

**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 DISCOVERY ORDER

Plaintiffs Advanced Micro Devices, Inc. and ATI Technologies ULC (collectively, “AMD”) and Defendant Realtek Semiconductor Corp. (“Realtek”) hereby move the Court for entry of a Partially Disputed Discovery Order. AMD’s proposed Discovery Order is attached hereto as Exhibit 1 and Realtek’s proposed Discovery Order is attached hereto as Exhibit 2.

The parties have met and conferred and agree on all provisions of the proposed Discovery Order for this case with the exception of Paragraph 12(a). The Parties’ competing versions of this provision are shown in the table below:

Plaintiffs’ Version of Paragraph 12(a)	Defendant’s Version of Paragraph 12(a)
Notwithstanding paragraph 14 of the Protective Order (Order No. 1), and paragraph 18 (Order No. 14) of ITC Investigation No. 337-TA-1318, so long as: (a) this district court action is either not stayed or any stay of the district court action relating to the ITC proceedings will be lifted; (b) and a protective order will be entered in this district court action (or if no protective order is entered, a	The AMD plaintiffs, Realtek defendants, and TCL defendants in this action (“the parties”) agree that they will meet and confer, in good faith, to reach agreement as to the use and admissibility in this proceeding of documents, source code, discovery responses, transcripts, testimony and exhibits thereto, pleadings or submissions (such as contentions and expert reports) and things (collectively, “Discovery”)

<p>similar confidentiality agreement between the parties) with provisions substantively equivalent to the provisions in the protective order (including any amendments or supplements thereto) in Investigation No. 337-TA-1318, during the pendency of the parallel ITC proceedings, and following the termination of the ITC proceedings, documents, source code, discovery responses, transcripts, testimony and exhibits thereto, pleadings or submissions (such as contentions and expert reports) and things (collectively, “Discovery”) produced in the ITC proceedings, including Discovery containing information that is confidential to a third party, can be used in this district court action to which the producing party is a party. Such documents and things need not be reproduced in this District Court action and shall be treated as if produced in this district court action with the appropriate level of confidentiality afforded by the protective order in place in that action. The parties may subsequently negotiate and agree that information falling within certain classifications of protection under the protective order in the ITC Investigation may be subject to certain lower levels of confidentiality in the protective order entered by the District Court after the Investigation has terminated. Prior to the final termination of this Investigation, the parties shall meet and confer regarding additional provisions that should be added to this agreement, if any, to enable them to otherwise comply with their obligations under paragraph 14 of the ITC Protective Order (Order No. 1). Nothing in this provision precludes a requesting party from seeking additional discovery it deems necessary</p>	<p>produced in the ITC proceedings, consistent with the obligations of the parties under Order No. 1 in 337-TA-1318 (ITC Protective Order) and Order No.14 (Amending the Protective Order). The parties agree that they will use their best efforts to reach agreement on these issues so as to avoid the unnecessary duplication of discovery in this litigation.</p>
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I. Plaintiffs’ Position:

AMD has filed an opposed motion for discretionary stay of this case (Dkt. No. 37), because litigating this case while simultaneously litigating the co-pending International Trade Commission

action, 337-TA-1318 (“ITC Investigation”), would be a waste of public and private resources given the overlap in parties and in the asserted patents and technology. *See* Dkt. No. 37. AMD’s proposed cross-use provision is reasonable and in line with Realtek’s own positions concerning the efficiencies that can be gained by having the discovery produced by the parties in the ITC Investigation be treated as produced in this action under a substantively equivalent protective order.

AMD’s proposed cross-use provision provides that if “the producing party is a party” to this action, and a protective order “*substantively equivalent*” to that of the ITC is in place in this action (e.g., outside attorneys’ eyes only confidentiality), then the documents, discovery responses, etc. produced by that party (and all of which are parties to this action) shall be treated as re-produced in this action. *See* Ex. A at 12(a). This is consistent with the position Realtek asserted in its opposition to AMD’s motion for discretionary stay wherein it argued that “[*d*]ocument production[s], contentions, fact discovery, expert discovery, claim construction rulings, etc. can be used for efficiencies and avoiding duplication of discovery “*without a stay of this case.*” Dkt. No. 43 at 12 (Aug. 5, 2022) (emphases added).

By contrast, in an email response on August 25, 2022, Realtek stated that “we think it is prudent for the parties to meet and confer, on a case-by-case basis, as to what materials from the ITC investigation can be used in the district court or to find solutions that achieve the desired efficiency consistent with the ITC protective order.” AMD respectfully submits that not only is AMD’s approach expressly consistent with the ITC protective order, but Realtek’s “case by case” approach will only needlessly increase inefficiencies and increase the likelihood of unnecessary disputes requiring this Court’s involvement. Finally, the parties’ proposed limits on discovery in Paragraph 5, e.g., limits on hours of deposition per party, only make sense if there is a full cross

use in this action of depositions of party witnesses in the ITC—otherwise those limits would be overly narrow. AMD has repeatedly informed Realtek that it would not be willing to agree to limits more narrow than the Court’s default order without a comprehensive cross-use provision. AMD’s proposed cross-use provision benefits both sides, and should be adopted.

II. Defendant’s Position:

Realtek proposes that the parties agree to meet and confer, in good faith, to reach agreement as to the use and admissibility in this proceeding of documents, discovery responses, transcripts, testimony, expert reports, and other discovery from ITC Investigation No. 337-TA-1318, consistent with the obligations of the parties under Order No. 1 in 337-TA-1318 (ITC Protective Order) and Order No.14 (Amending the Protective Order). Realtek proposes that the parties use their best efforts to reach agreement on these issues so as to avoid the unnecessary duplication of discovery in this litigation.

Most discovery in the ITC investigation is governed by Order No. 1, the Protective Order, under which every attorney agrees to utilize “confidential business information *solely for the purposes of this investigation.*” During a discovery teleconference on August 24, 2022, Judge Elliot made it clear to the parties that any “Confidential Business Information” produced under the ITC Protective Order can *only* be used for the purposes of that investigation, and cannot be “used” in any other case, even if it is “re-produced” in another case. For example, while AMD and Realtek can agree to produce their own documents in both litigations, the parties may be precluded from producing and/or using in this litigation deposition transcripts, hearing testimony, expert reports, discovery responses and other documents from the ITC Investigation that contain Confidential Business Information under the ITC Protective Order. This is further complicated by the fact that third parties in the ITC Investigation have been subpoenaed and are producing Confidential Business Information in the ITC Investigation, such as ARM, Roku, Samsung, Microsoft, and

Khronos Group. Such third-party CBI is likely to permeate discovery responses, deposition and hearing testimony, expert reports, and other discovery materials in the ITC. Accordingly, it is not possible for the parties—consistent with the ITC Protective Order—to make a *blanket* agreement for the production and use of all ITC discovery materials in this litigation, *in advance* of knowing the content of those materials. That said, Realtek is committed to avoiding duplication of efforts and streamlining this litigation wherever possible, and therefore, has proposed a provision by which the parties agree to meet and confer in good faith, on a case-by-case basis, to determine whether and how discovery and other materials from the ITC investigation can be produced and/or used in this litigation, so the parties can achieve efficiencies where feasible.

Dated: August 26, 2022

Respectfully submitted,

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