

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

ADVANCED MICRO DEVICES, INC., ET
AL.,

Plaintiffs,

v.

TCL INDUSTRIES HOLDINGS CO., LTD.;
ET AL.,

Defendants.

Case No.: 2:22-cv-00134-JRG-RSP

JURY TRIAL DEMANDED

JOINT MOTION FOR ENTRY OF PARTIALLY DISPUTED PROTECTIVE ORDER

Plaintiffs Advanced Micro Devices, Inc. and ATI Technologies ULC (collectively, “AMD” or “Plaintiffs”) and Defendants Realtek Semiconductor Corp. (“Realtek”) (“Defendant”), respectfully move the Court for entry of a Partially Disputed Discovery Order. AMD proposes the Protective Order, attached hereto as Exhibit A. Realtek proposes the Protective Order, attached hereto as Exhibit B.

The parties have met and conferred and agree on all provisions of the proposed Protective Order for this case with the exception of the following disputes.

I. Plaintiffs’ Position:

**a. Scope of Prosecution Bar in Paragraph 11 and Paragraph
28(B)(xviii)**

AMD proposes edits to paragraph 11 to make it clear that the scope of subject patents, i.e., “pertaining to the particular confidential information disclosed in the HIGHLY SENSITIVE MATERIAL” is aligned with the scope in paragraph 28(B)(xviii) of the proposed protective order in this case, i.e., the prosecution bar entered into by the ITC in the co-pending 337-TA-1318 case

(and specifically proposed by *Realtek*), which is “related to the particular confidential information disclosed in the CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY INFORMATION.” Otherwise, there is an inconsistency between broader “the field of the invention of the patents in suit” in paragraph 11, and the subject matter of the subject patents as stated in paragraph 28(B)(xviii).

Paragraph 28(B)(xviii) has been in the parties’ exchanged drafts for weeks now; shortly before the protective order submission was due on September 8, 2022, Realtek suddenly changed course and stated that it believed paragraph 28(B)(xviii) should be removed because it is not in the Model Protective Order. However, several of the parties’ agreed-to provisions in paragraph 28 are not in the Model Protective Order, but they are appropriate because they are already entered in the 337-TA-1318 ITC case. AMD respectfully submits that paragraph 28(B)(xviii), which is a provision *Realtek* advocated for in the 337-TA-1318 case, should remain as part of the source code provisions of paragraph 28, and paragraph 11 should be aligned thereto.

Further, Realtek has not shown any need for such a broader set of subject matter, such as “the field of the invention of the patents in suit,” to apply to any specific counsel in this case. “The court is required to ‘examine all relevant facts surrounding counsel’s actual preparation and prosecution activities, on a counsel-by-counsel basis’ to determine the risk of inadvertent disclosure” (*see Tech Pharmacy Servs., LLC v. Alixa Rx LLC*, Civil Action No. 4:15-CV-00766, 2016 U.S. Dist. LEXIS 142965, at *4 (E.D. Tex. Oct. 17, 2016)), and Realtek has not identified any counsel representing AMD in this action, nor any specific counsel’s activities, which would necessitate broader protections than the scope of paragraph 28(B)(xviii). *In re Deutsche Bank Trust Co. Americas*, 605 F.3d 1373, 1381 (Fed. Cir. 2010). AMD respectfully requests its proposal to be adopted for alignment with paragraph 28(B)(xviii).

b. Source Code Computer Present at Depositions and Trial

Realtek, in its opposition to AMD's pending motion to stay, argued that this case can benefit from cross-use of discovery from the ITC action (Dkt. No. 43 at 12 (Aug. 5, 2022)) yet in this particular instance is seeking more restrictive limits than the protections in the ITC. In particular, Realtek is seeking to remove the requirement for the source code supplier to provide a searchable source code computer to be present at depositions and the trial. *See* Ex. A at ¶ 28(B)(x)(4).

AMD needs the searchable computer to effectively examine party and non-party witnesses who are familiar with the code, on how the code works. This includes the need to examine Realtek witnesses on their understanding of the code (even if it is ARM-based), how it operates, and how it is incorporated into Realtek and TCL products. The majority of source code at issue in this case is ARM-based source code.

For example, ARM identifies on its website that its licensees can access ARM's software products from anywhere in the world through an electronic download hub using "[thei]r [web] browser in the usual manner." *See* "Product Download Hub Getting Started Guide for Arm Partners," dated August 2022 (accessed Sept. 7, 2022), at 2, 25, available at <https://developer.arm.com/documentation/107572/latest>. If Realtek apparently can access its ARM-based code from its own web browsers, on their own computers anywhere in the world, including in the deposition or trial room, Realtek does not provide a justification for insisting that AMD's counsel and experts under the protective order not be able to access the same searchable code on a computer in the same room. Indeed, Realtek has been ordered to provide such a computer at depositions and trial in the co-pending 337-TA-1318 proceedings.

Realtek has previously agreed to making a secure computer available at depositions and the trial in other ITC proceedings, and so it is unclear why the restriction was unnecessary then,

but necessary now. *See, e.g., Certain Video Processing Devices, Components Thereof, and Digital Smart Televisions Containing the Same*, 337-TA-1222, Order No. 14 at 10, 12 (Dec. 9, 2020) (source code protective order agreed-upon by TCL and Realtek requiring that “[t]he supplier shall, on request, make a searchable electronic copy of the Source Code available on a secure computer during depositions and evidentiary hearing testimony of witnesses who would otherwise be permitted access to such Source Code”). If that were not enough, non-party ARM also agreed in the 337-TA-1222 action to allowing remote computers at the evidentiary hearing. *See, e.g., Certain Video Processing Devices, Components Thereof, and Digital Smart Televisions Containing the Same*, 337-TA-1222, Order No. 33 (Feb. 4, 2021) (Non-Party ARM PO Addendum) (“...remote access computers (computers with remote secure access to the standalone computer(s) provided pursuant to paragraph 19 of the Protective Order) will be made available at live and remote depositions and hearings. If the producing party does not agree to allow remote access computers at live depositions and hearings, the parties (including Arm) will meet and confer to discuss suitable logistics for managing the transport of the standalone computer(s) containing Arm Source Code to the site of the deposition or hearing”). Further, this provision is in place already in the 337-TA-1318 proceedings, from which Realtek claims significant efficiencies can be drawn from cross-use of discovery.

The Realtek and non-party witnesses that will be examined in this case are not going to be familiar with hard copies, as they do not work with hard copy printouts in their ordinary course of business. The code, moreover, is voluminous, and it is overly time-consuming and often impractical to examine and move through the code without the benefit of a searchable computer. Fundamental fairness, moreover, requires that AMD have access to a searchable computer at the depositions and trial, given that party and third party fact witnesses may offer altogether new

testimony at depositions and the evidentiary hearing that were not previously included in the hardcopy printouts, disclosed in contention interrogatory responses, or disclosed in expert reports. Without rapid access to searchable source code, AMD's counsel will be artificially handicapped in its ability to check the assertions of fact and expert witnesses in real time. The Court's interest in developing a complete and accurate evidentiary record is paramount but would be impinged by Realtek's proposal.

AMD's concerns that fact witnesses, including party witnesses and/or non-party corporate representatives, may provide unexpected testimony not disclosed in contentions or expert reports are not mere speculation. ARM has previously offered non-infringement testimony and testified that "machine readable portions" of the source code are the "authoritative statement of how the product operates." *Certain Consumer Electronics and Display Devices with Graphics Processing and Graphics Processing Unites Therein*; Inv. No. 337-TA-932, EDIS Doc. ID 559506, Tr. at 598:1-16 (testimony by Mr. Guy Larri of ARM) (June 24, 2015); *see also id.*, EDIS Doc. ID 568758, Init. Det. at 130 (Oct. 9, 2015) ("Mr. Larri consistently explained that the statements relied upon by Nvidia describe only the theoretical flexibility of the GPU hardware by itself, and do not address how ARM driver software configures that hardware to actually operate within mobile devices. (*See e.g.*, Tr. at 629:3-1 1; 636:9-637:7, 639114-25; 68 1:10-23.) Thus, NVIDIA's references to ARM documents that do not describe how Samsung products are configured by the ARM driver software provide no basis to understand actual operation of these accused products.").

Fundamental fairness requires that AMD have the opportunity to rapidly search the source code on a computer at depositions and the trial to allow for meaningful cross-examination following "rebuttal" testimony from fact and expert witnesses. Absent access to a searchable computer, cross-examination will be artificially and unjustifiably hobbled.

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