# UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE PATENT TRIAL AND APPEAL BOARD \_\_\_\_\_\_

APPLIED MATERIALS, INC., Petitioner

v.

OCEAN SEMICONDUCTOR LLC,
Patent Owner

IPR2021-01342 Patent No. 6,968,248

### PATENT OWNER'S PRELIMINARY RESPONSE

Under 35 U.S.C. § 42.107

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
Submitted Electronically via PTAB E2E



## TABLE OF CONTENTS

I.	INTRODUCTION1
II.	APPLICABLE LEGAL PRINCIPLES4
	A. Discretionary Denial of Review Under 35 U.S.C. § 3144
	B. Obviousness Under 35 U.S.C. § 1035
	EACH OF THE SIX <i>FINTIV I</i> FACTORS WEIGHS STRONGLY IN FAVOR DENYING REVIEW UNDER SECTION 3147
	A. Eight District Court Litigations Are Pending Between Patent Owner and Third Parties That Involve the '248 Patent9
	B. <i>Fintiv I</i> , Factor 1 Favors Discretionary Denial: No Stay Motion Is Pending in the EDTX and WDTX Proceedings, and No Evidence Exists that One May Be Entered
	C. <i>Fintiv I</i> , Factor 2 Favors Discretionary Denial: The Trial Dates in the EDTX and WDTX Litigations Are Several Months Before the Board's Projected Statutory Deadline for An FWD
	1. The Trial Dates in the WDTX and EDTX Litigations Are Two Months and Five Months Before the Board's Projected Statutory Deadline for an FWD, Respectively
	2. Petitioner's Speculation About Volatility in Case Schedules and the COVID-19 Pandemic Has Previously Been Debunked and Shot Down by the Board and District Court
	D. <i>Fintiv I</i> , Factor 3 Strongly Favors Discretionary Denial: There Has Been Immense Investment in the Parallel Proceedings by the Court and Non-Party Defendants
	Patent Owner and Non-Party Defendants Have Expended Immense Resources in the Parallel Proceedings
	E. <i>Fintiv I</i> , Factor 4 Strongly Favors Discretionary Denial: There Is Complete Overlap Between Issues Raised in the Petition and in the Parallel Proceedings, Including Asserted Claims, Asserted Prior Art References, and Identical Invalidity Arguments, with Non-Party Defendants Committing to Raising These Same Grounds, References, and Arguments in the Parallel Proceedings26
	1. There Is Complete Overlap as to Claims and Prior Art References Raised in the Petition and in the Parallel Proceedings
	2. There Is Complete Overlap as to Asserted Grounds and Arguments28



		None of the Non-Party Defendants in Parallel District Court ceedings Has Committed to Not Asserting the Same Prior Art Reference Grounds	ces .29
	Explair This IP	ntiv I, Factor 5 Favors Discretionary Denial: Petitioner Has Failed to My Addressing the Same or Substantially Same Validity Issues In R Would Not Be Duplicative of Those Involved in Parallel District Proceedings	.31
	Includi	ntiv I, Factor 6: Other Circumstances Further Favor Non-Institution, ng Additional Prior Art References Raised in the Parallel District Coundings	
	1.	The Petition's Grounds Are Weak	.33
		lancing the Six <i>Fintiv I</i> Factors Weighs Heavily in Favor of Denying to on a Discretionary Basis	the .33
FA	AILS: CI	PETITION'S ASSERTED GROUND OF UNPATENTABILITY LAIMS 1-22 OF THE '248 PATENT ARE NOT OBVIOUS OVER E IN VIEW OF GUPTA	.34
	A. Ov	verview of the '248 Patent	.34
	B. Cla	aim Construction	.36
	C. Le	vel of Ordinary Skill in the Art	.36
	a Fab, a	apta Teaches Away from Extending Its Local Scheduling to All Tools and Petitioner's Proposed Combination Would Have No Reasonable ation of Success	
	1.	Schulze's MES Covers Every Tool in a Semiconductor Fab	
	2.	Unlike Schulze, Gupta's Local Optimization Focuses on Individual chines and Processes to Conserve Resources	
		pta and Schulze, Alone or In Combination, Do Not Teach or Suggest ve Scheduling	.43
	1.	Gupta's Local Optimization Is Predictive, Not Reactive	.43
	2.	Gupta's Six Minute Time Steps Do Not Permit Reactive Scheduling	.46
	F. Cla	aim 14	.47
	1. Sug	Schulze and Gupta, Alone or in Combination, Do Not Teach or gest a Plurality of Scheduling Agents	.48
	C	oims 6 15 % 10	10



1.	Schulze and Gupta, Alone or in Combination, Do Not Teach or	
Sug	gest "Sending an Indication of the Occurrence to A Publisher,"	
"Pu	blishing the Cccurrence from the Publisher to a Subscribing Listener"	,
and	"Publishing the Occurrence from the Publisher to a Subscribing	
List	tener"	49
H. Cl	aims 2-5, 7-13, 16, 17 and 19-22	52
V CONO	CLUSION	53



### TABLE OF AUTHORITIES

Page(	(S)
Cases	
Apple Inc. v. Contentguard Holdings, Inc., IPR2015-00442, Paper 9 (PTAB July 13, 2015)	, 9
Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020)	38
Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 15 (P.T.A.B. May 13, 2020)	6
Apple Inc. v. Maxell, Ltd., IPR2020-00203, Paper 12 (P.T.A.B. Jul. 6, 2020)	36
Cisco Sys., Inc. v. Ramot at Tel Aviv Univ. Ltd., IPR2020-00122, Paper 15 (P.T.A.B. May 15, 2020)	29
Code200, UAB v. Luminati Networks Ltd., IPR2020-01358, Paper 11 (P.T.A.B. Feb. 2, 2021)	38
Continental Intermodal Group - Trucking LLC v. Sand Revolution LLC et al., No. 7-18-cv-00147 (W.D. Tex. July. 22, 2020) (text order)	17
Cuozzo Speed Techs., LLC v. Lee, 136 S. Ct. 2131 (2016)	4
Fitbit, Inc. v. Koninklijke Philips, N.V., IPR2020- 00771, Papers 17-18 (P.T.A.B. Oct. 19, 2020)	19
General Plastic Indus. Co. v. Canon Kabushiki Kaisha, IPR2016-01357, Paper 19 (P.T.A.B. Sept. 6, 2017)	4
Harmonic Inc. v. Avid Tech., Inc., 815 F.3d 1356 (Fed. Cir. 2016)	4
<i>In re Magnum Oil Tools Int'l.</i> , 829 F.3d 1364 (Fed. Cir. 2016)6,	, 7
<i>In re NTP, Inc.</i> , 654 F.3d 1279 (Fed. Cir. 2011)	9



# DOCKET

# Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

# **Real-Time Litigation Alerts**



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

#### **Advanced Docket Research**



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## **Analytics At Your Fingertips**



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

#### API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

#### **LAW FIRMS**

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

#### **FINANCIAL INSTITUTIONS**

Litigation and bankruptcy checks for companies and debtors.

#### **E-DISCOVERY AND LEGAL VENDORS**

Sync your system to PACER to automate legal marketing.

