

# EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

APELDYN CORPORATION,

Plaintiff,

v.

AU OPTRONICS CORPORATION, et al.,

Defendants.

Civil Action No. 08-568-SLR

DM 6, 8

**ORDER**

**WHEREAS**, on November 1, 2010, Plaintiff Apeldyn Corporation (“Apeldyn”) filed a letter motion seeking a recommendation compelling Rule 30(b)(6) depositions in the United States of Defendant AU Optronics Corporation (“AUO”) (D.I. 352) (DM6), to which AUO filed a response on November 9, 2010 (D.I. 362), and to which Apeldyn filed a reply on November 19, 2010 (D.I. 370);

**WHEREAS**, on November 16, 2010, Apeldyn filed a letter motion seeking a recommendation compelling Fed. R. Civ. P. Rule 30(b)(6) depositions in the United States of Defendants Chi Mei Optoelectronics Corporation (“CMO”) and Chi Mei Optoelectronics Corporation USA, Inc. (“CMO USA”) (D.I. 366) (DM8), to which AUO filed a response on November 23, 2010 (D.I. 369), and to which Apeldyn filed a reply on November 29, 2010 (D.I. 376);

**WHEREAS**, the Special Master conducted a telephonic hearing on December 6, 2010, where counsel for Apeldyn, AUO, CMO, and CMO USA presented oral argument in support of their respective positions for DM6 and DM8;

**WHEREAS**, Apeldyn first served its Notice of Deposition under Fed. R. Civ. P. 30(b)(6) as to AUO on January 19, 2010 (D.I. 202); Apeldyn subsequently served its Amended Notice of Deposition under Fed. R. Civ. P. 30(b)(6) as to AUO on September 10, 2010 (D.I. 331); AUO first served its objections and response to Apeldyn's Notice of Deposition under Fed. R. Civ. P. 30(b)(6) on April 27, 2010 (D.I. 303), objecting *inter alia* to the deposition taking place outside of Taiwan; and AUO maintained this objection after service of Apeldyn's Amended Notice of Deposition under Fed. R. Civ. P. 30(b)(6) (Apeldyn's Rule 7.1.1 certification (DM 6), Ex. 2 (Oct. 12, 2010 letter from P. Wied to L. Brzezynski)(D.I. 353);

**WHEREAS**, Apeldyn first served its Notices of Deposition under Fed. R. Civ. P. 30(b)(6) as to CMO and CMO USA on January 19, 2010 (D.I. 197); Apeldyn subsequently served Amended Notices of Deposition under Fed. R. Civ. P. 30(b)(6) as to CMO and CMO USA on September 10, 2010 (D.I. 332); and CMO and CMO USA first served their objections and responses to Apeldyn's amended Notice of Deposition under Fed. R. Civ. P. 30(b)(6) on November 9, 2010 (D.I. 361), objecting *inter alia* to the depositions taking place outside of Taiwan;

**WHEREAS**, the District of Delaware recognizes the general presumption that depositions of corporate designees under Fed. R. Civ. P. 30(b)(6) occur in the location of the corporation's principal place of business, to which a defendant is entitled the benefit of unless the plaintiff rebuts the presumption, and which presumption is to be weighed, on a case-by-case basis, against relevant equitable factors, including (1) the ability of the Court to intervene in discovery disputes; (2) the hardship to the deponent(s) in terms of time, expense, and

inconvenience of travel; (3) the location of counsel; (4) the number of deponents; and (5) whether the deponents regularly travel to the United States<sup>1</sup>;

**WHEREAS**, AUO has its principal place of business in Taiwan, CMO has its principal place of business in Taiwan, and CMO USA has its principal place of business in California<sup>2</sup>;

**WHEREAS**, the Special Master concludes the ability of the Court to intervene to be a neutral factor despite the eleven-hour time difference between Delaware and Taiwan for at least the following reasons: (1) this case is more than two years old and has only had five discovery matters preceding the instant dispute as to three different defendants – three of which have been resolved by the parties themselves; (2) the Special Master is available by cell phone outside of normal business hours to resolve discovery disputes; (3) the ability of the deponents to obtain additional information should they not be adequately prepared about a particular topic will be greatly enhanced by having corporate resources readily available; and (4) the Special Master trusts that counsel will conduct themselves professionally during depositions such that all depositions can be completed in full in an efficient and timely manner prior to the deadline of January 28, 2011 established in the (D.I. 315) Court’s Amended Scheduling Order, keeping in mind the consequences of failure to cooperate under Fed. R. Civ. P. 37;

**WHEREAS**, the Special Master concludes that the balance of hardships weighs in favor of the defendants because Apeldyn has not shown any hardship other than financial expenses

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<sup>1</sup> See, e.g., *Aerocrine AB v. Apieron Inc.*, 267 F.R.D. 105, 108 (D. Del. 2010) (recognizing general presumption that deposition of corporation be taken at principal place of business, subject to modification when justice requires); *Xpoint Techs., Inc. v. Intel Corp.*, No. 09-26 (SLR), slip. op. at 21 (D. Del. Aug. 11, 2010) (Bechtle, S.D.M.); see also, e.g., *In re Outsidewall Tire Litig.*, 267 F.R.D. 466, 471-72 (D. Del. 2010); (recognizing presumption that foreign defendant corporation should be deposed at principal place of business and that presumption may be overcome “only where circumstances exist distinguishing the case from the ordinary run of civil cases”); see also, e.g., *Oxford Indus., Inc. v. Luminco, Inc.*, 1990 U.S. Dist. LEXIS 15685, \*2-3 (E.D. Pa. Nov. 19, 1990) (“An objection by a corporate defendant to a deposition at some place other than its principal place of business should generally be sustained, absent a showing of ‘unusual circumstances which justify such an inconvenience to the corporation.’”).

<sup>2</sup> Apeldyn has not disputed that AUO and CMO have their respective principal places of business in Taiwan. Apeldyn has asserted that CMO USA has its principal place of business in California, and CMO USA has not disputed this assertion.

incurred in traveling for counsel and court reporters and counsel are better equipped to bear the burden of travel than are deponents who must lose time from work to travel to be deposed, Apeldyn has not shown that the procedures for taking depositions in Taiwan will in any way substantively prejudice Apeldyn or prevent it from obtaining evidence, and Apeldyn is admittedly willing to travel to California for CMO USA depositions;

**WHEREAS**, the Special Master concludes that the location of counsel, while weighing in favor of Apeldyn, is of nominal significance in this United States patent infringement case where all parties necessarily have United States counsel and where defendants include foreign corporations;

**WHEREAS**, the Special Master concludes that the number of deponents weighs in favor of defendants for at least the reasons that each of AUO and CMO intend to produce multiple witnesses, all of whom are located in Taiwan, and at least AUO has indicated that certain individuals will be more readily available - consistent with the Court's Amended Scheduling Order - to appear as deponents in Taiwan rather than the United States<sup>3</sup>;

**WHEREAS**, the Special Master concludes that the number of deponents weighs in favor of defendants for at least the reasons that each of AUO and CMO intend to produce multiple witnesses, all of whom are located in Taiwan, and at least AUO has indicated that certain individuals will be more readily available - consistent with the Court's Amended Scheduling Order - to appear as deponents in Taiwan rather than the United States<sup>4</sup>;

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<sup>3</sup> While Apeldyn complains the defendants collectively have dragged their feet on designating the number and identity of their witnesses, Apeldyn has not brought the matter to the attention of the Special Master before the filing of DM 6 & DM 8.

<sup>4</sup> While Apeldyn complains the defendants collectively have dragged their feet on designating the number and identify of their witnesses, Apeldyn has not brought the matter to the attention of the Special Master before the filing of DM 6 & DM 8.

**WHEREAS**, the Special Master concludes the factor of the deponent's regular travel to the United States to be neutral for the following reasons: (1) AUO and CMO have not yet identified any individual deponents; (2) Apeldyn has shown that some individuals from these 40,000-plus-employee defendants travel to the United States, but there has been no showing that any of the likely deponents actually travel to the United States on a regular basis; and (3) the Special Master takes defendants' counsel at their word that certain potential deponents have never traveled to the United States;

**WHEREAS**, for all of the foregoing reasons the Special Master concludes that, Apeldyn has failed to rebut the general presumption that depositions of corporate designees under Fed. R. Civ. P. 30(b)(6) occur in the location of the corporation's principal place of business; and

**WHEREAS**, in light of the deadline for completion of fact discovery being January 28, 2011, the Special Master concludes and the parties agreed (Hrg Tr.75:18-24; 76:1-13) that it is critically important to achieve final decision in this matter on an expedited basis, that the time within which a party may, pursuant to Fed. R. Civ. P. 53(f)(2), file objections to any Special Master's Order should be shortened and that any briefing to the Court on an application under Fed. R. Civ. P. 53(f)(2) should be expedited, with a shortened page limit;

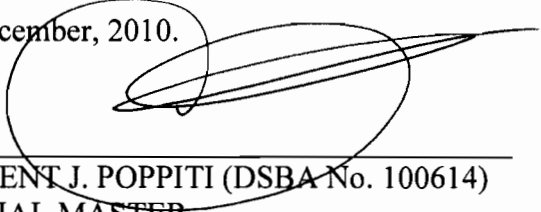
**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Fed. R. Civ. P. 30(b)(6) depositions of AUO shall proceed in Taiwan.
2. The Fed. R. Civ. P. 30(b)(6) depositions of CMO shall proceed in Taiwan.
3. The Fed. R. Civ. P. 30(b)(6) depositions of CMO USA shall proceed in California unless another mutually acceptable location is agreed upon between Apeldyn and CMO USA.
4. The Fed. R. Civ. P. 30(b)(6) depositions of AUO, CMO, and CMO USA shall be completed by January 28, 2010.

5. Counsel for AUO and CMO shall cooperate with counsel for Apeldyn to schedule the depositions in Taiwan to maximize efficiency and convenience and to arrange for all depositions to be held during the same trip unless otherwise agreed to by Apeldyn.

THE SPECIAL MASTER'S OPINION AND ORDER WILL BECOME A FINAL ORDER OF THE COURT UNLESS OBJECTION IS TAKEN IN ACCORDANCE WITH THE ANTICIPATED ORDER OF THE COURT WHICH SHORTENS THE TIME WITHIN WHICH AN APPLICATION MAY BE FILED PURSUANT TO FED. R. CIV. P. 53(f)(2).

SO ORDERED, this 13th day of December, 2010.



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VINCENT J. POPPITI (DSBA No. 100614)  
SPECIAL MASTER