
16 and two other related applications, rather than every application. Duhn also raised the specter of
17 having to reveal information regarding otherwise secret patent applications. Cameron explained
18 that it is seeking to establish a pattern regarding Duhn Oil’s claims to small entity status and
19 therefore it should be permitted discovery regarding patents outside the ‘925 patent family.
20 Moreover, it argued Plaintiff’s concern with regard to secrecy is a red herring in light of the
21 operative protective order.² (Doc. 409 at 70-77.)

22 Plaintiff’s objections are overruled. The interrogatory is not overbroad. The discovery is
23 relevant to Cameron’s defenses. Duhn shall be ordered to provide a full and complete response
24 to the interrogatory.

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²See Document No. 37.

1 **C. Interference Issue**

2 Cameron “requests this Court order that Duhn Oil will not interfere with Cameron’s
3 attempts to obtain from non-parties the information requested in Interrogatory No. 36 regarding
4 the number of employees for ‘any person to whom Duhn Oil has assigned, granted, conveyed, or
5 licensed (or is under an obligation to do so) any rights in the ‘925 patent.’” (Doc. 405 at 2.)

6 At the January 29, 2010, hearing, Cameron explained that it originally sought this
7 information from Duhn, but the information was not provided. Thereafter, Cameron sought the
8 information from the non-party affiliates known to it by way of third party subpoenas. Duhn then
9 filed a motion to quash the subpoenas directed to the third parties. One argument asserted in the
10 motion was the fact that the information Cameron sought was available from Duhn. Ultimately,
11 the motion to quash was denied. Following denial of the motion, Duhn has subsequently
12 indicated it does *not* have the information Cameron seeks. (*See* Doc. 409 at 43; *see also* Doc.
13 307.) Cameron seeks a complete answer to Interrogatory 36 in the absence of interference by
14 Duhn.

15 While the Court is not willing to expressly find that Duhn has purposefully interfered
16 with Cameron’s efforts to obtain the information it seeks from third party affiliates, the Court
17 notes that any efforts by a party to frustrate Court ordered discovery will not be tolerated. Duhn
18 is therefore cautioned accordingly, particularly where this Court has already determined Cameron
19 is entitled to the discovery it seeks. (*See* Doc. 354.) This Court’s order does not affect the
20 separate rights of any third party affiliate.

21 **CONCLUSION AND ORDER**

22 The Court finds that Cameron is entitled to the discovery it seeks, and overrules Duhn’s
23 objections thereto.

24 For the reasons given above, this Court hereby ORDERS as follows:

- 25 1. Duhn shall provide a privilege log to Cameron for any document it has not yet
26 produced regarding Cameron’s Request for Production, Number 46, and for which
27 Duhn is withholding production based upon the attorney-client privilege, within
28 fourteen (14) days of the date of this Order;

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2. Duhn shall provide supplemental responses to Interrogatory numbers 32, 34 and 37 of Cameron’s Fourth Set of Interrogatories within fourteen (14) days of the date of this Order; and

3. Duhn is cautioned that any effort on its part to frustrate Court ordered discovery regarding Cameron’s efforts to obtain discovery concerning its defense of invalidity regarding the ‘925 patent may bring about severe sanctions.

IT IS SO ORDERED.

Dated: March 1, 2010

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE