

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

ADVANCED MICRO DEVICES, INC. and
ATI TECHNOLOGIES ULC,

Plaintiffs,

v.

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

Defendants.

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

PROTECTIVE ORDER

Before the Court is the Joint Motion for Entry of Partially Disputed Protective Order filed by Plaintiffs Advanced Mirco Devices, Inc. and ATI Technologies ULC (together, “AMD”) and Defendant Realtek Semiconductor Corp. **Dkt. No. 64**. The parties dispute concerns two provisions: the scope of the prosecution bar in ¶¶ 11 and 28(B)(xviii) and whether a source code computer should be made available at depositions and trial, which is ¶ 28(B)(x)(4) in AMD’s proposed protective order. *Id.* at 2-3.

For the prosecution bar issue, the Court adopts AMD’s proposed protective order largely because AMD’s proposal adopts the provisions the parties agreed to in the parallel proceeding before the ITC. Realtek’s opposition to AMD’s proposal is simply that the provisions AMD proposes are not in the Court’s model protective order. This is not a persuasive reason to ignore what the parties have agreed to in a parallel proceeding concerning mostly the same patents.

For the source code issue, the Court adopts Realtek’s proposal to not require it to provide a source code computer at depositions and trial. AMD’s concerns about being able to respond to unanticipated testimony are best addressed by other procedural mechanisms, not a source code computer. Furthermore, although this provision may be in place in the parallel ITC proceeding,

based on the motion, Realtek was “ordered to provide such a computer at depositions and trial in the co-pending 337-TA-1318 proceedings,” rather than agreeing to do so. Therefore, the Court declines, by means of the protective order, to require Realtek to provide a source code computer at depositions or at trial. Thus, the Court **GRANTS-IN-PART** the motion.

WHEREAS, Plaintiffs Advanced Micro Devices, Inc. and ATI Technologies ULC (collectively, “AMD” or “Plaintiffs”) and Defendant Realtek Semiconductor Corp. (“Realtek” or “Defendant”) believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and **ORDERED** that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material (“Protected Material”). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: (i) “CONFIDENTIAL, or (ii) “CONFIDENTIAL BUSINESS INFORMATION,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or similar designation. The designation shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such protection is sought. For deposition and hearing transcripts, the word “CONFIDENTIAL BUSINESS INFORMATION” shall be placed on the cover page of

the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as “CONFIDENTIAL BUSINESS INFORMATION.”

2. Any document produced under Patent Rules 2-2, 3-2, and/or 3-4 before issuance of this Order that were designated as confidential under Patent Rule 2-2 shall continue to be governed by Patent Rule 2-2. The parties agree to meet and confer in good faith to agree on an appropriate confidentiality designation for those documents under this Protective Order. Pursuant to ¶ 12(a) of the Discovery Order (Dkt. No. 59), the parties agree to meet and confer, in good faith, to reach agreement as to the use and admissibility in this proceeding of discovery from the ITC investigation (including the confidentiality designation). If the parties cannot reach agreement, the parties reserve the right to obtain relief from the Court.
3. With respect to documents, information or material designated (i) “CONFIDENTIAL,” (ii) “CONFIDENTIAL BUSINESS INFORMATION,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or similar designation, or (iii) “CONFIDENTIAL SOURCE CODE – OUTSIDE ATTORNEYS’ EYES ONLY INFORMATION” (collectively “DESIGNATED MATERIAL”),¹ subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents

¹ The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as (i) “CONFIDENTIAL,” (ii) “CONFIDENTIAL BUSINESS INFORMATION,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or similar designation or (iii) “CONFIDENTIAL SOURCE CODE – OUTSIDE ATTORNEYS’ EYES ONLY INFORMATION,” both individually and collectively

marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

4. A designation of Protected Material (i.e., (i) “CONFIDENTIAL,” (ii) “CONFIDENTIAL BUSINESS INFORMATION,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or similar designation or (iii) “CONFIDENTIAL SOURCE CODE – OUTSIDE ATTORNEYS’ EYES ONLY INFORMATION”) may be made at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information or material derived from or based thereon.
5. “CONFIDENTIAL BUSINESS INFORMATION,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or similar designation documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating party, upon order of the Court, or as set forth in paragraph 12 herein:

- (a) outside counsel of record in this Action for the Parties;
 - (b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;
 - (c) in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action;
 - (d) up to and including three (3) designated representatives of each of the Parties to the extent reasonably necessary for the litigation of this Action, except that either party may in good faith request the other party's consent to designate one or more additional representatives, the other party shall not unreasonably withhold such consent, and the requesting party may seek leave of Court to designate such additional representative(s) if the requesting party believes the other party has unreasonably withheld such consent;
 - (e) technical experts and their staff who are employed for the purposes of this litigation (unless they are otherwise employed by, consultants to, or otherwise affiliated with a party, or are employees of any domestic or foreign manufacturer, wholesaler, retailer, or distributor of the products, devices or component parts which are the subject of this litigation), provided that: before access is given, the consultant or expert has completed the Undertaking attached as Appendix A hereto and the same is served upon the producing Party with a current curriculum vitae of the consultant or expert at least ten (10) days before access to the Protected Material is to be given to that consultant or Undertaking to object to and notify the receiving Party in writing that it objects to disclosure of Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Court within fifteen (15) days of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. The objecting Party shall have the burden of proving the need for a protective order. No disclosure shall occur until all such objections are resolved by agreement or Court order;
 - (f) independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action; and
 - (g) the Court and its personnel.
6. A Party shall designate documents, information or material as "CONFIDENTIAL BUSINESS INFORMATION," "CONFIDENTIAL – ATTORNEYS' EYES ONLY" or similar designation only upon a good faith belief that the documents, information or

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