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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 OVERRULING OBJECTION TO
DISCOVERY ORDER NO. 40**

v.

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

Defendants.

Presently before the Court is Defendants' Objection to Special Master Discovery Order No. 40 re Trade Secret 4 Sanctions. (hereafter, "Objection," Docket Item No. 484.)

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.)

On September 25, 2009, the Special Master issued Discovery Order No. 40, in which he granted Defendant AMEC's Motion for Sanctions Regarding Trade Secret 4. (hereafter, "RDO 40," Docket Item No. 457.) In RDO 40, the Special Master determined that: (1) Jim Carducci, a witness provided by AMEC with regard to its damages claims, should have been disclosed earlier; and (2) a number of individuals, referred to by Mr. Carducci in his deposition, who were allegedly involved in the development of the trade secrets at issue, should have been disclosed earlier. (RDO 40 at 1-2.) On the basis of these findings, the Special Master imposed the following sanctions on Plaintiff: (1) Mr. Carducci's testimony at trial is limited to the topic of damages, and he may not testify as to

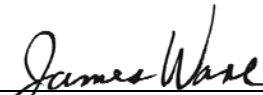
1 information or documentation supporting the damages claim which he had not disclosed before the
2 time of his deposition; and (2) None of the twenty-eight individuals listed in the damages
3 spreadsheet, with the exception of Buchberger, Sun, Hoffman, Kojiri and Salinas, may testify at
4 trial, nor may any documents which they created be offered into evidence unless the individuals
5 have been otherwise identified in the course of discovery or such documents have been otherwise
6 produced. (Id. at 6-7.)

7 Defendants object to RDO 40 on the ground that the sanctions which the Special Master
8 imposed for Plaintiff's discovery violations do not provide Defendants' with an adequate remedy.
9 (Objection at 1.) The Court finds that the Special Masters' recommendation is not clearly erroneous
10 or contrary to law. The sanctions which the Special Master imposed are sufficient to remedy any
11 prejudice Defendants' may suffer as a result of Plaintiff's late disclosure of certain witnesses and
12 documents regarding trade secret 4.

13 The Special Master specifically found that Defendants failed to make a sufficient showing
14 that Plaintiff's late disclosure was the result of "willfulness, fault or bad faith" to justify the extreme
15 sanction of preclusion of evidence. (RDO 40 at 6.) The Special Master also found that Defendants
16 had ample opportunity to depose the person primarily responsible for the development of trade
17 secret 4, and had access to the testimony and records of at least six of the individuals identified on
18 the damages spreadsheet. (Id. at 5.) Upon review of the evidence presented by both parties, the
19 Court finds that neither of these factual findings are clearly erroneous, and the Special Master's
20 choice of sanctions was clearly within the range of his broad discretion to craft an appropriate
21 remedy.

22 Accordingly, the Court **OVERRULES** Defendants' Objection to Special Master Discovery
23 Order No. 40 re Trade Secret 4 Sanctions.

24
25 Dated: November 24, 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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Dated: November 24, 2009

Richard W. Wieking, Clerk

**By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy**