IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

AUBURN UNIVERSITY,	)	
	)	
Plaintiff,	)	
v.	)	CASE NO. 3:09-cv-694-MEF
	)	(WO)
INTERNATIONAL BUSINESS MACHINES, CORP.,	)	
	)	
Defendant.	)	

DISCOVERY ORDER

It is hereby ORDERED that:

Based on the parties' conference and agreed-upon deadline, IBM will provide to Auburn by no later than December 30, 2011, the following documents and information:

1. All "T2 letters" applicable to any "Cell" products made by (or at the direction of) IBM for Sony since March 2007.

2. Non-duplicative reliability models (i.e., spreadsheets) similar to those produced by IBM in connection with other accused products, including any Weibull models, applicable to any "Cell" products made by (or at the direction of) IBM for Sony since March 2007.

3. A supplemental response to Auburn's Interrogatory No. 23,[1] identifying any portions of source code that are responsible for, designed for, or capable of implementing nearest neighbor or repair-based testing in connection with any "Cell" products made by (or at the direction of) IBM for Sony since March 2007.

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[1] Auburn's Interrogatory No. 23, served on March 21, 2011, states in relevant part: "Separately for each IBM product, identify the portions of the source code for each test program IBM has made, used, sold, offered for sale, or imported since 2001 (inclusive) that, when executed, makes or implements testing determinations or strategies based at least in part on either a count of a number of repairs made to, or determined to be necessary for, a given integrated circuit die or, with respect to a given integrated circuit die, a count of a number of defective integrated circuit die from the same wafer that are or were located adjacent to and/or neighboring the given integrated circuit die. For example, with respect to the P6 product, this interrogatory calls for [REDACTED]."

4. Documents, including presentations and emails, sufficient to identify and disclose all know-how relating to **nearest neighbor** or repair-based testing that was provided by IBM to Sony under the agreement bearing production numbers IBM_AUB_E00058947-84.

5. Documents created in the ordinary course of IBM's business, such as source code, sufficient to verify IBM's contention that nearest neighbor testing has not been used since March 2007 in connection with any "Cell" products made by (or at the direction of) IBM for Sony.

To the extent that IBM contends that there are no responsive documents or information for any of the foregoing categories of documents and information, IBM shall make an affirmative representation of such contention. The parties agree that IBM need not produce the financial discovery relating to Sony sought in Auburn's January 28, 2011 Motion to Compel at the present time. The parties agree to confer in good faith regarding the production of Sony-related financial information, if necessary, following Auburn's review of IBM's forthcoming production consistent with this Order. Auburn reserves its right to apprise this Court of any demonstrated need for Sony-related financial information consistent with its prior Motion to Compel.

DONE this the 20th day of December, 2011.

/s/ Mark E. Fuller
UNITED STATES DISTRICT JUDGE