**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF DELAWARE**

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| **PACT XPP SCHWEIZ AG,**<br><br>***Plaintiff,***<br>**v.**<br><br>**INTEL CORPORATION,**<br><br>***Defendant.*** | **Case No. 1:19-cv-01006-JDW** |

**MEMORANDUM**

This patent litigation between PACT XPP Schweiz AG ("PACT") and Intel Corporation ("Intel") concerns patents for the data processing architecture in computer chips. Intel has moved for summary judgment of noninfringement, while PACT seeks summary judgment on Intel's affirmative defenses.

## I. BACKGROUND

### A. Facts

Modern computers need to store, access, and move information and data at high speeds. Both PACT and Intel developed multi-processor computer chips that increase processing speeds and expand memory storage. The chips' efficacy depends on their internal architecture, through which they move information between, and access memory from, multiple processors and memory caches. The Parties have developed chip architecture for many years.

PACT and Intel have a long history. In relevant part, PACT met with Intel in the early 2000s to discuss PACT's multi-processor technology. There is no evidence that anyone from Intel's engineering team attended those meetings or received information from those meetings. At the time, PACT didn't hold patents to any of the relevant technology. No working relationship, partnership, or license agreement resulted from those meetings.

In 2012, PACT shared a list of its patents and patent applications with Intel and asked if Intel would like to license any of its technology. There's no evidence that Intel knew the patents in suit existed, or that PACT was prosecuting those applications. Ultimately, Intel didn't seek a license.

Intel started marketing multi-core processor technology in 2011. It is undisputed that Intel's chips execute series of instructions, which are passed along from processor to processor, and which allow the cores to access and store memory in multiple memory caches. PACT claims Intel's system infringes its patents for multi-processor systems, which claim multi-processor chips that execute sequences of data functions. This suit followed.

**B. Procedural History**

On May 30, 2019, PACT filed a complaint asserting that Intel infringed 12 of its patents, including U.S. Patent No. 8,312,301 (the "'301 Patent"), U.S. Patent No. 8,471,593 (the "'593 Patent), and U.S. Patent No. 9,250,908 (the "'908 Patent"). Intel answered and asserted counterclaims on June 4, 2019. By motion and with the Court's permission, Intel Amended its answer on September 10, 2020. The Parties have participated in multiple

rounds of *inter partes review* ("IPR"), as well as appeals of those petitions to the Federal Circuit, which have invalidated a significant number of claims and patents. Litigation regarding two additional patents remains stayed pending the outcome of such proceedings. The Parties filed Motions For Summary Judgment on June 21, 2022.

Since the Parties filed their summary judgment motions, several developments have changed the scope of the case. *First*, the Federal Circuit invalidated claim 17 of the '301 Patent. *Second*, the Federal Circuit reversed the PTAB and invalidated U.S. Patent No. 9,552,047 (the "'047 Patent") and U.S. Patent No. 9,436,631 (the "'631 Patent"). *Third*, following a ruling in the Federal Circuit about the '908 Patent, PACT dismissed its claims about that patent. These developments render moot all of Intel's arguments about those patents or patent claims. It also renders moot Intel's Motion To Strike Portions Of PACT's Expert's Reports (D.I. 274), which relates to expert opinions about the '631 Patent. (It's possible, of course, that PACT will seek and obtain rehearing, rehearing *en banc*, or certiorari concerning the '047 and '631 Patents. If so, I can revisit the mootness determination.)

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 56(a) permits a party to seek, and a court to enter, summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party has the initial burden of proving the absence of a genuinely

disputed material fact relative to the claims in question. *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). Material facts are those "that could affect the outcome" of the proceeding, and "a dispute about a material fact is 'genuine' if the evidence is sufficient to permit a reasonable jury to return a verdict for the nonmoving party." *Lamont v. New Jersey*, 637 F.3d 177, 181 (3d Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The burden on the moving party may be discharged by pointing out to the district court that there is an absence of evidence supporting the non-moving party's case. *Celotex*, 477 U.S. at 323.

The burden then shifts to the non-movant to demonstrate the existence of a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). A non-moving party asserting that a fact is genuinely disputed must support such an assertion by: "(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials; or (B) showing that the materials cited [by the opposing party] do not establish the absence ... of a genuine dispute ...." Fed. R. Civ. P. 56(c)(1).

When determining whether a genuine issue of material fact exists, the court must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *Scott v. Harris*, 550 U.S. 372, 380 (2007). A dispute is "genuine" only if the evidence is such that a reasonable jury could return a

verdict for the non-moving party. *Anderson*, 477 U.S. at 247–49. If the non-moving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See *Celotex Corp.*, 477 U.S. at 322.

## III. DISCUSSION

### A. Intel's Motion

#### 1. The '301 Patent

The surviving claims of the '301 patent require "a plurality of data processing elements adapted for programmably processing sequences." ('301 Patent at 15:60-61.) During claim construction, I gave this language its plain and ordinary meaning. Later, to distinguish the '301 Patent over prior art during IPR, PACT argued that the term "sequences" is limited to data processors and does not include instruction processors. The PTAB neither adopted nor rejected that construction. Instead, the PTAB cited my construction and gave the term its plain and ordinary meaning. Intel asserts that PACT's argument before the PTAB constitutes a disclaimer of scope, meaning that Intel can't infringe because its chips only process instructions.

Statements made during IPR can constitute prosecution disclaimer. *See Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1361 (Fed. Cir. 2017). For this doctrine to apply, the disclaimer must be "both clear and unmistakable to one of ordinary skill in the art." *Tech. Props. Ltd. LLC v. Huawei Techs. Co.*, 849 F.3d 1349, 1357 (Fed. Cir. 2017) (citations

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