

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BROADCOM CORPORATION
Petitioner

v.

TELEFONAKTIEBOLAGET LM ERICSSON (PUBL)
Patent Owner

Cases IPR2013-00601(Patent 6,772,215 B1)
IPR2013-00602 (Patent 6,446,568 B1)
IPR2013-00636 (6,424,625 B1)¹

Before KARL D. EASTHOM, KALYAN K. DESHPANDE, and
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

EASHTOM, *Administrative Patent Judge*.

DECISION
Ericsson's Motion for Additional Discovery
37 C.F.R. § 42.51(b)(2)

¹ The Board exercises its discretion to issue one Order to be filed in each case. The parties are not authorized to use this heading style.

Introduction

Patent Owner (“Ericsson”) filed a redacted motion for additional discovery in the instant proceedings (Paper 13, “Mot.” or “Motion”), and Petitioner (“Broadcom”) filed a redacted opposition (Paper 16 “Opp.” or “Opposition”).² In its Motion, Ericsson requests discovery regarding indemnity agreements, defense agreements, payments, and email, or other communications, between Broadcom and defendants (“D-Link Defendants”) in related litigation, *Ericsson Inc., et al. v. D-LINK Corp., et al.*, Civil Action No. 6:10-CV-473 (LED/KGF) (“Texas Litigation”). *See* Mot.; Ex. 2001 (“Patent Owner’s Requests for Production,” hereinafter “Request”).

In the Texas Litigation, a jury found Ericsson’s challenged patents in the instant proceedings infringed by the D-Link Defendants due partly to their use of Broadcom’s Wi-Fi compliant products. *See* Pet. 1–2. Broadcom was not a party to the Texas Litigation. *Id.* at 1. According to Broadcom, the jury did not address the issue of validity with respect to the patents challenged in IPR2013-00601 and IPR2013-00602. *See* IPR2013-00601, Paper 3, 2; IPR2013-00602, Paper 2, 1-2. Ericsson maintains that the requested discovery will show that “Broadcom is in privity with at least one D-Link Defendant” in the Texas Litigation. Mot. 4.

For the reasons stated below, Ericsson’s motion is *denied*.

35 U.S.C. § 315(b)

Under 35 U.S.C. § 315(b), “[a]n inter partes review may not be instituted if the petition requesting the proceeding is filed more than 1 year

² The parties also filed sealed redacted versions. *See* note 3. Unless otherwise noted, reference throughout is to redacted papers filed in IPR2013-00636. The same or similar papers are filed in the other two cases, IPR2013-00601 and IPR2013-00602.

after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent.” Broadcom does not dispute that one or more of the D-Link Defendants were served with a complaint more than one year prior to the filing of the Petition. Therefore, if Ericsson can show privity existed between the D-Link Defendants and Broadcom in the Texas Litigation, an *inter partes* review may not be instituted under 35 U.S.C. § 315(b). *See* Paper 9 (Order Authorizing Motion for Additional Discovery).

Request

Pursuant to its discovery Motion, Ericsson seeks the following discovery items:

1. All executed contracts or agreements between Broadcom and any of the D-Link Defendants relating to Wi-Fi compliant products, such as the BCM4313 and BCM4321, that are used in any of the D-Link Defendants’ products accused of infringement in the D-Link Litigation.
2. All executed contracts or agreements between Broadcom and any of the D-Link Defendants that include any indemnity or duty to defend provisions.
3. All joint defense agreements, or other agreements addressing cooperation on the defense of the D-Link Litigation, between Broadcom and any of the D-Link Defendants relating to the D-Link Litigation.
4. All invoices provided to or received from any of the D-Link Defendants, or their counsel, seeking reimbursement for any fees or expenses incurred in the D-Link Litigation.
5. Records of any payments made by Broadcom to any of the D-Link Defendants, or their counsel, or to Ericsson, pursuant to any actual or alleged contractual duty to defend or

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indemnify any [of] the D-Link Defendants for any fees or expenses incurred in the D-Link Litigation.

6. All emails and written correspondence between any of the D-Link Defendants, or their counsel, and Broadcom, or its counsel, relating to any claimed duty of Broadcom to defend or indemnify any of the D-Link Defendants in the D-Link Litigation from January 1, 2010 to the present.

7. All emails and written correspondence between Broadcom, or its counsel, and any of the D-Link Defendants, or their counsel, from January 1, 2010 to the present relating to:

A. The filing of IPR2013-00601, IPR2013-00602, and IPR2013-00636;

B. Intervention by Broadcom in the D-Link Litigation;

C. The claim construction or interpretation of any of the patents at issue in the D-Link Litigation, including, but not limited to, the '568 Patent, the '625 Patent, or the '215 Patent; and

D. The validity or alleged invalidity of any of the patents at issue in the D-Link Litigation, including, but not limit[ed] to, the '568 Patent, the '625 Patent, or the '215 Patent.

Ex. 2001.

Analysis

To show privity, Ericsson relies, *inter alia*, on known indemnity agreements, wherein Broadcom agreed to indemnify certain D-Link Defendants. Ericsson also relies on allegations about litigation activity by Broadcom, filing of an amicus appeal brief by Broadcom in the Texas Litigation, SEC filings, communications with Acer, Inc., a D-Link Defendant, Broadcom's use of Ericsson's expert report in the filing of the Petition, timing of the filing of the IPRs, and email correspondence about indemnity and other matters. *See* Mot. 1-7 (citing Ex. 1010; Exs. 2002-

2017).³ For its part, Broadcom asserts that “Broadcom is not in privity with the Texas Defendants, and no amount of discovery in this proceeding or in the Texas Litigation will prove otherwise.” Opp. 2.

Pursuant to the America Invents Act (AIA), certain discovery is available in *inter partes* review proceedings. See 35 U.S.C. § 316(a)(5); 37 C.F.R. §§ 42.51-53. Discovery in an *inter partes* review proceeding, however, is less than what is normally available in district court patent litigation, as Congress intended *inter partes* review to be a quick and cost effective alternative to litigation. See H. Rep. No. 112-98 at 45-48 (2011). A party seeking discovery beyond what is expressly permitted by rule must do so by motion, and “must show that such additional discovery is in the interests of justice.” 37 C.F.R. § 42.51(b)(2)(i); accord 35 U.S.C. § 316(a)(5) (“such discovery shall be limited to . . . what is otherwise necessary in the interest of justice”).

The AIA legislative history makes clear that additional discovery

³ As indicated above, note 2, in addition to the redacted papers, the parties filed un-redacted papers that remain under seal: Ericsson filed a protected motion, Paper 11, with protected exhibits that remain under seal. Similarly, Broadcom filed a protected opposition, Paper 16, and a protected exhibit, Ex. 1017, that remain under seal. (Broadcom should clarify if Exhibit 1018 is to be placed under seal. It appears, based on the face of the document and related characterizations, that it contains confidential information. It is under seal at PTAB at this time.) After review of the un-redacted materials, the Board determines that they do not alter the outcome. In this Motion Decision, Broadcom’s sealed opposition and exhibits are not addressed further, because they do not impact Ericsson’s initial burden of showing that the requested discovery is necessary in the interests of justice. Ericsson’s sealed motion, Paper 11, additionally shows confidential litigation activity by Broadcom that fails to imply or show control by Broadcom over the Texas Litigation.

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should be confined to “particular limited situations, such as minor discovery that PTO finds to be routinely useful, or to discovery that is justified by the special circumstances of the case.” 154 Cong. Rec. S9988-89 (daily ed. Sept. 27, 2008) (statement of Sen. Kyl). In light of this, and given the statutory deadlines required by Congress for *inter partes* review proceedings, the Board must be conservative in authorizing additional discovery. *See id.*

An important factor in determining whether additional discovery is in the interests of justice is whether there exists more than a “mere possibility” or “mere allegation that something useful [to the proceeding] will be found.” *Garmin International, Inc. et al. v. Cuozzo Speed Technologies LLC*, IPR2012-00001, Paper 20, 2–3, “Order—Authorizing Motion for Additional Discovery” (listing important factors to determine whether a discovery request meets the applicable standard) (hereinafter the “Garmin factors”); *accord Apple v. Achates Reference Publishing, Inc.*, IPR2013-00080, Paper 18, “Decision—Achates Motion for Additional Discovery” (applying the Garmin factors to indemnity agreements). The party seeking discovery must come forward with some factual evidence or support for its request. *See* IPR2012-00001, Paper 26 (decision addressing the Garmin discovery factors).

Whether a non-party is a “real party-in-interest” or “privy” for purposes of an *inter partes* review proceeding is a “highly fact-dependent question” that takes into account how courts generally have used the terms to “describe relationships and considerations sufficient to justify applying conventional principles of estoppel and preclusion.” *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,759 (Aug. 14, 2012) (“Trial

Practice Guide” or “TPG”). Whether parties are in privity, for instance, depends on whether the relationship between a party and its alleged privy is “sufficiently close such that both should be bound by the trial outcome and related estoppels.” *Id.* Depending on the circumstances, a number of factors may be relevant to the analysis, including whether the non-party “exercised or could have exercised control over a party’s participation in a proceeding,” and whether the non-party is responsible for funding and directing the proceeding. *Id.* at 48,759-60.

Ericsson’s evidence does not amount to more than a “mere allegation that something useful will be found” to show privity, as is required by the first Garmin factor. To show privity requires a showing that Broadcom would be bound to the outcome of the Texas Litigation. To be bound, in normal situations, Broadcom must have had control over the Texas Litigation. According to long-standing precedent, *Bros, Inc. v. W.E. Grace Mfg. Co.*, 261 F.2d 428, 429 (5th Cir. 1958), when a patent holder sues a dealer, seller, or distributor of an accused product, as is the case at hand, indemnity payments and minor participation in a trial are not sufficient to establish privity between the non-party manufacturer of the accused device and the defendant parties:

While the mere payment of counsel fees or participation in a trial by one not a named party to it would not alone be sufficient, *cf. I.T.S. Rubber Co. v. Essex Co.*, [] 272 U.S. 429 [(1926)]. . . Restatement, Judgment § 84, comment e (1942), the extent and nature of that participation may completely alter the consequences. This is particularly so in patent infringement cases in which, from tactical or strategic considerations relating to venue, desirability of a particular forum and the like, such cases are so often filed and tried against a dealer, a seller, a distributor, or a user of the accused device manufactured by

another. If the manufacturer stands aloof, he risks a judgment adverse to his interest resulting perhaps from inadequate or incompetent defense by one who has a secondary interest. *Such judgment, to be sure, would normall[y] not be binding by estoppel or res judicata*, but it would take its place in the jurisprudence where its practical effect as stare decisis might be as decisive. The alternative, of course, is to jump in and give the case full and active defense as though the manufacturer were the real named party. This assures that the issues will be presented and contested in a way deemed most effective by the nominally remote, but practically immediate, party at interest.

261 F.2d at 429 (emphases added); cited with approval by *Emerson Elec. Co. v. Black and Decker Mfg. Co.*, 606 F.2d 234, 242, n. 20 (8th Cir. 1979) (“If Emerson does control the Maryland suit, the outcome will be binding on, or inure to the benefit of, Emerson under principles of res judicata.”); *see also United States v. Webber*, 396 F.2d 381, 387 (3d Cir.1968) (finding that appellants were “privies” because of their “control over and interest in the earlier litigation.”)

Bros, Inc. relies on a long line of precedent to support the normal rule that privity requires a finding of active control of the trial:

Where that course is followed and the non-party actively and avowedly conducts the defense, manages and directs the progress of the trial at its expense and under its supervision, the outcome, which if favorable would have redounded to his benefit, if adverse becomes sauce for goose and gander alike, and binding under principles of res judicata. *Minneapolis-Honeywell Regulator Co. v. Thermoco, Inc.*, 116 F.2d 845 (2d Cir. 1941); *Nash Motors Co. v. Swan Carburetor Co.*, 105 F.2d 305 (4th Cir. 1939); *Warford Corp. v. Bryan Screw Machine Products Co.*, 44 F.2d 713 (6th Cir. 1930); *N. O. Nelson Manufacturing Co. v. F. E. Myers & Bro. Co.*, 25 F.2d 659 (6th Cir. 1928); *Beyer Co. v. Fleischmann Co.*, 15 F.2d 465 (6th Cir. 1926); Restatement, Judgments 84, comment b, illustration 5 (1942).

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261 F.2d at 429 (citations reformatted).

Similarly, under *TRW Inc. V. Ellipse Corp.*, 495 F.2d 314, 318 (7th Cir. 1974), “the crucial distinction . . . is the extent of participation, for privity in the law of judicial finality usually connotes representation.” In *Dentsply Intern., Inc. v. Kerr Mfg. Co.*, 42 F.Supp.2d 385 (D.Del. 1999), the court characterized *TRW* as requiring control of the trial to show privity:

In *TRW*, the Court of Appeals for the Seventh Circuit refused to apply the doctrine of res judicata to *TRW*, a nonparty, who agreed to indemnify a named party in a prior suit, but whose role in the prior suit was limited to observing the proceedings and filing amicus curiae briefs. In reaching this conclusion, the court noted that *the crucial distinction* between *TRW* and other cases, in which nonparty indemnitors were found to have interests sufficiently close for establishing privity for res judicata purposes, was *TRW's limited extent of participation in the prior lawsuit*. Indeed, *the court explicitly distinguished TRW's situation from the situation in which a nonparty indemnitor retained the indemnitee-defendant's counsel and controlled the litigation*.

Dentsply, 42 F.Supp.2d at 398 (emphasis added).

Contrary to Ericsson’s assertion that “[t]he weight of authority strongly supports that an indemnity agreement . . . establish[es] privity,” Mot. 6, *Bros. Inc, TRW, Dentsplay* and other cases noted *supra* illustrate that more is required. Control of the litigation, or some sort of representation, constitutes a “crucial” factor. *Dentsply*, 42 F.Supp.2d at 398.

Ericsson relies, *inter alia*, on *Jennings v. U.S.*, 374 F.2d 983, 985 (4th Cir. 1967) for the following proposition: “where an indemnitor is notified and can take part in – indeed may control – the litigation, he is precluded from contesting the indemnitee’s liability in the subsequent indemnity action.” Mot. 5. Ericsson does not explain how this *dicta* in *Jennings*

applies to the situation at hand or otherwise supports a departure from the long-standing rule that includes control or representation as a crucial factor that may bind a non-party to a trial outcome.

For example, in *Dentsplay*, the court found that “even if Centrix was ultimately relieved of its legal duty to defend and indemnify Kerr, as a factual matter, Centrix did defend Kerr for approximately two years, in a manner which was consistent with various terms of the agreement.” 42 FSupp. 2d at 396, n. 4. Certain indemnity agreements involved in *Dentsply* corroborated control of the litigation, and the court found *extensive participation in the litigation* by indemnitor Centrix. *See id.* at 397-399. “Because of the contractual relationship between Centrix and Kerr, Centrix’s extensive participation in the litigation and Centrix’s knowledge of the injunction, the Court concludes that privity exists between Kerr and Centrix.” *Id.* at 399.

Nevertheless, Ericsson seeks to discover indemnity agreements and asserts that certain SEC filings show that “it is not uncommon for Broadcom” to indemnify its customers. Mot. 1 (citing Ex. 2005, 46). Ericsson also asserts that “Broadcom does not deny the existence of such indemnity agreements.” Mot. 7. Ericsson attaches an order from the Texas Litigation, Ex. 2016, in which the district court mentions two indemnity agreements and an e-mail communication about indemnity.⁴

⁴ In the order, the court denied Ericsson’s motion to release discovery of those items, partially because it was under a protective order there, and granting the motion would undermine the negotiations which produced the protective order and discovery items. *See* Ex. 2016, 3. The court noted that granting Ericsson’s motion would allow Ericsson to employ the district

Ericsson also attaches evidence of other litigation activity by Broadcom (which remains under a protective order in this proceeding), Ex. 2009, and attaches a “Motion of Amici Wi-Fi Chip Companies Broadcom Corporation . . . for Leave to File Amicus Brief” in the Court of Appeals for the Federal Circuit,” Ex. 2017, as further evidence of collusion, litigation activity, or control by Broadcom.

The totality of this evidence fails to amount to more than a “mere possibility” that Broadcom controlled, or could have controlled, the Texas Litigation. Paying for trial expenses pursuant to indemnity normally does not establish privity or control. Therefore, the sought-after indemnity agreements, and the requested discovery items seeking evidence of payment pursuant to indemnity or other agreements, fail to amount to more than a “mere allegation that something useful will be found” to establish privity. *See* Ex. 2001 (discovery items 1–6, also listed *supra*).

Similarly, although filing an amicus brief shows interest in the outcome, it only shows some potential future control as a non-party over the appeal of an issue of damages. *See* Ex. 2017, 2 (motion by Broadcom to file amicus brief to address royalties and noting that the “award may also provoke indemnity issues”). Filing an amicus brief on appeal does not bind Broadcom to the trial below outcome or show that Broadcom exercised control over that outcome. *See Dentsplay*, 42 F.Supp.2d at 398 (quoted *supra*, discussing *TRW*—agreeing to indemnify a named party, but having a role limited to observing the proceedings and filing amicus curiae briefs, is insufficient to show privity). The other litigation activity by Broadcom in

court’s broader “relevancy” standard and circumvent the PTO’s narrower standard. *Id.*

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another forum, Ex. 2009 (under seal), appears to have occurred during the Texas Litigation, prior to the court's entry of judgment. Nonetheless, it does not show control of the Texas Litigation or otherwise show that Broadcom would be bound by that outcome.

Ericsson also requests discovery of "emails and written correspondence," Ex. 2001 (discovery requests 6, 7), between Broadcom and the D-Link defendants relating to "[i]ntervention by Broadcom in the D-Link Litigation," *id.* (request 7), relating to a duty to defend or indemnify, *id.* (request 6) and also "agreements addressing cooperation on the defense of the D-Link Litigation," *id.* (request 3). Other than indemnity agreements, Ericsson does not provide sufficient evidence, if any, that any such other agreements exist or were discussed.

Ericsson also does not explain how a discovery request regarding intervention would show privity on the part of non-party Broadcom. For its part, Broadcom asserts that "Ericsson chose, for its own strategic reasons, not to sue [Broadcom] in this case." Opp. 1. The evidence also indicates that Ericsson partially opposed another manufacturer's motion to intervene. *See* Ex. 2006, 1. As Broadcom points out, participation in joint defense groups, even if such a group exists, also fails to show privity. *See* Opp. 5–6, n. 4; TPG 48,760 ("Joint Defense Group," by itself, insufficient to show privity).

Ericsson also asserts that filing a request for IPR (*inter partes* review) and the other noted litigation activity, Ex. 2009, constitutes evidence of "Broadcom filing litigation on behalf of its customers pursuant to its indemnity obligation." *See* Mot. 1; Ex. 2001 (discovery request 7A, IPR filings). Ericsson's allegation amounts to conjecture because Ericsson does

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not show how IPR filings and other filings were pursuant to indemnity agreements, and even if they were, the IPR filings fail to show control over the Texas Litigation. The evidence does not amount to more than speculation that any of Broadcom's activity constitutes evidence of collusion with the D-Link defendants in the Texas Litigation in a manner that would bind Broadcom to the outcome thereof.

Ericsson also asserts that Broadcom's reliance, in its IPR filings, on "a majority of the same references that the defendants relied upon for their invalidity claims in the D-Link lawsuit" shows "coordination [that] raises serious questions about whether Broadcom is in privity with the defendants." Mot. 3. Ericsson also asserts that the IPR filings rely heavily on Ericsson's expert report from the Texas Litigation. *Id.* Again, these allegations of "serious questions" amount to just that, questions or speculation about collusion or control. Filing IPRs does not constitute evidence that shows control over prior litigation. Broadcom, as a manufacturer of accused products, had an interest in the trial; however, using some of the same trial evidence, including known prior art, in the IPR proceedings, and using an expert report, does not constitute evidence beyond mere speculation that Broadcom controlled, or should be bound by the outcome of, the Texas Litigation.

Ericsson's assertion that D-Link Defendant Acer sought "to discuss comments from Acer's vendors," including Broadcom, also fails to show control. *See* Mot. 2 (citing Ex. 2007). Even if the record shows that Acer sought to discuss the accused products with Broadcom, the manufacturer of the products, this implies control by Acer, not Broadcom. *See* Ex. 2007. As Broadcom also points out, providing technical information to customers

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does not establish control over the trial. Opp. 5.

Ericsson also asserts that “Acer admitted” that some Texas Litigation discovery that Acer produced was “privileged” and shows that “a privilege exists that protects communications between Acer and Broadcom.” Mot. 2 (discussing Ex. 2008). The relevance of this assertion is not clear. The emails show that Acer’s counsel relies on the “Protective Order[, which] mandates that designated information may only be used for purposes of litigation between the parties,” and that “fact discovery and trial in the Ericsson v. D-Link case concluded long ago.” Ex. 2008 (email dated Dec. 4, 2013 11:44AM; *accord* email Dec. 5, 2013 1:46PM and other emails attached). Acer’s counsel also stated that “as far as we understand it, the IPR is a proceeding initiated by Broadcom to which our clients are not parties” and “[w]e do not believe our clients are under any obligation to respond to your request.” *Id.* (email dated Nov. 12, 2013 4:55 PM). This email chain shows that Acer’s counsel sought to abide by the trial court’s protective order, and does not imply any control by Broadcom over Acer’s actions in the Texas Litigation.

Ericsson’s discovery request for correspondence between Broadcom and the D-Link Defendants regarding claim construction and invalidity positions “including, but not limited to, the ‘568 Patent, the ‘625 Patent, or the ‘215 Patent,” Ex. 2001 (requests 7C, 7D), also amounts to a speculative request. Ericsson does not point the Board to evidence that documents about some of these positions exist or that communication about them occurred. Moreover, the request is overly broad because it is not limited to patents at issue here. Ericsson fails to explain how discovering information about other patents bears on control over the Texas Litigation.

The request for “all executed contracts or agreements between Broadcom and any of the D-Link Defendants relating to Wi-Fi compliant products,” Ex. 2001 (request 1), seeks discovery that broadly embraces Broadcom’s commercial activity including, for example, contracts regarding the sale of such products. Ericsson fails to explain how such broad information “relating” to selling accused products shows that Broadcom was in privity with the D-Link Defendants. The breadth and cost of searching for all potential agreements, which may include sales or other agreements, weighs against Ericsson’s request.

The evidence and arguments fail to show that the sought-after discovery would have more than a mere possibility of producing useful privity information, i.e., that Broadcom controlled or could have controlled the Texas Litigation. This Garmin factor weighs heavily against Ericsson. The privity precedent outlined *supra* shows that determining whether privity exists, especially without some evidence of actual control of a trial, typically spirals into what amounts to a separate trial that involves a myriad of considerations. This impacts the PTAB’s mandate to expedite the proceedings and provide limited discovery in the interests of justice. In the attached order denying Ericsson’s request, the court in the Texas Litigation noted that “[a]ccording to Ericsson, the Indemnity documents show Broadcom is in privity with Dell and Toshiba, *or at least show additional discovery is warranted on the issue.*” Ex. 2016, 2 (emphasis added). The AIA discovery procedures do not contemplate allowing discovery on the basis that it may show that “additional discovery is warranted.”

The Board agrees with Ericsson that the requests are simple to understand, and that this Garmin factor weighs in Ericsson’s favor. *See Mot.*

6–7, n. 5. Nevertheless, that and other Garmin factors, including the ability to generate equivalent information, and seeking litigation positions by other means, do not outweigh the Garmin factor related to discovering useful information discussed above.

Other than the indemnity agreements, certain email correspondence, certain litigation activity, and other tangential items, Ericsson has not provided evidence to show that there is more than a mere possibility that the sought-after discovery even exists. Ericsson has not shown that the sought-after discovery has more than a mere possibility of producing useful evidence on the crucial privity factor—control of the Texas Litigation by Broadcom in a sufficient manner to bind Broadcom through principles of res judicata or estoppel. Notwithstanding that Ericsson argues that no other way exists to obtain the discovery because of the Protective Order, *see* Mot. 7-8 (citing Exs. 2011–2014), the Board cannot determine on this record, with more than conjecture, whether Ericsson otherwise would be able to obtain much of the sought-after discovery, because Ericsson has not shown beyond mere speculation that it exists. For example, Ericsson has not shown that communication about any defense agreements, duty to defend agreements, agreements to intervene, invalidity positions, and claim interpretation, exist.

After weighing the factors surrounding the issue of privity as advanced by Ericsson, including the redacted information and arguments presented by Ericsson and Broadcom that remain under seal, the Board finds that Ericsson has not met its burden of demonstrating that additional discovery is in the interests of justice.

In consideration of the foregoing, it is hereby

ORDERED that Ericsson’s motion for additional discovery is *denied*.

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