

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

U.S. ETHERNET INNOVATIONS, LLC,
Plaintiff,

v.

ACER, INC.; ACER AMERICA CORPORATION; APPLE, INC.; ASUS COMPUTER INTERNATIONAL; ASUSTEK COMPUTER, INC.; DELL, INC.; FUJITSU, LTD.; FUJITSU AMERICA, INC.; GATEWAY, INC.; HEWLETT PACKARD CO.; SONY CORPORATION; SONY CORPORATION OF AMERICA; SONY ELECTRONICS INC.; TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; and TOSHIBA AMERICA INFORMATION SYSTEMS, INC.,

Defendants,

INTEL CORPORATION; NVIDIA CORPORATION; MARVELL SEMICONDUCTOR, INC.; Atheros COMMUNICATIONS, INC.; and BROADCOM CORPORATION,

Intervenors.

No. C 10-3724 CW

ORDER ADDRESSING
USEI'S MOTION FOR
DISCOVERY
SANCTIONS AND TO
SET A SHOW CAUSE
HEARING FOR
FURTHER SANCTIONS
DUE TO PARTY
MISCONDUCT (Docket
No. 749)

United States District Court
For the Northern District of California

Plaintiff U.S. Ethernet Innovations LLC (USEI) moves for certain "evidentiary sanctions" against Intervenor Intel Corporation, Defendant Hewlett-Packard Company (HP) and their counsel and for an order directing them to show cause why additional sanctions should not be ordered. USEI contends that these parties improperly entered into a consulting agreement with Richard Baker, who is a former employee of 3Com, which was the prior owner of the patents-in-suit. Mr. Baker is also a former employee of HP and is a potential fact witness in this litigation.

1 USEI requests that the Court find that all communications between
2 Mr. Baker and Intel, HP or their counsel are not privileged and
3 must be disclosed to USEI; require the production of documents
4 related to meetings between them and all documents that they have
5 exchanged; permit USEI to depose Mr. Baker about these
6 communications; and prohibit Intel and HP from using evidence from
7 Mr. Baker to support their claims or defenses. USEI also asks
8 that the Court set a show cause hearing to consider whether to
9 disqualify HP and Intel's counsel and to strike their claims and
10 defenses. HP and Intel oppose the motion in its entirety.

11 Having considered the papers filed by the parties, the Court
12 DENIES the motion in part and REFERS it in part. USEI has not
13 shown that HP and Intel's counsel should be disqualified, that
14 their claims and defenses should be stricken or that any other
15 such sanctions are warranted. However, HP and Intel may not
16 prevent USEI from contacting Mr. Baker directly and may not
17 require that USEI contact Mr. Baker only through HP or its
18 counsel.¹ They also may not prevent Mr. Baker from speaking with
19 USEI, if he wishes to do so.

20 The Court REFERS the remainder of the motion, including the
21 issues of USEI's specific discovery requests and HP and Intel's
22 claims of privilege, to the discovery Magistrate Judge for
23 resolution. Within seven days of the date of this Order, the
24 parties shall meet and confer regarding the remaining issues
25 raised in USEI's motion, and shall file a single joint letter
26

27 ¹ If Mr. Baker is represented by counsel himself, USEI may
28 contact Mr. Baker only through his attorney.

1 brief addressing any issues on which they are unable to reach a
2 resolution, following the procedures set forth in the Magistrate
3 Judge's standing order.

4 IT IS SO ORDERED.

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6 Dated: 8/16/2013

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9 CLAUDIA WILKEN
10 United States District Judge
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