

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

VALTRUS INNOVATIONS LIMITED,

Plaintiff,

v.

NTT DATA SERVICES, LLC, *et al.*,

Defendants,

and

VERTIV CORPORATION

Intervenor,

Civil Action No. 2:24-cv-00361-JRG
(Lead Case)

JURY TRIAL DEMANDED

VERTIV CORPORATION,

Plaintiff,

v.

VALTRUS INNOVATIONS LIMITED,

Defendant.

Civil Action No. 2:24-cv-00907-JRG

JURY TRIAL DEMANDED

VERTIV CORPORATION'S MOTION FOR PROTECTIVE ORDER

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Plaintiff Vertiv Corporation (“Vertiv”) files this motion seeking an order of protection preventing Defendant from enforcing third-party subpoenas directed to Vertiv’s customers.

Vertiv filed this action seeking only a declaration that certain Vertiv-supplied products identified by Defendant and used by Vertiv’s customers (“Identified Products”) do not infringe Defendant’s patents. Defendant has not asserted any infringement counterclaims; thus, there are no damages to address or other issue concerning any financial information from Vertiv or its customers. Vertiv has already produced the technical information regarding the Identified Products, and Defendant has not identified any deficiency or need for additional information. Vertiv has also made available the relevant source code for the Identified Products, which Defendant has not attempted to review. Defendant now seeks improper, onerous, and prejudicial third-party discovery from Vertiv’s data center operator customers¹ relating to damages and other issues not remotely related to the non-infringement issue. Defendant goes further, seeking dozens of unwarranted data center inspections that are not only disproportional to the needs of the case, but also give rise to third-party security concerns due to the highly confidential facilities, which not even the data center operator/customers themselves can freely enter.

Defendant has not identified any legitimate reason for this discovery, and even conceded that it seeks information unrelated to this case. Exh. 1 ¶ 6. Defendant’s motives are clear: unnecessarily harass Vertiv’s customers (and, thus, Vertiv) by seeking unwarranted intrusions to their facilities and operations, as Defendant expands its enforcement campaign with information

¹ Five Vertiv customers (“Initial Subpoenaed Customers”) were initially alleged by Defendant to infringe based on their use of Vertiv products. On March 3, 2025, after the parties’ meet-and-confer, Defendant served essentially identical subpoenas on seven additional Vertiv customers that Defendant had not previously identified as infringing any of its patents (“Additional Subpoenaed Customers”, collectively with “Initial Subpoenaed Customers,” “Subpoenaed Customers”). Exh. 1 (“Schwartz Decl.”) ¶¶ 3–5. The Additional Subpoenaed Customers are addressed separately in Section III.D., *infra*.

it cannot otherwise obtain. With respect to the data center inspections, Defendant continues the false pretense that inspections are needed to determine whether the customers practice the claimed methods. However, as previously explained, Defendant does not need inspections: previous inspections in its prior litigations have yielded no new infringement information, and Defendant asserts that each of the data centers operate in the same way with respect to the infringement assertions directed to Vertiv's products. Dkt. No. 97 at 1–2.

I. FACTUAL AND PROCEDURAL BACKGROUND

Defendant has filed serial patent infringement suits accusing several Vertiv data center operator customers of infringing the asserted patents due to their use of Vertiv equipment (the “Customer Suits”). *Vertiv Corp. v. Valtrus Innovations Ltd.*, Case No. 2:24-cv-00907, Dkt. No. 1 ¶ 17 (N.D. Tex.) (“Compl.”). Defendant has dismissed all but two of the suits before any decisions on the merits. Defendant contends that Vertiv's customers infringe various of its patents by, among others, using Vertiv cooling equipment. Compl. ¶¶ 1–17. Defendant has also sent licensing letters to additional Vertiv customers asserting generally the same infringement theories in those letters. *Id.* To defend against such suits more efficiently, and rather than in piecemeal fashion through numerous and repetitive customer suits that Defendant appears unwilling to proceed to ruling on the merits, Vertiv filed the instant suit declaratory judgment.

As the manufacturer of the accused Vertiv cooling equipment, Vertiv has already produced the relevant information for addressing the non-infringement issues, including making the source code available. Defendants have neither contended that Vertiv's discovery responses are deficient, thereby requiring third-party discovery, nor suggested that third parties have unique information unavailable from Vertiv. Without responding to Vertiv's Complaint, Defendant continues targeting Vertiv's customers, including serving document/data center inspection/deposition subpoenas. Exh. 1 ¶¶ 3–5. The subpoenas seek production of information related to, *inter alia*:

Category of Information from Each Customer	Requests	Status of Response and Objections
Technical, usage and purchase information of Vertiv Cooling Equipment	Topics: 1, 2 and 10; RFPs 1, 2 and 10	Produced by Vertiv; source code made available to Defendant; objected to by Customers
Technical, usage and purchase of Non-Vertiv Cooling Equipment; sourcing of same	Topic 5-7 and 9-10; RFP 5-7 and 9-10	Not relevant to DJ action; objected to by Customer Defendants
Potential indemnification claims made by Customer to Vertiv	Topic 3; RFP 3	Produced by Vertiv; objected to by Customer Defendants
Customer's data center electricity usage	Topic 4; RFP 4	Not relevant to DJ action; objected to by Customer Defendants
Information about Customer's relationship with Vertiv and communications regarding the DJ Action	Topic Nos. 8 and 11; RFP Nos. 8 and 11	Available from Vertiv; objected to by Customer Defendants
Data Centers Inspection	Exhibits A and B to each subpoena	Not relevant to DJ action; disproportional to the needs of the case; prejudicial to third party customers.

Exh. 1 ¶ 3.

II. LEGAL STANDARD

Parties may seek protective orders pursuant to Rule 26(c) to limit the scope of discovery of third-party subpoenas served on non-parties. *Madison v. Courtney*, Civil Action No. 4:18-cv-00671, 2018 WL 10579557, at *2 (N.D. Tex. Aug. 17, 2018). In deciding a motion for protection, courts “balance the relevant interests and ‘compare the hardship to the party against whom discovery is sought against the probative value of the information to the other party[, and also] weigh relevant public interests in this analysis.’” *Id.* (quoting *Cazorla v. Koch Foods of Miss., L.L.C.*, 838 F.3d 540, 555 (5th Cir. 2016)). “While the burdens may vary somewhat depending on which rule or procedure is invoked, the substantive considerations for denying a party discovery are generally the same and may be gleaned from Rule 26(b), (c) and (g).” *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1323 (Fed. Cir. 1990) (citations omitted).

“After balancing the relevant interests[,] the Court ‘has broad discretion in determining whether to grant a motion for a protective order.’” *Madison*, 2018 WL 10579557 at *2. “Discovery may not be had regarding a matter which is not ‘relevant to the subject matter involved in the pending action,’ [and even where] relevant, discovery is not permitted where no need is shown, or compliance would be unduly burdensome, or where harm to the person from whom discovery is sought outweighs the need of the person seeking discovery of the information.” *Id.*; *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 280 (N.D. Tex. 2017) (“Under Rule 26(b)(1), discoverable matter must be relevant and proportional to the needs of the case—which are related but distinct requirements.”).

III. ARGUMENTS

The Court should exercise its discretion and enter an order protecting the Subpoenaed Customers from Defendant enforcing the subpoenas and obtaining the requested discovery, including preventing Defendant from performing the requested data center inspections.²

A. Information Relating to Non-Vertiv Cooling Equipment is Irrelevant

Notwithstanding that this case is directed to *Vertiv’s* cooling equipment, Defendant’s subpoenas request technical, usage, purchase, and sourcing information related to *Non-Vertiv* Cooling Equipment. During the meet-and-confer process, Defendant conceded that Non-Vertiv Cooling Equipment is relevant to damages and financial issues, which are simply not part of this action:

“[W]e think it’s very important to see the advantages/disadvantages of Vertiv technology vis-à-vis others. This is relevant, for example, to valuation, non-infringing alternatives, and potentially secondary considerations. We understand that, at the moment, there is no invalidity issue, but we cannot hold off on discovery pending resolution of the motion to dismiss.”

² Through the meet-and-confer process, Defendant and the Initial Subpoenaed Customers agree that the most efficient manner to address these issues globally is for Vertiv to first file this Motion for Protective Order.

Exh. 1 ¶ 6. That it recognizes it has no basis for pursuing this information, especially as it has refused to answer the Complaint thus far, Defendant's true motive is the harassment of Vertiv's customers and Vertiv itself. Defendant articulates no legitimate need for additional information from the customers, but seems more intent on pursuing irrelevant information than reviewing the relevant material already available to it.

Notably, Vertiv has already produced technical information regarding the accused products and has made the source code available to Defendant. Whatever information regarding the features and functionality of Vertiv Cooling Equipment that Defendant seeks from Subpoenaed Customers that is relevant, Defendant could and should have obtained from Vertiv, a much more convenient source than the Initial Subpoenaed Customers. Defendant "has had ample opportunity to" do so. FED. R. CIV. P. 26(b)(2)(C)(ii). Defendant has no reason to believe Vertiv would not cooperate in producing whatever relevant information Defendant now seeks from Subpoenaed Customers.

Accordingly, an order of protection from producing information responding to Topics and RFPs 5–7 and 9–10 is warranted here.

B. Subpoenaed Customer's Business and Financial Information

The same analysis applies with respect to Defendant's requests for business and financial information related to both Vertiv and Non-Vertiv Cooling Equipment, including, *e.g.*: operational costs (Topic and RFP No. 4); cooling equipment purchasing and servicing (Topic and RFPs No. 2 and 6); and cooling equipment usage (Topic and RFPs No. 1 and 5). None of the requested information relates to the non-infringement issues and instead falls within the categories conceded by Defendant to be unrelated to any issue here. Without any need or basis for this information, an order of protection is warranted with respect to business and financial information.

In addition, Vertiv has already produced spreadsheets showing purchases of Identified Products by each of the Initial Subpoenaed Customers. Similarly, Vertiv has produced indemnification agreements between itself and the Initial Subpoenaed Customers (Topic and RFPs No. 3 and 8). There is no need to make the customers re-produce the same information.

With respect to the Customer's relationship with Vertiv, this is irrelevant to the non-infringement issues present here, and thus the requests seeking such information are overly broad and unduly burdensome.

C. Inspection of Subpoenaed Customer's Data Centers are Unnecessary, Disproportional to Needs of the Case, and Raise Unique Confidentiality Issues

The data center inspections raise two separate, but equally important, issues requiring an order of protection. First, Defendant's suggestion that it needs to inspect the data centers to determine whether any customer infringes based on its use of Vertiv products is simply untrue. Defendant has consistently asserted in its infringement contentions that each data center allegedly performs the claimed methods in the same manner and, notwithstanding one year of litigation by Defendant, it has never identified a single difference in the use of Vertiv equipment in any data center. Dkt. No. 100 at 3. Indeed, Defendant inspected several data centers in the Digital Realty matters and failed to find any information to supplement or amend its infringement contentions thereafter. Dkt No. 97 at 2. It is enough that Defendant demands *parties* to its lawsuits to make their data centers available for inspection, but there is simply no reason for *non-parties*, like the Subpoenaed Customers, to be forced to do the same.

Second, assuming *arguendo* that data centers themselves contain even remotely relevant information, entry to the data centers by Defendant is so highly prejudicial and burdensome to the Subpoenaed Customers that it decidedly outweighs any probative value Defendant may gain. As set forth in the objections and responses by each Initial Subpoenaed Customer, the data centers

house extremely sensitive and confidential information of the customers of the Initial Customers, including in certain instances highly classified and similarly protected information. Exh. 1 ¶¶ 8–11. In most instances, even the Initial Subpoenaed Customers themselves do not have the ability to freely enter and examine their own facilities, as they have substantial legal and contractual obligations restricting access, including prohibitions against audio/visual recordings. *Id.* Even with the Protective Order protections, additional protections would be required to permit access to the Initial Subpoenaed Customers’ data centers. Accordingly, and in addition to the other issues addressed herein, the issues raised by these inspections are wholly disproportionate to the needs of the case.

D. Additional Subpoenaed Customers Also Require an Order of Protection

For all of the reasons discussed above, an order of protection is also appropriate for the subpoenas served on the Additional Subpoenaed Customers. Further, to Vertiv’s knowledge, Defendant has never alleged these customers have infringed its patents based on the use of Vertiv’s products, and definitely had not done so at the time Vertiv filed this declaratory judgment action (“DJ Action”). As Vertiv previously stated, this case is limited to the products used by Vertiv’s customers identified by Defendant prior to the initiation of this DJ Action. Thus, these Additional Subpoenaed Customers are well beyond the scope of this action. Defendant cannot use the existence of a manufacturer’s DJ Action to seek discovery of any customer, regardless of that customer’s relationship and the scope of the DJ action. The Court should enter an order to protect the Additional Subpoenaed Customers from responding at all to Defendant’s subpoenas.

IV. CONCLUSION

For the foregoing reasons, Vertiv respectfully submits that the Court enter the requested protective order.

Dated: March 10, 2025

Respectfully submitted,

/s/Daniel J. Schwartz w/permission

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document is being filed electronically in compliance with Local Rule CV-5(a). As such, this document is being served this March 10, 2025 on all counsel of record, each of whom is deemed to have consented to electronic service. L.R. CV-5(a)(3)(A).

/s/ Daniel J. Schwartz

Daniel J. Schwartz

CERTIFICATE OF CONFERENCE

Counsel for Vertiv Corporation (Daniel Schwartz) and counsel for Valtrus Innovations Limited (Matthew Berkowitz and Connor Houghton) met and conferred through email and telephonically several times regarding the issues in this motion. Above identified counsel and local counsel for both parties met and conferred in a final attempt to resolve the issues on March 7, 2025 pursuant to Local Rule CV-7(h). Valtrus Innovations Limited does oppose this motion.

/s/ Daniel J. Schwartz

Daniel J. Schwartz