IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

OCEAN SEMICONDUCTOR LLC,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Case No. 6:20-cv-1212-ADA
	§	
NXP USA, INC.,	§	
	§	
Defendant.	§	
	§	
	§	

NXP USA, INC.'S OPPOSITION TO OCEAN SEMICONDUCTOR'S
MOTION FOR PRE-TRIAL CONSOLIDATION OF CO-PENDING RELATED CASES

I. INTRODUCTION

Essentially, Ocean complains that ***its*** decision to sue 10 defendants across 3 forums on various combinations of 10 total asserted patents has created work it would rather not do. Although Ocean offers no concrete proposal for how consolidation would apply to the 7 cases pending before this Court, Plaintiff's general objective is clear enough: it wants the Court to treat 7 cases as a single case for Plaintiff's convenience. During the parties' meet and confer, Plaintiff explained that it seeks consolidation not just to coordinate the schedules and *Markman* proceedings across the 7 cases—which the Court routinely accomplishes without formal consolidation and to which NXP does not object—but also, contrary to the Court's *Order Governing Proceedings* ("OGP")[1], to limit the Defendants' ability to take individual discovery and submit separate briefing. Such limitations would unfairly prejudice NXP's defense among a group of Defendants with different accused products manufactured by different combinations of foundries that implement different semiconductor-related tools.

II. APPLICABLE LAW

Consolidation is only appropriate when it promotes judicial efficiency without prejudicing or unfairly advantaging any party. *Arnold & Co., LLC v. David K. Young Consulting, LLC*, No. SA-13-CV-00146-DAE, 2013 WL 1411773, *2 (W.D. Tex. April 8, 2013). Federal Rule of Civil Procedure 42(a) gives the district court discretion to consolidate actions if doing so promotes judicial efficiency. *In re Air Crash Disaster at Florida Everglades*, 549 F.2d 1006,

[1] OGP Version 3.3, at n.2, explicitly provides that, even in consolidated cases, defendants shall receive the same number of discovery requests and summary-judgment pages they would receive if the consolidated cases were proceeding individually.

1012 (5th Cir. 1977).[2] But a district court must weigh its interest in judicial efficiency against the potential for prejudice caused by consolidation. *See Arnold*, 2013 WL 1411773, at *2. Consolidation "does not merge the suits into a single action or change the rights of the parties; rather, consolidation is intended only as a procedural device used to promote judicial efficiency and economy and the actions maintain their separate identities." *Lay v. Spectrum Clubs, Inc.*, No. SA-12-CV- 00754-DAE, 2013 WL 788080, at *2 (W.D. Tex. Mar. 1, 2013) (internal quotations omitted). Ocean bears the burden of showing consolidation is appropriate. *Certified/LVI Environmental Servs., Inc. v. PI Construction Corp.*, No. SA-01-CA-1036-FB-NN, 2003 WL 1798542, *2 (W.D. Tex. March 3, 2003).

III. ARGUMENT

The Court should deny Ocean's request for consolidation because (1) Ocean cannot meet the threshold requirement to show common questions of law and fact, and (2) pre-trial consolidation would not significantly reduce the time or cost of litigating the cases but instead prejudice NXP and the other Defendants.

A. Ocean Failed Its Burden to Show Common Questions of Facts and Law

The Motion should be denied because Ocean cannot meet the threshold showing that the seven cases share "common question[s] of law or fact" warranting consolidation. *YETI Coolers, LLC v. RTIC Drinkware, LLC*, No. 1:16-CV-909-RP, 2017 WL 5505325, at *2 (W.D. Tex. Jan. 18, 2017). While Ocean has accused each Defendant of infringing 7–9 patents, the accused products for each Defendant are different, and the Defendants are unrelated, separate—and in

[2] Consolidation is a procedural, non-patent issue to which Fifth Circuit law applies. *See DynaEnergetics Eur. GmbH v. Hunting Titan, Inc, KTech*, 6:20-cv-00069-ADA, 2020 WL 3259807, *1 (W.D. Tex. June 16, 2020) (citing *K-Tech Telecomms., Inc. v. Time Warner Cable, Inc.*, 714 F.3d 1277, 1282 (Fed. Cir. 2013).

most instances, competitor—entities. The following table shows the variability in accused tools, manufacturers, and asserted patents across the 7 cases before this Court:

Table 1: Accused Tools & Foundries by Defendant

		Foundry				
		TSMC	**TSMC, Own Fab**	**TSMC, UMC**	**TSMC, UMC, Own Fab**	**TSMC, Kioxia, Own Fab**
Tool	**camLine**	SiLabs	Renesas		STMicro*	
	Applied			MediaTek	NXP*	Western Digital
	Both			NVIDIA**		

* Ocean also asserts the '097 Patent.
** Ocean also asserts the '170 and '383 Patents.

Ocean incorrectly assumes that common questions of fact and law exist because there are overlapping patents and all 7 Defendants have accused devices manufactured by foundries using allegedly infringing tools or software. Multiple distinctions exist beyond the obvious distinction that the accused products differ between each of the Defendants. First, NXP possesses internal fabrication capabilities and is necessarily unique on that basis alone. Second, as the above table shows, there is no overarching commonality of third party fabs. Third, the fact that validity and infringement of overlapping patents is at issue in separate actions does not justify consolidation because Ocean's infringement contentions remain unique to each Defendant and their particular methods and products. *See, e.g.*, *Fenner Invs., Ltd. v. 3Com Corp.*, No. CIV.A.6:08-CV-61, 2008 WL 4876816, at *1 (E.D. Tex. Nov. 12, 2008) (denying consolidation where validity and infringement of same patents were at issue in separate cases); *Talon Research, LLC v. Toshiba Am. Elec. Components, Inc.*, Case No. 4:11-cv-4819-CW, Dkt No. 70 (N.D. Cal. Mar. 5, 2012) (denying motion to relate cases involving a single patent because Section 299 of the America Invents Act evinces Congress's intent to not group multiple, unrelated defendants together

simply because they allegedly infringe the same patent). Even the invalidity issue weighs against commonality because Western Digital has filed IPR petitions that will impose preclusive effects on Western Digital if instituted that would not apply to NXP.

In *YETI*, this Court denied a motion to consolidate a set of cases involving drinkware products with separate cases involving soft-sided coolers even though the plaintiff, RTIC, accused the same defendant, YETI, using mirror-image legal claims of patent and trade dress infringement. 2017 WL 5505325, at *1. The Court was not persuaded that there were "common question[s] of fact and law" "simply because [the cases] involve the same types of claims and the products at issue happen to be manufactured by the same companies." *Id.* at *2. Rather, "the factual inquiries RTIC believe are common to these cases are actually different inquiries relating to different products, with different appearances and different designs." *Id.* The holding in *YETI* applies here, and with greater force given that the parties differ across the cases and are differently situated as shown in Table 1.

Finally, Ocean fails to carry its burden because by its own admission its cases against Defendants are both in flux and pleaded with the minimum specificity required to satisfy its notice pleading obligation. Ocean admits that the possibility of an even greater divergence exists by reserving the right in its Motion to assert additional infringement theories based on yet-unnamed foundries, importers, or tools. (Dkt. 25 at 2, nn. 1-2.) And without infringement contentions specifying what claims are asserted on what basis against which Defendants, Ocean's current assertions are merely catch-all allegations that NXP infringes "at least one claim of" a given asserted patent. (Dkt. 1 at ¶¶ 112, 132, 152, 194, 214, 234.)

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