

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AVAGO TECHNOLOGIES FIBER IP)
(SINGAPORE) PTE. LTD.,)
)
Plaintiff,)
)
v.)
)
IPTRONICS, INC. and IPTRONICS A/S,)
)
Defendants.)

Case No.: C 10-CV-02863 EJD (PSG)
**ORDER GRANTING-IN-PART
MOTION TO DE-DESIGNATE AND
MODIFY THE PROTECTIVE ORDER**
(Re: Docket No. 221)

On April 6, 2012, Plaintiff Avago Technologies Fiber IP (Singapore) Pte. Ltd. (“Avago”) filed an administrative motion to de-designate certain product samples marked highly confidential by Defendant IPtronics, Inc. and IPtronics A/S (“IPtronics”) and to modify the court’s protective order. IPtronics opposes the motion.

IPtronics argues that Avago improperly filed an administrative motion to resolve a substantive dispute. IPtronics is right. Civil Local Rule 7-11 is reserved for “miscellaneous administrative matters, not otherwise governed by a federal statute, Federal or local rule or standing order of the assigned judge,” including but not limited to “motions to exceed otherwise applicable page limitations or motions to file documents under seal.” A motion for administrative relief “is not the appropriate vehicle for resolution of the substantive arguments raised by the

1 parties.”¹ As IPtronics correctly noted, the de-designation of product samples and modification of
2 the parties’ stipulated protective order are substantive issues. These issues are not suitable for
3 filing under the shortened time and briefing requirements of Civil Local Rule 7-11.²

4 Despite Avago's procedural violation, in light of its own delay in resolving this dispute and
5 its understanding of the parties' arguments, the court will proceed to consider the merits of the
6 dispute.

7 The parties’ dispute centers around what Avago views as overly broad restrictions on
8 discovery. Avago first seeks modification of the prosecution bar in the protective order,
9 complaining the language is overbroad. However, Avago wrongly suggests that it had no role in
10 urging this language upon the court. In fact, the parties negotiated at length before they jointly
11 submitted the language of the stipulated protective order to the court.³ If Avago is unhappy with
12 the consequences of the language it agreed upon, those consequences are of its own making, and
13 there is no reason to alter it at this late stage.

14 Regarding IPtronics’ designation of certain products as “Highly Confidential – Attorney’s
15 Eyes Only,” the court agrees that this higher level of confidentiality is unwarranted. The
16 designating party bears the burden of showing its designation is correct.⁴ Under the stipulated
17 protective order, the standard for “Highly Confidential – Attorney’s Eyes Only” is “extremely
18 sensitive” information, “disclosure of which... would create a substantial risk of serious harm that
19 could not be avoided by less restrictive means.”⁵ The standard dictates that the information cannot
20 be disclosed to the receiving party itself, but only to the receiving party’s outside counsel and other
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22 ¹ Hess v. Astrazeneca Pharmaceuticals, L.P., Case No. 06-0572 PJH, 2006 WL 2092068, at *1
23 (N.D. Cal. July 26, 2006).

24 ² See Civ. L.R. 7-11 (limiting motions and oppositions to five pages each and requiring oppositions
to be filed no later than four days after the filing of the motion).

25 ³ See Docket No. 77; Docket No. 227 ¶ 4.

26 ⁴ See Docket No. 77; See also Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1130 (9th
27 Cir. 2003).

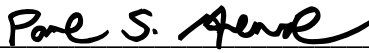
28 ⁵ See Docket No. 77.

1 select individuals who agree to be bound by the prosecution bar.⁶ Avago has shown that IPtronics
2 has distributed the products at issue only under the label of “Confidential,” or “treated and
3 maintained as confidential by the receiving party.”⁷ IPtronics relied on this lower, not higher, level
4 of confidentiality in distributing the products to a third-party (but Avago-related) entity, Avago
5 Technologies U.S., Inc.⁸ IPtronics cannot now claim that the lower level of confidentiality is
6 insufficient to protect their products when they have previously distributed products to customers
7 under only that level of confidentiality. If the lower level of confidentiality was sufficient outside
8 of this litigation, it will be sufficient inside of it.

9 Avago’s motion to modify the protective order is DENIED. Avago’s motion to re-
10 designate certain samples under the lower standard of “Confidential” is GRANTED.

11 **IT IS SO ORDERED.**

12 Dated: January 2, 2013

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14 PAUL S. GREWAL
15 United States Magistrate Judge

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⁶ See Docket No. 77.

27 ⁷ See Docket No. 222 ¶¶ 10-11, Ex. G.

28 ⁸ See Docket No. 226 ¶ 8.