IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BIOSENSE WEBSTER, INC.,	)	
	)	Case No: 8:19-cv-1984 JVS (KESx)
Petitioner,	)	
	)	
v.	)	Case in Other Court: *Innovative Health LLC, v. Biosense Webster, Inc.*,
	)	
ABBOTT LABORATORIES,	)	Case No.: 8:19-cv-1984 JVS (KESx)
	)	(C.D. Cal.)
Respondent.	)	

MOTION TO ENFORCE SUBPOENAS ISSUED TO ABBOTT LABORATORIES

Biosense Webster, Inc. ("Biosense") respectfully requests that the Court compel Abbott Laboratories ("Abbott") to comply, pursuant to Federal Rules of Civil Procedure 37 and 45, with subpoenas issued in the in the above-captioned litigation pending in the Central District of California. Specifically, Biosense has subpoenaed Abbott to (1) produce aggregated and anonymized transactional data for its Advisor HD Grid Mapping Catheter (the "Requested Data") in response to Biosense's subpoena to produce documents served on December 10, 2020, and (2) designate a corporate witness to testify in response to Biosense's Rule 30(b)(6) deposition subpoena.

Over the past eight months, both Biosense and Plaintiff Innovative Health LLC ("Innovative", and together with Biosense, the "Parties") have met and conferred numerous times with Abbott to try to obtain relevant documents and data in response to their respective subpoenas and were finally able to reach agreement with respect to almost all issues after the Parties made significant concessions to Abbott, and Abbott has just now begun to produce responsive documents as the close of fact discovery approaches on September 21, 2021. However, despite agreeing to produce aggregated and anonymized transactional data for all of its

other mapping and ultrasound catheters, Abbott has refused to produce the same data for its Advisor HD Grid Mapping Catheter, a direct competitor of Biosense's Pentaray catheter,[1] one of the catheters at issue in the litigation, forcing Biosense to make this motion. The Requested Data is highly relevant to Biosense's defense against the antitrust claims brought against it; the Requested Data is not burdensome for Abbott to collect and produce; and any confidentiality concerns Abbott may have are more than adequately addressed both by the anonymized and aggregated form in which the Requested Data is sought and by Abbott's ability to designate the Requested Data as Highly Confidential Material under the Protective Order entered by the Court in this case (ECF No. 62, Stipulated Protective Order), which does not permit disclosure of non-party Highly Confidential Material to any Party employee or the Parties' in-house counsel, but only to their outside counsel and experts.

In addition, Abbott has refused to designate a witness to testify orally in response to Biosense's July 23, 2021 Rule 30(b)(6) deposition subpoena (the "Rule 30(b)(6) Deposition") without articulating any reasonable basis for doing so. The subpoena requests relevant testimony and is not unduly burdensome; it seeks a half-day of testimony that would be taken remotely on three narrow topics relevant to market definition, including substitutability of products and the ability of customers to switch between competing products. After two meet and confers, Abbott declared that, absent a court order, it will not designate a witness to testify orally. As such, Biosense now respectfully requests that the Court order Abbott to comply with its Rule 30(b)(6) subpoena pursuant to Rules 37 and 45.[2]

[1] Biosense also manufactures another multi-electrode catheter, the Lasso catheter, which also competes with the Advisor HD Grid Mapping Catheter.

[2] Pursuant to Local Rule 37.2, Biosense states that after multiple good faith attempts to resolve these issues with Abbott, Biosense and Abbott were unable to reach agreement. With respect to the HD Grid transactional data, counsel for the Parties (Lillian Grossbard and Jeff Berhold) met and conferred telephonically with counsel for

BACKGROUND

Innovative, a reprocessor of catheters used with cardiac mapping systems and ultrasound systems in electrophysiology ("EP") procedures, alleges against Biosense in this action monopolization and restraint of trade in violation of federal and state antitrust laws in the alleged nationwide markets for the sale of high-density mapping catheters and ultrasound catheters for use with Biosense's cardiac mapping system, the CARTO 3.[3] (Figliulo Decl. Ex. I [ECF No. 59, Corrected Second Amended Complaint for Damages and Injunctive Relief for Violations of Sherman Act and Cartwright Act ("Corrected Second Amended Complaint"), ¶¶ 12-19].) Abbott is one of a number of original equipment manufacturers of cardiac mapping systems and catheters and is Biosense's leading competitor.

Relevant here, Innovative claims that as a result of Biosense's alleged anticompetitive conduct, Biosense has been able to force customers to pay supra-competitive prices for high-density mapping and ultrasound catheters.[4] In particular, Innovative alleges as purported evidence of supra-competitive pricing that Biosense charges 20% more for new high-density mapping catheters and 10-20% more for new ultrasound catheters for use with the CARTO 3 system than Biosense's competitor Abbott charges for those catheters for use with its cardiac mapping system. (Figliulo Decl. Ex. I [Corrected Second Amended Complaint, ¶ 51].)

Abbott (Rohit Singla) on February 22, 2021, March 3, 2021, June 3, 2021, August 5, 2021 and August 11, 2021. With respect to Biosense's Rule 30(b)(6) subpoena, counsel for Biosense (Lillian Grossbard and Colleen Kozikowski) met and conferred telephonically with counsel for Abbott (Rohit Singla) on August 5, 2021 and August 11, 2021.

[3] Biosense files herewith the Declaration of James R. Figliulo ("Figliulo Decl.") and accompanying exhibits in support of this motion.

[4] According to Innovative's complaint, high-density mapping catheters "provide extremely rapid and highly accurate mapping of the heart's electrical activity to show where to ablate, *i.e.*, destroy, the [cardiac] tissue". Figliulo Decl. Ex. I [Corrected Second Amended Complaint, ¶ 6]. Ultrasound catheters are used to "visualize anatomical structures and blood flow in the heart". *Id.*

1. Requested Data

Given these allegations, both Innovative and Biosense served targeted subpoenas on competing manufacturers of cardiac mapping systems and catheters, including Abbott, requesting (among other things) transactional data for sales of catheters used in EP procedures:

i. **Innovative's Request No. 1:** "Transaction Data. Electronically stored information to be produced in xls format for all of your customer transactions in electrophysiology catheters, including any transaction number, transaction type (*e.g.*, sale, return, credit, rebate, service or administrative fee or charge), invoice number, transaction date, order date, shipping date, delivery date, customer name, customer id, facility name, facility id, billing address, delivery address, order code, item code, product code, part number, product name, product description, unit cost, unit price, product quantity, and total price."[5]

ii. **Biosense's Request No. 3**: "Documents sufficient to show, by year, by month, by customer and by each Cardiac Mapping System and/or Ultrasound System and/or Diagnostic and Mapping Catheter product, your gross revenues, sales allowances, sales discounts, returns, cost of goods sold, other selling costs (*e.g.*, commissions), net revenues, gross profits or losses, gross profit margins, net profits or losses, net profit margins, units sold, list prices and average selling price."[6]

Abbott initially objected in full to Biosense's request but stated its willingness to meet and confer.[7] In addition, Abbott demanded that the Parties "come up with a single proposal for data that would be produced by Abbott." (Figliulo Decl. Ex. J [2021.01.26 Email from R. Singla to L. Grossbard].) Biosense and Innovative agreed and proposed that Abbott produce only data responsive to Biosense's less granular Request No. 3, forgoing Innovative's request for

[5] Figliulo Decl. Ex. A [Innovative's 2020.09.25 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action]. Innovative served a second document subpoena on Abbott with a nearly identical request for transaction data on February 26, 2021, but covering a longer time period. Figliulo Decl. Ex. D [Innovative's 2021.02.26 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action].

[6] Figliulo Decl. Ex. B [Biosense's 2020.12.10 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action].

[7] Figliulo Decl. Ex. C [Abbott's Responses and Objections to Subpoena for Production of Documents Served by Biosense Webster].

transaction-level data. Abbott continued to object, however, citing concerns about disclosing confidential customer sales data. In an effort to compromise, the Parties proposed that Abbott produce anonymized data—*i.e.*, data without customer information—aggregated by month. (Figliulo Decl. Ex. K [2021.05.14 Email from L. Grossbard to R. Singla].) Abbott still refused. Biosense and Innovative agreed to further narrow their request to anonymized catheter sales data aggregated by quarter rather than by month. (Figliulo Decl. Ex. L [2021.06.24 Email from J. Berhold to R. Singla and L. Grossbard].)

After months of negotiations and concessions, Abbott agreed on June 25, 2021 to produce the following aggregated, anonymized sales data for all of its diagnostic, mapping and ultrasound catheters *except* its Advisor HD Grid Mapping Catheter: "[S]ummary sales data for specific lines of diagnostic catheters listed below for 2013-2020 on quarterly basis in the U.S. including average net selling price and quantity . . . [and] its standard cost measure (including components, labor, and operations overhead; but not R&D, marketing, and SGA) on an annual basis" for specific lines of catheters. (Figliulo Decl. Ex. N [2021.06.25 Email from R. Singla to L. Grossbard and J. Berhold]; Figliulo Decl. Ex. P [2021.07.19 Email from R. Singla to L. Grossbard and J. Berhold].) Even after reaching agreement on the scope of Abbott's data production, Abbott insisted on a "global agreement" on each of the Parties' document requests before producing the transactional data or any other responsive documents. (Figliulo Decl. Ex. M [2021.06.25 Email from R. Singla to L. Grossbard and J. Berhold].) As a result, Abbott did not make its first data production until July 30, 2021, less than two months before the close of fact discovery.

For the Advisor HD Grid, Abbott refused to produce any information, claiming that the product was not relevant because certain unspecified features of the Advisor HD Grid differ from

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