

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, SAN JOSE DIVISION

**Deborah Howington, et al. v. Taiwan Semiconductor Manufacturing
Co., Ltd., et al.**

Howington · No. 24-cv-05684-VKD · Decided January 29, 2026

OPINION

Howington

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 SAN JOSE DIVISION

7 8 DEBORAH HOWINGTON, et al., Case No. 24-cv-05684-VKD 9 Plaintiffs,

ORDER RE PLAINTIFFS' MOTION

10 v. TO COMPEL DISCOVERY;

REQUIRING STATUS REPORT

11 TAIWAN SEMICONDUCTOR

MANUFACTURING CO., LTD., et al., Re: Dkt. No. 111 12 Defendants. 13 14 As permitted by
the Court (Dkt. No. 110), plaintiffs filed a motion to compel discovery 15 from TSMC.1 The
Court held a hearing on this motion, as well as status conference regarding the 16 progress of
discovery, on January 27, 2026. Dkt. No. 118. 17 For the reasons explained on the record during
the hearing, and as summarized below, the 18 Court resolves the motion to compel discovery as
follows: 19 1. Non-Custodial ESI responsive to Plaintiffs' RFPs 7, 13, 16-19, 25, and 27 20 The
parties disagree about whether TSMC has substantially completed its production of 21 non-
custodial ESI, particularly with respect to data plaintiffs require in order to perform statistical 22
analyses regarding the alleged disparate treatment of workers by race, national origin, and/or 23
citizenship. During the hearing, plaintiffs identified several specific examples of gaps they have
24 identified in TSMC's production. TSMC explained that different defendants may not maintain
the 25 same data in the same form, or at all, and that obtaining the data plaintiffs have asked for is
26 difficult given the security measures that limit access to the relevant data sources. 27 1 Based
on the discussion at the hearing, the Court orders counsel for the parties to confer 2 specifically
about the gaps plaintiffs identify in TSMC's production, and further orders TSMC to 3 investigate
and remedy any such gaps for which data is available but has not been produced. For 4 RFPs 16-
19, TSMC need only produce aggregate numerical data, not individual-specific data. 5 The parties
shall jointly report on the status of TSMC's production of this non-custodial 6 ESI data by

February 24, 2026. 7 2. Plaintiffs' RFP 33 8 The Court denies plaintiffs' request for an order compelling TSMC to produce documents 9 responsive to RFP 33 as currently written because it is overbroad. As discussed at the hearing, 10 plaintiffs may withdraw RFP 33 and serve a revised document request in its place (or with a new 11 number) that specifically describes the documents or communications plaintiffs explained they 12 require. After receiving the revised document request, TSMC shall investigate whether any such 13 responsive documents or communications exist and shall produce all non-privileged documents. 14 If TSMC contends no responsive documents exist, TSMC shall produce, as it has proposed to do 15 (see Dkt. No. 112 at 15), all meeting minutes of the TSMC Board of Directors for the relevant 16 time period, so that plaintiffs can confirm that at least no responsive communications were 17 addressed during the board meetings.² 18 The parties shall jointly report on the status of their efforts to resolve this dispute by 19 February 24, 2026.

20 3. Custodial ESI: Custodians and Search Terms 21 The parties disagree about whether ESI should be collected, reviewed, and produced from 22 four specific TSMC custodians, and they disagree more broadly regarding the selection and 23 applications of search terms to custodial ESI. 24 Custodians: TSMC objects to plaintiffs' demand for ESI from the following TSMC 25 personnel: (1) Rose Castanares, President of defendant TSMC Arizona; (2) Y.H. Wu, Vice 26 President of Manufacturing at TSMC in Taiwan and formerly "one of three leaders of" TSMC 27 1 Arizona; (3) H.T. Yang, Fab Director for defendant TSMC Arizona; and (4) Lynette Ng, Senior 2 Director of Human Resources of defendant TSMC Ltd. Dkt. No. 112 at 20. TSMC refers to all 3 four as "high-level employees," and argues that these individuals should be protected from 4 discovery by the so-called "apex" doctrine. Id. TSMC asserts that these custodians' documents 5 are likely duplicative of those in the files of other "lower-level" custodians. Id. at 20-21. 6 Plaintiffs respond that the apex doctrine does not apply to document requests. Dkt. No. 111 at 19- 7 20. They argue that the operative complaint identifies each of these individuals and includes 8 allegations regarding their specific conduct that forms the bases for plaintiffs' claims. See id.; 9 Dkt. No. 113 at 11-12. 10 The Court agrees with plaintiffs that, as a general matter, the apex doctrine does not apply 11 to document discovery, but only to deposition discovery. See, e.g., *Affinity Credit Union v. Apple 12 Inc.*, No. 22-cv-04174-JSW, 2024 WL 3859802, at *2 (N.D. Cal. Aug. 16, 2024); *Alta Devices, 13 Inc. v. LG Elecs., Inc.*, No. 18-cv-00404 LHK (VKD), 2019 WL 8757255, at *1 (N.D. Cal. Feb. 14 20, 2019); see also *Apple Inc. v. Samsung Electronics Co., Ltd.*, 282 F.R.D. 259, 263-64 (N.D.

15 Cal. 2012) (describing purpose of apex doctrine and its application with respect to depositions). 16 Rather, discovery from the disputed custodians is guided by application of Rule 26, which permits 17 discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and 18 proportional to the needs of the case. See Fed. R. Civ. P. 26(b)(1). The Court must protect 19 another party from discovery that is unreasonably cumulative or duplicative, or can be obtained 20 from some other source that is more convenient, less burdensome, or less expensive,

and may 21 issue a protective order upon a showing of good cause. See Fed. R. Civ. P. 26(b)(2) (C), (c). 22 Here, plaintiffs have explained why these four individuals are likely to have documents 23 relevant to a claim or defense. While TSMC identifies these custodians as high-level executives 24 who fall within the ambit of the apex doctrine, it has not shown that collecting documents from 25 these individuals would be cumulative or duplicative of document discovery from other sources. 26 The Court is not persuaded that all of these custodians properly may be considered apex witnesses, 27 but even if they could be, TSMC also has not shown that collecting documents from them would 1 Union, 2024 WL 3859802, at *2 (“The apex doctrine loses relevance in the context of document 2 production because documents may be produced with no or minimal involvement of the apex 3 witness.”). 4 However, the Court does not, in this order, conclude that TSMC must collect, review, and 5 produce documents from all custodians plaintiffs have identified. Rather, as discussed at the 6 hearing, the Court requires the parties to confer further to resolve any remaining disagreements 7 about the custodians from whom ESI will be collected. 8 Search terms: The parties have made little progress in identifying search terms or other 9 techniques that will facilitate TSMC’s review and production of responsive custodial ESI. Greater 10 cooperation and transparency is required. During the hearing, the Court shared some observations 11 and suggestions that the parties should consider. The Court expects the parties to heed that 12 guidance and to focus on problem-solving. 13 The parties shall jointly report on the status of their efforts to resolve their dispute 14 regarding custodians, search terms, and other techniques for facilitating the review and production 15 of ESI by February 24, 2026. 16 4. Plaintiffs’ RFP 27 17 The Court agrees with plaintiffs that TSMC’s practice of producing a large number of 18 selected documents responsive to RFP 27 a few days before a witness’s deposition prejudices 19 plaintiffs’ counsel’s ability to adequately prepare the witness for the deposition. This prejudice 20 can be mitigated by, for example, prioritizing the production of custodial and non-custodial ESI 21 for a particular witness so that TSMC can produce substantially all responsive documents for the 22 witness’s deposition by a reasonable date in advance of that deposition. Again, this requires the 23 parties to cooperate. 24 As to this particular RFP, it should not be difficult for the parties to identify the relevant 25 custodians for each named plaintiff and the non-custodial records that pertain to each named 26 plaintiff. The remaining named plaintiffs’ depositions should be scheduled to ensure that TSMC 27 can produce substantially all documents responsive to RFP 27 for each named plaintiff reasonably] to use in the deposition. The guidance provided above regarding custodial ESI generally applies 2 || to RFP 27 as well. 3 The parties shall jointly report on the status of their efforts regarding production of 4 || documents responsive to RFP 27 by February 24, 2026. 5 3s 2 3 6 The parties’ joint status report, due to be filed February 24, 2026, must not include 7 || argument or attachments. The status report must not exceed 1,000 words total. 8 IT IS SO ORDERED. 9 || Dated: January 29, 2026 10 11 Virginia K. DeMarchi 12 United States Magistrate Judge 14 15 16 17 Z 18 19 20 21 22 23 24 25 26 27 28

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