

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

OCEAN SEMICONDUCTORS LLC,

Plaintiff,

v.

NXP SEMICONDUCTORS N.V., et al.,

Defendants.

Civil Action No. 6:20-CV-1212-ADA

**JURY TRIAL DEMANDED**

**NXP USA, INC.'S OPPOSITION TO OCEAN SEMICONDUCTOR LLC'S MOTION  
FOR LEAVE TO FILE SURREPLY TO NXP USA, INC.'S PARTIAL MOTION TO  
DISMISS FOR FAILURE TO STATE A CLAIM UNDER 35 U.S.C. § 271(g)**

Surreplies “are heavily disfavored.” *Warrior Energy Servs. Corp. v. ATP Titan M/V*, 551 F. App’x 749, 751 n.2 (5th Cir. 2014) (*per curiam*) (quoting *Weems v. Hodnett*, No. 10-CV-1452, 2011 WL 2731263, at \*1 (W.D. La. July 13, 2011)). They “often amount to little more than a strategic effort by the nonmovant to have the last word on a matter,” and it is proper to deny a surreply request when a party “fails to demonstrate exceptional or extraordinary circumstances.” *Weems*, 2011 WL 2731263, at \*1. Such is the case here.

The Motion for Leave (Dkt. 20) is entirely conclusory and offers no support for the relief sought. When a party “ma[kes] conclusory statements about new arguments” without identifying any, it has failed to show such circumstances. *Silo Rest. Inc. v. Allied Prop. & Cas. Ins. Co.*, 420 F. Supp. 3d 562, 571 (W.D. Tex. 2019). Here, Ocean states that NXP’s Reply “asserts new arguments not presented in its original Motion” but does not describe those arguments. *See* Dkts. 20 at 1 & 20-1 at 1. Ocean’s conclusory statements do not support a motion for leave. *Silo Rest.*, 420 F. Supp. at 571.

The substance of the proposed surreply (Dkt. 20-1) reveals why Ocean did not bother to attempt to justify its request for leave. The caselaw Ocean wishes to address in its proposed surreply falls into three categories—none of which justifies departing from the Court’s Local Rules:

1. Caselaw NXP cited in the underlying Motion to Dismiss (Dkt. 15) to which Ocean had the opportunity to respond, and did, in its Opposition (Dkt. 18):
  - *Bayer AG v. Housey Pharm., Inc.*, 340 F.3d 1367 (Fed. Cir. 2003)
  - *Momenta Pharms., Inc. v. Teva Pharms. USA Inc.*, 809 F.3d 610 (Fed. Cir. 2015)
2. Caselaw that Ocean cited in its Opposition to which NXP responded in its Reply:
  - *Bio-Technology General Corp. v. Genentech, Inc.*, 80 F.3d 1553 (Fed. Cir. 1996)
  - *Millennium Cryogenic Techs., Ltd. v. Weatherford Artificial Lift Sys.*, No. H-12-0890, 2012 U.S. Dist. LEXIS 196638 (S.D. Tex. Sept. 5, 2012)

- *Ormco Corp. v. Align Tech., Inc.*, 653 F. Supp. 2d 1016 (C.D. Cal. 2009)
3. Caselaw that Ocean cites for the first time in its proposed Surreply (Dkt. 20-1):
- *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005)

Allowing Ocean more pages would reward its transparent effort to have the last word and make new arguments on caselaw that has already been addressed in accordance with the Local Rules. Accordingly, NXP respectfully requests that the Court deny Ocean's Motion for Leave.

Respectfully submitted,

Dated: April 16, 2021

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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 all counsel of record via the Court's ECF system.

/s/ Bradley D. Coburn  
Bradley D. Coburn