

DISCOVERY–CJB,MEDIATION–MPT,PATENT  
**U.S. District Court**  
**District of Delaware (Wilmington)**  
**CIVIL DOCKET FOR CASE #: 1:19–cv–00097–CFC–CJB**

Magnolia Medical Technologies, Inc. v. Kurin, Inc.  
Assigned to: Judge Colm F. Connolly  
Referred to: Judge Christopher J. Burke  
Cause: 35:271 Patent Infringement

Date Filed: 01/16/2019  
Jury Demand: Plaintiff  
Nature of Suit: 830 Patent  
Jurisdiction: Federal Question

Date Filed	#	Docket Text
09/01/2020	153	<p>ORAL ORDER: The Court, having reviewed Defendant's motion regarding a discovery dispute ("Motion"), (D.I. 139), in which Defendant requests that Plaintiff "be ordered to search and produce the electronic documents of [Plaintiff's] now–former V.P. of Marketing Brad Nelson[,]" (D.I. 138 at 1), the letter briefing related thereto, (D.I. 138; D.I. 147), and having heard oral argument on August 31, 2020, ("Tr."), hereby ORDERS that Defendant's Motion is GRANTED. Defendant has demonstrated good cause to justify this deviation from the Scheduling Order's terms (which had required the parties to only produce documents from seven custodians, absent a showing of good cause"). (D.I. 24, ex. B at 2(a)) First, Defendant must demonstrate its own diligence in seeking the information, see <i>GlaxoSmithKline LLC v. Glenmark Pharms. Inc.</i>, Civil Action No. 14–877–LPS–CJB, 2016 WL 7319670, at *1 (D. Del. Dec. 15, 2016), and on that front, Defendant has done enough. It identified Mr. Nelson to Plaintiff months ago as someone it believed might have relevant information. (D.I. 138 at 1) After Mr. Nelson was not included in the group of seven Plaintiff custodians whose documents were searched, Defendant raised the instant dispute with Plaintiff in a reasonable time frame i.e., about six weeks after Plaintiff provided the bulk of its 110,000 documents to Defendant (which Defendant had to first take time to review and process). (Tr. at 8, 16; see also id. at 29) Though Defendant did not thereafter bring the dispute to the Court's attention until August 10, 2020, (D.I. 113), the Court does not have the record before it to hold this further one–and–a–half month gap against Defendant, given the back–and–forth typically needed to meet and confer on an issue like this, (Tr. at 17). From there, Defendant has established that Mr. Nelson is likely to have a good number of relevant documents pursuant to Federal Rule of Civil Procedure 26(b)(1) (and even Plaintiff does not contest this), in that: (1) Mr. Nelson's position and his time of service with Plaintiff likely means that his documents will contain information regarding, inter alia, objective indicia of non–obviousness and damages; and (2) Mr. Nelson appears on thousands of Plaintiff–produced e–mails. (D.I. 138 at 1–3; D.I. 147 at 1, 3 (Plaintiff noting that Mr. Nelson's name is "all over" a number of documents already produced); Tr. at 35) Moreover, the Court is not convinced that Mr. Nelson's responsive documents will be unreasonably cumulative or duplicative of others already produced, pursuant to Rule 26(b)(2)(C)(i), in that his role as V.P. of Marketing suggests that he likely would have had various communications with company employees and with third parties about relevant subject matter that would not have included other custodians (like Plaintiff's CEO or CCO, who had higher–level positions with the company). (D.I. 138 at 3; Tr. at 12–13) Moreover, Defendant has not demonstrated, pursuant to Rule 26(b)(1), that the burden or expense of this discovery outweighs its likely benefit, or that such discovery would not be proportional to the needs of the case. The Court understands that the parties are not large companies, and that cost and burden were a factor in the parties' agreement to the seven–custodian limit in the first place. (D.I. 147 at 2) But Plaintiff could have provided the Court with a record (i.e., by way of submission of a declaration or affidavit, or via some other similar means) to help the Court conclude that the collection, search, review and production of Mr. Nelson's documents would be unduly burdensome or costly, or that it would be disproportionate to either the amount in controversy or the parties' resources or some other relevant metric. If Plaintiff had, the decision may have gone the other way here. But though Plaintiff called such an effort an "incredible burden" in its letter brief, (D.I. 147 at 3), it made no record in support of that claim; thus, the Court cannot rule in its favor on these grounds, (see also Tr. at 39–40). Lastly, and in part because of Plaintiff's failing in this regard, the Court does not know how long it would reasonably take Plaintiff to produce Mr.</p>

		Nelson's documents (though it guesses that doing so by September 4, as Defendant requests, is likely too quick of a timeframe). (D.I. 138 at 3) So the parties should meet and confer regarding a production date.". Ordered by Judge Christopher J. Burke on 9/1/2020. (dlb) (Entered: 09/01/2020)
09/01/2020	<u>154</u>	NOTICE OF SERVICE of Plaintiff Magnolia Medical Technologies, Inc.'s Supplemental Objections and Responses to Defendant Kurin, Inc.'s Second Set of Interrogatories (No. 9) filed by Magnolia Medical Technologies, Inc..(McCann, Douglas) (Entered: 09/01/2020)
09/01/2020		CORRECTING ENTRY: D.I. <u>152</u> has been corrected per request of filer to reflect that it is a Notice of Withdrawal of Counsel and not a Motion to Withdraw. (nmf) (Entered: 09/01/2020)
09/01/2020	<u>155</u>	REQUEST for Oral Argument by Magnolia Medical Technologies, Inc. re <u>105</u> MOTION for Leave to File <i>Plaintiff's Motion for Leave to Amend its Disclosure of Infringement and Willfulness Contentions</i> . (McCann, Douglas) (Entered: 09/01/2020)
09/01/2020	<u>156</u>	REDACTED VERSION of <u>143</u> Declaration, of <i>Douglas E. McCann</i> by Magnolia Medical Technologies, Inc.. (Attachments: # <u>1</u> Exhibit S, # <u>2</u> Exhibit T, # <u>3</u> Exhibit U, # <u>4</u> Exhibit V, # <u>5</u> Exhibit W, # <u>6</u> Exhibit X, # <u>7</u> Exhibit Y, # <u>8</u> Exhibit Z, # <u>9</u> Exhibit AA, # <u>10</u> Exhibit BB, # <u>11</u> Exhibit CC, # <u>12</u> Exhibit DD, # <u>13</u> Exhibit EE, # <u>14</u> Exhibit FF)(McCann, Douglas) (Entered: 09/01/2020)
09/01/2020	<u>157</u>	REDACTED VERSION of <u>142</u> Reply Brief,, by Magnolia Medical Technologies, Inc.. (Attachments: # <u>1</u> Exhibit S, # <u>2</u> Exhibit T, # <u>3</u> Exhibit U, # <u>4</u> Exhibit V, # <u>5</u> Exhibit W, # <u>6</u> Exhibit X, # <u>7</u> Exhibit Y, # <u>8</u> Exhibit Z, # <u>9</u> Exhibit AA, # <u>10</u> Exhibit BB, # <u>11</u> Exhibit CC, # <u>12</u> Exhibit DD, # <u>13</u> Exhibit EE, # <u>14</u> Exhibit FF)(McCann, Douglas) (Entered: 09/01/2020)