

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

OCEAN SEMICONDUCTOR LLC,

Plaintiff

v.

NVIDIA CORPORATION,

Defendant

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Civil Action No.: 6:20-cv-1211

JURY TRIAL DEMANDED

PATENT CASE

NVIDIA CORPORATION'S RESPONSE IN OPPOSITION TO PLAINTIFF OCEAN SEMICONDUCTOR LLC'S MOTION FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION TO DEFENDANT NVIDIA CORPORATION'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Plaintiff Ocean Semiconductor LLC's Motion for Leave to File Sur-Reply in Opposition to Defendant NVIDIA Corporation's Motion to Dismiss for Failure to State a Claim fails to show why additional pages are warranted let alone why it should be permitted to circumvent the local rules to expand the briefing on a straightforward motion to dismiss. Plaintiff had every opportunity to make its arguments in the Opposition, but chose not to. Its motion should be denied.

A party who seeks leave to file a sur-reply must show "exceptional or extraordinary circumstances" or "good cause." *Silo Rest. Inc. v. Allied Prop. & Cas. Ins. Co.*, 420 F. Supp. 3d 562, 571 (W.D. Tex. 2019). Filing sur-replies "[is] heavily disfavored" and "it is within the sound discretion of the courts to grant or deny leave to file such additional briefing." *Id.* at 571 (quoting *Warrior Energy Servs. Corp. v. ATP Titan M/V*, 551 F. App'x 749, 751 n.2 (5th Cir. 2014) (per curiam)).

Plaintiff's Motion fails to show any "exceptional or extraordinary circumstances," "good cause," or even that NVIDIA's Reply introduced any new arguments, evidence, or law. In fact, the Motion does not provide any support for its request beyond the bare assertion that, "In its Reply, NVIDIA asserts new arguments and cites new legal authority not presented in its Motion that present an inaccurate description of the Complaint and the applicable cases interpreting the pleading standard for direct infringement." Motion at 1. But Plaintiff fails to offer any supporting citations or analysis to support this contention. *Id.* Neither does it explain what "new arguments" were allegedly raised. *Id.*

The only case cited in NVIDIA's Reply not cited in the Motion to Dismiss was

Anticancer, Inc. v. Pfizer, Inc., Case No. 11-CV-107-JLS, 2012 WL 13180611 (C.D. Cal. June 1, 2012). NVIDIA cited this case for the uncontroversial proposition that a § 271(g) claim can be dismissed at the pleading stage—an argument made in NVIDIA’s Motion to Dismiss. Tellingly, Plaintiff’s proposed sur-reply only mentions this case in a passing footnote. Sur-Reply at 2 n.3.

Plaintiff’s attempt to have the last word is not permitted by the local rules. *See e.g., Lacher v. West*, 147 F. Supp. 2d 538, 539 (N.D. Tex. 2001) (“Surreplies and any other filing that serves the purpose or has the effect of a surreply, are highly disfavored, as they usually are a strategic effort by the nonmovant to have the last word on a matter.”). The proposed sur-reply only repeats arguments raised in Plaintiff’s Opposition—not exceptional circumstances or novel issues requiring a deviation from the local rules. Plaintiff’s Motion should be denied. *See, e.g., Williams v. Aviall Servs. Inc.*, 76 F. App’x 534, 535 (5th Cir. 2003) (affirming discretionary denial of proposed sur-reply that included no new arguments or evidence).

Dated: April 16, 2021

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT NVIDIA
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on April 16, 2021, on all counsel of record via the Court's ECF system.

/s/ Scott L. Cole _____
Scott L. Cole