

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

AMC TECHNOLOGY, LLC,)	Case No.: 11-cv-3403 PSG
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF’S
v.)	MOTION TO COMPEL DEPOSITION
)	OF BRIAN MCCORMACK
CISCO SYSTEMS, INC.,)	
)	(Re: Docket No. 91)
Defendant.)	

Plaintiff AMC Technology, LLC (“AMC”) moves to compel a deposition of Brian McCormack (“McCormack”).¹ Defendant Cisco Systems, Inc. (“Cisco”) opposes on the grounds that AMC already has deposed ten individuals and has not shown good cause either to depose an eleventh individual or to modify the fact discovery cut-off date.² The parties stipulated to shortened time on hearing this motion, AMC agreed not to file a reply, and the court heard oral arguments on February 12, 2013.³

The court recounts here only its decision and a summary of its reasoning. Pursuant to Fed. R. Civ. P. 30(a)(2)(A)(i), a party must obtain leave from the court for a deposition if it “would result in more than 10 depositions being taken.” The court “must grant leave to the extent

¹ See Docket No. 91.

² See Docket No. 95.

³ See Docket Nos. 93, 97.

1 consistent with Rule 26(b)(2).” Fed. R. Civ. P. 26(b)(2) in turn provides that the court must limit
2 the frequency or extent of discovery if it determines that: (1) “the discovery sought is unreasonably
3 cumulative or duplicative, or can be obtained from some other source that is more convenient, less
4 burdensome, or less expensive”; (2) “the party seeking discovery has had ample opportunity to
5 obtain the information by discovery in the action”; or (3) “the burden or expense of the proposed
6 discovery outweighs its likely benefit.”

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8 The court finds that AMC has shown good cause for deposing McCormack after the fact
9 discovery cut-off date. AMC seeks to depose McCormack because it asserts that he has firsthand
10 knowledge of defamatory statements made by Cisco to TD Ameritrade regarding AMC’s products,
11 which AMC contends are crucial for its defamation claims.⁴ AMC asserts that it expected Cisco to
12 produce a Rule 30(b)(6) deponent with knowledge of statements by Cisco regarding AMC
13 products.⁵ Cisco responds that AMC failed to ask the deponent Cisco offered about his knowledge
14 of the statements while he was deposed in his 30(b)(6) capacity.⁶ Cisco also asserts that it earlier
15 objected to AMC’s deposition topic regarding the defamation and so AMC had notice that it might
16 need to seek a third-party deponent.⁷ Cisco finally argues that AMC has not shown McCormack in
17 fact has firsthand knowledge of the Cisco statements.

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19 An additional deposition is warranted. AMC expected a deponent from Cisco with
20 knowledge of communications about AMC, and Cisco agreed to provide a deponent who could
21 speak at least generally to those communications.⁸ Cisco’s designated deponent could not testify to
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⁴ See Docket No. 91.

25 ⁵ See id.

26 ⁶ See Docket No. 95.

27 ⁷ See id.

28 ⁸ See id.

1 either general or specific communications.⁹ As to Cisco’s assertions regarding whether
2 McCormack has firsthand knowledge, the deposition would serve to establish whether he has
3 admissible information. Pursuant to Fed. R. Civ. P. 26(b), discovery is relevant if it “appears
4 reasonably calculated to lead to the discovery of admissible evidence”; the discovery itself need not
5 be admissible. A deposition of a witness who has knowledge of certain statements reasonably
6 could lead either to admissible testimony from him or to other admissible evidence.

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8 As to the timing of the request, the court notes that AMC subpoenaed McCormack and
9 would have completed the deposition before the close of discovery save for Cisco’s objection to an
10 eleventh deposition.¹⁰ Cisco’s argument regarding late discovery¹¹ – especially in light of the
11 representation by AMC that both parties plan to engage in ongoing discovery despite the court’s
12 scheduling order¹² – is unavailing.

13 AMC may take the deposition of McCormack within fourteen days of this order. In light of
14 this order, to the extent the parties argue that an adjustment of the pretrial schedule is warranted,
15 they should submit a stipulation and proposed order.

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17 **IT IS SO ORDERED.**

18 Dated: February 15, 2013

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20 _____
21 PAUL S. GREWAL
22 United States Magistrate Judge

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26 ⁹ See Docket No. 91 Ex. D.

27 ¹⁰ See id. Ex. G.

28 ¹¹ See Docket No. 95.

¹² See Docket No. 91.