

IN THE IOWA SUPREME COURT
No. 21-1652

IN THE MATTER OF THE SUBPOENAS
ISSUED TO DETHMERS
MANUFACTURING COMPANY

DETHMERS
MANUFACTURING COMPANY,

Appellant

APPELLANT'S FINAL BRIEF

**APPEAL FROM THE IOWA DISTRICT
COURT FOR OSCEOLA COUNTY**

HON. NANCY L. WHITTENBURG, PRESIDING

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Table of Contents

	Page
Table of Authorities _____	3
Statement of Issues Presented for Review _____	5
Routing Statement _____	6
Statement of Case _____	7
Statement of Facts _____	8
Argument _____	20
Conclusion _____	52
Request for Oral Argument _____	52
Certificate of Compliance _____	53
Cost Certificate _____	53
Certificate of Filing and Service _____	53

Table of Authorities

<u>Case Law</u>	<u>Pages</u>
<i>Am. Broad. Companies, Inc. v. Aereo, Inc.</i> , No. 13-MC-0059, 2013 WL 5276124 (N.D. Iowa Sept. 17, 2013) _____	5,37,38,43,44,45
<i>Centurion Industries, Inc. v. Warren Steurer and Associates</i> , 665 F.2d 323, 325 (10th Cir.1981) _____	38,39,43
<i>CMI Roadbuilding, Inc. v. Iowa Parts, Inc.</i> , 322 F.R.D. 350 (N.D. Iowa 2017) _____	41
<i>Convolve, Inc. v. Dell, Inc.</i> , 2011 WL 1766486 (N.D. Cal.) _____	38,42,43,44
<i>Echostar Commc'ns Corp. v. News Corp.</i> , 180 F.R.D. 391 (D. Colo. 1998) _____	5,34,35,39,51
<i>Mason v. Robinson</i> , 349 N.W.2d 236 (Iowa 1983) _____	5,31,32
<i>Memory Integrity, LLC v. Intel Corp.</i> , 308 F.R.D. 656 (D. Or. 2015) _____	41
<i>Ney v. Ney</i> , 891 N.W.2d 446 (Iowa 2017) _____	20
<i>Sullivan v. Chicago & Nw. Transp. Co.</i> , 326 N.W.2d 320 (Iowa 1982) _____	6,36
<i>Powers v. State</i> , 911 N.W.2d 774 (Iowa 2018) _____	24
<i>State ex. Rel. Miller v. Publishing Clearing House, Inc.</i> , 633 N.W.2d 732 (Iowa 2001) _____	25,28
<i>Wesley Retirement Servs., Inc. v. Hansen Lind Meyer, Inc.</i> , 594 N.W.2d 22 (Iowa 1999). _____	5,23

Court Rules:

Ia. R. Evid. 5.701	5,27,30
Ia. R. Evid. 5.702	26,30,31
Ia. R. App. P. 6.101(1)(b)	22
Ia. R. Civ. P. 1.503(1)	24
Ia. R. Civ. P. 1.904(2)	22
Ia. R. Civ. P. 1.707(5)	26,40
Ia. R. Civ. P. 1.1701	21,26
Ia. R. Civ. P. 1.1701(4)	35
Ia. R. Civ. P. 1.1701(4)(a)	6,36,43
Ia. R. Civ. P. 1.1701(4)(d)(2)	6,28
Ia. R. Civ. P. 1.1702	5,7,20,21,27
Ia. R. Civ. P. 6.103(1)	5,22
Fed. R. Civ. P. 45(d)	35,36
Louisiana Code of Evidence Article 401	48

Other Authorities

<i>8 Ia. Prac., Civil Litigation Handbook</i> §25:10	32
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Statement of the Issues Presented for Review

1. Does the Court have jurisdiction of this case?

Iowa Const. Art. 5 §4

Wesley Retirement Servs., Inc. v. Hansen Lind Meyer, Inc., 594 N.W.2d 22 (Iowa 1999).

Ia. R. Civ. P. 1.1702

Ia. R. Civ. P. 6.103(1)

2. Did the district court abuse its discretion in ordering an Iowa company to appear as an expert witness for an out of state plaintiff in a case to which the Iowa company is not a party, where the plaintiff has not shown a compelling necessity for such testimony?

Mason v. Robinson, 349 N.W.2d 236 (Iowa 1983)

Echostar Commc'ns Corp. v. News Corp., 180 F.R.D. 391, 395 (D. Colo. 1998)

Am. Broad. Companies, Inc. v. Aereo, Inc., No. 13-MC-0059, 2013 WL 5276124 (N.D. Iowa Sept. 17, 2013)

Ia. R. Evid. 5.701

3. Did the district court abuse its discretion in ordering an Iowa company to produce twenty-two broad categories of confidential and proprietary documents constituting trade secrets, for use by a plaintiff in an out of state case to which the Iowa company is not a party, where there has been no showing of what documents are already available to the plaintiff by other means?

Am. Broad. Companies, Inc. v. Aereo, Inc., No. 13-MC-0059, 2013 WL 5276124 (N.D. Iowa Sept. 17, 2013)

Echostar Commc'ns Corp. v. News Corp., 180 F.R.D. 391, 395 (D. Colo. 1998).

Ia. R. Civ. P. 1.1701(4)(a)

Ia. R. Civ. P. 1.1701(4)(d)(2)

Routing Statement

This case involves interpretation and application of the Iowa Rules of Civil Procedure governing subpoenas issued to third parties. The Iowa rules are based on the federal rules, so Iowa courts normally look to federal decisions to assist in applying identical or similar language. See, e.g., *Sullivan v. Chicago & Nw. Transp. Co.*, 326 N.W.2d 320, 326 (Iowa 1982). While there is not a body of reported Iowa law specific to the topics involved in this case, there is a significant body of reported federal law involving the federal rule with identical language. Thus, even though the issues are novel to Iowa state court decisions, that may not be important in the larger scheme. Accordingly, Dethmers believes the Iowa Court of Appeals would be a suitable forum for the issues in this case.

Statement of the Case

On April 28, 2021, plaintiff Mittapalli filed two civil actions in the Iowa District Court for Osceola County, pursuant to Ia. R. Civ. P. 1.1702 concerning “Uniform interstate depositions and discovery.” Appx. Vol I pp. 9-12. Both Iowa civil actions relate to the same Louisiana personal injury lawsuit. *Id.* One of the two Iowa cases requested issuance of a document subpoena and the other requested issuance of a deposition subpoena. *Id.* Both subpoenas were directed to Dethmers Manufacturing Company, an Iowa corporation, which is not a party to the Louisiana case. *Id.*; Appx. Vol. II p. 157.

Dethmers moved to quash or, in the alternative, for protective orders as to both subpoenas. See Combined Motion to Quash, May 5, 2021. On July 9, 2021, the District Court entered an order denying Dethmers’ motions to quash. Appx. Vol. II pp. 157-164. The Court allowed the subpoenas to proceed as to all twenty-two categories of documents and topics for which they sought information. *Id.* The Court also required the parties to agree upon a protective order to govern re-disclosure of documents and testimony. *Id.* Dethmers filed a timely motion to reconsider, and the Court made no change to its previous order. Appx. Vol. II, pp. 157-164; Appx. Vol. II pp. 189-193. Dethmers then appealed both cases. Appx. Vol. II pp. 194-198. The Supreme

Court is expected to order the appeals to be consolidated.

Statement of the Facts

Plaintiff filed a lawsuit in Louisiana state court against U-Haul International, Inc., U-Haul affiliates, and other parties. See Appx. Vol. I pp. 9-12. Dethmers, which has been subpoenaed, is not a party to his lawsuit and none of its products are involved in the circumstances of the lawsuit. Appx. Vol. II p. 157. The lawsuit generally deals with a U-Haul cargo trailer being towed from Florida. Appx. Vol. II pp. 90-111. En route, the coupler on the hitch ball detached. *Id.* The trailer tongue was attached to the towing vehicle with security chains. See Appx. Vol. I p. 93. The chains held and the towing vehicle was able to stop alongside of or on the highway. *Id.* Plaintiff was a passenger who got out of a vehicle to assist with re-attaching the trailer, according to the Petition. *Id.* A passing semi struck the plaintiff. *Id.* He has sued the semi owner and the driver in Louisiana state court on negligence theories. *Id.*, pp. 91-92. However, he has also sued the U-Haul companies involved in the towed trailer rental on theories of strict product liability, claiming that a defect in the trailer coupler caused the detachment, which in turn caused the stopping of the towing vehicle, which caused the plaintiff to try to assist, which caused the plaintiff to be struck and injured. *Id.*, pp. 91-94.

Mittapalli's liability theory against U-Haul is a simple contention about the mechanical design of the trailer coupler. A coupler is a mechanical device that fits over a hitch ball on a towing vehicle's trailer hitch. See Exhibit O, Appx. Vol. II p. 144. The coupler is designed with a housing into which the hitch ball fits. *Id.* The coupler contains a ball clamp which is made to tighten against the lower half of the hitch ball to prevent it from detaching. *Id.* The issue raised by Mittapalli is the difference between two types of couplers: (1) the handwheel coupler which was on the trailer at the time of the accident; and (2) the "Drop and Tow" coupler which is on some U-Haul trailers and which is manufactured by Dethmers. See Exhibit O, Appx. Vol. II p. 144. The "Drop and Tow" name is a trademark used by U-Haul for what Dethmers calls its "EZ Latch" coupler. See Affidavit of Kevin Ten Haken, Appx. Vol. I p. 33, ¶¶ 5-6; Exhibit 5.

Both types of couplers contain a metal clamp that is supposed to be pressed against the lower half of the hitch ball when the coupler is fully seated. See Exhibit O, Appx. Vol. II p. 144; Exhibit N, App. Vol. II pp. 115-116. The Drop and Tow or EZ Latch design, however, has a metal plate on the bottom of the coupler. See Exhibit N, App. Vol. II pp. 115-116. With the U-Haul handwheel design, the ball clamp is exposed underneath the coupler, making it possible for the metal clamp to be pushed up into the housing and rest on

top of the hitch ball, rather than dropping to the bottom half of the hitch ball as intended. *Id.* That condition is not possible with the EZ Latch design. *Id.*

Thus, Mittapalli's theory of defect is that one of these couplers has a bottom plate preventing the ball clamp from being trapped on top of the ball. The other does not have that feature and the ball clamp can be trapped on top of the ball. Mittapalli argues that the detachment in his case was caused by the ball clamp being trapped as illustrated. He also argues that a coupler with an exposed ball clamp on the bottom is unreasonably dangerous and defective under Louisiana product liability law.

Mittapalli's Iowa subpoenas seek documents and Dethmers' corporate testimony dealing with the same twenty-two topics. These are:

- “1. The general scope of Dethmers/Demco's business as it relates to the design, development and manufacturing of trailer coupling devices.
2. Dethmers/Demco's history of designing manufacturing, and/or selling hand wheel couplers and/or lever latch couplers.
3. Facts and circumstances surrounding the design, development and manufacturing of the Demco EZ latch coupler.
4. The utility, function, benefits and/or purpose of the Demco EZ Latch coupler.
5. All patent applications and/or awards regarding the Demco EZ Latch coupler.
6. All engineering drawings, testing reports, schematics, diagrams, plans, blueprints, electronically stored information, video or

other documents or tangible items that depict, describe, discuss, refer to, or relate to the design, assembly, testing and/or construction of the Demco EZ Latch coupler.

7. All safety and/or instruction manuals, documents, warning and/or electronic communication (i.e., computer or video links) regarding the Demco EZ Latch coupler including but not limited to engineering drawings, testing reports, schematics diagrams, plans, warnings, instructions, blueprints, electronically stored information, video, correspondence, electronic communication, etc.
8. All communications, marketing and/or negotiations with U-Haul and/or other customers regarding the utility, function, benefits, safety and/or purpose of the Demco EZ Latch coupler.
9. The approximate date and/or time frame that Dethmers/Demco introduced the Demco EZ Latch coupler for sale to the public, including but not limited to customers such as U-Haul.
10. All communications, promotion, and/or marketing with U-Haul and/or any other customers regarding the purchase, sale, use and/or implementation Demco EZ Latch coupler.
11. All communication promotions and/or marketing with U-Haul and/or any other customers regarding whether the Demco EZ Latch coupler could potentially improve safety and/or reduce liabilities.
12. The approximate date and/or time frame that Dethmers/Demco first began communications, marketing and/or negotiations with U-Haul regarding the potential purchase, sale, use and/or implementation of Demco EZ Latch coupler.
13. All documents and electronic communication between Dethmers and U-Haul regarding the utility, function, benefits, safety and/or purpose of the Demco EZ Latch coupler.

14. Facts and circumstances surrounding U-Haul's purchase, use and/or implementation of Demco EZ Latch couplers in their fleet of towing equipment.
15. All documents, contracts agreements, and/or electronic communication between Dethmers and U-Haul regarding U-Haul's purchase, use and/or implementation of Demco EZ Latch couplers in their fleet of towing equipment.
16. Communications, marketing and/or negotiations with U-Haul and/or other customers regarding the replacement and/or retrofitting of hand wheel and/or lever latch couplers with Demco EZ Latch couplers.
17. All documents, contracts, communications and/or agreements regarding the price and/or cost paid by U-Haul for Demco EZ Latch couplers (Purchase, retrofit, etc.)
18. All studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving the Demco EZ Latch coupler.
19. All studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving non-EZ Latch coupler design such as hand wheel coupler, lever latch couplers, etc.
20. All communications with U-Haul and/or any other customers regarding studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving the Demco EZ Latch coupler versus non-EZ latch coupler designs such as hand wheel couplers, level latch couplers, etc.
21. Annual sales volume of new and/or replacement/retrofit EZ Latch Couplers from January 1, 2006 to the present.
22. Annual sales volume of new and/or replacement/retrofit EZ Latch couplers to U-Haul from January 1, 2006 to the present.'

See Subpoenas, Appx. Vol. I pp. 66-68, 73-75.

When Dethmers moved to quash the subpoenas on May 5, 2021, it submitted an Affidavit of Kevin Ten Haken, its Executive Vice President. See Appx. Vol. I pp. 32-35. Mr. Ten Haken's initial affidavit established the following pertinent facts:

“3 Dethmers is a family-owned Iowa corporation based in Boyden, Iowa, engaged in manufacturing metal products. Part of Dethmers' business is the manufacture and sale of trailer couplers.

4. A trailer coupler is a device used for attaching the tongue of a trailer to a hitch ball on a towing vehicle.

5. Trailer couplers are made in different designs. Dethmers has at times produced a coupler known as a "lever lock" design. It currently produces couplers using a design which it calls the "EZ Latch." These two designs both utilize a clamping device to hold a coupler on a hitch ball. However, they have certain structural differences which make their mechanical operation different in certain respects.

6. One of Dethmers' customers is U-Haul International, the well-known consumer trailer rental company. U-Haul and/or its affiliated companies purchase versions of the Dethmers EZ Latch coupler for installation on the trailers it produces for its rental fleet, for replacement parts in the rental fleet, and for resale to the general public.

7. The EZ Latch coupler provided to U-Haul for resale is branded with Dethmers' trade name, Demco. This coupler is available for sale to the general public on the internet.

8. Dethmers also sells its EZ Latch coupler through various distributors, and they are available for sale to the general public on the internet.

9. I have reviewed the applications filed in this case for issuance of subpoenas, one for documents and one to compel Dethmers to provide a corporate deposition.

10. Most of the categories of topics and documents described in the applications are addressed to trade secret, proprietary and confidential information of Dethmers. The following categories seek information which Dethmers keeps in confidence and does not allow to be disseminated to persons outside of its business operations ... [reciting the many topics which concern proprietary matters].

11. The trailer parts business is highly competitive and involves margins that are easily affected by changes in sales. The information described in the categories listed above would, in my opinion, provide our competitors with an undue advantage if disseminated to them, and could affect our sales of couplers.

12. To the extent that we can understand what is being asked of us, the information in the above categories would require substantial expense and man-hours to gather. Gathering this information would involve examination of many physical files and computer files. Dethmers' business records are not kept in a way that corresponds with these categories. Gathering these records would adversely impact Dethmers' business operations and affect Dethmers' income by devoting man-hours to useless activity instead of profitable activity.”

Appx. Vol. I pp. 32-35.

On June 24, 2021, Dethmers submitted a supplemental affidavit from Mr. Ten Haken in response to Mittapalli's resistance to the Motion to Quash. Mr. Ten Haken's supplemental affidavit established the following pertinent facts:

“4. Dethmers is engaged in manufacturing various metal products, including couplers. Since late 2018, Dethmers has sold couplers to U Haul International for use on trailers that It manufactures or obtains from a manufacturer other than Dethmers. U Haul conducts a consumer rental business and competes with other national consumer rental companies like U Haul and Budget.

5. Dethmers is of course in competition with other manufacturing companies which could supply couplers to companies like U Haul. Like other American manufacturing companies, Dethmers is concerned about competition from other countries where labor is cheaper. Dethmers has outsourced some limited manufacturing of parts to other countries but maintains control and confidentiality of its design documents. Dethmers also does not share the overall design of a single product (e.g., a coupler) with any single company. Rather, Dethmers outsources individual parts of an item such as a coupler to different companies, then assembles the various parts in the United States.

6. In connection with its EZ Latch coupler, Dethmers has developed custom design drawings using its personnel, its equipment, and its licensed CAD software. Dethmers has invested significant time and money in developing these drawings which form the basis for production of the coupler. Dethmers does not disclose those documents to outside persons. They are confidential and proprietary.

7. Dethmers maintains the confidentiality of its financial information, business methods, corporate records, design drawings, records of contact with customers, customer lists, emails, correspondence, price lists, costing information, production records, and other internal information and does not disclose those to persons outside the company unless compelled to do so.

8. Dethmers' financial information, business methods, corporate records, design drawings, records of contact with customers, customer lists, emails, correspondence, price lists, costing information, production records, and other internal

information is of independent economic value to potential competitors of Dethmers and to competitors of Dethmers' customers, such as U Haul.

9. Companies with knowledge of U Haul's costs and coupler specifications could gain an advantage in setting prices to compete with U-Haul. In addition, knowledge of dealings between U Haul and Dethmers derived from emails or correspondence could allow a Dethmers competitor to discern U Haul's business needs and practices, knowledge which Dethmers has gained only through business contact and dealings and significant time and expense. The timing of existing orders and delivery dates, for example, would allow a competitor to know when to contact U Haul to work on a new order.

10. It is reasonable and in keeping with the practice of virtually every industry to keep in confidence a company's information such as Dethmers' financial information, business methods, corporate records, design drawings, records of contact with customers, customer lists, emails, correspondence, price lists, costing information, production records, and other internal information.

11. Dethmers currently employs over 300 persons at its plant in Boyden, Iowa. Public availability of Dethmers' financial information, business methods, corporate records, design drawings, records of contact with customers, customer lists, emails, correspondence, price lists, costing information, production records, and other internal information, could endanger those jobs.

12. Dethmers does not have possession of or access to any data concerning U-Haul's rentals, accidents with rentals, causes of accidents, or other information related to any casualties in which U-Haul equipment may have been involved.

13. Dethmers has never made an attempt to quantify decoupling incidents with respect to the type of coupler being used. Dethmers does not collect data on decoupling incidents for purposes of comparisons between types of couplers.

14. I am familiar with the Kentucky litigation being referenced in this case. A customer of Dethmers, Penske, was a co-defendant in that case, which resulted in a 12-0 jury verdict in favor of Dethmers and a 10-2 jury verdict in favor of Penske. In that case, Dethmers produced documents under a confidentiality order, showing that Penske tracked what it called "Cumulative Assists" for its equipment, including the car carrier trailer involved in the Bramblett case. These "assists" included a category of "vehicle coupling" which represents everything from a customer not comprehending how to do it and calling in, up to an actual detachment event. There were many other categories of "assists." The Penske records included notations by customer service representatives, which said what happened in whatever manner the representative thought best. Dethmers was furnished this information because it is a long-time whole good supplier to Penske, and the information might suggest product improvements for the next build. This was not a systematic study of different coupler types or statistics about them, nor has Dethmers ever conducted such a study for any reason."

Appx. Vol. II pp. 13-16.

Dethmers also submitted Exhibits A through P at the hearing, which were received into evidence. Exhibit A is the docket of proceedings in Louisiana, showing that the case there has been on file since August 18, 2017. Appx. Vol. II p. 18. Exhibit B is correspondence dated March 9, 2021 from plaintiff's counsel to the Louisiana court initiating the subpoena process as to Dethmers. Appx. Vol. II pp. 34-40. Exhibit C depicts a Dethmers EZ Latch coupler (similar to the one U-Haul uses under the Drop and Tow trademark) and shows that it can be purchased online for about \$50.00. Appx. Vol. II pp. 35-40. Exhibits D, E, F, I, J, are discovery documents from the Louisiana

litigation showing that most of the information sought from Dethmers is available through discovery from U-Haul. Appx. Vol. II pp. 41-61; pp. 75-86. Exhibits G and K shows that the plaintiff had yet to take a corporate deposition of U-Haul when he subpoenaed Dethmers. Appx. Vol. II pp. 62-67; pp. 87-94. Exhibit H shows the previous trial date of September 8, 2021 in Louisiana; in other words, the subpoenas to Dethmers came on the eve of trial, four years after the case was filed. Appx. Vol. II pp. 68-74. Exhibits L and M are protective orders entered in other litigation which did involve a Dethmers product, and from which plaintiff is drawing for his theory of liability. Appx. Vol. II pp. 95-107. Exhibit N is an engineering report from that other litigation, authored by the same engineer who was recently employed by Mittapalli for the Louisiana lawsuit. Appx. Vol. II pp. 108-141. Exhibit O shows the U-Haul instructions for use of both its handwheel and Drop & Tow couplers. (Exhibit O is the same as plaintiff's Exhibit 4.) Appx. Vol. II pp. 142-147. Exhibit P is the Dethmers patent for the EZ Latch coupler, a public document. Appx. Vol. II pp. 148-156. See Exhibits A – P.

Plaintiff also submitted exhibits for the hearing on the Motion to Quash. Exhibit 1 is the Louisiana order and subpoenas issued to support the applications in Iowa. Appx. Vol. I pp. 62-76. Exhibit 2 is correspondence between counsel before the filing in Iowa. Appx. Vol. I pp.77-80. Exhibit 3

is a photograph of the handwheel coupler involved in the Louisiana incident. Appx. Vol. I pp. 81-84. Exhibit 4 is the instructions for the U-Haul handwheel and Drop & Tow couplers. Appx. Vol. I pp. 85-89. Exhibit 5 is the Louisiana Petition for Damages and subsequent amendment. Appx. Vol. I pp. 90-111. Exhibit 6 is an order from the Kentucky case in which Dethmers was previously involved. Appx. Vol. I pp. 112-115. Exhibit 7 is a transcript of a hearing on a motion to compel filed by the plaintiff in the Kentucky lawsuit. Appx. Vol. I pp. 116-136. Exhibit 8 is a plaintiff's trial exhibit from the Kentucky case, *viz.* an email from Penske Truck Leasing to Dethmers discussing causes of trailer disconnects on Penske trailers equipped with Demco lever latch couplers. Appx. Vol. I pp. 137-140. See Exhibits 1 – 8.

The plaintiff did not disclose the status of discovery in the Louisiana court in his Iowa filings. In particular, he did not disclose whether the documents he seeks from Dethmers have been the subject of any discovery orders in Louisiana. The record does not show, for instance, whether the Louisiana court put any restrictions on discovery that the plaintiff is evading by seeking documents from Dethmers.

Argument

1. The Iowa courts have jurisdiction of this case.

a. Preservation of issues for review.

Neither party raised jurisdictional issues in the district court. The issue of jurisdiction was raised *sua sponte* by the Court on appeal and the parties were instructed to brief the issue.

b. Standard of Review.

The question of general jurisdiction is a question of law. Therefore, if there had been a ruling in the district court, it would be reviewed for correction of errors at law. *Ney v. Ney*, 891 N.W.2d 446, 450 (Iowa 2017). Both parties to this case have submitted to personal jurisdiction, so that is not an issue here.

c. Argument.

On December 6, 2012, the Iowa Supreme Court temporarily adopted Ia. R. Civ. P. 1.1702, which is Iowa's version of the Uniform Interstate Depositions and Discovery Act ("Act"). The rule became permanent on February 4, 2013. Ia. R. Civ. P. 1.1702 Ann. (West Pub. 2021). According to West Publishing, the rule has not been challenged in Iowa nor can this lawyer find any other jurisdiction where someone has challenged adoption of the Act. Iowa Const. Art. 5 §4 provides that the Iowa Supreme Court "shall have power to issue all writs and process necessary to secure justice to

parties,” which on its face encompasses issuance of subpoenas. Ia. R. Civ. P. 1.1702 is a companion to another rule governing subpoenas which was issued pursuant to this power, and has been in force so long that it was renumbered from former Rule 365. See I.C.A. R. Civ. P. 1.1701 (West Pub. 2021). The Iowa Supreme Court had power to issue both rules which achieve the same goal of regulating subpoena processes that regularly occur in Iowa.

On April 28, 2021, Mittapalli filed two civil cases in the Iowa District Court for Osceola County, Case Nos. IFIF000087 and IFIF000088. Each of these was filed pursuant to Ia. R. Civ. P. 1.1702 governing interstate depositions and discovery. For each case, Mittapalli had followed the procedures outlined in the rule. One of the cases requested issuance of a subpoena to compel testimony from Dethmers. The other requested issuance of a subpoena to compel production of documents from Dethmers. The District Court entered orders that same day for issuance of subpoenas as requested.

Ia. R. Civ. P. 1.1702(6) specifically provides that a party subject to a subpoena issued under the rule may move to quash or modify it. On May 5, 2021, Dethmers filed motions to quash, affidavits, and appendices in the two cases requesting that the subpoenas be quashed or that a protective order be entered. After additional filings, the District Court held a hearing on the

motions on June 28, 2021. The District Court entered orders in both cases denying Dethmers' motions and enforcing the subpoenas *in toto* on July 9, 2021.

Pursuant to Ia. R. Civ. P. 1.904(2), Dethmers filed a motion to reconsider or enlarge the District Court's orders on July 11, 2021. The District Court entered orders denying Dethmers' motions to reconsider or enlarge in both cases on October 29, 2021. The time for appeal from the original District Court orders of July 9 was increased due to the pending motions to reconsider or enlarge. See Ia. R. App. P. 6.101(1)(b).

Dethmers then timely filed two notices of appeal on November 2, 2021, and two combined certificates on November 4, 2021. Dethmers paid the appeal fees on November 8, 2021. There are no further proceedings pending in the District Court for these cases. The orders of October 29, 2021 are the final orders in each of the two interstate subpoena cases.

Ia. R. Civ. P. 6.103(1) provides that "All final orders and judgments of the district court involving the merits or materially affecting the final decision may be appealed to the supreme court..." The two orders entered below were the final orders in the Iowa interstate subpoena cases concerning the issuance of and scope of the subpoenas. Because the underlying action is in Louisiana, there are no ongoing Iowa court proceedings connected to this case, apart from

the contemplated depositions and document production pursuant to the subpoenas. Dethmers has no recourse in Louisiana because it is not a party to the Louisiana case. Dethmers' only recourse to challenge the District Court's orders is to appeal them to the Iowa Supreme Court.

A final judgment or decision is

“one that finally adjudicates the rights of the parties, and it must put it beyond the power of the court which made it to place the parties in their original positions. It is a determination which may be enforced by execution or in some similar manner.”

Wesley Retirement Servs., Inc. v. Hansen Lind Meyer, Inc., 594 N.W.2d 22, 28 (Iowa 1999). By this test, the orders entered below are final orders which may be appealed to the Iowa Supreme Court. The orders are the final word in the District Court on the merits of Dethmers' challenge to the subpoenas issued to it. The orders finally adjudicated the rights of the parties concerning the subpoenas and it would be enforced by issuance of the subpoenas, similar to the issuance of an execution. Therefore, these orders meet the criteria of final orders in every respect. Accordingly, the Iowa Supreme Court has jurisdiction of these appeals.

2. The District Court applied incorrect legal standards and abused its discretion by ordering Dethmers to appear and give expert testimony on behalf of the plaintiff for the Louisiana case on 22 broad topics. It also applied incorrect legal standards and abused its discretion in ordering Dethmers to produce decades of proprietary documents relating to its coupler designs and sales covering the same 22 broad topics.

a. Preservation of issues for review.

These issues were raised in the Motion to Quash, the Reply to Resistance to Motion to Quash, and the Motion to Reconsider filed by Dethmers in the district court. Appx. Vol. I pp. 13-35; Vol. II pp. 5-16, 165-172.

b. Standard of Review.

“We review non-constitutional challenges to a district court ruling on a discovery matter for an abuse of discretion.” *Powers v. State*, 911 N.W.2d 774, 780 (Iowa 2018). However, “[a] reversal of a discovery ruling is warranted when the grounds underlying a district court order are clearly unreasonable or untenable. A district court decision is “unreasonable or untenable” ... when it is based on an erroneous application of the law.” *Powers v. State*, 911 N.W.2d 774, 780 (Iowa 2018) (internal citations and quotes omitted).

c. District Court Rulings and Legal Standards Used.

The Court’s order of July 9, 2021, evaluated the issue of Dethmers’ compelled testimony as a routine question of discovery, just as if Dethmers and Mittapalli were parties to an Iowa action in which Mittapalli had sued Dethmers. See Ruling, Appx. Vol. II p. 159 (citing Ia. R. Civ. P. 1.503(1)). The district court ruled that the “burden is on Dethmers to show that the

information sought by Plaintiff via his subpoena is not relevant, and Dethmers has failed on that showing. Plaintiff is now across the threshold.” Appx. Vol. II p. 160. The Court then cited factors to be considered as to whether there was an undue burden placed on Dethmers. The Court stated:

“Dethmers next asserts that there is an undue burden placed upon it to produce the requested information. Plaintiff cites *State ex rel. Miller v. Publishers Clearing House, Inc.*, 633 N.W.2d 732, 738 (Iowa 2001), in response, for the factors to be taken into consideration in determining whether a discovery request is unduly burdensome. Those factors are: (1) the needs of the case; (2) the amount in controversy; (3) limitations on the parties’ resources; and (4) the importance of the issues at stake in the litigation.”

Id. The Court then discussed these factors without considering any burden of proof for either side. See Appx. Vol. II pp. 160-162. Remarkably, without citation to any part of the record, the court accepted plaintiff’s claim that “he has not obtained from U-Haul the information necessary to prove the elements of his products liability case.” Appx. Vol. II p. 161. The court also contended that the expert hired by Mittapalli, who has previously testified about the EZ Latch design (see Exhibit N Appx. Vol. II pp.108-141), cannot give plaintiff the information he needs because the previous testimony “did not involve U-Haul” even though the coupler design issue is identical. Appx. Vol. II p. 161. Finally, the court suggested, without citing any part of the record, that the adversarial relationship with U-Haul raised “the distinct possibility of lack of

full disclosure” by U-Haul. *Id.* Based on this reasoning, the Court ordered Dethmers to appear and testify, subject to a protective order to be tendered by the parties. Appx. Vol. II p. 163.

Dethmers moved to reconsider, making explicit its intention to appeal and the need to preserve error. See Appx. Vol. II pp. 165-171, 187-188. In its ruling on the Motion to Reconsider, the Court summarized Dethmers’ contentions and requests for clarification as follows:

“The movants object to this Court’s order on multiple grounds: (1) they request clarification as to whether the Court applied Iowa Rule of Civil Procedure 1.701, (2) they request clarification as to what standard the Court is applying in compelling Dethmers to testify versus compelling Dethmers to produce documents, (3) they request clarification on whether the Court is or is not ordering Dethmers to provide “specialized knowledge” within Rule 5.702 of the Iowa Rules of Civil Procedure, (4) they argue, under Rule 1.707(5), the “reasonable particularity” prong has not been met in the 22 topics listed by movant, (5) they argue the scope of the topics demanded “encyclopedic knowledge” which is contrary to what is permissible under the rules and case law, (6) they request specific rulings as to each topic as it pertains to breadth and relevancy, (7) they argue, as it pertains to information involving trade secrets, that there needs to be “a clear cut need” and a “narrowly drawn subpoena,” (8) they argue the Court applied incorrect factors, as this is not a garden variety discovery action, (9) finally, in the alternative, they argue if Dethmers were to cooperate, specific compensation for their cooperation should be specifically labeled by the Court.”

Appx. Vol. II pp. 189-190. The Court’s Ruling on Motion to Reconsider dismissed these contentions. The ruling was as follows:

1. Despite the fact that its first order did not mention Ia. R. Civ. P. 1.1701, the Court stated that it had addressed and considered the rule. *Id.* p. 300.
2. Despite the fact that its first order did not distinguish between the legal rules to be applied for the subpoena versus the rules to be applied for the document production, the Court asserted that its ruling was “clear and correct.” *Id.* p. 300.
3. With respect to Dethmers’ point that it is being required to provide expert testimony--“specialized knowledge”— the Court stated “the Court disagrees that “specialized knowledge” makes the category of information being provided only able to be provided by experts alone.”¹ The court also expressed its belief “that simply seeking factual information and documentation from someone with specialized knowledge does not make them an expertwitness needing to be retained.”² *Id.* pp. 300-301.
4. As to the question of whether the topics for deposition were described with “reasonable particularity,” the Court stated that Dethmers “provides no factual or legal issue to persuade the Court to hold otherwise,” *Id.* p. 3, despite a topic-by-topic discussion in Dethmers Memorandum. Neither the Court’s original order nor the order on the Motion to Reconsider quoted the specific topics or explained why the Court thought they were described with reasonable particularity.
5. As to breadth and relevancy the Court stated that Dethmers had not presented any new facts or law. *Id.* p. 301.
6. As to the final two points, the court held that the federal cases cited by Dethmers were “non-binding on this Court.” The Court also stated without explanation that “the facts of those cases are nothing like those of the one present.” *Id.* p. 301.

The District Court went on to consider Dethmers’ contention that the

¹ As discussed below, this statement contradicts Ia. R. Evid. 5.701.

² See footnote 1.

Court failed to apply the standards set forth in Ia. R. Civ. P. 1.1702. The Court held that “the factors that the Court applied were nonetheless equivalent” and refused to correct its order. The Court then asserted that

“Furthermore, the cases cited by Dethmers, *State ex. Rel. Miller v. Publishing Clearing House, Inc.*, 633 N.W.2d 732,738 (Iowa 2001), dealt with a subpoena within the state of Iowa and our Supreme Court did not weigh in on the issue of party vs. non-party.”

Id. p. 3. In reality, the *Publishing Clearing House* case was the case cited by *Mittapalli*, a citation on which the Court relied in its first order and from which the Court gleaned the balancing factors it used. See Appx. Vol. II p. 161. The Court had it backwards in its second order.

The Court also dismissed Dethmers’ contention that it was entitled to protection under Rule 1.1701(4)(d)(2) because it is being required to disclose trade secrets and to testify as an expert witness. Without saying more, the Court stated that these points “do not apply to Dethmers.” Appx. Vol. II p. 192.

d. The District Court failed to correctly characterize the subpoena to testify as requiring expert testimony, and failed to apply the correct legal standards when determining whether Dethmers should be compelled to testify as an expert.

As to the subpoena to testify, the District Court’s errors began with a mischaracterization of the testimony sought as being purely “factual” and not expert in nature. See Appx. Vol. II pp. 190-191. This is inaccurate. Subpoena

topics 1 through 7 seek Dethmers' entire history of decades of coupler development, and culminate with the overarching topic of "The utility, function, benefits and/or purpose of the Demco EZ Latch coupler." Topic 13 is "All documents and electronic communication between Dethmers and U-Haul regarding the utility, function, benefits, safety and/or purpose of the Demco EZ Latch coupler." Topic 18 is "All studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving the Demco EZ Latch coupler," and is correlated with Topic 19, which deals with similar statistics for non-EZ Latch couplers. Topic 20 asks for any communications with U-Haul in which comparisons are made between statistics of EZ latch versus non-EZ Latch couplers. These topics are clearly designed to elicit a factual basis for and opinions about the relative merits and safety of the EZ Latch design versus other couplers. The subpoena to testify is directly asking for expert opinions and the factual basis for them, and should be treated as such when considering whether Dethmers can be subpoenaed.

The District Court's error was reinforced by its misunderstanding of the scope of expert testimony versus lay testimony under the Iowa Rules of Evidence. The Court stated that it "disagrees that "specialized knowledge" makes the category of information being provided only able to be provided by

experts alone.” Appx. Vol. II pp. 190-191. The Court further stated that “simply seeking factual information and documentation from someone with specialized knowledge does not make them an expert witness...” *Id.* Appx. Vol. II p. 191. The Iowa Rules of Evidence do not agree with these statements.

Ia. R. Evid. 5.701 states that witnesses “not testifying as an expert” are limited to testimony that is “**not based** on scientific, technical, or other specialized knowledge within the scope of rule 5.702” (emphasis added). This definition is the opposite of the district court’s opinion that “specialized knowledge” does not make the category of information being provided only able to be provided by experts alone. Under Rule 5.701’s definition, any testimony based on scientific, technical or other specialized knowledge is **not** lay testimony under Ia. R. Evid. 5.701.

Rules 5.701 and 5.702 also do not use the term “factual information.” Rather, the question is whether the testimony is based on “scientific, technical, or other specialized knowledge.” If it is, then Rule 5.701 is not applicable and the testimony is “expert” in nature under Rule 5.702. The twenty-two categories of testimony being subpoenaed from Dethmers easily qualify on their face as “scientific, technical or other specialized knowledge” which is expressly *not* the province of lay testimony under Rule 5.701.

Ia. R. Evid. 5.702 states that “A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.” This rule distinguishes expert testimony as being that which is “in the form of opinion *or otherwise*,” and therefore can include what the District Court calls “factual information.” All of the twenty-two categories of testimony in the witness subpoena go to “scientific, technical, or other specialized knowledge.”

Because the District Court made legal errors in its understanding of the nature of expert testimony, it abused its discretion. Misclassifying the testimony as not being “expert” led directly to the District Court’s failure to discuss or apply binding Iowa precedent repeatedly cited by Dethmers, *viz. Mason v. Robinson*, 349 N.W.2d 236, 242 (Iowa 1983). That case establishes the general rule in Iowa that “an expert witness, absent some other connection with litigation, is free to decide whether or not he wishes to provide opinion testimony for a party.” *Mason v. Robinson*, 349 N.W.2d 236, 242 (Iowa 1983).

The Court held:

“We deem that generally an expert witness, absent some other connection with litigation, is free to decide whether or not he wishes to provide opinion testimony for a party.

This is not to say compulsion is never proper. Rather, the distinction between previously formed opinions and those requiring preparation does not serve as a sufficient justification for the abrogation of an expert's right to freely contract for his services. Conversely, the principle of necessity does provide a sound basis for compulsion of an unwilling expert's testimony. Consequently, before the court compels an expert to testify solely on the basis of his expertise and in the absence of any other connection to the litigation, the compelling party should affirmatively demonstrate some compelling necessity for an expert's testimony that overcomes the expert's and the public's need for protection. Additionally, an adequate plan of compensation must be presented. Finally, an expert only can be compelled to give previously formed *243 opinions and cannot be required to engage in any out-of-court preparation."

Id. at 242-243. West Publishing's leading treatise on Iowa civil procedure recognizes the continued binding authority of this case in Iowa courts, citing the language quoted above. See *8 Ia. Prac., Civil Litigation Handbook* §25:10. Under the holding of *Mason v. Robinson*, the District Court should have applied the correct legal standard of whether Mittapalli had met his burden to demonstrate a "compelling necessity" for Dethmers' testimony. Instead, the court placed the burden of proof on Dethmers to show that the requested testimony was not relevant, a nearly impossible standard to meet. See Appx. Vol. II p. 160.

Mittapalli did not meet his burden to show a "compelling necessity" for Dethmers to testify as his expert witness. The record shows that Mittapalli has employed an engineer who testified against Dethmers in previous

litigation on the very topic of EZ Latch couplers versus other coupler types. The report of that expert from the previous case shows that the plaintiff can obtain the required technical and scientific testimony and knowledge concerning the design of EZ Latch couplers from his expert. See Exhibit N Appx. Vol. II pp. 115-116. Whether the earlier case involved U-Haul is irrelevant, since the two cases involve exactly the same alternative coupler design. See Exhibit N Appx. Vol. II pp. 115-116 (discussing EZ Latch alternative design). Moreover, the coupler itself can be purchased on the open market (see Exhibit C Appx. Vol. II pp. 35-40) and Mittapalli can obtain exemplars from U-Haul for inspection and testing under normal discovery rules. The design of this simple product is not a mystery requiring access to megabytes of Dethmers' CAD drawings. The theory that the design should have a plate on the bottom of the coupler does not require an understanding of decades of coupler development at Dethmers.

The testimony topics go well beyond anything necessary to prove Mittapalli's theory of product defect. Mittapalli's theory only needs an engineer to testify that one coupler design is unreasonably dangerous and defective, while pointing to the alternative feasible design already in use by U-Haul and other companies. Mittapalli has unrestricted access to the patented EZ Latch design via public records. See Exhibit P, Appx. Vol. II p.

148. Mittapalli does not need access to Dethmers' proprietary design information to understand or explain the point about the bottom plate preventing a ball clamp hang-up.

It is no answer to say, as the district court did, that the adversarial relationship with U-Haul raises "the distinct possibility of lack of full disclosure" by U-Haul in its discovery responses in Louisiana. Mittapalli did not make any record in the Iowa case about the discovery battles in Louisiana. He certainly did not make a record that U-Haul was withholding information. In fact, the record showed that at the time he filed his cases in Iowa, he had yet to depose a U-Haul corporate representative. See Exhibit K Appx. Vol. II pp. 87-94. To show a compelling necessity to obtain information from Dethmers, Mittapalli should be required to make some record of what he is able to and has obtained in Louisiana. See *Echostar Commc'ns Corp. v. News Corp.*, 180 F.R.D. 391, 395 (D. Colo. 1998).

A related policy concern, one raised by Dethmers to the district court, is that the Iowa court risks conflict with Louisiana if it rules without knowing the discovery boundaries set by the Louisiana court. The record gives us no way to know whether the Louisiana court has already ruled on the scope of the requests for documents related to U-Haul. It may be that the Louisiana court has set discovery limits which the Iowa court is now effectively

overruling, when the State of Iowa has no direct relationship to the case or its outcome. Surely Mittapalli should have the obligation to disclose all Louisiana rulings to the Iowa courts to avoid such conflict. That is part of showing that he is not imposing an “*undue*” burden on Dethmers. Until the plaintiff has exhausted his efforts in the Louisiana court, he “cannot even begin to argue that [he] has a substantial need to obtain the materials from non-parties.” *Echostar Commc'ns Corp. v. News Corp.*, 180 F.R.D. 391, 395 (D. Colo. 1998).

The District Court also erred in its failure to discuss or apply the specific terms of Ia. R. Civ. P. 1.1701(4), which deals with “Protecting a person subject to a subpoena.” Dethmers quoted and argued these terms in detail to the district court. See Appx. Vol. I pp. 18-31. Ia. R. Civ. P. 1.1702(4), which governs these interstate actions, makes Ia. R. Civ. P. 1.1701(4) also applicable: “1.1702(4) *Deposition, production, and inspection.* Rule 1.1701(4)-(7) applies to subpoenas issued under rule 1.1702(2).” Ia. R. Civ. P. 1.1702(4).

Rule 1.1701(4), like many other Iowa rules of civil procedure, is modeled on and uses the language of a federal rule, in this case Fed. R. Civ. P. 45(d). *Compare* Ia. R. Civ. P. 1.1701(4) with Fed. R. Civ. P. 45(d) (virtually identical language). For this reason, Iowa courts freely cite federal

case law when discussing civil procedure rules that are identical. See, e.g., *Sullivan v. Chicago & NW. Transp. Co.*, 326 N.W.2d 320, 326 (Iowa 1982) (“Cases interpreting federal rule 26(b)(4)(B) are illustrative because the federal rule employs the same language as our rule 122(d)(2)”). Consequently, Dethmers cited federal case law in the district court for lack of comparable reported Iowa state court decisions involving out of state subpoenas. Unfortunately, rather than analyzing these cases, the district court ignored the federal decisions, saying they are not binding precedent. Appx. Vol. II p. 191. While that is true, it goes against decades of tandem rulings between Iowa and federal courts on identical rules of civil procedure and rules of evidence. Presumably, a significant reason for Iowa’s adopting identical rules is to have that federal district court precedent available for guidance in lieu of Iowa district court decisions which are not reported. Cf. *Sullivan*, supra.

Like Fed. R. Civ. P. 45(d), Ia. R. Civ. P. 1.1701(4)(a) provides in pertinent part:

“a. Avoiding undue burden or expense; sanctions. A party or attorney responsible for issuing and serving a subpoena **must take reasonable steps to avoid imposing undue burden or expense** on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney’s fees, on a party or attorney who fails to comply.”

Id. (emphasis added). With regard to whether undue burden or expense exists, a 2013 federal decision in the Northern District of Iowa is illustrative. In *Am. Broad. Companies, Inc. v. Aereo, Inc.*, No. 13-MC-0059, 2013 WL 5276124 (N.D. Iowa Sept. 17, 2013), Magistrate Judge Jon Stuart Scoles gives a thoughtful analysis of the issues involved in a subpoena served upon an Iowa non-party for an out of state case. The primary case was a copyright infringement case in New York. See *id.* at *1. One of the parties, Aereo, served Syncbak, an Iowa company, with both a document and a testimonial subpoena. *Id.* at *1. Much like the present case, the subpoenas described and sought information about features of Syncbak’s proprietary technology: “All Documents concerning the function and features of Syncbak’s technology, including but not limited to, Syncbak’s use of location-based authentication technology.” Syncbak had no connection to the New York case, but was a potential competitor of Aereo. *Id.* at *1.

Judge Scoles sustained Syncbak’s motion to quash the subpoenas. As a starting point, he reasoned that:

“If a subpoena subjects a person to undue burden, then it must be quashed by the Court. FED.R.CIV.P. 45(c)(3)(A)(iv). That is, “[e]ven if 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.” *Micro Motion, Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1323 (Fed.Cir.1990) (emphasis in original).

Factors which may be considered by the Court in determining whether an undue burden exists include: (1) relevance of the information requested; (2) the need of the party for the documents; (3) the breadth of the discovery request; (4) the time period covered by the request; (5) the particularity with which the party describes the requested documents; and (6) the burden imposed... When a non-party is subpoenaed, however, the Court is “particularly mindful” of Rule 45's undue burden and expense cautions. *Id.* See also *Miscellaneous Docket Matter No. 1*, 197 F.3d at 927 (“concern for the unwanted burden thrust upon non-parties is a factor entitled to special weight in evaluating the balance of competing needs”).”

Am. Broad. Companies, Inc. v. Aereo, Inc., No. 13-MC-0059, 2013 WL 5276124, at *5–7 (N.D. Iowa Sept. 17, 2013). He went on to say that where trade secrets are concerned,

“[t]he burden shifts to the party seeking discovery to establish that the disclosure of trade secrets is relevant and necessary to the action.” *Centurion Industries, Inc. v. Warren Steurer and Associates*, 665 F.2d 323, 325 (10th Cir.1981). The Court must then balance the need for the information against the injury which may result from its disclosure. *Id.* A non-party should not suffer disclosure of confidential technology information “without a clear-cut need and a subpoena narrowly drawn to meet that need.” *Convolve, Inc. v. Dell, Inc.*, 2011 WL 1766486 (N.D. Cal.) at*2.”

Am. Broad. Companies, Inc. v. Aereo, Inc., No. 13-MC-0059, 2013 WL 5276124, at *5–7 (N.D. Iowa Sept. 17, 2013).

The affidavits of Kevin Ten Haken establish that the subpoenas require evidence about trade secrets and other confidential research, development and commercial information. Even without the affidavits, it is apparent from the

topics alone that the subpoenas seek what would normally be confidential business information. There is no other reasonable interpretation of the subpoena topics.

For the same reasons argued above, Mittapalli cannot meet his burden of establishing that the testimony is “*necessary* to the action.” See *Centurion Industries, Inc. v. Warren Steurer and Associates*, 665 F.2d 323, 325 (10th Cir.1981). He has other means to obtain testimony about the utility and safety of the EZ Latch design. He has no “clear-cut need” for the testimony about dealings with U-Haul because he can obtain the same information from U-Haul via discovery procedures in Louisiana. See Exhibits D through K Appx. Vol. II pp. 41-94. Notably, Mittapalli made no effort to tell the district court what information he has already obtained via discovery in Louisiana. A basic part of proving a “clear-cut need” and a subpoena “narrowly drawn to meet that need” would be a showing of what has already been obtained in discovery and why there is remaining information to be obtained from Dethmers. Mittapalli did not do this. See *Echostar Commc'ns Corp. v. News Corp.*, 180 F.R.D. 391, 395 (D. Colo. 1998).

The district court should also have balanced the need for the information against the harm that would be caused by disclosure. The Ten Haken affidavits are filled with descriptions of the potential harm to Dethmers

in having this information escape to the public. One potential harm is that a Chinese or other foreign company might use the design drawings to make a competing product overseas, where Dethmers would be unable to prevent it. While the district court seemed to think that harm could be avoided by a protective order, such orders have limited geographic reach. The risk of 300 Iowa jobs outweighs any need that the plaintiff may claim.

The district court also erred by not applying the test of “reasonable particularity.” With regard to corporate depositions, such as the one sought from Dethmers, Ia. R. Civ. P. 1.707(5) states that “A notice or subpoena may name as the deponent a public or private corporation ... and describe with reasonable particularity the matters on which examination is requested.” The notice must have sufficient particularity to permit proper preparedness by a corporate designee:

“Proper preparedness for a ...[corporate] deposition requires the good faith of both parties. “[T]he requesting party must reasonably particularize the subjects about which it wishes to inquire.” *Dwelly v. Yamaha Motor Corp.*, 214 F.R.D. 537, 540 (D. Minn. 2003); see also FED. R. CIV. P. 30(b)(6) (requiring that the notice describe the matters for examination with “reasonable particularity”). A deposing party may not demand that a corporate designee be prepared to speak with encyclopedic authority. See generally *Murphy v. Kmart Corp.*, 255 F.R.D. 497, 506 (D.S.D. 2009).”

CMI Roadbuilding, Inc. v. Iowa Parts, Inc., 322 F.R.D. 350, 361 (N.D. Iowa 2017). One court has described the “reasonable particularity” requirement for corporate depositions this way:

“Because Rule 30(b)(6) places substantial responsibilities and burdens on the responding corporate party, the rule itself expressly requires that the party requesting the deposition “must describe with reasonable particularity the matters for examination.” As one court has explained, “to allow the Rule to effectively function, the requesting party must take care to designate, *with painstaking specificity*, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute.” *Sprint*, 236 F.R.D. at 528 (emphasis added); *see also Lipari v. U.S. Bancorp, N.A.*, 2008 WL 4642618, at *5 (D. Kan. Oct. 16, 2008).

Memory Integrity, LLC v. Intel Corp., 308 F.R.D. 656, 661 (D. Or. 2015).

Mittapalli in this case has submitted 22 extremely broad topics which literally cover decades of corporate business operations. Two topics in particular illustrate the lack of particularity in what is being demanded:

“6. All engineering drawings, testing reports, schematics, diagrams, plans, blueprints, electronically stored information, video or other documents or tangible items that depict, describe, discuss, refer to, or relate to the design, assembly, testing and/or construction of the Demco EZ Latch coupler.

7. All safety and/or instruction manuals, documents, warning and/or electronic communication (i.e., computer or video links) regarding the Demco EZ Latch coupler including but not limited to engineering drawings, testing reports, schematics diagrams, plans, warnings, instructions, blueprints, electronically stored information, video, correspondence, electronic communication, etc.”

The EZ Latch was patented in 2005. See Exhibit P Appx. Vol. II pp.148-156. The development and design work obviously extends years before that. We are talking here about decades of documents on which someone is supposed to become educated, testify on behalf of Dethmers as a company, and thereby bind Dethmers to such testimony for all future litigation. The same is true of the other topics. This is highly prejudicial to Dethmers and unjustified. The district court abused its discretion in not requiring the topics of corporate deposition to be described with “painstaking specificity.”

Finally, the district court abused its discretion by failing to analyze each of the topics involved. The court entered an “all or nothing” order as to 22 wide-ranging topics. Even if Mittapalli could meet his burden to show necessity of some testimony, that hardly means that every topic out of 22 is something for which there is necessity. Dethmers presented separate arguments in the district court as to each individual topic. See Appx. Vol. I pp. 23-29. Ia. R. Civ. P. 1.1701(4)(d) allows the court to modify a subpoena. Modification would be appropriate to meet the requirement of “a subpoena narrowly drawn to meet” the need of the plaintiff, if any exists. See *Convolve, Inc. v. Dell, Inc.*, 2011 WL 1766486 (N.D. Cal.) at*2.” The district court should have made its ruling more particular and considered the burden and

risks of each topic, drawing a narrow order crafted to meet the specific needs discerned by the court.

The subpoena for testimony should be quashed, or, in the alternative, narrowed substantially to meet a demonstrated necessity.

e. The District Court failed to apply the correct legal standards when determining if Dethmers should be compelled to produce 22 broad categories of documents.

The propriety of the subpoena for documents is distinct from the propriety of the subpoena for testimony, although many of the same legal standards apply. Because trade secrets and commercial information are involved,

“[t]he burden shifts to the party seeking discovery to establish that the disclosure of trade secrets is relevant and necessary to the action.” *Centurion Industries, Inc. v. Warren Steurer and Associates*, 665 F.2d 323, 325 (10th Cir.1981). The Court must then balance the need for the information against the injury which may result from its disclosure. *Id.* A non-party should not suffer disclosure of confidential technology information “without a clear-cut need and a subpoena narrowly drawn to meet that need.” *Convolve, Inc. v. Dell, Inc.*, 2011 WL 1766486 (N.D. Cal.) at*2.”

Am. Broad. Companies, Inc. v. Aereo, Inc., No. 13-MC-0059, 2013 WL 5276124, at *5–7 (N.D. Iowa Sept. 17, 2013). Furthermore, Ia. R. Civ. P. 1.1701(4)(a) provides:

“a. Avoiding undue burden or expense; sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or

expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney’s fees, on a party or attorney who fails to comply.”

Id. (emphasis added). The factors to be considered by the Court in determining whether an undue burden exists include:

“(1) relevance of the information requested; (2) the need of the party for the documents; (3) the breadth of the discovery request; (4) the time period covered by the request; (5) the particularity with which the party describes the requested documents; and (6) the burden imposed... When a non-party is subpoenaed, however, the Court is “particularly mindful” of Rule 45's undue burden and expense cautions. *Id.* See also *Miscellaneous Docket Matter No. 1*, 197 F.3d at 927 (“concern for the unwanted burden thrust upon non-parties is a factor entitled to special weight in evaluating the balance of competing needs”)

Am. Broad. Companies, Inc. v. Aereo, Inc., No. 13-MC-0059, 2013 WL 5276124, at *5–7 (N.D. Iowa Sept. 17, 2013).

As a non-party and Iowa company, Dethmers was entitled to the court’s particular concern and attention to the scope of the document requests. *Id.* The district court did not give Dethmers this concern and attention. Because the document requests involve confidential, trade secret information (as established by Mr. Ten Haken’s two affidavits), Mittapalli was also required to demonstrate “a clear-cut need and a subpoena narrowly drawn to meet that need.” *Convolve, Inc. v. Dell, Inc.*, 2011 WL 1766486 (N.D. Cal.) at*2, quoted

in *Am. Broad. Companies, Inc. v. Aereo, Inc.*, No. 13-MC-0059, 2013 WL 5276124, at *5–7 (N.D. Iowa Sept. 17, 2013).

With these standards in mind, we turn to the particular topics for documents required in the subpoena. These divide more or less into two categories: (i) general Dethmers coupler documents, and (ii) documents related specifically to Dethmers' business with U-Haul. However, there is one topic that does not fit these categories. Topic 5, requesting patent applications is, on its face, a request for records that are public and freely available via Google's patent search function. There is no reason at all to request this from Dethmers. See Exhibit P Appx. Vol. II pp. 148-156.

(i) General Demco coupler topics.

Topic 1. The general scope of Dethmers/Demco's business as it relates to the design, development and manufacturing of trailer coupling devices.

Topic 2. Dethmers/Demco's history of designing manufacturing, and/or selling hand wheel couplers and/or lever latch couplers.

Topic 3. Facts and circumstances surrounding the design, development and manufacturing of the Demco EZ latch coupler.

Topic 4. The utility, function, benefits and/or purpose of the Demco EZ Latch coupler.

Topic 6. All engineering drawings, testing reports, schematics, diagrams, plans, blueprints, electronically stored information, video or other documents or tangible items that depict, describe, discuss, refer to, or relate to the design, assembly, testing and/or construction of the Demco EZ Latch coupler.

Topic 7. All safety and/or instruction manuals, documents, warning and/or electronic communication (i.e. computer or video links) regarding the Demco EZ Latch coupler including but not limited to engineering drawings, testing reports, schematics diagrams, plans, warnings, instructions, blueprints, electronically stored information, video, correspondence, electronic communication, etc.

Topic 18. All studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving the Demco EZ Latch coupler.

Topic 19. All studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving non-EZ Latch coupler design such as hand wheel coupler, lever latch couplers, etc.

Topic 21. Annual sales volume of new and/or replacement/retrofit EZ Latch Couplers from January 1, 2006 to the present.

Topics 1 through 4 ask for documents that reflect “general scope” of Dethmers’ coupler business; the “history” of that business, which would be basically any document ever produced relating to couplers; documents showing the “facts and circumstances” surrounding the design and development of the EZ Latch, which again is virtually anything ever generated; and documents showing the “utility function benefits and or purpose of” the EZ Latch, which is just an unclear request. Mittapalli does not have a personal injury case against Dethmers, so it is difficult to see what relevance these categories would have in the case against U-Haul. Just to be clear, Mittapalli already knows from the Kentucky case that Penske’s

consumer rental division adopted the EZ Latch coupler design for its trailers over a decade ago. There can be no genuine dispute in the Louisiana case about whether the EZ Latch design was feasible and commercially available.

These four topics are also unlimited in time. Dethmers has been in the business of designing, developing and manufacturing trailer coupling devices for at least thirty years. Per Mr. Ten Haken's affidavit, Dethmers has been selling couplers to U-Haul since late 2018. Supplemental Affidavit of Kevin Ten Haken App. Vol. II p. 14 ¶ 4. The scope of this topic is far beyond anything pertinent to the Louisiana case.

Topics 6 and 7 seek all of Dethmers confidential and proprietary documents related to the EZ Latch coupler. This includes all design drawings, when the plaintiff's theory of defect relates only to the bottom plate on the EZ Latch. It is not clear how these documents advance the case against U-Haul, when there can be no genuine issues of design feasibility and commercial availability. And these topics are also unlimited in time, making them unduly burdensome.

Topics 18 and 19 ask for statistics relating to decoupling incidents of EZ Latch couplers and non-EZ Latch couplers. Here again, there is no time limitation, which means that Dethmers would have to search records for its entire history of coupler production. The Supplemental Affidavit of Kevin

Ten Haken, App. Vol. II p. 15 ¶12, establishes that “Dethmers does not have possession of or access to any data concerning U-Haul’s rentals, accidents with rentals, causes of accidents, or other information related to any casualties in which U-Haul equipment may have been involved.” Further, his Supplemental Affidavit, App. Vol. II p. 15 ¶13, establishes that “Dethmers has never made an attempt to quantify decoupling incidents with respect to the type of coupler being used: “Dethmers does not collect data on decoupling incidents for purposes of comparison between different types of couplers.” See Appx. Vol. II pp. 13-16. Since no incident reports in Dethmers’ possession would relate to U-Haul equipment, the documents are irrelevant. Dethmers also should not be compelled to search decades of records to try to glean information about decoupling incidents of which it may have become aware. That is unduly burdensome to a non-party.

Topic 21 asks for Dethmers’ annual sales volume of EZ Latch couplers since 2006. Mittapalli has not offered any explanation of how Dethmers’ sales volume would make a fact in the Louisiana case more or less probable, the basic requirement for relevance. See Louisiana Code of Evidence, Article 401 (corresponds to federal and Iowa rules with same number). Nor is it clear how sales before 2018, when Dethmers began selling to U-Haul, would have any pertinence.

The District Court abused its discretion in requiring Dethmers to respond to the subpoena for documents in these categories.

(ii) U-Haul topics.

Topic 8. All communications, marketing and/or negotiations with U-Haul and/or other customers regarding the utility, function, benefits, safety and/or purpose of the Demco EZ Latch coupler.

Topic 9. The approximate date and/or time frame that Dethmers/Demco introduced the Demco EZ Latch coupler for sale to the public, including but not limited to customers such as U-Haul.

Topic 10. All communications, promotion, and/or marketing with U-Haul and/or any other customers regarding the purchase, sale, use and/or implementation Demco EZ Latch coupler.

Topic 11. All communication promotions and/or marketing with U-Haul and/or any other customers regarding whether the Demco EZ Latch coupler could potentially improve safety and/or reduce liabilities.

Topic 12. The approximate date and/or time frame that Dethmers/Demco first began communications, marketing and/or negotiations with U-Haul regarding the potential purchase, sale, use and/or implementation of Demco EZ Latch coupler.

Topic 13. All documents and electronic communication between Dethmers and U-Haul regarding the utility, function, benefits, safety and/or purpose of the Demco EZ Latch coupler.

Topic 14. Facts and circumstances surrounding U-Haul's purchase, use and/or implementation of Demco EZ Latch couplers in their fleet of towing equipment.

Topic 15. All documents, contracts agreements, and/or electronic communication between Dethmers and U-Haul regarding U-Haul's purchase, use and/or implementation of Demco EZ Latch couplers in their fleet of towing equipment.

Topic 16. Communications, marketing and/or negotiations with U-Haul and/or other customers regarding the replacement and/or retrofitting of hand wheel and/or lever latch couplers with Demco EZ Latch couplers.

Topic 17. All documents, contracts, communications and/or agreements regarding the price and/or cost paid by U-Haul for Demco EZ Latch couplers (Purchase, retrofit, etc.)

Topic 20. All communications with U-Haul and/or any other customers regarding studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving the Demco EZ Latch coupler versus non-EZ latch coupler designs such as hand wheel couplers, level latch couplers, etc.

Topic 22. Annual sales volume of new and/or replacement/retrofit EZ Latch couplers to U-Haul from January 1, 2006 to the present.

Topics 10, 11, and 20 are primarily directed to U-Haul-related documents but also encompass “other customers.” Mittapalli has not made any effort to explain how documents related to other customers would make any fact more or less probable in the case against U-Haul. Again, everyone knows that Penske has used the EZ Latch coupler on its consumer rental trailers for over a decade, so the feasibility and commercial availability of the product to U-Haul for its rental fleet cannot be genuinely disputed in the Louisiana case. Mittapalli has already hired the engineer who testified against Penske, so he can easily establish this fact through his own expert.

As to all of the U-Haul-related documents, a basic part of Mittapalli’s proving a “clear-cut need” and a subpoena “narrowly drawn to meet that need”

would be a showing of what has already been obtained in discovery in Louisiana, and why there is remaining information to be obtained from Dethmers. Mittapalli did not do this. Until he has exhausted his efforts in the Louisiana court, he “cannot even begin to argue that [he] has a substantial need to obtain the materials from non-parties.” *Echostar Commc'ns Corp. v. News Corp.*, 180 F.R.D. 391, 395 (D. Colo. 1998).

Mittapalli did not provide the court with anything other than conclusory statements about the status of his discovery with U-Haul. His lawyers claimed that they could not get the same information from U-Haul, but they failed to submit documentation to support that claim. They notably did not tell the District Court what they had already obtained from U-Haul. Nor did they inform the district court about discovery orders in Louisiana, so that the Iowa court would not expand discovery where the Louisiana court has limited it. These are basic elements of proof that should have been required of Mittapalli. The district court abused its discretion in not doing so.

The district court also engaged in unfounded speculation when it declared that the adversarial relationship with U-Haul raised “the distinct possibility of lack of full disclosure” by U-Haul. Nothing in the record supports that statement. Conversely, when Dethmers raised the distinct possibility that its confidential business secrets would find their way into the

hands of competitors, foreign and domestic, the court disregarded the concern. Apparently, we are to assume that U-Haul is not to be trusted in discovery, despite the distinct possibility of discovery sanctions from a court which already has jurisdiction of it. Simultaneously, we are to assume that the plaintiff's experts and numerous others entrusted with Dethmers' confidential information will hold it in confidence, despite the lack of a practical remedy due to the logistical and monetary nightmare of pursuing violators across international borders.

The subpoena for documents should be quashed.

Conclusion

The District Court should be reversed on all issues raised and the case remanded for entry of judgment quashing both subpoenas.

Request for Oral Argument

Appellants request oral argument.

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I, Daniel E. DeKoter, hereby certify that I served and filed the foregoing Appellant's Final Brief on May 13, 2022, by filing with the EDMS system pursuant to agreement of counsel and permission of this Court. All counsel are of record in the EDMS system and will be served by it.

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