IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FG SRC LLC,

      Plaintiff,

      v.

XILINX, INC.,

      Defendant.

C.A. No. 20-cv-601-LPS

[PROPOSED] SCHEDULING ORDER

This ___ day of _____, 2021, the Court having conducted a Case Management Conference/Rule 16 scheduling and planning conference pursuant to Local Rule 16.2(a) and Judge Stark's Revised Procedures for Managing Patent Cases (which is posted at http://www.ded.uscourts.gov; see Chambers, Judge Leonard P. Stark, Patent Cases) on _____, 2021, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS HEREBY ORDERED that:

1.   Rule 26(a)(1) Initial Disclosures and E-Discovery Default Standard. The parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) by **March 4, 2021**. The parties shall meet and confer regarding, and subsequently submit, a stipulated ESI Order on or before **March 22, 2021**. The parties shall complete their Paragraph 3 ESI Disclosures by **April 5, 2021**.

2.   Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before **July 22, 2021**.

3.   <u>Application to Court for Protective Order</u>. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court by **March 22, 2021**. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 8(g) below.

Any proposed protective order must include the following paragraph:

> <u>Other Proceedings</u>. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated 'confidential' [the parties should list any other level of designation, such as 'highly confidential,' which may be provided for in the protective order] pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

4.   <u>Papers Filed Under Seal</u>. In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

Should any party intend to request to seal or redact all or any portion of a transcript of a court proceeding (including a teleconference), such party should expressly note that intent at the start of the court proceeding. Should the party subsequently choose to make a request for sealing or redaction, it must, promptly after the completion of the transcript, file with the Court a motion for sealing/redaction, and include as attachments (1) a copy of the complete transcript highlighted so the Court can easily identify and read the text proposed to be sealed/redacted, and (2) a copy of the proposed redacted/sealed transcript. With their request, the party seeking redactions must demonstrate why there is good cause for the redactions and why disclosure of the redacted material would work a clearly defined and serious injury to the party seeking redaction.

5.   Courtesy Copies. Other than with respect to 'discovery matters,' which are governed by paragraph 8(g), and the final pretrial order, which is governed by paragraph 20, the parties shall provide to the Court two (2) courtesy copies of all briefs and one (1) courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

6.   ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

7.   Disclosures. Absent agreement among the parties, and approval of the Court:

a.   By **March 9, 2021**, Plaintiff shall identify the accused product(s), including accused methods and systems, and its damages model, as well as the asserted patent(s) that the accused product(s) allegedly infringe(s). Plaintiff shall also produce the file history for each asserted patent.

b.   By **April 15, 2021**, Defendant shall produce core technical documents related to the accused product(s), sufficient to show how the accused product(s) work(s), including but not limited to non-publicly available operation manuals, product literature, schematics, and specifications. Defendant shall also produce sales figures for the accused product(s).

c.   By **June 3, 2021**, Plaintiff shall produce an initial claim chart relating each known accused product to the asserted claims each such product allegedly infringes.

d.   By **July 22, 2021**, Defendant shall produce its initial invalidity contentions for each asserted claim, as well as the known related invalidating references.

e.   By **May 13, 2022**, Plaintiff shall provide final infringement contentions.

f.   By **June 3, 2022**, Defendant shall provide final invalidity contentions.

8.   Discovery. Unless otherwise ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed.

      a.   Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before **May 2, 2022**.

      b.   Document Production. Document production shall be substantially complete by **February 14, 2022**.

      c.   Requests for Admission. A maximum of 35 requests for admission are permitted for each side. There is no limit on the number of requests for admission the parties may serve to establish the authenticity of documents.

      d.   Interrogatories.

         i. Each party may serve on any other party a maximum of 30 interrogatories, including contention interrogatories.

         ii. The Court encourages the parties to serve and respond to contention interrogatories early in the case. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof. The adequacy of all interrogatory answers shall be judged by the level of detail each party provides; i.e., the more detail a party provides, the more detail a party shall receive.

      e.   Depositions.

         i. Limitation on Hours for Deposition Discovery.

           Plaintiff's Proposal: Each side is limited to a total of 70 hours of taking deposition by testimony by deposition upon oral examination

(excluding third-party depositions and expert depositions). No limit shall be imposed on the number of third-party depositions that may be taken.

Defendant's Proposal: Each side is limited to a total of 70 hours of taking testimony by deposition upon oral examination (including third-party depositions, but excluding expert depositions).

Plaintiff's Position Regarding Deposition Limits: Plaintiff's Position Regarding Deposition Limits: As this Court recently recognized in denying Defendant's motion to dismiss, Plaintiff has adequately pled induced infringement. Dkt. 35. Defendant has denied Plaintiff's allegations of direct infringement. Dkt. 7 ¶ 1. In order to prove induced infringement, Plaintiff will need to take discovery adequate to show that Xilinx induces numerous individual customers of its products to directly infringe the asserted patents. Limiting Plaintiff to 70 hours of depositions, including Xilinx does not provide adequate time for Plaintiff to gather evidence from Xilinx's numerous customers sufficient to prove its induced infringement case. The Federal Rules of Civil Procedure provide mechanisms to protect individual third-party customers from

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