

DISCOVERY–CJB,MEDIATION–CJB,Motion–CJB,PATENT
U.S. District Court
District of Delaware (Wilmington)
CIVIL DOCKET FOR CASE #: 1:20–cv–00361–LPS

Speyside Medical, LLC v. Medtronic Corevalve, LLC et al
Assigned to: Judge Leonard P. Stark
Cause: 35:1 Patent Infringement

Date Filed: 03/13/2020
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Date Filed	#	Docket Text
03/02/2021	88	<p>ORAL ORDER: The Court, having reviewed the parties' joint motion to resolve a discovery dispute, (D.I. 79), in which Defendants request that the Court order Plaintiff to produce certain documents and communications (to the extent they are not privileged) relating to third–party funding or financing of this case, and the letter briefs related thereto, (D.I. 82; D.I. 83), and having heard argument on March 1, 2021, hereby ORDERS that the request is DENIED. Since Defendants did not engage on the privilege issue, Plaintiffs' argument against production for now is focused on lack of relevance. (D.I. 83) On that score, Defendants' primary argument for relevance relates to standing, as they suggest that the litigation funding agreement at issue (it is not disputed that one exists here, though the identity of the third–party funder is not known to Defendants) could be relevant to standing if it happens to contain a clause that grants the third–party funder(s) some type of actual or conditional ownership/license to the patents–in–suit in some scenario. (D.I. 82) Yet Defendants acknowledge that they have no facts or evidence to suggest that the agreement does or might have such a provision (and Plaintiff's counsel has stated to the Court, on the record, that the agreement, in fact, does not). The Court agrees with Plaintiff that this amounts to seeking discovery based on pure speculation (and not on a baseline showing of relevance), which is prohibited. See <i>Micro Motion, Inc. v. Kane Steel Co., Inc.</i>, 894 F.2d 1318, 1326 (Fed. Cir. 1990); <i>United Access Techs., LLC v. AT&T Corp.</i>, C.A. No. 11–338–LPS, 2020 WL 3128269, at *2 (D. Del. June 12, 2020); cf. <i>Ashghari–Kamrani v. United Servs. Auto. Assoc.</i>, Civil Action No. 2:15–cv–478, 2016 WL 11642670, at *4–6 (E.D. Va. May 31, 2016) (permitting discovery into whether a third party provided funding or resources to the plaintiff relating to an interest in the patents–in–suit, on the ground that the discovery was relevant to the issue of standing, but only when the court was presented with "substantial facts" indicating that the third party may have, pursuant to its funding agreement with plaintiff, obtained some sort of licensing rights regarding the patents). As for Defendants' alternate theory of relevance i.e., that the materials could be relevant to damages and the value of the patents in suit one District Judge of this Court has held that litigation funding agreements "are not [] relevant to the hypothetical negotiation between the parties" and "are so far removed from the hypothetical negotiation [as to] have no relevance" in that they are little more than "informed gambling on the outcome of litigation." <i>AVM Techs., LLC v. Intel Corp.</i>, Civil Action No. 15–33–RGA, 2017 WL 1787562, at *3 (D. Del. May 1, 2017). The Court tends to agree that this is correct (and even if there might be some factual scenario where such an agreement is marginally relevant to the hypothetical negotiation at issue, the Court has not been presented with it here). Ordered by Judge Christopher J. Burke on 3/2/2021. (dlb) (Entered: 03/02/2021)</p>