

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BANDSPEED, LLC,

Plaintiff,

v.

REALTEK SEMICONDUCTOR
CORPORATION,

Defendant.

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CASE NO. 1:20-cv-00765-DAE

AGREED DISCOVERY ORDER

After a review of the pleaded claims and defenses in this action, in furtherance of the management of the Court's docket under Federal Rule of Civil Procedure 16, and after receiving the input of the parties to this action, it is ORDERED AS FOLLOWS:

1. **Initial Disclosures.** The parties will serve the disclosures required by Federal Rule of Civil Procedure 26(a)(1) no later than November 17, 2023.
2. **Disclosure of Expert Testimony.**¹ A party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703 or 705, and:
 - (a) if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, provide the disclosures required by Federal Rule of Civil Procedure 26(a)(2)(B); and

¹ All expert reports should be written such that the report is organized with discrete paragraph numbers.

(b) for all other such witnesses, provide the disclosure required by Federal Rule of Civil Procedure 26(a)(2)(C).

3. **Protective Orders.** The Court will enter the parties' Agreed Protective Order.
4. **Discovery Limitations.** The discovery in this cause is limited to the disclosures described in this Discovery Order and discovery permitted under the Federal Rules of Civil Procedure, except as modified as follows:
 - a. 21 hours for depositions pursuant to Fed. R. Civ. P. 30(b)(6) per Side,
 - b. 60 hours of nonparty depositions (which does not include Fed. R. Civ. P. 30(b)(6) depositions) per Side,² and
 - c. 4 expert witnesses per Side.

“Side” means a party or a group of parties with a common interest. Any deposition time requiring the use of a translator shall be counted in an amount equal to 66% of the actual time incurred (e.g., three hours of deposition time requiring the use of a translator shall count as two hours). Any party may later move to modify these limitations for good cause.

5. The Parties agree to the limitations of Federal Rule of Civil Procedure 26 with regard to the discovery of expert materials. To the extent not already covered by Federal Rule of Civil Procedure 26, the Parties further agree to the following limitations regarding the discovery of expert materials.
 - i. No conversations or communications between or including any Party or its counsel and any testifying or non-testifying expert, or between or including any testifying expert and any non-testifying expert, including emails,

² Inventors, party employees, and other third parties (but not including experts) are nonparty witnesses for the purposes of this Discovery Order.

written agreements, or correspondence, and notes or outlines pertaining thereto, whether drafted or occurring in connection with this Action or any prior or pending investigation, litigation, or proceeding (including *inter partes* review or reexamination proceedings before the USPTO), will be subject to discovery or examination at any deposition, hearing, or trial unless the conversations or communications are relied upon by a testifying expert in formulating his or her final report or any opinion in this Action.

- ii. All materials generated by any testifying expert in connection with this Action are exempt from discovery, unless relied upon by a testifying expert in formulating his or her final report or any opinion in this Action. Testifying experts shall not be subject to discovery or examination at any deposition, hearing, or trial on any draft of their expert reports, draft declarations, and draft affidavits, nor notes or outlines pertaining thereto, whether drafted in connection with this Action or any prior or pending investigation, litigation, or proceeding (including *inter partes* review or reexamination proceedings before the USPTO).
- iii. Discovery of materials provided to testifying experts, whether provided in connection with this Action or any prior or pending investigation, litigation, or proceeding (including *inter partes* review or reexamination proceedings before the USPTO), shall be limited to those materials, facts, non-testifying expert opinions, and other matters actually relied upon by a testifying expert in formulating his or her final report or any opinion in this Action.

iv. Non-testifying experts shall not be subject to discovery, except to the extent a testifying expert is relying on the work or opinions of a non-testifying expert in formulating his or her final report or any opinion in this Action. Where a testifying expert is relying on the work or opinions of a non-testifying expert, discovery can be taken from the non-testifying expert with the same limitations that apply to testifying experts, but discovery shall be limited to the information provided to the testifying expert that the testifying expert is relying on in formulating his or her final report or any opinion in this Action and the basis for such information.

(a) Privilege Logs. Documents or information created, conveyed, and/or dated after the filing date of these Actions that are protected by attorney-client privilege and/or attorney work product, including any applicable common interest privilege, are not required to be included in either party's privilege log.

(b) Third Party Discovery. A party who serves a subpoena in this matter on a third party shall provide a copy to all other parties. A party who receives documents from a third party pursuant to a subpoena shall reproduce those documents to the other party(s) as soon as practicable and at most no later than five (5) business days after receiving the documents. A party to whom documents or things are made available for inspection shall notify the other party(s) that such materials are available for inspection as soon as practicable and at most no later than three (3) business days after the documents are made available for inspection.

(c) Email Discovery. General ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure order of this Court,

shall not include email or other forms of electronic correspondence (collectively “e-mail”). The Parties further agree to forego serving and responding to specific email production requests. However, the parties do not waive their rights to seek email production upon a showing of good cause. To the extent a Party has shown good cause to seek the production of emails, the Parties agree to make a good faith effort to agree upon a procedure for the production of emails.

(d) ESI Provisions.

- i. **General Document Image Format.** Each electronic document shall be produced in (1) multi-page PDF or (2) single-page Tagged Image File Format (“TIFF”) or (3) Joint Photographic Expert Group (“JPEG”) format, except for documents where production in such format would be impractical (including, for example, large spreadsheets). TIFF and JPEG files shall be single page and shall be named with a unique production number followed by the appropriate file extension. Load files shall be provided to indicate the location and unitization of the TIFF and JPEG files. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document. To the extent reasonably possible, produced data will be de-duplicated across custodians using industry standard de-duplication techniques, including without limitation using an MD5 or SHA-1 hash value.
- ii. **Text-Searchable Documents.** No party has an obligation to make its production text-searchable; however, if a party’s documents already exist

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