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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Applied Materials, Inc.,

NO. C 07-05248 JW

Plaintiff,

**ORDER SUSTAINING PLAINTIFF'S
OBJECTION TO DISCOVERY ORDER
NO. 13; OVERRULING AS MOOT
PLAINTIFF'S OBJECTION TO
DISCOVERY ORDER NO. 14**

v.

Advanced Micro-Fabrication Equipment
(Shanghai) Co., Ltd., et al.,

Defendants.

Applied Materials, Inc. ("Applied" or "Plaintiff") brings this diversity action against Advanced Micro-Fabrication Equipment, Inc., ("AMEC Inc.") and its China and Asia subsidiaries (collectively, "Defendants"), alleging, *inter alia*, that Defendants misappropriated its trade secrets and engaged in unfair business practices in violation of California law.

Presently before the Court are Plaintiff's Objections to the Special Master's Recommended Discovery Order Nos. 13 and 14 ("RDO 13" and "RDO 14"). (hereafter, "Objection," Docket Item No. 229.) The Court reconsiders a recommendation of the Special Master pertaining to a non-dispositive motion or pretrial discovery matter only where the Special Master's recommendation is clearly erroneous or contrary to law. (See Order of Appointment, Docket Item No. 119.)

In RDO 13, the Special Master granted Defendants' motion to de-designate certain items produced by Plaintiff in discovery as "Highly Confidential - Attorney's Eyes Only." (RDO 13 at 1, Docket Item No. 210.) In particular, the Special Master considered two sets of emails concerning Plaintiff's internal strategy for reacting to the potential entry of AMEC into the market as a

1 competitor. The Special Master concluded that the documents at issue were not covered by either
2 the applicable Protective Order or Federal Rule of Civil Procedure 26(c), based on the reasoning that
3 Plaintiff has not met its burden of demonstrating “specific harm” that would result from release of
4 those documents.

5 In this case, the Protective Order states that “[d]isclosure and discovery activity in this action
6 are likely to involve production of confidential, proprietary, or private information for which special
7 protection from public disclosure and from use for any purpose other than prosecuting this litigation
8 would be warranted.” (Docket No. 135 at 1.) The Protective Order limits the disclosure of
9 “confidential information,” which is defined as:

10 information . . . or tangible things that qualify for protection under standards
11 developed under Fed. R. Civ. P. 26(c). The parties contemplate that such
12 information includes, without limitation, information that would cause
13 competitive injury to a party if said information were made public or revealed to a
competitor, such as trade secrets, technical data, confidential research,
development and manufacturing information, and financial and marketing
information relating to the parties’ respective products and technology.

14 (Id. at 2.)

15 As noted by the Special Master, Defendants’ express goal in seeking to de-designate the
16 documents at issue is so that Defendants may “share these documents with [their] investors and
17 customers.” (RDO 13 at 3.) The stated purpose of the Protective Order is to limit confidential and
18 private company documents from “use for *any purpose other than prosecuting this litigation.*” As
19 such, the Court finds that Defendants’ agenda would directly undermine the very reason for the
20 Protective Order.


21 In addition, the Court finds that the Special Master erroneously applied an overly narrow
22 construction of the term “confidential information.” Even though the documents at issue do not
23 include trade secrets or technical data, the Court’s review indicates that they do contain information
24 that “would cause competitive injury.” Indeed, because these documents involve business strategy
25 exchanges among high-level Applied executives, they are within the meaning of confidential
26 information, as used in the Protective Order. Finally, the Court finds that the Special Master erred
27 by discounting Plaintiff’s showing of the potential harm resulting from release of the documents.

1 Given that Defendants' stated goal was to reveal the documents to investors and customers, it can be
2 inferred that Defendants sought to inflict competitive damage on Plaintiff.

3 Accordingly, the Court SUSTAINS Plaintiff's Objections to RDO 13. The Court orders that
4 document numbers AMAT03273574 and AMAT03274079-81 shall remain labeled "Highly
5 Confidential - Attorney's Eyes Only."

6 Since RDO 14 relates to the issue of the Special Master having declined to reconsider RDO
7 13, the Court OVERRULES Plaintiff's Objection to RDO 14 as moot in light of the Court's
8 conclusions with respect to RDO 13.

9
10 Dated: March 11, 2009



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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12 **Dated: March 11, 2009**

Richard W. Wieking, Clerk

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By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy