UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

BLADEROOM GROUP LIMITED, et al.,

Plaintiffs,

v.

FACEBOOK, INC., et al.,

Defendants.

Case No.5:15-cv-01370-EJD (HRL)

ORDER RE DISCOVERY DISPUTE JOINT REPORT NO. 14

Re: Dkt. No. 307

In Discovery Dispute Joint Report (DDJR) #14, plaintiffs (collectively "BladeRoom") complain that the Emerson defendants did not comply fully with the court's order on DDJR #10 and ask the court to this time insist that they comply, and, better still, order evidentiary sanctions.

The dispute concerns damages. If BladeRoom proves its allegations that the Emerson defendants misappropriated trade secrets, then what were the secrets worth? Following the alleged misappropriation, Emerson sold off a large host of its business units, including the two entities and one "division" that were where the plaintiffs allege the stolen secrets went to roost. The two entities were Emerson Network Power Solutions, Inc. ("ENPS") and Liebert Corporation, and the division was called Hyperscale. (Defendant Emerson is the parent of ENPS and Liebert, and these three are the "Emerson defendants" in this suit.) It is not clear to the court if Hyperscale is a division of ENPS or Liebert. In any event, BladeRoom figured that the price paid for ENPS,

Liebert, and Hyperscale would be an indicator of what the secrets were worth. However, discovery revealed that the value attributed by Emerson to these three was only a small fraction of the total price paid for the whole host of units sold. BladeRoom felt that the numbers were artificially low and that further discovery could suss out support for a higher allocation of the price paid for the whole host.

In DDJR #10 plaintiffs were looking for an order requiring the Emerson defendants to give valuation information on all the units that were sold off. The order that the court issued granted further valuation discovery on "Emerson Network Power," on Liebert, and on Hyperscale. The context of the order makes it clear that the court was limiting discovery, not enlarging it. Nonetheless, plaintiffs seize on the words Emerson Network Power to claim that the court actually threw open valuation discovery for ALL of the business units that were sold off. This argument is based on its explanation that Emerson Network Power was the "brand name" for the whole host of units that were sold off, so the court must have meant that individual valuations on the whole host were being ordered produced.

Plaintiffs are mistaken. In DDJR#10 the court was using the words Emerson Network Power in the same way that BladeRoom itself had used it in the past: as a shorthand descriptor for Emerson Network Power Solutions, Inc. (ENPS, one of the defendants here). See, for example, the Definition that plaintiffs used in their first set of requests for production of documents: ". . . . 'Emerson Network Power' means Defendant Emerson Network Power Solutions, Inc. . . .." (Dkt. 198-1, Ex. A at ECF p. 3).

That was the definition that was before the court in DDJR #9, and the court in a footnote in its order on DDJR #9 said: "The actual words used in RFP 45 are 'Emerson Network Power,' but the definition's accompanying the RFP tell the reader that Emerson Network Power is just plaintiffs' shorthand for Emerson Network Power Solution, Inc." (Dkt. 243 at 2 n.1).

When DDJR #10 came before the court some time later, it did not occur to the court that plaintiffs had modified their definitions in subsequent RFPs. The court now sees that plaintiffs had reworked the definition of Emerson Network Power to mean the "brand" name for ALL the business units sold off rather than simply a short hand way to describe ENPS. (Dkt 264-10, Ex. E

at ECF p. 4). The court did not pick up on the revised definition and assumed that the name Emerson Network Power continued to mean what it had meant before. The court regrets any confusion.

So, the Emerson defendants are correct in their opposition to plaintiffs' argument in DDJR #14. The court did not intend to order production of valuation information on all the units sold off under the brand name Emerson Network Power. It intended (and thought it was doing so) to order production of all available valuation information on ENPS, Liebert, and the Hyperscale division. Indeed, if the court had intended to order valuation discovery of all the sold off business units, there would have been no need to specifically mention Liebert and Hyperscale, since they were just two of the many. And, the Emerson defendants say they have produced all there is on the three business units (two companies and one division). BladeRoom's contention that there must be more is not persuasive. So long as the Emerson defendants have (or, will) submit proper verifications, then that ends this inquiry.

BladeRoom's request for a further order on valuation discovery beyond the three business units alleged to have the alleged trade secrets, as well as for evidentiary sanctions, is denied.

SO ORDERED.

Dated: July 25, 2017

HOWARD R. LLOYD
United States Magistrate Judge

United States District Court
Northern District of California