

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

Ocean Semiconductor LLC,

Plaintiff

v.

NXP Semiconductors N.V., *et al.*,

Defendant.

Civil Action No.: 6:20-cv-01212-ADA

JURY TRIAL DEMANDED

PATENT CASE

**REPLY RE MOTION BY OCEAN SEMICONDUCTOR LLC FOR LEAVE
TO FILE SUR-REPLY IN OPPOSITION TO
NXP USA, INC.'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

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NXP's Opposition (Dkt. 21) to Ocean's Motion for Leave to File Sur-Reply is both misguided and belied by filings in a parallel action.

First, as the Court is doubtless aware, there are four other currently-pending Motions to Dismiss filed by defendants in parallel actions.¹ The issues raised in these various motions substantially overlap with those here. In particular, Silicon Labs' motion raises every legal issue that is raised by NXP's Motion to Dismiss and Silicon Labs' Reply similarly addressed the many arguments common across the five Motions to Dismiss. Nevertheless, *Silicon Labs did not oppose* Ocean's Motion for Leave to file a sur-reply. That Silicon Labs did not oppose making Ocean's Sur-Reply arguments of record and having them considered by the Court illustrates a recognition that the various Replies raised new arguments that merited further response from Ocean. NXP's Reply, addressing the same legal issues in a similar manner, is no different.

Second, a review of Ocean's Sur-Reply (Dkt. 20-2) readily illustrates that the Sur-Reply is entirely directed to responding to specific *new arguments made by NXP* in its Reply—arguments that were conspicuously absent in NXP's opening brief. (Notably, NXP's Reply is *longer* than its original Motion.) Throughout the Sur-Reply, Ocean explicitly discusses and responds to those new arguments made, and positions taken, by NXP in NXP's Reply. These new arguments could not have been addressed in Ocean's Opposition as they were never raised in NXP's opening brief. Similarly, Ocean directly addresses factual arguments raised by NXP in its Reply that were intentionally mis-stated or taken out of context. *See Jenam Tech, LLC v. Google LLC*, No. 6:20-cv-00453-ADA, at 1 (W.D. Tex. Apr. 12, 2021) (granting Plaintiff's motion for leave because of the Court's "main interests" in providing "justice and achieving the

¹ No. 6:20-cv-1214-ADA, Dkt. 14 (W.D. Tex. Mar. 11, 2021) (Silicon Labs); No. 6:20-cv-1211-ADA, Dkt. 13 (W.D. Tex. Mar. 12, 2021) (NVIDIA); No. 6:20-cv-1216-ADA, Dkt. 12 (W.D. Tex. Mar. 12, 2021) (Western Digital Technologies); and No. 6:20-cv-1215-ADA, Dkt. 18 (W.D. Tex. Mar. 12, 2021) (STMicroelectronics).

improper for the purpose of determining the applicability of Section 271(g). (Dkt. 19 at 4-5.) In fact, . . .”

- Sur-Reply at 4: “NXP’s [Reply] argument that the ’305 and ’248 patents ‘are limited to scheduling’ (Dkt. 19 at 6) grossly mischaracterizes and oversimplifies the invention of each patent. Instead,”
- Sur-Reply at 4: “NXP’s [Reply] recitation of applicable law contains numerous mischaracterizations and unsupported conclusions. . . .”
- Sur-Reply at 5: “*Momenta* offers zero support for NXP’s nebulous proposition that ‘an important relationship to manufacturing is not enough under § 271(g).’ (Dkt. 19 at 5.)”
- Sur-Reply at 5: “NXP’s convoluted [Reply] reading of *Bio-Tech Gen.* (Dkt. 19 at 5) also fails.”
- Sur-Reply at 5: “While NXP takes pains to argue [on Reply] that the Court should not consider the factual question of whether a patented process contributes to the commercial viability of a product (Dkt. 19 at 6-7), it once again relies on selective and misleading case law quotations. For example,”
- Sur-Reply at 6: “***NXP entirely fails to address*** the final section of Ocean’s Opposition (*see* Dkt. 18 at 12). As such, NXP concedes that at worst the Court should grant leave to amend the Complaint rather than dismissing the Complaint outright.”

In sum, Ocean’s Sur-Reply places NXP’s new and mis-stated Reply arguments and legal citations in context, highlighting their flaws so that the Court can fully understand each side’s positions and achieve “the correct outcome.” Leave should be granted for the Sur-Reply to be filed so that the Motion to Dismiss can be decided (and denied) on the merits.

Dated: April 21, 2021

/s/ Alex Chan

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CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2021, I caused a copy of this document to be served by transmitting it via e-mail or electronic transmission to counsel of record for Defendant.

/s/ Alex Chan

Alex Chan