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DISCOVERY-CJB,MEDIATION-MPT,PATENT,VACANTJUDGESHIP-2017

**U.S. District Court  
District of Delaware (Wilmington)  
CIVIL DOCKET FOR CASE #: 1:18-cv-00966-CFC-CJB**

VLSI Technology LLC v. Intel Corporation  
 Assigned to: Judge Colm F. Connolly  
 Referred to: Judge Christopher J. Burke  
 Related Case: [1:19-cv-00426-CFC](#)  
 Cause: 35:271 Patent Infringement

Date Filed: 06/28/2018  
 Jury Demand: Both  
 Nature of Suit: 830 Patent  
 Jurisdiction: Federal Question

Date Filed	#	Docket Text
06/19/2020	623	<p>ORAL ORDER: The Court, having reviewed Defendant's motion for leave to amend its answer, defenses and counterclaims ("Motion"), (D.I. 255), by which it seeks to add counterclaims and corresponding defenses for unenforceability of three of the five asserted patents (the '633 patent, the '027 patent and the '331 patent) due to inequitable conduct ("the inequitable conduct claims") and the affirmative defense of unclean hands (the "unclean hands defense"), as well as the briefing related thereto, (D.I. 256; D.I. 273; D.I. 287), hereby ORDERS that the Motion is GRANTED. Plaintiff challenged the Motion on two grounds: (1) that Defendant unduly delayed in bringing it (and relatedly, that this delay demonstrated that the Motion was brought in bad faith); and (2) that grant of the Motion would cause undue prejudice to Plaintiff. (D.I. 273 at 5-14) (Plaintiff did not challenge the Motion on futility grounds, noting that it would instead reserve such arguments for a forthcoming motion to dismiss/strike the claims/defenses, were the Motion granted.) (Id. at 5, 15) With regard to undue delay, Plaintiff is probably correct that most or all of the documents and facts underlying the inequitable conduct claims were publicly available to Defendant prior to the date when Defendant filed its initial Answer on April 9, 2019, (D.I. 128), the date by which Plaintiff argues Defendant should have timely brought these allegations. And it is also probably true that a good bit (though certainly not all) of the material related to Defendants' unclean hands defense was available to Defendant by then. But it is also true that (especially in this large, complex case) it could have reasonably taken Defendant some time thereafter to process the information related to the instant claims/defenses, figure out whether they amounted to viable claims/defenses and then bring those claims/defenses forward. (D.I. 287 at 5) More importantly, Defendant's motion was filed on the date set out as the deadline for amendment of pleadings in the Scheduling Order (a date, so far as the Court can tell, that both Plaintiff and Defendant proposed to the District Court). (D.I. 36; D.I. 40 at para. 2; D.I. 253) It would be the unusual case where a Court had previously determined (at the parties' request) that amendment could be allowed by a certain date without causing harm to the case schedule, and yet thereafter the Court would nevertheless find a claim filed by that deadline to be untimely. See Invensas Corp. v. Renesas Elecs. Corp., Civil Action No. 11-448-GMS-CJB, 2013 WL 1776112, at *3 (D. Del. Apr. 24, 2013); Butamax Advanced Biofuels LLC v. Gevo, Inc., Civ. No. 11-54-SLR, 2012 WL 2365905, at *2 (D. Del. June 21, 2012). With regard to the undue prejudice issue, because the Motion was filed prior to the deadline for amending pleadings, it is hard for Plaintiff to convincingly argue that it would be unduly prejudiced by the addition of the claims/defenses. The Medicines Co. v. Teva Parenteral Meds., Inc., C.A. No. 09-750-ER (Consolidated), 2011 WL 13135647, at *25 &amp; n.18 (D. Del. Aug. 26, 2011); Butamax, 2012 WL 2365905, at</p>

\*2. Additionally, undue prejudice is not likely to occur via grant of the Motion because: (1) Plaintiff is familiar with many of the underlying facts relating to the claims/defenses at issue and its counsel represents many of the third parties who are relevant to the inequitable conduct claims, (D.I. 287 at 8-9), so since the filing of the Motion, it has likely developed a good sense of its response to the claims/defenses; and (2) since the filing of the Motion, the case schedule has changed, and no trial date is now set, meaning there could be time to address these issues prior to any trial. Lastly, the Court agrees with Defendant that although the case is currently stayed as to the '026 and '552 patents, since the arguments as to this Motion were not patent-specific, the Motion should be and is GRANTED as to the unclean hands defense in its entirety. (D.I. 617 at 1) However, because it is clear that Plaintiff now intends to challenge that defense on a patent-by-patent basis, (id. at 2), the Court ORDERS that Plaintiff's deadline to file a motion to dismiss or strike that defense based on any argument uniquely related to the '026 or '552 patents is STAYED until 21 days after the stay regarding those two patents is lifted by the Court, (id. at 1). Ordered by Judge Christopher J. Burke on 6/19/2020. (dlb) (Entered: 06/19/2020)

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