

EXHIBIT O

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SOVERAIN SOFTWARE LLC,	§	
	§	
Plaintiff	§	
	§	6:04-CV-14
v.	§	
	§	
AMAZON.COM, INC.	§	
	§	
Defendant	§	

ORDER

Having considered the parties' written submissions and oral arguments, the Court memorializes its oral ruling and **GRANTS** Soverain Software LLC's Motion for a Protective Order (Docket No. 171).

BACKGROUND

Soverain brought this patent infringement suit against Amazon.com and the Gap. Through mediation the Gap and Soverain settled their dispute, but the claims and counterclaims between Soverain and Amazon still remain. By a subpoena issued by another district court, Amazon now seeks four categories of documents from the Gap's attorneys: (1) the settlement term sheet from the mediation, (2) the final settlement agreement, (3) documents exchanged between Soverain and the Gap, such as demand letters and counteroffers, and (4) any prior art that the Gap cited to Soverain during settlement negotiations. Pursuant to their settlement's confidentiality agreement, the Gap notified Soverain of the subpoena, and Soverain sought protection from this Court to prevent Amazon from obtaining these documents from the Gap.

ANALYSIS

This discovery dispute pits two of the Court's practices against each other. The Court is an ardent proponent of mediation and requires all parties to attempt to resolve their differences through mediation. The Court also enforces a broad policy that all relevant information is discoverable, with a few exceptions. In the current dispute, Soverain champions the former, while Amazon advocates the latter.

If mediation and settlement negotiations are not kept confidential from other parties to the litigation, parties will be less forthright in their negotiations and less likely to resolve their differences without the need for a trial. In order for mediation to be effective, parties must be able to approach mediation secure in its confidentiality. A party should not fear that those things it discloses in mediation will later be used as a sword against it. Parties should not be penalized for attempting to use mediation to reach a settlement.

In this situation, the Court's policy favoring mediation slightly outweighs its policy favoring broad discovery. A party cannot, however, use mediation as a shield to hide what would otherwise be discoverable information. Thus, if Soverain learned of any previously unknown prior art from the Gap during mediation, Soverain is obligated to disclose that to Amazon. Soverain has assured the Court and Amazon that it has disclosed all known prior art.

The Court's discovery order does require the parties to disclose all settlement agreements related to the litigation. The final settlement agreement, if anything, may be discoverable especially if it contains a licensing agreement. The parties have agreed to discuss disclosing the final settlement agreement, and it is currently not necessary for the Court to rule on whether or not it is discoverable.

CONCLUSION

The Court **GRANTS** Sovereign's motion in all respects without prejudice to Amazon filing a motion to compel, as it originally should have done in seeking this information.

So **ORDERED** and **SIGNED** this 15th day of March, 2005.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE