

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

OCEAN SEMICONDUCTOR LLC,
Plaintiff,

v.

NXP USA, INC.,
Defendant.

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W-20-CV-01212-ADA

ORDER GRANTING MOTION TO MODIFY PROTECTIVE ORDER

Came on for consideration is Plaintiff’s Opposed Motion to Modify the Protective Order to Allow Use of Third-Party Discovery in a Related Action (the “Motion”). ECF No. 112. After careful consideration of the Motion and the applicable law, the Court **GRANTS** Plaintiff’s Motion.

I. BACKGROUND

A. Western District of Texas Action

Plaintiff Ocean Semiconductor LLC (“Ocean”) filed its Original Complaint in this action on December 31, 2020. ECF No. 1. Ocean alleged infringement of its patents for semiconductor manufacture by Defendant NXP USA, Inc. (“NXP”). *See* ECF No. 1. Subsequently, the Parties filed a Joint Motion for Entry of Protective Order on March 10, 2022. ECF No. 64. The Court granted the joint motion and entered the order on March 29, 2022. ECF No. 65. The order specified that materials designated for protection “shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose.” ECF No. 65 ¶ 7.

On August 25, 2022, Ocean requested leave to file amended Final Infringement Contentions. ECF No. 84. The Court granted in part and denied in part the motion. ECF No. 107.

On January 3, 2023, Ocean filed the Motion seeking “to use third-party discovery obtained in this action in a” collateral action. ECF No. 112 at 4. On January 6, 2023, Ocean filed

a transcript from the collateral action supporting the Motion. ECF No. 113. On January 10, 2023, Analog Devices, Inc. (“Analog”) filed a motion to intervene “for the sole and limited purpose of opposing [Ocean’s]” Motion. ECF No. 115 at 5. On January 16, 2023, Ocean filed a reply in opposition to Analog’s intervention in the Motion. ECF No. 116.

B. District of Massachusetts Action

Ocean filed its Original Complaint against Analog in the District of Massachusetts on December 31, 2020. *Ocean Semiconductors LLC v. Analog Devices Inc.*, Case No. 1:20-cv-12310 (D. Mass.) (“Mass. Action”), ECF No. 1. As in the Western District of Texas action, Ocean alleged infringement of its patents related to semiconductor manufacturing. *Id.* ¶ 1. On April 26, 2021, Analog filed a motion to dismiss for failure to state a claim. *See Mass. Action* at ECF No. 17.

On August 31, 2021, Analog filed a motion to stay pending *inter partes* review of the seven patents in suit. 1:20-cv-12310, ECF No. 30 at 1. On September 20, 2021, the court granted “the motion to stay this case pending the decision on the institution of IPR proceedings on the seven patents in suit.” 1:20-cv-12310, ECF No. 37 at 1. The court also found the pending motion to dismiss for failure to state a claim would be mooted upon lift of the stay. 1:20-cv-12310, ECF No. 38.

On June 30, 2022, Analog renewed its motion to dismiss for failure to state a claim. 1:20-cv-12310, ECF No. 48. Ocean filed its response in opposition on August 4, 2022. 1:20-cv-12310, ECF No. 59. Analog filed a corresponding reply in support of its motion on August 9, 2022. 1:20-cv-12310, ECF No. 62.

On August 5, 2022, Ocean amended its infringement claims in its First Amended Complaint. 1:20-cv-12310, ECF No. 61. The court entered an order lifting the stay regarding U.S. Patent No. 6,836,691 on August 10, 2022. 1:20-cv-12310, ECF No. 64.

On August 19, 2022, Analog withdrew its renewed motion to dismiss (1:20-cv-12310, ECF No. 66) and filed a new motion to dismiss for failure to state a claim (1:20-cv-12310, ECF No. 67). Ocean filed its response on September 2, 2022. 1:20-cv-12310, ECF No. 75. A further reply was filed by Analog on September 16, 2022 (1:20-cv-12310, ECF No. 84), and a sur-reply submitted by Ocean on September 23, 2022 (1:20-cv-12310, ECF No. 87).

On September 6, 2022, the court entered a protective order on the action. 1:20-cv-12310, ECF No. 78.

On October 13, 2022, the Parties filed a joint motion to lift the stay pertaining to U.S. Patent Nos. 6,660,651 and 7,080,330. 1:20-cv-12310, ECF No. 90. The court entered an order endorsing the joint motion on October 14, 2022. 1:20-cv-12310, ECF No. 92.

On October 27, 2022, Analog filed a motion to dismiss First Amended Complaint with respect to the '330 patent. 1:20-cv-12310, ECF No. 95. Ocean filed its response in opposition on December 2, 2022. 1:20-cv-12310, ECF No. 108.

On December 6, 2022, Analog filed a motion to quash all third-party subpoenas, or in the alternative for a protective order, and to stay discovery in the action. 1:20-cv-12310, ECF No. 109. On December 20, 2022, Ocean filed its response in opposition. 1:20-cv-12310, ECF No. 116. The court entered a stay pending resolution of the motion to dismiss on December 21, 2022. 1:20-cv-12310, ECF No. 117.

On February 14, 2023, Analog filed a notice of the final decision by the Patent Trial and Appeal Board in the *inter partes* review. 1:20-cv-12310, ECF No. 124. The decision found all

challenged claims of U.S. Patent Nos. 6,725,402, 6,907,305, 6,968,248, and 8,676,538 to be unpatentable. 1:20-cv-12310, ECF No. 124 at 1.

On March 28, 2023, the court granted Analog's motion to dismiss for failure to state a claim without prejudice. 1:20-cv-12310, ECF No. 126. Ocean may still replead "in 30 days if there is a factual basis for alleging that Analog infringed claims 4 and 5." 1:20-cv-12310, ECF No. 126 at 19.

C. Ocean's Discovery

Ocean has sought discovery from various third-party manufacturers of semiconductor manufacturing tools. ECF No. 112 at 4-5. It alleges that those tools are then used for infringement of its patented processes. ECF No. 112 at 5. Ocean obtained material from some subpoenaed third parties. ECF No. 112 at 5. Relevant third-party information was obtained from "Applied Materials, Inc., Infinicon, Inc., TSMC, camLine, and Hitachi High-Tech America, Inc." ECF No. 112 at 5. Ocean seeks permission to use those materials against Analog in the 1:20-cv-12310 action. ECF No. 112 at 6. TSMC and camLine have granted Ocean permission to use produced documents in the 1:20-cv-12310 action. ECF No. 112 at 6. Ocean received permission to use discovery from third parties in this action as evidence "to supplement its complaint in the *Ocean v. ADI* action." ECF No. 112 at 6.

The joint protective order entered by the Parties prohibits Ocean from using discovery productions in the 1:20-cv-12310 action. ECF No. 112 at 6. Ocean alleges that early cooperation from Applied Materials, Inc., Infinicon, Inc., and Hitachi High-Tech American, Inc. ended "after they were contacted by counsel for Analog. ECF No. 112 at 6. Ocean now seeks permission from the court to modify the protective order allowing the use of the produced documents in the 1:20-cv-12310 action. ECF No. 112 at 4. Additionally, Analog has sought intervention to prevent

modification of the protective order, alleging that Ocean is pursuing no more than a “fishing expedition against Analog.” ECF No. 115 at 6.

II. LEGAL STANDARD

A. Intervention

Rule 24 provides parties a route to intervene in an action before the court. Fed. R. Civ. P. 24. It affords either intervention as a matter of right or permissive intervention. Fed. R. Civ. P. 24(a), 24(b). The Fifth Circuit set forth a four-factor test for intervention as a matter of right pursuant to Rule 24(a). *Field v. Anadarko Petroleum Co.*, 35 F.4th 1013, 1017 (5th Cir. 2022).

[An] intervenor must show that “(1) the application . . . [was] timely”; (2) that it has “an interest relating to the property or transaction which is the subject of the action”; (3) that it is “so situated that the disposition of the action may, as a practical matter, impair or impede [its] ability to protect that interest”; and, finally, (4) that its interest is “inadequately represented by the existing parties to the suit.”

Id. (quoting *DeOtte v. State*, 20 F.4th 1055, 1067 (5th Cir. 2021)). Similarly, permissive intervention may be granted where “an applicant’s claim or defense and the main action have a question of law or fact in common.” Fed. R. Civ. P. 24(b)(2). This Court has previously stated that permissive intervention “ ‘is wholly discretionary.’ ” *Nat’l Press Photographers Ass’n v. McCraw*, 594 F. Supp. 3d 789, 812 (W.D. Tex. 2022).

The Fifth Circuit addressed the intervention factors in *Field*. *Field*, 35 F.4th at 1017–20. It stated that acting to intervene “as soon as an intervenor realizes its interests are not adequately protected” will be timely. *Id.* at 1018. An intervenor must show a legally protectable interest in the action, not merely a preference for an outcome thereof. *Id.* at 1018. An intervenor’s interest may be insufficient where “too far removed from the dispute,” purely economic, or require separate legal action, making the interest too indirect. *Id.* at 1018–19. Intervenors with an actual interest can show a practical risk of impairment when it may be impaired without intervening. *Id.*

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