

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

PACT XPP SCHWEIZ AG,)
)
Plaintiff,) C.A. No. 19-1006-RGA
)
v.)
)
INTEL CORPORATION,)
)
Defendant.)

INTEL CORPORATION'S INITIAL INVALIDITY CONTENTIONS

Defendant Intel Corporation (“Intel”) hereby provides by and through its attorneys its Initial Invalidity Contentions for United States Patent Nos. 7,928,763 (“the ’763 Patent”), 8,301,872 (“the ’872 Patent”), 8,312,301 (“the ’301 Patent”), 8,471,593 (“the ’593 Patent”), 8,686,549 (“the ’549 Patent”), 8,819,505 (“the ’505 Patent”), 9,037,807 (“the ’807 Patent”), 9,075,605 (“the ’605 Patent”), 9,170,812 (“the ’812 Patent”), 9,250,908 (“the ’908 Patent”), 9,436,631 (“the ’631 Patent”), and 9,552,047 (“the ’047 Patent”) (collectively the “patents-in-suit”). The citation of prior art and the accompanying exhibits are being disclosed as, and should be construed as nothing more than, Intel’s Invalidity Contentions, and may, in part, be based on PACT XPP Schweiz AG’s (“Plaintiff” or “PACT”) apparent view as to the scope of the asserted claims as reflected in its Infringement Contentions. Intel does not accept Plaintiff’s apparent reading of the claims as reflecting the proper scope of the claims. These documents are not intended to reflect Intel’s claim construction positions, which will be disclosed pursuant to the Scheduling Order in this case. Furthermore, PACT’s infringement contentions assert more than the permitted 180 claims allowed by this Court’s Scheduling Order (D.I. 120 at 5) due to its selection of multiple-dependent claims. *See* 10-15-2019 C. Lawless Ltr to S. Li. By setting forth its invalidity grounds with respect to all of PACT’s asserted claims, Intel does not waive and hereby expressly reserves all rights to challenge PACT’s assertion of claims that exceed the number expressly allowed by this Court.

Intel’s Initial Invalidity Contentions reflect present knowledge and contentions, and Intel reserves the right, to the extent permitted by the Court and the applicable statutes and rules, to modify and supplement its Initial Invalidity Contentions in the event that additional invalidity grounds are identified, whether in response to any amendment by Plaintiff of its Infringement Contentions, otherwise becoming aware of additional prior art or further material information,

including, without limitation, discovery from Plaintiff or third parties; discovery concerning the alleged priority, conception, and reduction to practice dates for any of the asserted claims; the Court's claim construction order; or any other basis in law or in fact. Additionally, Intel reserves the right to modify its contentions should any of the claim limitations be construed, whether previously construed or not, by the Court.

Intel's Initial Invalidity Contentions are made in a variety of alternatives and do not represent Intel's agreement or view as to the meaning, definiteness, written description support for, or enablement of any claim contained therein. Given that the Court has not yet made any claim construction ruling in this action, Intel's Invalidity Contentions are made in a variety of alternatives, and are not intended to necessarily be consistent with each other and/or Intel's other contentions in this action, and should not be otherwise construed. Intel's contentions herein are not, and should in no way be seen as, admissions or adoptions as to any particular claim scope or construction, or as any admission that any particular claim element is met in any particular way. Intel objects to any attempt to imply claim constructions from any identification of potential prior art. Additionally, Intel's Initial Invalidity Contentions may use Plaintiff's improper assertions of infringement and improper applications of the claims to understand Plaintiff's view of the scope of the asserted claims. Intel does not agree with Plaintiff's application of the claims and denies infringement. Further, to the extent an accused product or feature comprises or arises from prior art, Intel contends, without admitting purported infringement, that the patents-in-suit are anticipated and/or made obvious in light of that prior art and Plaintiff's own Infringement Contentions.

In those instances where Intel asserts that the claims are invalid under 35 U.S.C. § 112 (e.g., no written description, not enabled, and/or indefinite), Intel has applied the prior art in part

in accordance with Intel's assumptions that PACT: (1) contends those claims are definite, (2) finds written description support for those claims, and (3) contends that those claims are enabled. However, Intel's prior art invalidity contentions do not necessarily represent Intel's agreement or view as to the meaning, definiteness, written description support for, or enablement of any claim contained therein, or that the patents-in-suit properly disclose structures corresponding to functions in claims governed by 35 U.S.C. § 112 ¶ 6. In fact, Intel notes numerous grounds for invalidity on such bases below.

Much of the art identified in the attached exhibits reflects common knowledge and the state of the art before the filing date of the patents-in-suit. In many instances where a particular contention calls for combining references, any one of a number of references can be combined. The inclusion of certain exemplary combinations of prior art references does not exclude other combinations based upon the claim charts attached hereto.

Each of the asserted claims of the patents-in-suit is anticipated by and/or obvious in view of one or more of the items of prior art identified herein alone or in combination with other prior art references. None of the contentions contained herein shall be construed as an admission that any asserted claim satisfies the requirements of 35 U.S.C. § 112.

I. THE '763 PATENT

Claims 1, 2-10, 12-22, 24-26, 28, 30-31 of the '763 Patent (the "Asserted '763 Patent Claims") have been asserted by Plaintiff in this litigation.¹

¹ With respect to all patents-in-suit, pursuant to the Court's Scheduling Order (D.I. 20), Intel has only provided invalidity contentions for the asserted claims of the patents-in-suit. Should Plaintiff later attempt to assert claims that they have not previously identified, Intel reserves the right to contend that any newly-asserted claims are invalid.