Micron Tech., Inc. v Plunkett Group, Inc.
2025 NY Slip Op 35045(U)
December 29, 2025
Supreme Court, New York County
Docket Number: Index No. 157986/2025
Judge: Kathleen Waterman-Marshall
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **31M**

Justice

---X

MICRON TECHNOLOGY, INC.,MICRON SEMICONDUCTOR PRODUCTS, INC.

Petitioners,

- v -

THE PLUNKETT GROUP, INC.,

Respondent.

---X

INDEX NO. 157986/2025

MOTION DATE 06/23/2025, 10/31/2025, 11/13/2025

MOTION SEQ. NO. 001 002 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 21, 24, 25, 26, 39, 40, 41, 42, 43, 44, 45, 46, 53, 54, 55

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52

were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 56, 57, 58, 59, 60, 62

were read on this motion to/for SEAL.

Upon the foregoing documents and following on-the-record oral argument on December 18, 2025: (1) the motion by Plaintiffs Micron Technology, Inc. and Micron Semiconductor Products, Inc. (collectively "Micron"), to compel Defendant The Plunkett Group, Inc. ("Plunkett") to comply with a Subpoena Duces Tecum and Ad Testificandum ("the Subpoena") served upon it on February 20, 2025, is denied, and Micron's cross-motion to quash the Subpoena and for a protective order, is granted (motion seq. 001); and (2) Micron's separate motions to seal certain documents submitted on the motion (motion seqs. 002 and 005), is granted.

The Court's Decision on the instant motions is spread upon the record, the transcript of which has been So-Ordered, attached, and the findings and conclusions are incorporated at length herein.

Briefly and in broad strokes, Micron brought this special proceeding to compel Plunkett to comply with the Subpoena, which seeks documents and information allegedly material and relevant to its Idaho State Court action against non-party Netlist, Inc. ("Netlist") in which it seeks damages for Netlist's alleged bad faith assertion of patent infringement claims against

Micron, in violation of the Idaho Bad-Faith Statute, Idaho Code § 48-1703.[1] In pertinent part, Idaho Code § 48-1703 provides that it is unlawful to assert a patent infringement claim in bad faith and that in determining whether a claim was made in bad-faith, the Court may consider, *inter alia*, whether the claimant acts in subjective bad faith or demands an unreasonable license amount (NYSCEF Doc. No. 2, Memorandum at 5-6).

Plunkett, a non-party to the Idaho action, is a public relations firm specializing in corporate communications, media management, investor relations and executive training (NYSCEF Doc. No. 25, Memorandum at 3). The Subpoena is addressed to Plunkett, as Netlist's public relations firm, and seeks documents and deposition testimony related to: Netlist's patents; licensing of patents; monetization of patents; internal procedures regarding patent monetization; any litigation of patents; the patent infringement litigation between Micron and Netlist; Netlist's valuation; Netlist's corporate governance; and any communication with Netlist concerning Micron. The subpoena requested compliance by March 24, 2025 (NYSCEF Doc. No. 17). Micron contends that Plunkett did not respond to the subpoena until March 27, 2025 when it provided written objections (however, the written objections do not appear on NYSCEF).

The Motion to Compel and Cross-Motion to Quash

As set forth in the Decision, a party seeking discovery from a nonparty must state the "circumstances or reasons" underlying the subpoena, on its face, and the party seeking to quash the subpoena must establish the material sought is "utterly irrelevant" or "the futility of the process to uncover anything legitimate is inevitable or obvious" (*Kapon v Koch*, 23 NY3d 32, 34 [2014]). The test is one of "usefulness and reason" (*AQ Asset Mgmt. LLC v Levine*, 138 AD3d 635 [1st Dept 2016]). Should the witness opposing the subpoena make such a showing, the burden shifts to subpoenaing party to establish the material sought is "material and necessary" to the action (*Kapon,* 23 NY3d at 34).

CPLR § 2304 requires a motion to quash a subpoena be made "promptly," thus making the issue of timeliness *sui generis*. However, where a motion to quash is brought after the return date of the subpoena, the motion risks futility if the subpoena is obeyed; thus, a motion to quash must generally be made before the subpoena's return date (*Matter of Brunswick Hosp. Ctr, Inc. v Hynes*, 52 NY2d 333, 339 [1981]; *see also Matter of Santangello v People*, 38 NY2d 536, 539 ["motion to quash ... should be made prior to the return date"] [1976]). While Plunkett's cross-motion to quash the subpoena was not filed until October 3, 2025, more than five months after the return date set forth in the Subpoena, the Court overlooks the delay given that the parties engaged in meet and confers both before and after the return date of the Subpoena in an attempt to resolve the issues.[2] Therefore, in its discretion, the Court considers the merits of the cross-

[1] Netlist filed a patent infringement action against Micron in the U.S. District Court in Texas, in which it claimed that Micron infringed on certain claims of its '833 patent and demanded that Micron pay it a licensing fee. Micron refused to pay the licensing fee, claimed that the '833 patent was invalid because a separate Netlist patent asserting a similar claim had been invalidated three years prior, and requested that Netlist withdraw or stay its infringement case. Netlist refused to withdraw or stay the infringement action. Micron then filed a proceeding with the Patent Trial and Appeal Board (PTAB) of the U.S. Patent and Trademark Office (USPTO) seeking to have certain claims of the '833 patent invalidated. PTAB cancelled claims 1, 3-17, and 19-30 under the '833 patent. Micron then commenced the Idaho action.

[2] Micron's argument that Netlist was required to respond to its subpoenas within 20 days pursuant to the CPLR is incorrect as the subpoenas themselves do not seek compliance until 35 days after they were served.

motion to quash (*see e.g. Menkes v Beth Abraham Servs.*, 89 AD3d 647 [1st Dept 2011] [motion to quash an exercise of discretion]).

The Court declines to quash the Subpoena as premature and subject to completion of party discovery. While the Appellate Division, First Department cases that Plunkett relies upon in support of this argument make good practical sense,[3] the Court of Appeals has stated that the general rule is that a party need not demonstrate the material is unavailable elsewhere before turning to a non-party subpoena (*Kapon*, 23 NY3d at 38; *Liberty Petroleum Realty, LLC v Gulf Oil, L.P.*, 164 AD3d 401, 406 [1st Dept 2018] [discussing that a party is no longer required to demonstrate material is unavailable from other sources before seeking non-party discovery in light of *Kapon*]).

However, the Subpoena is quashed as it is overbroad and seeks matter that is utterly irrelevant to Micron's Idaho action. Even presuming, *arguendo*, that information about Netlist's "subjective intent" with respect to its patent infringement litigation for the '833 patent is relevant to the Idaho action, the Subpoena seeks all documents concerning ***all*** of Netlist's patents – not limited to the '833 patent, or the previously invalidated patent which Micron contends placed Netlist on notice that the '833 patent was subject to invalidation. In addition, the Subpoena seeks all documents related to Netlist's patent enforcement for all patents, financial outcomes, and monetization. Put simply, of the 10 categories/requests outlined in the Subpoena, only one appears limited to the patent infringement litigation between Micron and Netlist (request number 6). Moreover, the deposition testimony of Ms. Sasaki refutes Micron's claim that Plunkett is in possession of investor communications addressing Netlist's '833 patent infringement litigation. The Subpoena is therefore overbroad and seeks utterly irrelevant information (*Grotallio v Soft Drink Leasing Corp.*, 97 AD2d 383 [1st Dept 1983] [use of "any and all" as preface to each demand rendered demand overly broad, and neither the party nor the court is required to "cull the good from the bad"] *citing People v Doe*, 39 AD2d 869 [1st Dept 1972]). "Where the discovery demands are overbroad, the appropriate remedy is to vacate the entire demand rather than to prune it" (*Fox v Roman Catholic Archdiocese of N.Y.*, 202 AD3d 1061 [2d Dept 2022]; *see also Star Auto Sales of Queens, LLC v Filardo*, 216 AD3d 839 [2d Dept 2023] [burden on counsel to construct a proper demand and "it is not for the courts to correct a palpably bad one"]).

As the motion to quash is granted, there is no need to consider whether the motion to compel should be granted, or whether the material sought is material and necessary (*Menkes*, 89 AD3d at 648). Consequently, to the extent that Micron seeks its attorney's fees (its Petition [NYSCEF Doc. No. 1]) seeks attorney's fees but papers in support of the instant motion are silent as to attorney fees), such fees are not warranted.

<u>The Motions to Seal</u>

Plunkett moves to seal the deposition transcript of Ms. Sasaki (Netlist's witness) filed as an exhibit and excerpts of the deposition contained in memoranda (NYSCEF Doc. Nos. 39, 42, 50, 51, 55), in accordance with Micron's and Netlist's stipulated protective order in the Idaho state court action. The sealing motions are unopposed.

[3] *Schorr v Schorr* (113 AD3d 490, 491 [1st Dept 2014]), *Financial Structures LTD v UBS AG* (96 AD3d 433, 434 [1st Dept 2012), and *Menkes* (89 AD3d at 647-648).

Court records are presumed to be in the public sphere, accessible for the public's review and inspection, absent good cause (*Mosallem v Berenson*, 76 AD3d 345 [1st Dept 2010]; 22 NYCRR § 216.1[a]). In this Court's considered view, a confidentiality order of a sibling state constitutes good cause to seal a document. Moreover, Micron does not dispute that Ms. Sasaki's testimony contains confidential or proprietary business information and is subject to the Idaho confidentiality order. Therefore, the motions to seal are granted (*Vergara v Mission Cap. Advisors*, 187 AD3d 495 [1st Dept 2020]).

Accordingly, it is hereby

ORDERED that Micron's motion to compel compliance with the Subpoena is denied and Plunkett's cross-motion to quash the Supoena is granted; and it is further

ORDERED that Plunkett's motions to seal are each granted in their entirety and the documents located at and identified as NYSCEF Doc. Nos. 39, 42, 50, 51, 55, are permanently sealed.

12/29/2025
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	REFERENCE