

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

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

No. 20-cv-08624-JST (VKD) (N.D. Cal. Apr. 16, 2025) · No. 20-cv-08624-JST (VKD) · Decided April 16, 2025

SUMMARY

The United States District Court for the Northern District of California denied AbCellera’s requests to depose Siddhartha Kadia and Mark Munch in a patent infringement action. The court held that Kadia, a nonparty residing outside the district, could not be compelled without a valid Rule 45 subpoena, and that AbCellera had not shown grounds to order his deposition. The court also found that Munch lacked unique first-hand knowledge relevant to the case and granted a protective order barring his apex deposition.

OPINION

1 2 3 UNITED STATES DISTRICT COURT 4 NORTHERN DISTRICT OF CALIFORNIA 5 6
ABCELLERA BIOLOGICS INC, et al., Case No. 20-cv-08624-JST (VKD) 7 Plaintiffs, ORDER
RE APRIL 14, 2025 8 v. DISCOVERY DISPUTE RE KADIA AND MUNCH DEPOSITIONS 9
BRUKER CELLULAR ANALYSIS, Re: Dkt. No. 334 Defendant. 10 11 12 AbCellera Biologics,
Inc. (“AbCellera”) and The University of British Columbia (“UBC”) 13 (collectively,
“AbCellera”) and defendant Bruker Cellular Analysis, Inc. (“Bruker Cellular”) ask 14 the Court to
resolve their dispute regarding AbCellera’s requests for depositions of Siddhartha 15 Kadia and
Mark Munch.

Dkt. No. 334.1 The Court finds this dispute suitable for resolution 16 without oral argument. Civil
L.R. 7-1(b). For the reasons explained below, the Court denies 17 AbCellera’s requests for relief.
18 I. BACKGROUND 19 As explained by the parties, Siddhartha Kadia is the former CEO of
PhenomeX. Dkt. No. 20 334 at 1. According to Bruker Cellular, PhenomeX was the successor to
the original defendant in 21 this action, Berkeley Lights.

Id. at 4. Bruker Corporation later acquired PhenomeX pursuant to an 22 August 2023 merger
agreement during the pendency of this litigation, and the surviving 23 corporation became current
defendant Bruker Cellular. Id. at 2, 4, Ex. 2. 24 Dr. Kadia, on behalf of PhenomeX, participated in
at least one communication or meeting 25 with a representative of AbCellera in August 2023 to
discuss a possible resolution of this action.

26 27 1 The Court defers ruling on AbCellera’s associated sealing motion (Dkt. No. 331), until the
1 Id. at 2, 5. He also signed the August 2023 merger agreement with Bruker Corporation. Id. at 2.

2 Dr. Kadia is no longer affiliated with any party to this action but is currently the CEO of an 3 unrelated company. Dr. Kadia resides and works outside of the Northern District of California.

4 Id. at 4. 5 Mark Munch is the president of current defendant Bruker Cellular, as well as the president 6 of its corporate parent. Id. at 1, 4. Dr. Munch signed the August 2023 merger agreement on 7 behalf of Bruker Corporation. Id. at 2, Ex. 2. 8 AbCellera first requested Dr. Kadia's deposition on January 23, 2025. Id. at 1, 3. Bruker 9 Cellular's counsel advised that they also represent Dr. Kadia for purposes of AbCellera's request 10 but objected to his deposition on multiple grounds, including that he is an "apex" witness with no 11 unique, relevant knowledge.

Apparently, Bruker Cellular's counsel did not advise AbCellera until 12 recently that they are not authorized to accept service of a subpoena on Dr. Kadia's behalf. See id. 13 at 3, 4 & n.3. 14 AbCellera first requested Dr. Munch's deposition on February 25, 2025. Id. at 1, 4. 15 Bruker Cellular objected to this deposition on the ground that Dr. Munch is an "apex" witness 16 with no unique, relevant knowledge.

Id. at 1, 4. 17 II. LEGAL STANDARD 18 Rule 30 of the Federal Rules of Civil Procedure permits "[a] party... [to] depose any 19 person, including a party, without leave of court...." Fed. R. Civ. P. 30(a)(1). If the party to be 20 deposed is a corporation, a notice of deposition may identify a specific officer, director, or 21 managing agent to testify. Fed.

R. Civ. P. 30(b)(1); see, e.g., *Elasticsearch, Inc. v. GmbH*, No. 19- 22 cv-05553-YGR (AGT), 2021 WL 1753796, at *1 (N.D. Cal. May 4, 2021). With respect to a non- 23 party, deposition discovery may be obtained by serving a subpoena pursuant to Rule 45 of the 24 Federal Rules of Civil Procedure. Fed. R. Civ. P. 45(a)(1). 25 The scope of discovery permitted under Rule 30, and by subpoena under Rule 45, is 26 governed by Rule 26.

See Fed. R. Civ. P. 45, advisory committee notes to 1970 amendment 27 (noting that "the scope of discovery through a subpoena is the same as that applicable to Rule 34 1 relevant to a claim or defense and that is "proportional to the needs of case, considering the 2 importance of the issues at stake in the action, the amount in controversy, the parties' relative 3 access to relevant information, the parties' resources, the importance of the discovery in resolving 4 the issues, and whether the burden or expense of the proposed discovery outweighs its likely 5 benefit." Fed.

R. Civ. P. 26(b)(1). 6 Under Rule 26(c)(1), "[t]he court may, for good cause, issue an order to protect a party or 7 person from annoyance, embarrassment, oppression, or undue burden or expense," including 8 forbidding a deposition, or limiting its scope. Fed. R. Civ. P. 26(c)(1).

The party seeking a 9 protective order bears the burden of showing good cause for the order by "demonstrating harm or 10 prejudice that will result from the discovery." *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th 11 Cir. 2004). 12 A party's request for the deposition of a high-level

executive of a corporation—a so-called 13 “apex” deposition—poses a risk of abuse or harassment.

Apple Inc. v. Samsung Elecs. Co., Ltd., 14 282 F.R.D. 259, 263 (N.D. Cal. 2012). A court may, in its discretion, disallow or limit such a 15 deposition if the discovery “can be obtained from some other source that is more convenient, less 16 burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C)(i).

In determining whether to permit 17 or limit an apex deposition, a court should consider (1) whether the deponent has unique first-hand 18 knowledge of the facts at issue in the case, and (2) whether the party seeking the deposition has 19 exhausted other less intrusive means to obtain the discovery. *Apple*, 282 F.R.D. at 263. 20 III. DISCUSSION 21 The Court separately addresses AbCellera’s requests for the depositions of Dr. Kadia and 22 Dr. Munch.

23 A. Dr. Kadia 24 Because Dr. Kadia is a non-party, AbCellera may only obtain his testimony pursuant to a 25 valid Rule 45 subpoena; it may not rely on Rule 30. Thus, to the extent AbCellera seeks a Court 26 order directing Bruker Cellular to produce Dr. Kadia for deposition, see Dkt. No. 334 at 1, this 27 request is denied. 1 subpoena has not been provided to the Court.

However, if Dr. Kadia resides outside of the 2 Northern District of California, as Bruker Cellular represents, the subpoena would have to 3 designate a place of compliance in accordance with Rule 45(c)(1), and disputes regarding Dr. 4 Kadia’s compliance with such subpoena would need to be brought in the district of compliance, 5 unless transferred here. See Fed.

R. Civ. P. 45(d)(3), (f). 6 As AbCellera has not presented any grounds on which the Court could properly order Dr. 7 Kadia to provide deposition testimony, or order Bruker Cellular to produce him for a deposition, 8 the Court denies AbCellera’s request for relief as to Dr. Kadia. 9 B. Dr. Munch 10 Unlike Dr. Kadia, Dr. Munch’s deposition may be noticed under Rule 30(b)(1), as he is an 11 officer of defendant Bruker Cellular.

There is no dispute that Dr. Munch is an “apex” witness. 12 The question is whether he has unique first-hand knowledge of any facts at issue in the case, and if 13 so, whether AbCellera has exhausted less intrusive means to obtain that information. 14 AbCellera explains that Dr. Munch signed the August 2023 merger agreement with 15 PhenomeX and was directly involved in that transaction.

Id. at 2. According to AbCellera, after 16 the merger, Dr. Munch was “the head of the business entity that is directly responsible for 17 manufacturing and selling the accused Beacon system, which is at the center of this case.” *Id.* In 18 addition, AbCellera says that Dr. Munch is knowledgeable about Bruker Cellular’s employment of 19 Anupam Singhal and the company’s decision to continue the allegedly infringing activity after 20 receiving AbCellera’s first notice of infringement.

Id. AbCellera argues that it deposed Bruker 21 Cellular's corporate representative about "this topic"2 but found that the representative had no 22 relevant knowledge. Id. at 2-3. 23 Bruker Cellular responds that Dr. Munch has had "almost no direct involvement" in any 24 issues relevant to this action. Id. at 6. While Bruker Cellular acknowledges Dr. Munch's role in 25 August 2023 transaction with PhenomeX, it argues that the negotiations involve "common-interest 26 privileged information" or are "otherwise clear" from the discovery already obtained.

Id. Finally, 27 1 Bruker Cellular observes that Dr. Singhal left Bruker Cellular's employ in March 2023, before 2 || Bruker Cellular began diligence on PhenomeX, and AbCellera's first notice of infringement came 3 || in 2019, four years before Bruker Cellular became involved. Id. 4 AbCellera does not explain how Dr. Munch's anticipated testimony on any of the matters 5 identified above is relevant to any issue in the case.

First, as to the Bruker Cellular/PhenomeX 6 || transaction, it is not clear why AbCellera believes the negotiations' with PhenomeX are relevant to 7 any issue in the case. To the extent, AbCellera suggests that Bruker Cellular and PhenomeX must 8 || have discussed the asserted patents and this litigation as part of the negotiations, see Dkt. No. 334 9 at 2 (discussing relevance of Dr. Kadia's testimony), it is not self-evident that such discussions 10 || have any bearing on any fact at issue, and AbCellera provides no authority or argument that 11 support such a conclusion.

Second, while Dr. Munch's information about a response to 12 || AbCellera's notice of infringement might well yield information relevant to the question of 13 willfulness, Bruker Cellular represents that he has no such information, given the timing of 14 || AbCellera's first notice of infringement. AbCellera does not respond to this point.

Third, 15 || AbCellera does not explain how Dr. Singhal's tenure with the company is relevant to any issue in Q 16 || the case, and it does not respond to Bruker Cellular's assertion that Dr. Singhal left the company = 17 before months before the transaction with PhenomeX. 18 As AbCellera has not shown that Dr. Munch has unique first-hand knowledge of any facts 19 || at issue in the case, the Court denies AbCellera's request for his deposition and grants Bruker 20 || Cellular's request for a protective order.

21 IT IS SO ORDERED. 22 || Dated: April 16, 2025 <«® 23 Virginia K. DeMarchi United States Magistrate Judge 25 26 3 Bruker Cellular provides no basis for the Court to conclude that the negotiations are privileged. There is no "common interest privilege." The "common interest" doctrine is an exception to ordinary waiver rules that comes into play only if a privilege or protection already covers the 27 waiver Tl communications in question.

See, e.g., RJ v. Cigna Health & Life Ins. Co., No. 20-cv-02255-EJD 28 (VKD), 2023 WL 187565, at *1 (N.D. Cal. Jan. 13, 2023) (discussing operation of doctrine). Bruker Cellular identifies no such underlying privilege or protection.

