

STAY CURRENT

A Client Alert from Paul Hastings

PAUL
HASTINGS

Does a Civil Protective Order Protect a Company's Foreign-Based Documents from Being Produced in a Related Criminal Investigation?

BY THOMAS P. O'BRIEN AND DANIEL PRINCE

With increasing scrutiny by the United States Department of Justice (DOJ) on intellectual property cases, a foreign company being sued by a competitor in the United States also may become the target of a federal criminal investigation. Whether or not the United States government may obtain a defendant's foreign-based documents by serving a grand jury subpoena on a civil plaintiff, despite the existence of a civil protective order, turns on the law of the federal Circuit Court in which the case is pending. The majority of federal United States Circuit Courts (including recent decisions by the United States Court of Appeals for the Fourth Circuit and the United States Court of Appeals for the Ninth Circuit) hold that a federal grand jury subpoena supersedes the provisions of a civil protective order per se. On the other hand, two minority rules have emerged. At least one Circuit Court has articulated that civil parties should be able to rely on the enforceability of their agreements, even against the government, barring some "compelling need" by the government for the requested information. Other Circuit Courts urge that there is a "rebuttable presumption" with respect to the enforcement of grand jury subpoenas unless the person seeking to avoid the subpoena can demonstrate the existence of exceptional circumstances sufficient to do so. This is a significant issue for foreign companies which do business in the United States.

To read the full alert, follow this [link](#).

To read other recent alerts, follow this [link](#).

Originally published by © 2011 Bloomberg Law Reports--Corporate Counsel.