

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**CERTAIN STANDARD CELL  
LIBRARIES, PRODUCTS CONTAINING  
OR MADE USING THE SAME,  
INTEGRATED CIRCUITS MADE USING  
THE SAME, AND PRODUCTS  
CONTAINING SUCH INTEGRATED  
CIRCUITS**

**Inv. No. 337-TA-906**

**Order No. 28**

Respondents Taiwan Semiconductor Manufacturing Co., Ltd. and TSMC North America (collectively, "TSMC") filed a Motion to Compel Non-Privileged Documents and Further Deposition Time, and a memorandum in support thereof. Motion Docket No. 906-67. Complainant Tela Innovations, Inc. ("Tela"), Andrew Kahng, and Puneet Gupta opposed the motion. The Commission Investigative Staff ("Staff") filed a response supporting in part the motion to compel.<sup>1</sup>

TSMC argues that the administrative law judge should issue an order (1) compelling Tela to produce two clawed-back documents on grounds that the claims of privilege with respect to the documents are "misguided and unsubstantiated," (2) allowing TSMC additional time to depose named inventors Andrew Kahng and Puneet Gupta on grounds that there was a "last-minute dump of over 32,000 pages of documents on the evening before Mr. Kahng's deposition and days after Mr. Gupta's deposition," and (3) allowing TSMC additional time to

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<sup>1</sup> TSMC subsequently filed a motion seeking leave to reply, and a reply. Motion Docket No. 906-75. Motion No. 906-75 for leave is granted.

depose Tela's Chief Technology Officer Dhruvil Gandhi on grounds that he was Tela's designated witness on more than 25 deposition topics, but that he was only available to testify for seven hours at deposition. Mem. at 1.

The first of the clawed-back documents at issue is marked with production number 906KAHNG\_000245233 and was clawed-back during the deposition of named inventor and third party Andrew Kahng. *See* Opp'n at 3-4. The second of the clawed-back documents at issue is marked with production number 906TELA\_000211183 – 906TELA\_000211185. *See id.* at 11. It remains unclear from the parties' briefs whether or not these documents would be shielded from discovery by the attorney-client privilege or similar privileges. Accordingly, *in camera* review of the documents is the appropriate course of action under the circumstances.

Turning to TSMC's request for further depositions, it is argued that a further deposition of Mr. Kahng is warranted because Mr. Kahng produced 3,811 documents comprising over 30,000 pages on the day before his deposition. *See* Mem. at 7; Opp'n at 6. The evidence submitted with the parties' briefs indicates that on June 18, 2014, counsel for TSMC, Tela, and Messrs. Kahng and Gupta agreed that "the vast majority" of a deponents' documents would be produced no less than five days prior to the deposition. *See* Opp'n at Ex. 14. Even though Mr. Kahng did produce documents on the eve of his deposition, the evidence demonstrates that Mr. Kahng complied with the agreement between counsel and had produced "the vast majority" of his documents five days prior to his deposition. *See* Opp'n at Ex. 3, Ex. 15, Ex. 21. It is therefore determined that a further deposition of Mr. Kahng is not warranted under the circumstances. TSMC's motion to compel is denied as to the Kahng deposition.<sup>2</sup>

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<sup>2</sup> TSMC also filed a motion requesting that the administrative law judge certify a request for judicial enforcement of the subpoena *ad testificandum* issued to Mr. Kahng. Motion Docket No. 906-65. Inasmuch as it is determined that a further deposition of Mr. Kahng is not warranted

TSMC also argues that it should be granted a further deposition of Mr. Gupta because TSMC did not have an opportunity to examine Mr. Gupta regarding documents produced by Mr. Kahng after Mr. Gupta's deposition had taken place. *See* Mem. at 11-12. TSMC, however, scheduled Mr. Gupta's deposition before Mr. Kahng's deposition, thereby running the risk that Mr. Kahng might produce relevant documents following the conclusion of Mr. Gupta's deposition. TSMC's motion to compel is denied as to the Gupta deposition.

As for TSMC's request that it be granted more time to depose Mr. Gandhi, TSMC argues that Mr. Gandhi is "an inventor on a relevant prior art patent, a founder of Tela," and a "central witness to this Investigation in his personal capacity." Mem. at 12. TSMC also argues that Mr. Gandhi was designated as Tela's corporate witness on 25 topics, and was the *de facto* corporate witness for "multiple additional corporate topics," inasmuch as the originally designated witnesses "repeatedly identified Gandhi as the key individual with knowledge of the relevant facts." *Id.* TSMC therefore takes the position that the seven hours allowed by Tela for Mr. Gandhi's deposition was not enough time to explore the relevant topics. *See id.* at 12-14.

Tela argues in opposition that the topics for which Mr. Gandhi was designated encompass only "six discrete areas of inquiry," and that "it was TSMC's own time-wasting, and not the number of topics for which Mr. Gandhi was designated, that created TSMC's failure to question Mr. Gandhi about topics for which he was designated." *See* Opp'n at 14, 17.

Considering the breadth of topics for which Mr. Gandhi was designated as Tela's corporate witness, and his alleged importance as a percipient witness, TSMC's request for further time to depose Mr. Gandhi is reasonable under the circumstances.

Accordingly, Motion No. 906-67 is granted in part.

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under the circumstances, Motion No. 906-65 for certification of judicial enforcement is denied.

No later than August 11, 2014, the documents marked with production numbers 906KAHNG\_000245233 and 906TELA\_000211183 – 906TELA\_000211185 shall be provided to the office of the administrative law judge for *in camera* review.<sup>3</sup>

No later than August 11, 2014, Tela shall provide TSMC with dates certain on which Mr. Gandhi is available to appear for up to six hours of additional deposition testimony (excluding breaks and lunch). It is expected that Mr. Gandhi's deposition will take place promptly.

So ordered.



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David P. Shaw  
Administrative Law Judge

Issued: August 7, 2014

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<sup>3</sup> The administrative law judge is aware of the arguments that Mr. Kahng is a third party to the investigation and is not under the control of Tela. *See, e.g.*, Opp'n at 7-8. Nevertheless, it is hoped that Mr. Kahng will provide the document in question in a spirit of cooperation. The administrative law judge is otherwise prepared to certify a request for judicial enforcement of the subpoena *duces tecum* issued to Mr. Kahng with respect to this document.

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**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **Order No. 28** has been served by hand upon the Commission Investigative Attorney, **Vu Bui, Esq.**, and the following parties as indicated, on                     **AUG 08 2014**                    



Lisa R. Barton, Secretary  
U.S. International Trade Commission  
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