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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

WACO DIVISION

SYNKLOUD TECHNOLOGIES, LLC \* May 19, 2020  
\*  
VS. \* CIVIL ACTION NO. W-19-CV-527  
\*  
ADOBE, INC. \*

BEFORE THE HONORABLE ALAN D ALBRIGHT, JUDGE PRESIDING  
TELEPHONIC DISCOVERY HEARING

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.



1 (May 19, 2020, 1:59 p.m.)

2 MS. MILES: Telephonic discovery hearing in Civil Action  
3 6:19-CV-527, styled SynKloud Technologies, LLC, versus Adobe,  
4 Incorporated.

5 THE COURT: Good afternoon, everyone. If I could hear  
6 from the plaintiff's counsel first, whoever will be speaking  
7 today, and then if I could hear from defense counsel, and then  
8 we'll take up whatever issues you have.

9 MR. TERRAZAS: Your Honor, this is Kevin Terrazas, and  
10 with me is Deepali Brahmhatt. And I will be speaking today on  
11 behalf of plaintiff.

12 THE COURT: Okay. Thank you, sir.

13 MR. DACUS: Your Honor, this is Deron Dacus, and also on  
14 the phone is Eugene Mar, Winston Liaw and Sushila Chanana on  
15 behalf of Adobe, Your Honor, and we're ready to proceed.

16 THE COURT: And, Mr. Dacus, who'll be speaking on behalf  
17 of defendant?

18 MR. DACUS: I'm sorry, Your Honor. I will. At least  
19 until the point where I can't speak anymore. I plan to speak.

20 THE COURT: Very good. Okay. So what brings you all to  
21 the Court?

22 MR. DACUS: Your Honor, this is Deron Dacus. I think  
23 we've got two issues today.

24 THE COURT: Okay.

25 MR. DACUS: One is a complaint by Adobe, the defendant,

1 and then we have a complaint by the plaintiff.

2 At least from my perspective, Adobe's complaint should be  
3 fairly short. Just to give the Court some background, earlier  
4 in this case we at Adobe reached out to the inventor of the  
5 patents-in-suit, and we had a discussion with him. He was not  
6 represented by counsel.

7 As a result of that discussion, Adobe had some concerns  
8 about retrieving and collecting and being able to produce  
9 documents to us from the inventor in the case. We reached out  
10 to the Court, you know, cognizant of the Court's rule that you  
11 don't allow discovery until after Markman, we reached out to  
12 the Court, expressed to the Court with the plaintiff on the  
13 line what our concerns were and asked the Court for permission  
14 to issue a subpoena to the inventor and require him to produce  
15 documents.

16 The Court granted us that permission, and the way the  
17 Court did that, Your Honor, is Dr. Yi sent an e-mail, and I  
18 will -- I know the Court probably doesn't -- the Court knows --  
19 well, I know the Court does not have this in front of it, so  
20 I'll read this so the Court has the benefit of it.

21 This is an e-mail that Dr. Yi sent to all the lawyers on  
22 December 3rd, 2019. And it says: To follow up on today's  
23 call, I talked to Judge Albright about the possibility of early  
24 discovery, specifically in regards to subpoenaing the inventor  
25 of the patents-in-suit. He said that he would permit that in

1 this case. He also said that the inventor could be deposed  
2 now, and if so, that will be the only deposition of the  
3 inventor for this case. In other words, the inventor cannot be  
4 deposed now and again during fact discovery.

5 So based on that order from the Court, we issued a  
6 subpoena to the plaintiff. The plaintiff then produced -- not  
7 to the plaintiff -- to the inventor. The plaintiff's counsel,  
8 SynKloud's counsel, at some point in time began representing  
9 the inventor, and so they responded to the subpoena, but they  
10 only partially responded to the subpoena.

11 I think by their own admission they only partially  
12 responded to it. They produced some documents, but they have  
13 withheld other documents. And so what we're here asking the  
14 Court to do today is to request, or require, that the plaintiff  
15 comply with the Court's order, produce all the documents that  
16 were requested pursuant to the subpoena, and in addition, I  
17 think it's necessary, at a minimum, to produce a privilege log,  
18 although we don't think the documents are privileged, but the  
19 inventor's counsel, who's also the plaintiff's counsel,  
20 contends that some of the documents are privileged.

21 If that's an issue, I do think we probably want to address  
22 that today, but at a minimum I think we need an order from the  
23 Court requiring them to produce all the documents that they  
24 have not and to provide a privilege log.

25 So I can answer any questions, Judge, if any of that's

1 confusing.

2 THE COURT: No. It's not.

3 I'll hear from the plaintiff's counsel.

4 MR. TERRAZAS: Thank you, Your Honor. So, Your Honor, in  
5 your order requiring the -- or allowing for a subpoena, the  
6 ultimate issue there was whether or not the inventor was going  
7 to destroy any documents. There's no question, and that's been  
8 resolved because all those documents have gone to plaintiff's  
9 counsel.

10 Plaintiff's counsel has since produced 716 pages from the  
11 inventor plus two versions of source code. The only type of  
12 documents that have not been produced are negotiations that are  
13 related to Federal Rule of Evidence 408, that what counsel has  
14 explained to the defendant is that we will make those available  
15 after the fact discovery period opens.

16 As the Court -- I remember in one of our previous hearings  
17 the Court said that it would not allow SynKloud to get  
18 licensing and other negotiation documents from the defendants  
19 in cases because that's restricted to after claim construction,  
20 after the Markman, and the open discovery period there.

21 We're simply asking for the same here involving the  
22 inventor because, again, the underlying issue of why the  
23 subpoena was even issued has been resolved in that all the  
24 documents are at least in plaintiff's counsel's possession and  
25 the vast majority of them are also in defendant's possession.

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