

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HONEYWELL INTERNATIONAL INC.)	
and HONEYWELL INTELLECTUAL)	
PROPERTIES INC.,)	
)	
Plaintiffs,)	
)	C.A. No. 04-1337-JJF
v.)	(Consolidated)
)	
NIKON CORPORATION, et al.,)	DM-13
)	
Defendants.)	

ORDER

WHEREAS, on September 30, 2008, the Fed. R. Civ. P. 30(b)(6) (“30(b)(6)”) deposition of InnoLux Display Corporation’s (“InnoLux”) witness, Katherine Liang, took place in accordance with Judge Farnan’s April 18, 2008 Order for the parties to conduct jurisdictional discovery;

WHEREAS, counsel for Honeywell International Inc. and Honeywell Intellectual Properties Inc. (“Honeywell”) was unable to conduct a proper 30(b)(6) deposition as a result of objections and instructions not to answer put forth by counsel for InnoLux throughout the deposition;

WHEREAS, the objections and instructions not to answer put forth by counsel for InnoLux prevented Honeywell from questioning InnoLux’s witness regarding her preparation for the 30(b)(6) deposition;

WHEREAS, counsel for InnoLux further instructed the witness to limit her answers to questions regarding InnoLux’s business and sales activities to the period 2004-2005;

WHEREAS, counsel for InnoLux also instructed the witness to limit her answers to questions regarding InnoLux’s modules and products to 10.2 inch modules only;

WHEREAS, disputes also arose during the course of the deposition as to whether InnoLux's designee, Ms. Liang, had been adequately prepared as a 30(b)(6) witness;

WHEREAS, on October 6, 2008, Honeywell, by motion to the Special Master, sought a determination as to 1) whether counsel for InnoLux had improperly raised privilege/work product, scope, and relevancy objections during the deposition of Ms. Liang; and 2) whether Ms. Liang had been adequately prepared as InnoLux's 30(b)(6) witness (D.I. 372);

WHEREAS, on October 21, 2008, InnoLux filed an opposition to Honeywell's October 6, 2008 motion to compel further testimony (D.I. 398);

WHEREAS, on November 14, 2008, Special Master Vincent J. Poppiti heard argument by the parties, via telephonic hearing;

NOW THEREFORE, IT IS HEREBY ORDERED, AS FOLLOWS:¹

I. Work Product Privilege Objections and Instructions Not to Answer

Throughout the course of the deposition, InnoLux objected to questions by Honeywell seeking factual information regarding the witness' preparation on the ground that the witness' preparation was privileged attorney work product. After reviewing the transcript from the deposition and conducting a hearing on the matter, I find that each and every objection and ensuing instruction not to answer on the grounds of work product was improper, and each is hereby stricken.² InnoLux may not avoid its obligation under 30(b)(6) to advise the examiner of what was done to prepare for the 30(b)(6) deposition by putting forward an attorney as its witness. Honeywell shall have the opportunity to re-depose Ms. Liang (or any other designee put forth by InnoLux) and question the deponent regarding all factual, non-privileged preparation

¹ In entering the instant order, the Special Master has made certain modifications to the stipulated order submitted by the parties on November 21, 2008 (D.I. 475).

² The only exception to this finding comes at Liang Deposition Transcript p. 77:4-9. Honeywell does not dispute that this one objection and instruction was proper.

for the 30(b)(6) deposition.³ See, e.g., *Hisaw v. Unisys Corp.*, 134 F.R.D. 151, 153 (W.D. La. 1991); *Banks v. Office of the Senate Sergeant-at-Arms*, 241 F.R.D. 376, 383-385 (D.D.C. 2007). In the event that InnoLux chooses to put forward a different 30(b)(6) witness or witnesses, that witness(es) is also bound to the terms of this order and shall provide full and complete 30(b)(6) testimony in compliance with 30(b)(6).

II. Objections Based on Relevancy and Instructions to Limit Answers

InnoLux objected to questions posed by Honeywell on the ground that the questions exceeded the scope of Judge Farnan's April 18, 2008 Order relating to jurisdictional discovery. On the basis of this objection, InnoLux instructed its witness to provide limited testimony to the question posited by either 1) constraining the answer to the time frame of 2004-2005 or 2) restricting the answer to 10.2-inch modules only. It is inappropriate to instruct a 30(b)(6) witness not to answer a question, unless there is an appropriate claim of privilege. The court is mindful of the history of this case, especially with regard to Judge Jordan's prior orders. Each and every objection and instruction limiting testimony on the grounds it exceeded Judge Farnan's April 18, 2008 Order was improper and are hereby stricken. Honeywell shall have the opportunity to re-depose Ms. Liang (or other designee), and the witness' answers shall not be limited to the time period of 2004-2005, nor shall they be limited to 10.2-inch modules only.⁴

³ Examples of the types of questions that are found to elicit non-privileged factual information, include: 1) Did you speak with anyone in preparation for your deposition; 2) What documents did you review in preparation for your deposition; 3) Who gave you documents; as well as variations of these questions as found at Liang Deposition Transcript pgs. 11:13-14; 11:23-24; 12:12-13; 13:11-12; 13:22; 14:7-8; 18:15-16; 19:1-2; 19:8-9; 22:18-19; 163:23-25; 164:6-9; 175:2-5; 186:25-187:1.

⁴ Exemplary questions may be found at Liang Deposition Transcript p.35:9-10 and 36:12-13. Honeywell shall have the opportunity to ask questions such as these, and InnoLux's witness will provide full and complete testimony without any limiting instructions from counsel, other than an appropriate privilege objection, if any.

III. The Preparation of InnoLux's 30(b)(6) Witness

Honeywell also raised concerns regarding the lack of preparation of InnoLux's 30(b)(6) witness. As addressed above, as a result of the improper objections and instructions not to answer, Honeywell did not have the opportunity to test the adequateness of Ms. Liang's preparation. The Special Master finds that such objections and instructions not to answer were inappropriate. (Section I *supra*.) The Special Master finds that InnoLux's objections and instructions not to answer obstructed Honeywell's efforts to understand Ms. Liang's preparedness; therefore, based on the deposition record, one cannot answer the question as to whether Ms. Liang properly prepared as a 30(b)(6) designee. Honeywell shall have the opportunity to re-depose Ms. Liang (or other designee) regarding the deponent's preparation for the 30(b)(6) deposition, including an examination in accordance with the Special Master's instructions in Sections I and II *supra*.

While Honeywell was unable to explore the witness' preparation, Honeywell was also concerned with the number of questions for which the witness had no answer or stated "I don't know." In defending this position in the post-deposition motion practice, counsel for InnoLux countered that each such question was beyond the scope of the 30(b)(6) notice. The Special Master finds that each of the disputed questions was within the scope of the topics in Honeywell's 30(b)(6) notice. Topic No. 25 of the 30(b)(6) notice is axiomatic of this. This topic sought information relating to the "relationship" between Hon Hai and InnoLux. In light of the briefing on InnoLux's motion to dismiss and Judge Farnan's Order of April 18, 2008, it is clear that Honeywell's notice encompassed each of the disputed questions, including those addressed at the telephonic hearing relating to the relationship between InnoLux and Hon Hai. Honeywell shall be given the opportunity to re-depose InnoLux's witness in relation to all such jurisdictional topics and issues for which this witness could not provide an answer and did not provide


Honeywell with information regarding her preparation. As is necessary, the parties shall confer prior to the deposition in order to agree upon such topics and issues and will engage the Special Master only at an impasse.

IV. Fees and Costs

InnoLux will bear the costs of Honeywell retaking this 30(b)(6) deposition as ordered herein, including:

- a. All costs and fees associated with the stenographic record and videotaping of the deposition;
- b. Coach airfare and one night hotel stay for one attorney to travel from Boston to Washington, D.C. to take the deposition on behalf of Honeywell;
- c. Attorney time for one attorney on behalf of Honeywell as follows:
 - (1) up to seven (7) hours of deposition time per witness;
 - (2) five (5) hours for preparation and travel for the deposition(s).

ENTERED this 24 day of November, 2008



Vincent J. Poppiti (#100614)
Special Master

SO ORDERED this 25 day of November, 2008



United States District Court Judge