

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 NUANCE COMMUNICATIONS, INC.,

No. C 08-2912 JSW (MEJ)

5 Plaintiff,

ORDER RE: DISCOVERY DISPUTE

6 v.

Re: Docket No. 438

7 ABBYY SOFTWARE HOUSE, et al.

8 Defendants.

9 Before the Court is the parties' joint discovery dispute letter, in which Defendant ABBYY
10 USA Software House, Inc. seeks to depose Plaintiff Nuance Communications, Inc.'s Chief
11 Executive Officer, Paul Ricci. Dkt. No. 438. When a party seeks the deposition of a high-level
12 executive, the Court must consider "(1) whether the deponent has unique first-hand, non-repetitive
13 knowledge of facts at issue in the case and (2) whether the party seeking the deposition has
14 exhausted other less intrusive discovery methods." *Affinity Labs of Texas v. Apple, Inc.*, 2011 WL
15 1753982, at *15 (N.D. Cal. May 09, 2011) (citations omitted). "Virtually every court that has
16 addressed deposition notices directed at an official at the highest level or 'apex' of corporate
17 management has observed that such discovery creates a tremendous potential for abuse or
18 harassment." *Id.* (quoting *Celerity, Inc. v. Ultra Clean Holding, Inc.*, 2007 WL 205067, at *3 (N.D.
19 Cal., Jan. 25, 2007)). "This is especially so where the information sought in the deposition can be
20 obtained through less intrusive discovery methods (such as interrogatories) or from depositions of
21 lower-level employees with more direct knowledge of the facts at issue." *Id.* (citation omitted).

22 Here, ABBYY has failed to show that Mr. Ricci has unique first-hand, non-repetitive
23 knowledge of facts at issue in this case. Moreover, even if it had, ABBYY has not shown that it has
24 exhausted other less intrusive discovery methods. Accordingly, ABBYY's request is DENIED.

25 **IT IS SO ORDERED.**

26 Dated: June 11, 2012

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MARIA-ELENA JAMES
United States Magistrate Judge