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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

XILINX, INC.,)
)
 Plaintiff,)
)
 v.)
)
 DOES 1 THROUGH 10,)
)
 Defendants.)
_____)

Case No. 10-03244 PVT

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF XILINX, INC.'S *EX PARTE* MOTION FOR EXPEDITED DISCOVERY

[Docket No. 5]

Plaintiff Xilinx, Inc. moves for leave to conduct expedited discovery prior to the Rule 26 conference. ("Xilinx"). Specifically, plaintiff Xilinx moves to serve Doe Defendants' Internet Service Providers with subpoenas pursuant to Rule 45 to determine their true identities.

Plaintiff Xilinx is a semiconductor company that offers certain software in pre-engineered hardware blocks. (known as "IP cores"). Customers develop their own designs by choosing specific IP cores. As a general matter, plaintiff Xilinx has developed special encryption software to protect the IP cores. And plaintiff Xilinx has registered two versions of its software with the U.S. Copyright Office.

Plaintiff Xilinx alleges that the Does Defendants have obtained copies of its special encryption software and related instructions and publicly posted them on a Usenet newsgroup known as "comp.arch.fpga."

1 On July 23, 2010, plaintiff Xilinx filed a complaint against the Does Defendants alleging
2 claims, including copyright infringement and a violation of the Digital Millennium Copyright
3 Act. To date, plaintiff Xilinx has been unable to determine the true identities of the Does
4 Defendants. It has determined their Host IP addresses only.

5 "A party may not seek discovery from any source before the parties have conferred as
6 required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule
7 26(a)(1)B), or when authorized by these rules, by stipulation, or by court order." Fed. R. Civ. P.
8 26(d). However, "a court may order pre-conference discovery upon a showing of good cause."
9 *UMG Recordings, Inc., et al. v. John Doe*, 2008 WL 4104207 *1 (N.D. Cal.)(citing *Semitool,*
10 *Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 275-276 (N.D. Cal. 2002)). "Good cause
11 may be found where the need for expedited discovery, in consideration of the administration of
12 justice, outweighs the prejudice to the responding party." *Id.*

13 Here, plaintiff Xilinx does not know the true identities of the Does Defendants, only their
14 Host IP addresses. The court finds that it is appropriate to allow plaintiff Xilinx to conduct
15 discovery to determine their true identities. Therefore, plaintiff Xilinx has shown good cause to
16 obtain discovery in advance of the Rule 26 conference.

17 Plaintiff Xilinx proposes to obtain the following discovery:

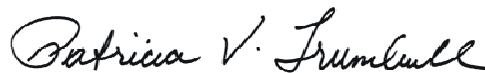
18 all logs, records, data, documentation, activity history and other information
19 containing the names, current and permanent addresses, telephone numbers, email
20 addresses, and posting Host IP addresses ("subscriber information") for the
persons responsible for the user or account name "doomsten" and/or associated
with the email address doom.zhang@gmail.com.

21 As in *UMG Recordings, Inc., et al. v. John Doe*, 2008 WL 4104207 *2, "the court agrees that
22 documents identifying John Doe's name, current and permanent address, e-mail address . . . will
23 permit [the plaintiff] to identify and serve John Doe." However, discovery related to "activity
24 history" and any "other information" is too broad. Moreover, there is no basis to obtain Does
25 Defendants' telephone number. *Id.* Therefore, plaintiff Xilinx may serve Rule 45 subpoenas on
26 Does Defendants' Internet Service Providers to obtain their names, addresses and email
27 addresses in advance of the Rule 26 conference. Accordingly, plaintiff Xilinx's *ex parte* motion
28 is granted

1 in part and denied in part.

2 IT IS SO ORDERED.

3 Dated: August 27, 2010



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5 PATRICIA V. TRUMBULL
6 United States Magistrate Judge
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