IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

OCEAN SEMICONDUCTOR LLC, **Plaintiff,** **v.** **HUAWEI DEVICE USA, INC., HUAWEI DEVICE CO., LTD., AND HISILICON TECHNOLOGIES CO., LTD.,** **Defendants.**	**C.A. No. 4:20-cv-00991-ALM** **DEMAND FOR JURY TRIAL**

PLAINTIFF OCEAN SEMICONDUCTOR LLC'S OPPOSITION
TO DEFENDANTS' MOTION
TO DISMISS FOR FAILURE TO STATE A CLAIM UNDER 35 U.S.C. § 271(g)

Dated: April 19, 2021

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I. INTRODUCTION

The Motion to Dismiss (Dkt. 13) filed by by defendants Huawei Device USA, Inc., Huawei Device Co., Ltd., and HiSilicon Technologies Co., Ltd. (collectively "Huawei"), which is essentially a replica of a Rule 12(b) motion filed by NXP—a defendant in a parallel action pending in the Western District of Texas (*Ocean Semicondcutor LLC. V. NXP Semiconductors N.V. et al.*, No. 6:20-cv-1212-ADA (W.D. Tex.), misconstrues both the nature of the patents at issue and the applicable law. Each of the four patents asserted by Ocean Semiconductor LLC ("Ocean") in this action that Huawei seeks to dismiss—U.S. Patent Nos. 6,725,402 ("'402 patent"), 8,676,538 ("'538 patent"), 6,907,305 ("'305 patent"), and 6,968,248 ("'248 patent") (collectively "Asserted Patents")—describes the manufacturing of semiconductors in excruciating detail and claims methods used for, and during, that manufacturing used, for example, to manufacture semiconductor wafers—physical products falling squarely within the scope of § 271(g). Huawei's bare bones motion, which includes little factual or legal argument, coupled with Huawei's (a) artificial attempt to limit the Court's analysis to isolated claimed features; and (b) misapplication of the relevant law, falls far short of the high bar necessary to obtain dismissal. In all events, fact issues preclude dismissal and the Motion should be denied.

II. LEGAL STANDARD

A. The High Bar for a Motion to Dismiss

Under Federal Rule of Civil Procedure 12(b)(6), dismissal of a complaint or cause of action is appropriate if it fails to state a claim for relief that is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When considering a motion to dismiss under Rule 12(b)(6), "[t]he court ***must*** accept all well-pleaded facts as true and ***must*** draw all reasonable inferences in favor of the plaintiff." *Frye v. Anadarko Petro. Corp.*, 953 F.3d 285, 290-91 (5th Cir. 2019) (citing *Lormand v. US Unwired,*

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