

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

GODO KAISHA IPB 1,)	
)	
Plaintiff,)	Case No. 2:17-cv-00676-RWS-RSP
)	
v.)	
)	
INTEL CORPORATION,)	
)	JURY TRIAL DEMANDED
Defendant.)	

**INTEL CORPORATION'S REPLY IN SUPPORT OF ITS
MOTION FOR LEAVE TO SUPPLEMENT INVALIDITY CONTENTIONS**

I. THE RECORD DEMONSTRATES INTEL'S DILIGENCE.

IP Bridge (“IPB”) criticizes Intel for supplementing its contentions with Intel prior art, but IPB cannot deny that many years have passed since the prior art products were produced, or the extensive efforts that Intel undertook to discover and confirm that they invalidate the asserted claims, facts that Intel immediately disclosed to IPB. Intel’s diligent efforts are detailed in a day-by-day description in the timelines supporting Intel’s Opening Brief, which IPB’s arguments ignore in important respects. *See* Dkt. No. 113-1 (“Carter Decl.”) at ¶ 7. Contrary to IPB’s assertions, Intel began searching for relevant prior art immediately after IPB filed this case; it did not delay.¹ *See* Carter Suppl. Decl. at ¶ 9. Before receiving IPB’s infringement contentions—and before knowing what claims would be asserted, let alone IPB’s infringement theories—Intel’s counsel interviewed engineers to locate product art. *Id.*; *see also* Carter Decl. at ¶ 7. Since most engineers did not know whether specific claim elements were present in Intel’s products, Intel had to follow up on leads from one engineer to the next, until information was eventually discovered. *See id.* At the same time, Intel sought to identify the products made using each process node,² and along with attempting to collect information from sources at Intel, promptly sought reverse engineering of those products. Intel’s investigation continued uninterrupted until July 20th, when Intel served the supplemental invalidity contentions at issue. *See id.*; Dkt. No. 113-6 (Tomkins

¹ IPB contends that Intel was obligated to search for prior art *before* this suit was filed but cites no supporting authority. Courts in other districts have held that the assessment of diligence focuses on the time when discovery is open. *See, e.g., Digital Ally, Inc. v. Taser Int’l, Inc.*, No. 16-CV-2032-CM-TJJ, 2018 WL 1138283, at *6 (D. Kan. Mar. 2, 2018); *Netflix, Inc. v. Rovi Corp.*, No. 11-CV-06591-PJH-DMR, 2015 WL 3504969, at *4 (N.D. Cal. June 2, 2015). This makes sense because a plaintiff may shift theories, as IPB did between the 2015 presentations and its January 2018 infringement contentions. *See e.g.,* Dkt. No. 125-6 at 12 and Ex. 5 (Appx. 3.2 Preliminary Infringement Contentions of U.S. Patent No. 7,279,727).

² Contrary to IPB’s assertion, Intel does not attempt to excuse alleged delays based on an inability to procure the chips. *See* Opp. at 9. The difficulty for Intel was *identifying* which prior-art products were manufactured using each node. It took multiple engineer interviews and extensive review of financial documentation to determine the relevant products. *See* Carter Decl. at ¶ 7. The Google search that IPB completed was likely much easier since IPB already knew the relevant products.

Decl.) at ¶¶ 18-62. During that span, Intel repeatedly provided updates to IPB—through supplemental contentions on April 25th (at IPB’s request), correspondence on May 31st,³ and a call on July 12th. There were no “inexcusab[le]” or “reckless[.]” delays in Intel’s investigation, and IPB’s contrary assertions are based on fundamental misunderstandings of the record.

P648/P650: IPB does not dispute that Intel sufficiently disclosed the P648/P650 process nodes in its original contentions on February 22nd, mapping those nodes to the asserted claims. Opp. at 4-5. Nor does IPB dispute that Intel diligently identified the 486DX2 processor in its supplemental charts on April 25. *Id.* at 9.⁴ Rather, IPB narrowly focuses on Intel’s diligence in the one-month period between its supplemental contentions identifying the 486DX2 processor (in April) and ICmasters’ analysis (in May). Even then, IPB ignores the actual record of Intel’s diligence during that time period: Intel searched its internal databases for information relating to P648/P650 process nodes and the Intel 486DX2 product, (Mot. at 5; Carter Decl. at ¶¶ 5, 7B), but the product’s age prevented Intel from uncovering additional documentation, requiring Intel to immediately request assistance from TechInsights (and then ICmasters) on an expedited basis. Carter Suppl. Decl. at ¶ 12; Mot. at 4-5. Intel worked with ICmasters continuously until obtaining reverse engineering results on July 11 for the 486DX2, which Intel promptly added as supplemental evidence to its P648/P650 charts. *See* Carter Decl. at ¶ 7.B.

³ IPB does not dispute that Intel’s May 31st letter provided notice of intent to supplement based on the process nodes and products discussed herein. Yet IPB complains that Intel did not specifically mention reverse engineering. IPB provides no authority for the suggestion that Intel was required to divulge the details of its ongoing investigation, but in any event, Intel had already identified the relevant process nodes and products to IPB, and Intel provided supplemental invalidity claim charts as soon as possible thereafter. Dkt. No. 113-4. And unlike the defendant in *MacroSolve, Inc. v. Antenna Software, Inc.*, No. 6:11-CV-287-MHS-JDL, 2013 WL 3833079, at *4 (E.D. Tex. July 23, 2013), Intel has fully “account[ed] for its activity during the period between filing its original invalidity contentions and the [motion to supplement].”

⁴ Contrary to IPB’s claims, it did *not* object to Intel’s addition of its 486DX2 product in the April 25 contentions as an exemplary processor fabricated according to the P648/650 node in the April supplement. *See* Ex. 6 (May 11, 2018 A. Radsch Email to C. Lawless).

P860: IPB concedes that Intel sufficiently disclosed the P860 process node in its February 22nd contentions. Opp. at 1, 4. IPB also admits that Intel’s “P860 charts referenced actual products allegedly made in those nodes.” *Id.* at 4. IPB’s narrow attempt to show insufficient diligence focuses on the one-month period (April-May 2018) after Intel discovered the Pentium 4S Northwood product, and before it authorized ICmasters to purchase samples. *See id.* at 9-10. During that time, Intel was diligently searching internally for preexisting P860 product reports and financial records to confirm first-sale dates of specific products, including Pentium 4S Northwood. Carter Suppl. Decl. at ¶ 13; *see also* Carter Decl. at ¶ 7.C. Furthermore, an unforeseeable conflict with a subcontractor arose which, contrary to IPB’s speculation (Opp. at 11), prevented ICmasters from doing *any* further work on this case until May 11th. *See* Carter Decl. at ¶ 7.C; Dkt. No. 113-6 at ¶¶ 10-12. On May 23, Intel was able to identify and commence analysis on specific products made using the P860 process node for which first sale could be verified. *See* Carter Decl. at ¶ 7.C. IPB does not dispute that Intel promptly disclosed those products to IPB in its May 31st letter. Opp. at 5. After obtaining reverse engineering results on July 10th, Intel promptly supplemented its contentions ten days later.

P1262: IPB does not dispute that Intel disclosed both the P1262 process node and the Pentium 4 Prescott processor in its original February 22nd contentions. *Id.* at 1, 4, and 9. IPB’s argument instead focuses on the period between Intel’s February contentions and ICmasters’ purchase of Prescott processors in May. *Id.* at 9. During this period, Intel diligently searched internally for more preexisting P1262 product reports and financial records to confirm first sale of specific P1262 products. Carter Suppl. Decl. at ¶ 14; *see also* Carter Decl. at ¶ 7.D. Intel also worked with ICmasters to identify obtainable samples of embodying prior-art products for which first sale could also be verified. ICmasters’ assistance was delayed until mid-May due to the sub-

contractor conflict discussed above. *Id.* After obtaining reverse engineering results on July 10th, Intel promptly supplemented its contentions ten days later.

P854: This process node took longer to uncover than the others because of even greater difficulty in locating individuals with knowledge of the process node and the products manufactured using it. IPB’s assertion that Intel “did not bother to contact a reverse engineering firm . . . until the day its invalidity contentions were due” ignores when Intel first learned of P854’s relevance to this case. Despite conducting nine engineer interviews over the six-week period from December 27 until February 6 (which could not have been conducted in parallel, since one interview led to the next), it was not until February 12th—just ten days before invalidity contentions were due—that Intel first became aware of the technical details of P854. Carter Suppl. Decl. at ¶ 10. In the days that followed, Intel diligently searched for the few documents available for P854 and made them available to IPB on February 22nd. Carter Decl. at ¶ 7.A. Intel first contacted TechInsights about the P854 that same day. *Id.* After TechInsights declined the work, Intel promptly contacted ICmasters, who immediately procured chips for analysis. *See* Dkt. No. 113-6. at ¶¶ 4-7.

IPB further faults Intel’s diligence in the period between first contact with ICmasters on March 1st and requesting analysis of the P854 on April 23rd. But during that time, Intel serially completed seven more engineer interviews and analyzed additional, newly-identified documentation⁵ in an effort to prepare contentions without reverse engineering. *See* Carter Decl. at ¶ 7A; Carter Suppl. Decl. at ¶ 11. Immediately upon realizing that reverse engineering was necessary, Intel requested that ICmasters complete its work on an expedited basis. *Id.*; *see also*

⁵ IP Bridge points out that the records reviewed were financial rather than technical (Opp. at 11), but this review was necessary in order to identify which specific products were made with a given process node and sold before the relevant priority date.

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