

# EXHIBIT C

JARED D. SCHUETTENHELM (SBN 267885)  
jared.schuettenhelm@bracewell.com  
BRACEWELL LLP  
701 Fifth Avenue, Suite 6200  
Seattle, Washington 98104-7018  
+1.206.204.6200  
+1.800.404.3970

Attorney for  
KIOXIA AMERICA, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE SUBPOENAS FROM OCEAN  
SEMICONDUCTOR LLP

Misc. Case No.

Action Currently Pending in the U.S.  
District Court for W.D. Texas (Case No.  
6:20-cv-01210-ADA)

KIOXIA AMERICA, INC.’S NOTICE  
AND MOTION TO QUASH OCEAN  
SEMICONDUCTOR LLP’S  
SUBPOENA

Date: 01/13/2022  
Time: TBD  
Place: TBD

**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on \_\_\_\_\_, 2022, at \_\_\_\_\_, before a Judge to be assigned by the Clerk’s Office, KIOXIA America, Inc. will, and hereby does, move for an Order granting its Motion to Quash Ocean Semiconductor LLP’s Subpoena To Testify at a Deposition in a Civil Action and produce documents.

The Motion will be based on this Notice and Motion, the Memorandum of Points and Authorities below, the Declaration of Jared D. Schuettenhelm, Esq., all exhibits attached thereto, all other pleadings and documents on file in this matter, and any evidence as may be presented at any hearing on this Motion

1 **ISSUES TO BE DECIDED**

2 1. Whether to grant the motion to quash the document subpoena for violations of Fed.  
3 R. Civ. P. 45(a)(2), (d)(3)(ii), and (d)(3)(iv).

4 2. Whether to grant the motion to quash the deposition subpoena for violations of Fed.  
5 R. Civ. P. 45(a)(2), (d)(3)(ii), and (d)(3)(iv).

6 **RELIEF REQUESTED**

7 Pursuant to Fed. R. Civ. P. 45(d)(3)(A), KIOXIA America, Inc. (“KAI”) respectfully  
8 requests that the Court quash the improper subpoena served by Ocean Semiconductor LLC  
9 (“Ocean”) seeking documents and testimony in support of its case against MediaTek, Inc. and  
10 Mediatek USA, Inc., currently pending in the Federal District Court for the Western District of  
11 Texas (Civil Action No. 6:20-cv-01210-ADA). As explained below, Ocean’s subpoena, on its face  
12 and by its terms, violates at least Fed. R. Civ. P. 45(d)(3)(A)(ii) and Fed. R. Civ. P. 45(d)(3)(A)(iv).  
13 KAI further requests that the Court enter an Order, as required by Fed. R. Civ. P. 45(d)(1), imposing  
14 an appropriate sanction against Ocean for its failure to take “reasonable steps to avoid imposing  
15 undue burden or expense” on third-party KAI in the form of an award of attorneys’ fees and costs.

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **PRELIMINARY STATEMENT**

18 On December 30, 2021, Ocean served KAI with the subpoena that is the subject of this  
19 motion to quash, as well as seven other subpoenas (which are the subject of concurrently-filed  
20 motions to quash in this Court and a motion to relate pursuant to Local Rule 3-12), in connection  
21 with a series of patent infringement lawsuits that Ocean has filed in the Western and Eastern  
22 Districts of Texas. The subpoena must be quashed for two independent reasons set forth in Fed. R.  
23 Civ. P. 45(d)(3)(A).

24 First, although KAI is a California corporation, headquartered in this District, and was  
25 served with the subpoena by Ocean in California, Ocean’s subpoena seeks the production of  
26 documents, as well as production of a witness for deposition, nearly 3,000 miles away at the office  
27 of Ocean’s counsel in the District of Delaware. This is a flagrant violation of the 100-mile limitation  
28

1 under Fed. R. Civ. P. 45(c)(1)(A) and (c)(2)(A) and a mandatory basis to quash the subpoena  
2 pursuant to Fed. R. Civ. P. 45(d)(3)(A)(ii).

3 Second, as a third party with no interest or involvement in Ocean’s litigation campaign, KAI  
4 must be protected under the Federal Rules from “undue burden.” Here, the undue burden of Ocean’s  
5 subpoena is self-evident from Ocean’s 37-page demand, which seeks compliance by third-party  
6 KAI with 44 expansive requests for production regarding thousands of products accused in ten  
7 different underlying lawsuits (two of which are currently stayed), as well as other broad categories  
8 of information concerning KAI’s relationships with other third-parties. Ocean has further demanded  
9 that KAI provide deposition testimony on 11 similarly overbroad topics. The vast overreach of  
10 Ocean’s requests provides a wholly independent, and mandatory, basis under Fed. R. Civ. P.  
11 45(d)(3)(A)(iv) for quashing Ocean’s subpoena.

### 12 FACTUAL BACKGROUND

13 Ocean launched a litigation campaign, primarily in Texas and entirely outside this District,  
14 alleging patent infringement against fifteen defendants across ten lawsuits.<sup>1</sup> In each lawsuit, Ocean  
15 asserts some combination of ten patents that it has acquired from third parties. With one exception,<sup>2</sup>  
16 Ocean’s cases are in the infancy of discovery<sup>3</sup> and two cases are stayed pending *inter partes* review  
17 of Ocean’s patents.<sup>4</sup>

18 KAI is a California company headquartered in San Jose, California, with no involvement in  
19 Ocean’s underlying litigation campaign. *See* Schuettenhelm Decl., ¶¶ 4-5, Exs. C and D. KAI is  
20 not a defendant or named party in any of Ocean’s ten lawsuits. *See id.* ¶ 4.

23 <sup>1</sup> Ocean’s cases are identified in the definition of “Actions” included with the subpoena.  
24 Schuettenhelm Decl., Ex. A, at A-2, Definition No. 6.

25 <sup>2</sup> The sole exception is *Ocean Semiconductor LLC v. Huawei Device USA Inc., et al.*, No. 4:20-cv-  
26 991, pending in the Eastern District of Texas. In that case, a mere thirty-six documents have been  
27 filed with court and the discovery period closes on April 6, 2022 according to the current scheduling  
28 order. *Id.*, Dkt. 22 (Aug. 3, 2021).

<sup>3</sup> *See, e.g., Ocean Semiconductor LLC v. MediaTek Inc., et al.*, No. 6:20-cv-01210, Dkt. 32, (July  
15, 2021, W.D. Tex.) (fact discovery opens December 9, 2021; closes July 6, 2022).

<sup>4</sup> *See Ocean Semiconductor LLC v. Analog Devices, Inc.*, No. 1:20-cv-12310, Dkt. 37 (Sept. 20,  
2021, D. Mass.) (granting stay prior to discovery); *Ocean Semiconductor LLC v. Infineon Tech. AG*

1 On December 22, 2021, Ocean’s counsel caused eight subpoenas to be issued to KAI in  
2 connection with its lawsuits in the Western and Eastern District of Texas. *See id.* ¶ 2, Ex. A. Ocean  
3 then delayed service of those subpoenas, waiting until December 30, 2021, to effect service on KAI  
4 via its corporate agent in Glendale, California. *See id.*, Ex. A. Each subpoena demanded document  
5 production by January 5, 2022, and a deposition on January 19, 2022. *See id.* The subpoenas each  
6 specified the office of Ocean’s counsel in Wilmington, Delaware as the place of production and  
7 deposition. *See id.*

8 On January 3, 2022, KAI retained the undersigned counsel, who contacted Ocean’s counsel  
9 seeking the courtesy of an extension of time to sort through Ocean’s voluminous requests. *See id.*,  
10 Ex. B (email from Doug Stewart, dated Jan. 4, 2022). In response, and despite having delayed  
11 service of the subpoena for eight days, leaving KAI only three business days to respond, Ocean’s  
12 counsel sought to condition any extension of the subpoena’s unreasonably short time frame on an  
13 agreement to produce documents by a date certain without objection.<sup>5</sup> *See id.* (email from Joel  
14 Glazer, dated Jan. 4, 2022). KAI’s counsel declined to assent to Ocean’s proposed waiver of  
15 objections and mandatory production. *See id.* (email from Doug Stewart, dated Jan. 5, 2022).  
16 Ocean’s counsel only relented and agreed to an unconditional nine-day extension of time until  
17 January 14 on the morning of January 5—the date set for compliance in the subpoena. *See id.* (email  
18 from Joel Glazer, dated Jan. 5, 2020).

#### 19 **A. Legal Standards**

20 Fed. R. Civ. P. 45(d)(1) commands that “[a] party or attorney responsible for issuing and  
21 serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a  
22 person subject to the subpoena.” Accordingly, “the court ‘must protect a person who is neither a  
23 party nor a party’s officer from significant expense resulting from compliance.’” *Personal Audio*  
24 *LLC v. Togi Ent’m’t, Inc.*, No. 14–mc–80025 RS (NC), 2014 WL 1318921, at \*1 (N.D. Cal. Mar.  
25 31, 2014) (citing Fed. R. Civ. P. 45(d)(2)(B)(ii)). Consistent with this command, “[t]he Ninth  
26 Circuit has long held that nonparties subject to discovery requests deserve extra protection from the

27 \_\_\_\_\_  
28 <sup>5</sup> Despite the actual case schedules noted above, Ocean’s counsel claimed that “the time sensitive  
nature of the active litigations” justified its refusal to agree to a reasonable extension

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.