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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADVANCED MICRO DEVICES, INC., et
al.,

Plaintiffs,

v.

LG ELECTRONICS, INC., et al.,

Defendants.

Case No. [14-cv-01012-SI](#)

**ORDER GRANTING AMD'S MOTION
SEEKING PERMISSION TO DISCLOSE
SOURCE CODE AND TECHNICAL
DOCUMENTS**

Re: Dkt. No. 208

Before the Court is AMD's motion seeking permission to disclose third-party Imagination Technologies, LLC's source code and technical documents to AMD's two technical experts, Dr. William Mangione-Smith and Dr. Andrew Wolfe. Dkt. No. 208. Pursuant to Civil Local Rule 7-1(b), the Court determines that this matter is appropriate for resolution without oral argument and VACATES the hearing scheduled for July 28, 2017. For the foregoing reasons, the Court GRANTS AMD's motion.

BACKGROUND

This is a patent infringement suit between plaintiffs Advanced Micro Devices, Inc. and ATI Technologies ULC (collectively, "AMD") and defendants LG Electronics, Inc., LG Electronics U.S.A., Inc., and LG Electronics Mobilecomm U.S.A., Inc. (collectively, "LG"). In Fall 2016, AMD and LG entered into a protective order for this litigation. Dkt. No. 120. The protective order states that certain highly confidential information may be disclosed to experts only if: (i) "reasonably necessary" for the litigation; (ii) the experts agree to be bound by the protective order; and (iii) the party who wishes to disclose highly confidential materials to its expert first makes a written request to the designating party. *Id.* ¶¶ 7.3(b); 7.4(a)(2). The

1 designating party has 14 days from receipt of the request to object to disclosure, and if the parties
2 cannot resolve an objection through meet and confer, the party seeking disclosure may file a
3 motion requesting court permission to disclose the information to its expert. *Id.* ¶¶ 7.4(b)-(c).
4 Similar procedures govern disclosure of source code. *See id.* ¶ 9.

5 The parties filed an addendum to the protective order to include non-party Imagination
6 Technologies LLC’s (“Imagination’s”) confidential materials. *See* Dkt. No. 152. According to
7 AMD, 125 LG accused products in this case utilize Imagination graphics processors. Fahrenkrog
8 Decl. (Dkt. No. 208-1) ¶ 3. AMD seeks to disclose certain Imagination source code and technical
9 documents to two of its experts to aid AMD’s infringement analysis as to these products.

10 On February 10 and 15, 2017, pursuant to the protective order, AMD notified Imagination
11 of its intent to disclose Imagination’s technical documents and source code to AMD’s two
12 technical experts, Drs. Mangione-Smith and Wolfe. *See* Fahrenkrog Decl., Exs. E, F (Dkt. Nos.
13 208-6, 208-7). Imagination objected and the parties have been unable to resolve their
14 disagreement through the meet and confer process.

15 Since 2009, Dr. Mangione-Smith has provided “[c]onsulting and intellectual property
16 services” as the sole proprietor of Phase Two LLC. Fahrenkrog Decl., Ex. G (Dkt. No. 208-8).
17 He is a named inventor on dozens of patents, and has served as an expert consultant in a range of
18 intellectual property matters. *Id.* As an expert, Dr. Mangione-Smith has recently been retained by
19 organizations such as Future Link Systems, TiVo, Innovative Memory Solutions, Advanced
20 Silicon Technologies, Ericsson, and many others. *See id.* He most often provides expert services
21 on behalf of patent plaintiffs in suits against companies like Apple, Samsung, Cisco, Google,
22 Verizon, Dell, and others. *See id.*

23 Since 2002, Dr. Wolfe has consulted on “processor technology, computer systems,
24 consumer electronics, software, design tools, and intellectual property issues.” Fahrenkrog Decl.,
25 Ex. H (Dkt. No. 208-9). His sample clients include IBM, Dell, Motorola, Samsung, HTC,
26 Huawei, Nvidia, and more. *Id.* Dr. Wolfe has also served as an expert witness in an array of
27 patent cases. *See id.*

28 AMD seeks an order from the Court granting AMD permission to disclose Imagination’s

1 documents and source code to Drs. Mangione-Smith and Wolfe. *See* Mot. (Dkt. No. 208).

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LEGAL STANDARD

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“In the ordinary course of litigation, a party is owed some degree of deference ‘in retaining and preparing an expert with the relevant industry experience and availability.’” *GPNE Corp. v. Apple Inc.*, 12-cv-2885-LHK (PSG), 2014 WL 1027948, at *1 (N.D. Cal. Mar. 13, 2014) (quoting *Apple Inc. v. Samsung Elecs. Co.*, No. 11-cv-1846-LHK (PSG), 2011 U.S. Dist. LEXIS 147515, at *2 (N.D. Cal. Dec. 22, 2011)). In some cases, however, “that interest must be balanced against an increased risk of improper use or disclosure” *GPNE Corp.*, 2014 WL 1027948, at *1. In cases where a proposed expert’s work in the field “creates a substantial risk” of misusing the information, disclosure may be permitted only where the expert “possesses unique expertise[.]” *See Symantec Corp. v. Acronis Corp.*, No. 11-cv-5310-EMC (JSC), 2012 WL 3582974, at *3 (N.D. Cal. Aug. 20, 2012).

DISCUSSION

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Imagination does not object to disclosure of its materials to *any* expert, it objects only to disclosure to AMD’s two chosen experts. The Court must determine whether, on this record, disclosure of Imagination’s highly confidential information to Drs. Mangione-Smith and Wolfe presents a concrete risk of misuse. The Court concludes that it does not.

Imagination argues that both experts present a substantial risk of subconsciously misusing Imagination confidential information given their active patent consulting businesses. Imagination contends that once Drs. Mangione-Smith and Wolfe have performed the necessary analysis of Imagination’s documents and source code, knowledge of that sensitive information will be “infused throughout their subsequent . . . activities in th[e] field.” Opp’n (Dkt. No. 216) at 3-4. Imagination further argues that the experts will use the information “[i]n any subsequent activity involving Imagination,” including an ITC investigation in which Drs. Mangione-Smith and Wolfe

1 have been designated as experts.¹ *Id.* at 4. Imagination further argues that Drs. Mangione-Smith
2 and Wolfe are prolific inventors, and thus present an even greater risk of subconsciously using
3 Imagination’s confidential information going forward. As a non-party to this litigation,
4 Imagination argues that it should not be required to allow disclosure of its information to Drs.
5 Mangione-Smith and Wolfe.

6 AMD, on the other hand, argues that Imagination’s claims of potential harm are highly
7 speculative. AMD argues that Imagination cannot point to any specific consulting activity either
8 expert performs for Imagination competitors, nor can Imagination identify a connection between
9 the experts’ inventive activity and the technology at issue in this case. AMD states that neither
10 expert has filed a patent with a priority date falling within the past six years. Reply (Dkt. No. 225)
11 at 4. AMD points out that Imagination made similar objections in an unrelated ITC matter, ITC
12 Investigation No. 337-TA-984, and those objections were overruled. *See* Fahrenkrog Decl. Exs. I,
13 J (Dkt. Nos. 208-10, 208-11). In overruling Imagination’s objections, Administrative Law Judge
14 Thomas Pender stated that the parties’ protective order provided “a sufficient deterrent against
15 unauthorized use or disclosure,” and found “little risk of misuse” given the experts were not
16 “involved in competitive decision-making or product development in the same [graphics
17 processing] field” Fahrenkrog Decl. Ex. J, Order Overruling Objection; *see also* Fahrenkrog
18 Supp. Decl. Ex. M, ITC Hearing Tr. (Dkt. No. 225-2) at 12-13 (“The fact that the disputed experts
19 previously served as litigation experts in connection with graphics processing technology is
20 insufficient to disqualify them, as it would also disqualify any person who has ever served as a
21 consulting or testifying expert in any litigation involving graphics processors.”).

22 The Court agrees with AMD. Disclosure of Imagination’s materials to Drs. Mangione-
23 Smith and Wolfe does not pose an unreasonable risk of commercial harm. Indeed, Drs.
24 Mangione-Smith and Wolfe are active consultants in the intellectual property space, and serve as
25 expert witnesses in patent cases with some regularity. They are both inventors and writers in their

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27 ¹ Imagination states that “the parties to this case are also involved in a co-pending ITC
28 Investigation numbered 337-TA-1044.” Opp’n at 2. Imagination provides little detail about the
ITC matter, stating that the investigation involves “different patents[,] but the same Imagination
products.” *Id.* at 4.

