

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

AbCellera Biologics Inc. v. Bruker Cellular Analysis, Inc.

AbCellera · No. 20-cv-08624-JST (VKD) · Decided May 19, 2025

SUMMARY

The United States District Court for the Northern District of California resolved a discovery dispute concerning Bruker Cellular Analysis, Inc.'s request for testimony about the resolution of a royalty-related dispute between AbCellera and the University of British Columbia. The court found the requested testimony relevant and timely, concluded that Bruker had been prevented from fully questioning AbCellera's witnesses, and ordered plaintiffs to submit a declaration supporting their attorney-client privilege and common-interest objections.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Virginia K. DeMarchi
JURISDICTION	United States District Court for the Northern District of California
DECIDED	May 19, 2025
DOCKET	20-cv-08624-JST (VKD)
DISPOSITION	other
PROCEDURAL POSTURE	The parties submitted a discovery dispute letter seeking resolution of objections to deposition testimony concerning the resolution of a dispute relating to the royalty terms and payments under the UBC-AbCellera license.
STANDARD OF REVIEW	The court reviewed the discovery dispute and the deposition transcripts to determine timeliness, relevance, the opportunity to obtain the requested testimony, and the applicability of attorney-client privilege and the common-interest doctrine.
PRECEDENTIAL VALUE	Unknown; district court discovery order

TOPICS

- discovery dispute
- attorney client privilege
- privilege
- patent infringement
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Bruker Cellular's request for additional deposition testimony was untimely.
2. Whether testimony concerning the royalty dispute and its resolution was relevant to the calculation of patent infringement damages.
3. Whether Bruker Cellular had a sufficient opportunity to question plaintiffs' witnesses about the dispute's resolution.
4. Whether attorney-client privilege and the common-interest doctrine protected the requested oral communications from discovery.

HOLDINGS

1. Bruker Cellular's request for additional deposition testimony was not untimely because Bruker did not learn of the relevant matter or receive the underlying report until shortly before the discovery-dispute deadline.
2. Information concerning the calculation of royalties under an exclusive license to the asserted patents, including whether and how the parties resolved a disagreement about the royalty terms, is relevant to the parties' reasonable-royalty damages calculations.
3. Bruker had an opportunity to question UBC through Dr. Sharp's deposition but was effectively prevented from questioning AbCellera witnesses about whether and how the royalty-related dispute was resolved.
4. The court could not determine on the existing record whether privilege and the common-interest doctrine protected the requested oral communications, and therefore required plaintiffs to submit a declaration establishing the bases for those objections.

KEY QUOTATIONS

“The doctrine does not create a privilege but comes into play only if a privilege or protection already covers the material disclosed to the third party.” (at 4)

“If AbCellera objects to providing testimony about resolution of the [redacted], and relies on assertion of privilege/common interest to resist that discovery, it must file (or, if necessary, submit in camera) a declaration supporting the privilege/common interest on which it relies by May 23, 2025.” (at 4)

FACTUAL BACKGROUND

AbCellera holds an exclusive license from UBC to the asserted patents and is required to pay UBC royalties quarterly. While the patent litigation was pending, UBC conducted an audit or review of AbCellera's records, and the resulting report led to a dispute concerning royalty-related matters. Bruker sought testimony about whether and how UBC and AbCellera resolved that dispute, but plaintiffs' counsel instructed several witnesses not to answer questions on the ground of privilege or the common-interest doctrine, while another witness was not asked directly about the dispute's resolution.

PROCEDURAL HISTORY

AbCellera and the University of British Columbia sued Bruker Cellular in a patent infringement action. During discovery, Bruker sought additional deposition testimony regarding a dispute between UBC and AbCellera concerning the licensed patents and royalty obligations. The court determined that the request was timely and relevant, found that Bruker had been prevented from questioning AbCellera witnesses on the subject, but deferred ruling on privilege and common-interest objections and ordered plaintiffs to submit a supporting declaration.

DISPOSITION

other

REMAND INSTRUCTIONS

If AbCellera objects to providing testimony based on attorney-client privilege or the common-interest doctrine, it must file, or submit in camera if necessary, a declaration supporting those objections by May 23, 2025. The court will then determine whether the requested testimony must be provided.

CASES CITED

- Ctr. for Auto Safety v. Chrysler Group, LLC, 809 F.3d 1092, 1098-99 (9th Cir.), cert. denied sub nom. FCA U.S. LLC v. Ctr. for Auto Safety, 137 S. Ct. 38 (2016)
- Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1179-80 (9th Cir. 2006)
- Georgia-Pac. Corp. v. U.S. Plywood Corp., 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970)
- United States v. Sanmina Corp., 968 F.3d 1107, 1116 (9th Cir. 2020)
- United States v. Ruehle, 583 F.3d 600, 607, 612 (9th Cir. 2009)
- In re Pac. Pictures Corp., 679 F.3d 1121, 1129 (9th Cir. 2012)
- Nidec Corp. v. Victor Co. of Japan, 249 F.R.D. 575, 578-79 (N.D. Cal. 2007)
- Health & Life Ins. Co., No. 20-cv-02255-EJD (VKD), 2023 WL 187565, at *2 (N.D. Cal. Jan. 13, 2023)