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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

IMMERSION CORPORATION,

Defendant.

CASE NO. C07-936RSM

ORDER DENYING IMMERSION'S
MOTION TO COMPEL

I. INTRODUCTION

This matter comes before the Court on “Immersion Corporation’s Motion to Compel Production of Documents Responsive to Request Nos. 53, 54 and 71 and Referenced in Response to Interrogatory No. 7.” (Dkt. #56). Defendant Immersion Corporation (“Immersion”) seeks an order from the Court compelling Plaintiff Microsoft Corporation (“Microsoft”) to produce settlement agreements that Microsoft entered into in all patent lawsuits after a judgment was entered for or against Microsoft. Immersion argues that these settlement agreements are relevant to the instant case because they would reveal Microsoft’s own practice and understanding of what constitutes a settlement of a district court proceeding. Immersion also contends that its requests are neither overly burdensome nor precluded by any confidentiality objections.

1 Microsoft responds that Immersion’s requests are irrelevant because settlement
2 agreements that Microsoft entered into in separate patent lawsuits have no bearing to the
3 instant lawsuit. Microsoft also contends that Immersion’s requests are overly burdensome,
4 and that confidential settlement agreements are not discoverable.

5 For the reasons set forth below, the Court agrees with Microsoft, and DENIES
6 Immersion’s motion to compel.

7 II. DISCUSSION

8 **A. Background¹**

9 On September 11, 2007, Immersion issued its first set of Requests for Production
10 (“RFP”) to Microsoft. (Decl. of Heinrich, ¶ 2). Microsoft timely responded to Immersion’s
11 RFPs on October 11, 2007. (*Id.* at ¶ 3). Soon thereafter, Immersion issued its first set of
12 Interrogatories to Microsoft on January 14, 2008. (*Id.* at ¶ 9). Microsoft timely responded to
13 Immersion’s Interrogatories on February 13, 2008. (*Id.* at ¶ 11). In its responses, Microsoft
14 objected to several of Immersion’s discovery requests, including RFP Nos. 53, 54 and 71, as
15 well as Interrogatory No. 7.

16 Immersion’s RFP No. 53 requests:

17 All purported “settlement agreements,” and agreements entered into connection
18 therewith, between Microsoft and any other entity that were entered into *after a*
19 *judgment was entered against Microsoft and in favor of such other entity* in any legal
20 proceeding involving a claim of patent infringement.

21 (*Id.*, Ex. 1 at 17) (emphasis added).

22 Immersion’s RFP No. 54 requests:

23 All purported “settlement agreement,” and agreements entered into in connection
24 therewith, between Microsoft and any other entity that were entered into after a
25 judgment was entered *against such other entity and in favor of Microsoft* in any legal
26 proceeding involving a claim of patent infringement.

27 (*Id.*) (emphasis added).

28 ¹ The Court has previously discussed the relevant facts that gave rise to this lawsuit in its “Order Denying Microsoft’s Motion to Disqualify.” (Dkt. #54). Accordingly, a detailed discussion of these facts is unnecessary here.

1 Immersion’s RFP No. 71 requests “[a]ll documents identified in your responses to
2 Immersion’s First Set of Interrogatories.” (*Id.* at 21).

3 Immersion’s Interrogatory No. 7 asks Microsoft to “[I]dentify all lawsuits you have
4 settled in which Microsoft or the opposing party satisfied a final judgment.” (*Id.*, Ex. 9 at 6).

5 Microsoft specifically objected to the discovery at issue by claiming that Immersion’s
6 requests were irrelevant, unduly burdensome, and protected by confidentiality provisions in
7 the settlement agreements. The parties conferred regarding the discovery at issue and
8 conducted a Rule 37 conference to no avail. (*Id.* at ¶ 10). As a result, Immersion now brings
9 the instant motion to compel.

10 **B. Relevance**

11 The Court first discusses the threshold issue of whether the settlement agreements at
12 issue are relevant. Pursuant to Fed. R. Civ. P. 26(b)(1), “[p]arties may obtain discovery
13 regarding any nonprivileged matter that is relevant to any party’s claim or defense[.] . . .
14 Relevant information need not be admissible at the trial if the discovery appears reasonably
15 calculated to lead to the discovery of admissible evidence.” *Id.* To be relevant, evidence must
16 have a “tendency to make the existence of any fact that is of consequence to the determination
17 of the action more probable or less probable than it would be without the evidence.” Fed. R.
18 Evid. 401. Information relevant to the subject matter of an action means information that
19 might reasonably assist a party in evaluating a case, preparing for trial, or facilitating
20 settlement. *See generally Hickman v. Taylor*, 329 U.S. 495, 506-07, 67 S.Ct. 385 (1947).
21 Relevance “has been construed broadly to encompass any matter that bears on, or that
22 reasonably could lead to other matter that could bear on, any issue that is or may be in the
23 case.” *Oppenheimer Fund v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380 (1978) (citation
24 omitted). The scope of discovery is within the discretion of the district court. *U.S. v.*
25 *Domina*, 784 F.2d 1361, 1372 (9th Cir. 1986).

26 Here, Immersion argues that the settlement agreements at issue are relevant because
27 they will allow Immersion to determine Microsoft’s practice with regard to settlements of
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1 patent lawsuits. Moreover, Immersion argues that these settlement agreements will shed light
2 upon whether Microsoft understands or uses the term “settlement” to refer to the satisfaction
3 of a final judgment. Immersion alleges that this is central to its defense in this case because it
4 argues that Microsoft should know that a “settlement” never occurs when a final judgment is
5 satisfied, which Immersion indicates occurred in the underlying patent litigation. In support of
6 this argument, Immersion claims that extrinsic evidence is admissible to prove the intent of the
7 parties when a court interprets a contract.

8 Under Washington state case law, it is well established that “[t]he touchstone of
9 contract interpretation is the parties’ intent.” *Tanner Elec. Coop. v. Puget Sound Power &
10 Light Co.*, 128 Wash. 2d 656, 674, 911 P.2d 1301 (1996) (citation omitted). To ascertain
11 intent, courts first look to the objective manifestations of the agreement. *Hearst
12 Communications, Inc. v. Seattle Times Co.*, 154 Wash. 2d 493, 503, 115 P.3d 262 (2005)
13 (citation omitted). The objective manifestations, however, are not always easily identifiable by
14 examining the agreement itself. Therefore a trial court may resort to extrinsic evidence “for
15 the purpose of aiding in the interpretation of what is in an instrument.” *Berg v. Hudesman*,
16 115 Wash. 2d 657, 669, 801 P.2d 222 (1990). Extrinsic evidence includes “the subject matter
17 and objective of the contract, all the circumstances surrounding the making of the contract,
18 the subsequent acts and conduct of the parties to the contract, and the reasonableness of
19 respective interpretations advocated by the parties.” *Id.* at 667.

20 However, Washington courts have set forth limitations upon the scope of admissible
21 extrinsic evidence. For example, “[a]dmissible extrinsic evidence does *not* include [] evidence
22 of a party’s unilateral or subjective intent as to the meaning of a contract word or term[.]”
23 *Bort v. Parker*, 110 Wash. App. 561, 574, 42 P.3d 980 (2002) (citation omitted) (emphasis in
24 original); *see also Go2Net, Inc. v. C I Host, Inc.*, 115 Wash. App. 73, 85, 60 P.3d 1245
25 (2003) (“When considering the circumstances leading up to and surrounding a writing, a court
26 examines the parties’ objective manifestations, but not their [‘]unilateral or subjective
27 purposes and intentions about the meanings of what is written.[’]”) (citations omitted). In
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1 addition, “unexpressed impressions are meaningless when attempting to ascertain the mutual
2 intentions [of the parties].” *Lynott v. Nat’l Union Fire Ins. Co.*, 123 Wash. 2d 678, 684, 871
3 P.2d 146 (1994) (citation omitted).

4 As related to the instant motion, it is therefore clear that the settlement agreements at
5 issue are irrelevant to ascertaining the intent of the parties to the contracts at issue *in this*
6 *case*. Any settlement agreements Microsoft entered into prior to or following its Sublicense
7 Agreement (“SLA”) with Immersion in 2003 only establish Microsoft’s unilateral and
8 subjective intent as to what it believes constitutes a settlement agreement. Microsoft’s
9 previous settlement agreements have no bearing upon the actual SLA between Microsoft and
10 Immersion. Nor do they have any bearing upon the agreement between Immersion and Sony
11 Corporation (“Sony”), an agreement that Microsoft claims triggers Immersion’s obligation to
12 pay Microsoft certain specified amounts pursuant to the SLA.

13 Nevertheless, Immersion argues that it is only fair that Microsoft produces such
14 information because this Court has previously compelled the production of documents and
15 communications related to Immersion’s agreement with Sony. (*See* Dkt. #59). Immersion
16 argues that Microsoft “is trying to have things both ways. It wants to get discovery that it
17 believes may support its theories, but block Immersion from exploring fertile territory for
18 evidence that may undermine Microsoft’s own case.” (Dkt. #65 at 5). However, the
19 discovery that the Court previously compelled disclosure of was related to documents and
20 communications underlying Immersion’s agreement with Sony. This agreement is centrally
21 relevant to Microsoft’s breach of contract claim because, as mentioned above, Microsoft
22 alleges that Immersion’s agreement with Sony triggers Immersion’s obligation to pay
23 Microsoft pursuant to the SLA. As such, the only two contracts a fact-finder will need to
24 interpret are the SLA and the agreement between Immersion and Sony. All other contracts
25 are irrelevant.

26 The Court also finds no merit in Immersion’s argument that Microsoft has opened the
27 door to this discovery by answering in part Immersion’s Interrogatory No. 7. Although
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1 Microsoft identified six cases wherein Microsoft settled with another party in a patent lawsuit,
2 it prefaced its response by very clearly retaining its objection on relevancy grounds. (Decl.
3 of Heinrich, Ex. 8 at 11). Additionally, Immersion argues that Microsoft’s counsel inquired at
4 a deposition involving Sony’s in-house counsel as to Sony’s standard practices regarding
5 settlements. Thus, Immersion argues that Microsoft has conceded that the settlement
6 agreements at issue are relevant. However, Immersion offers no authority to support this
7 position, and the Court likewise cannot find any authority to suggest that these circumstances
8 constitute a waiver.

9 Therefore, despite the liberal rules regarding discovery, the settlement agreements at
10 issue in the instant motion are simply too attenuated from the two primary contracts at issue in
11 this case. In addition, while “analysis at [the discovery stage] is not driven by issues of
12 admissibility, but by fairly minimalistic precepts of relevancy,” *In re Potash Antitrust Litig.*,
13 161 F.R.D. 405, 409 (D. Minn. 1995), the relevant information must appear to be “reasonably
14 calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). Here,
15 Washington state case law on contract interpretation clearly excludes the type of extrinsic
16 evidence Immersion seeks. Accordingly, the Court finds that the settlement agreements at
17 issue are irrelevant.

18 **C. Undue Burden and Confidentiality**

19 Because the Court has determined that the discovery at issue is irrelevant, the Court
20 finds it unnecessary to address the remainder of the parties’ respective arguments.

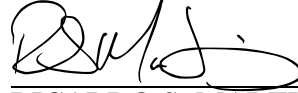
21 **III. CONCLUSION**

22 Having reviewed Defendant’s motion, Plaintiff’s response, Defendant’s reply,
23 Plaintiff’s surreply, the declarations and exhibits attached thereto, and the remainder of the
24 record, the Court hereby finds and orders:

25 (1) “Immersion Corporation’s Motion to Compel Production of Documents
26 Responsive to Request Nos. 53, 54 and 71 and Referenced in Response to Interrogatory No.
27 7” (Dkt. #56) is DENIED.

1 (2) The Clerk is directed to forward a copy of this Order to all counsel of record.
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3 DATED this 5 day of May, 2008.
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5 RICARDO S. MARTINEZ
6 UNITED STATES DISTRICT JUDGE
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