

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

OCEAN SEMICONDUCTOR LLC,

*Plaintiff,*

vs.

STMICROELECTRONICS, INC.,

*Defendant.*

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**NO. 6:20-cv-01215-ADA**

**STMICROELECTRONICS, INC.'S OPPOSITION TO OCEAN SEMICONDUCTOR  
LLC'S MOTION FOR LEAVE TO FILE SURREPLY TO STMICROELECTRONICS,  
INC.'s PARTIAL MOTION TO DISMISS**

STMicroelectronics, Inc. (“ST Inc.”) opposes Ocean Semiconductor LLC’s (“Ocean”) Motion for Leave to File a Surreply because Ocean fails to justify its request for more briefing.

**I. Ocean’s Unsupported Statements About “New Arguments” in ST Inc.’s Reply Do Not Establish the Required “Exceptional and Extraordinary” Circumstances**

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. 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 ST Inc.’s Reply “asserts new arguments not presented in its original Motion” but does not describe those arguments. *See* Dkts. 20 & 21 at 1, Ex. A. Ocean’s conclusory statement cannot support a motion for leave. *Silo Rest.*, 420 F. Supp. at 571.

**II. Ocean Raised or Should Have Raised Its Arguments in Earlier Briefing**

The arguments raised in Ocean Semiconductor’s proposed surreply could have and should have been addressed in its Response. Dkts. 19 & 21, Ex. A; *see Branch v. CEMEX, Inc.*, No. H-11-1953, 2012 WL 2357280, at \*9 (S.D. Tex. June 20, 2012), *aff’d*, 517 Fed. App’x 276 (5th Cir. 2013). Giving Ocean more pages to raise the arguments would serve no purpose, waste the Court’s time and resources, and reward Ocean’s transparent ploy to get the last word.

First, Ocean has previously presented most of its arguments to the Court. The surreply takes issue with ST Inc’s argument that 35 U.S.C. § 271(g) does not apply to processes that may “relate” to manufacturing but are too far removed from making a product. Dkt. 21, Ex. A at 1–2;

Dkt. 20 at 2. ST Inc.'s Motion to Dismiss covered this issue, *e.g.*, Dkt. 18 at 1, 6, 12, and Ocean already attempted to address it in the Response, Dkt. 21, Ex. A at 1 (citing Dkt. 19 at 4). Similarly, the surreply attacks ST Inc.'s argument that the processes claimed in the '538 and '402 patents do not create or transform a physical product. Dkt. 21, Ex. A at 2–4; Dkt. 18 at 9. As Ocean admits, ST Inc. raised this argument in its Motion, Dkt. 21, Ex. A at 2 (quoting Dkt. 18 at 9), and Ocean's Response addressed it. *See* Dkt. 19 at 4–10. In the proposed surreply, Ocean seizes on ST Inc.'s statement in the Reply that the claimed methods of the '305 and '248 patents have “a remote connection to actual product manufacture.” Dkt. 21, Ex. A at 2–6; Dkt. 20 at 7. But that argument was central to ST Inc.'s Motion, which argued that the methods are “only tangentially related to the making of a physical product” (Dkt. 18 at 12), and Ocean addressed the argument in the Response (Dkt. 19 at 10–12). As to indirect infringement, Ocean's proposed surreply likewise rehashes arguments raised in its Response. Dkt. 21, Ex. A at 6–8; Dkt. 19 at 12–16. The surreply addresses specific intent (Dkt. 21, Ex. A at 6) even though Ocean made the same arguments in the Response (Dkt. 19 at 12–14). Ocean further argues that ST Inc. has not addressed Ocean's arguments about the existence of purported fact issues. Dkt. 21, Ex. A at 8. That is false. ST Inc.'s Motion repeatedly states that there are no purported factual disputes that would preclude dismissal (Dkt. 18 at 15–16), and its Reply does the same (Dkt. 20 at 9–10). No additional briefing is needed on any of these issues because ST Inc. raised them in its Motion and Ocean already tried to address them in its Response. *See* Dkt. 19 at 4–10.

Second, Ocean's proposed surreply attempts to distinguish the *Momenta* case cited in ST Inc.'s Motion. Dkt. 21, Ex. A at 2. Ocean could have made its arguments in the Response; it simply chose not to do so. Dkt. 19 at 6.

### III. Conclusion

Because Ocean cannot justify its surreply request, the Court should deny its motion.

Dated: April 16, 2021

Respectfully submitted,

/s/ Tyler R. Bowen

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**CERTIFICATE OF SERVICE**

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that, on April 16, 2021, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system.

/s/ Tyler R. Bowen

Tyler R. Bowen