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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MONOLITHIC POWER SYSTEMS, INC.,

Plaintiff,

v.

INTERSIL CORPORATION,

Defendant.

Case No. [5:18-mc-80060-HRL](#)

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
QUASH SUBPOENAS**

Re: Dkt. Nos. 1, 3

The present discovery dispute arises out of litigation filed by plaintiff Monolithic Power Systems, Inc. (MPS) in the District of Delaware against Intersil Corporation (Intersil), an MPS competitor in the semiconductor industry. This court is told that the lawsuit concerns Intersil's alleged theft of MPS's claimed confidential technical information concerning a fix for a problem in motherboards manufactured by MPS's customer, Supermicro Computer, Inc. (Supermicro). MPS claims that Intersil misused that information to defame MPS's products to MPS's customers. Among other things, Intersil disputes that MPS took reasonable steps to maintain the confidentiality of the claimed trade secrets that Intersil supposedly misappropriated.

Relevant to the present discovery dispute is what, if any, non-disclosure agreements (NDAs) MPS had in place with Supermicro prior to the filing of the lawsuit. The parties disagree whether Intersil should be permitted to depose one of MPS's in-house attorneys, Ms. Lindsey

1 Munro.¹ Munro was involved in the negotiation of what MPS calls a “renewal NDA” entered
2 between MPS and Supermicro shortly after this litigation was filed on December 6, 2016. She
3 also prepared two slide presentations on NDAs that MPS says were used by the company to train
4 employees on confidentiality issues.

5 Prior to the signing of the December 2016 NDA, MPS says that it had an “unwritten
6 confidentiality understanding” with Supermicro, as well as protections afforded by the terms and
7 conditions of MPS’s web portal, “MyMPS.” Intersil scoffs at the characterization of the
8 December 2016 NDA as a “renewal,” and questions what, if any, NDA arrangements actually
9 were in place prior to the entry of that agreement. Intersil also has its doubts about the MyMPS
10 web portal terms and conditions, which Intersil says, concern materials made available in
11 connection with the use of that particular website. Defendant also claims that Supermicro
12 employees who logged on to MyMPS to download data sheets had no authority to bind
13 Supermicro to a contract.

14 Intersil now wants to depose Munro about the content of her negotiations with Supermicro
15 concerning the December 2016 NDA. This discovery is crucial, says defendant, because Intersil
16 believes that the December 2016 NDA “renewed” nothing and that any suggestion about
17 “updated” NDAs merely was a notion MPS concocted after-the-fact to support its allegations. For
18 its part, MPS maintains that the December 2016 NDA is irrelevant because it was not operative
19 during case events. At any rate, MPS contends that Intersil has not shown that Munro’s deposition
20 is warranted. Additionally, MPS says that Intersil had the documents purportedly providing the
21 basis for Munro’s deposition for over a year. Thus, MPS argues that defendant’s efforts to depose
22 Munro (and to have her produce documents in connection with the deposition) come far too late in
23 the case. Here, MPS points out that under the case schedule, document discovery was to have
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25 ¹ MPS also moved to quash a subpoena for the deposition of Trip Slautterback, an MPS sales
26 employee. However, having agreed to make Slautterback available for deposition, and having
27 further agreed to have the dispute over that deposition resolved in Delaware, MPS said that it
28 included Slautterback in the present motion simply as a precaution. This court is informed that
Slautterback has since been deposed. MPS’s motion to quash as to him therefore is denied as
moot.

1 been substantially completed by November 17, 2017, and fact discovery closed on March 30,
2 2018.

3 The matter is deemed suitable for determination without oral argument, and the May 1,
4 2018 hearing is vacated.² Civ. L.R. 7-1(b). Upon consideration of the moving and responding
5 papers, this court grants MPS’s motion to quash as to Munro.

6 Although there is no absolute prohibition against deposing an opposing party’s counsel,
7 such examinations “should be permitted only where the party seeking the deposition shows that
8 (1) no other means exist to obtain the information, (2) the information sought is relevant and
9 nonprivileged, and (3) the information is crucial to the preparation of the case.” *Chao v. Aurora*
10 *Loan Servs., LLC*, No. C10-3118 SBA (LB), 2012 WL 5988617, at *3 (N.D. Cal., Nov. 26, 2012)
11 (citing *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986)); *Graff v. Hunt &*
12 *Henriques*, No. C08-0908 JF (PVT), 2008 WL 2854517 at *1 (N.D. Cal., July 23, 2008) (same).

13 Intersil has not persuaded that the information it seeks meets the Shelton criteria.
14 Defendant wants to examine Munro about the “content of her negotiations with Supermicro to
15 determine what, if any, NDA arrangements were in place prior to the so-called ‘update.’” (Dkt. 6-
16 3 at ECF p. 7). Intersil says that Munro’s deposition is important because neither Rohan Samsi
17 (MPS’s Fed. R. Civ. P. 30(b)(6) designee) nor Kevin Bauer (Supermicro’s Fed. R. Civ. P. 30(b)(6)
18 designee) were able to testify about Munro’s communications with Supermicro. Although
19 communications between Munro and Supermicro are not privileged, MPS says that those
20 communications occurred by email, all of which have been produced. (Dkt. 2-4). Intersil does
21 not, on this motion, challenge the completeness of that email production. True, one of the emails
22 indicates that Munro had a phone call with Supermicro. However, that email appears to simply
23 reflect agreement about certain proposed edits that had already been discussed by others: “Hi
24 Deanna, thank you for talking with me earlier. As we discussed, I made a few changes to the
25 Supermicro NDA consistent with the discussions between Joseph and Saria.” (Dkt. 2-4 at ECF p.

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28 ² MPS does not consent to the transfer of this motion to Delaware for resolution, and Intersil has
not asked for a transfer order.

1 3). And, in response to an interrogatory asking about MPS’s communications with Supermicro,
2 MPS confirmed that “the only non-written correspondence about this negotiation consisted of
3 MPS proposing the edits reflected in MPS_INT0005144-46, and Supermicro agreeing to these
4 edits without further discussion; this correspondence and agreement was reflected in e-mail
5 correspondence afterward.” (Dkt. 8-10 at ECF p. 12).³

6 Intersil nonetheless argues that it should be permitted to depose Munro about the NDA
7 slide presentations that she prepared, stating that the presentations are “the only policies and
8 procedures governing the protection, use, and/or treatment of trade secrets that [MPS] has been
9 able to identify . . .” (Dkt. 6-3 at ECF p. 10). Intersil maintains that a deposition about the
10 presentations is crucial because the slides contain mostly “bullet points” rather than “detailed
11 expositions of [MPS’s] policies.” (Dkt. 6-3 at ECF p. 10). However, MPS points out that it has,
12 in response to interrogatories, denied that the presentations are company “policies.” (Dkt. 8-8 at
13 ECF pp. 22-26). Moreover, MPS argues that although defendant certainly had the opportunity to
14 do so, Intersil never sought discovery about documents MPS produced and which MPS says are
15 the company’s “actual confidentiality policies”---including an employee handbook, an IT
16 department handbook, and a “Design and Development Data Security Procedure”---none of which
17 were authored by Munro. (See Dkts. 8-5, 8-6, 8-7). Intersil nevertheless contends that the slides
18 contain statements that reportedly contradict Mr. Samsi’s Fed. R. Civ. P. 30(b)(6) deposition
19 testimony as to whether any individual employee is authorized to bind the corporation to an NDA
20 agreement. However, Intersil has not convincingly demonstrated that a probing deposition of
21 Munro is warranted to expound upon claimed discrepancies that are apparent on the face of the
22 documents themselves.

23 In sum, Intersil has not convincingly demonstrated that Munro has any unique or personal
24 knowledge relevant to the issues that cannot be obtained from other sources. MPS’s motion to
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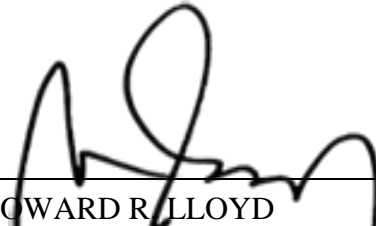
28 ³ Although one or both sides have asked to seal MPS’s emails and interrogatory responses, the contents discussed in this order were disclosed by MPS in its public filings.

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quash therefore is granted.

SO ORDERED.

Dated: April 27, 2018



HOWARD R. LLOYD
United States Magistrate Judge