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

Ocean Semiconductor LLC, Plaintiff v. STMicroelectronics, Inc., Defendant.	CIVIL ACTION NO. 6:20-cv-1215-ADA JURY TRIAL DEMANDED PATENT CASE

JOINT MOTION FOR ENTRY OF SCHEDULING ORDER

The Court has instructed that the pre-trial schedules in seven separate actions currently pending before this Court— *Ocean Semiconductor LLC v. MediaTek Inc.*, No. 6:20-cv-1210-ADA (W.D. Tex.); *Ocean Semiconductor LLC v. NVIDIA Corp.*, No. 6:20-cv-1211-ADA (W.D. Tex.); *Ocean Semiconductor LLC v. NXP Semiconductors N.V.*, No. 6:20-cv-1212-ADA (W.D. Tex.); *Ocean Semiconductor LLC v. Renesas Electronics Corp.*, No. 6:20-cv-1213-ADA (W.D. Tex.); *Ocean Semiconductor LLC v. Silicon Labs Inc.*, No. 6:20-cv-1214-ADA (W.D. Tex.); *Ocean Semiconductor LLC v. STMicroelectronics Inc.*, No. 6:20-cv-1215-ADA (W.D. Tex.); and *Ocean Semiconductor LLC v. Western Digital Techs., Inc.*, No. 6:20-cv-1216-ADA (W.D. Tex.)— "should go forward on the same schedule. Thus, there will be coordinated/joint Markman proceedings, discovery, and pretrial briefing." (*See* email communications between Henrik Parker, counsel for Ocean, and Evan Pearson, Law Clerk to the Honorable Alan D. Albright, dated June 29-30, 2021.) While the parties in the seven actions have conferred over the last week, they have been unable to agree on a pre-trial schedule. As a result, set forth separately below are the positions

of Ocean and of the defendants as to why their proposed schedule is more appropriate. The Defendants in the related actions are proposing the same schedule for each related case.

Set out in Attachment A is a comparison of the proposed schedules containing separate columns for each of the various deadlines contained within the Court's most recent standard Order Governing Proceedings – Patent Case (filed June 24, 2021) ("the OGP") and setting out the dates for each deadline: (a) per the Court's default schedule in accordance with the OGP; (b) as proposed by plaintiff Ocean Semiconductor LLC ("Ocean"); and (c) as proposed by the defendants.

Attachment B is a proposed Scheduling Order reflecting Ocean's proposal.

Attachment C is a proposed Scheduling Order reflecting Defendants' proposal.

Plaintiff Ocean Semiconductor's Scheduling Proposal

Other than dealing with one minor internal inconsistency within the Court's OGP, Ocean believes that the Court's default schedule as calculated using the time periods set out in the Appendix to the OGP is wholly appropriate for all of the actions. This is particularly true since the actions were already a full six months old before the Court set a designated June 30, 2021, Case Management Conference ("CMC") date meaning that, even under the default schedule, trial will not occur until more than 23 months after filing. As such, Ocean proposes a schedule that reaches both the *Markman* Hearing date and a date for trial in accordance with the default deadlines measured from the CMC date of June 30, 2021.

The one difference between Ocean's proposal and the Court's default schedule arises because of the inherent inconsistency between the "22 weeks after CMC ***(but at least 10 days before Markman hearing)***" (emphasis added) deadline for tutorials and the "23 weeks after CMC" deadline for the *Markman* Hearing (and the extended date for defendants' invalidity contentions). To deal with this inconsistency, Ocean proposes to keep the *Markman* Hearing at the stated 23

weeks after the CMC (December 8, 2021) but move several of the various deadlines for the briefing leading to the *Markman* Hearing back between two to seven days depending on the item. All post-*Markman* Hearing deadlines track the Court's default schedule.

Defendants' proposal, on the other hand, needlessly extends the time period between deadlines at least fourteen different times, usually by at least a week and, in many instances, by two weeks.

Moreover, while defendants only argument during the initial meet and confers about a Scheduling Order was that the pre-*Markman* Hearing schedule should be extended due to Ocean asserting more than the normal number of patent claims causing them to allegedly need more time for ***claim construction briefing***. Nevertheless, six of their time interval extensions occur ***after*** the *Markman* Hearing:

- Extending the deadline for serving Final Infringement and Invalidity Contentions by two weeks;
- Extending the time between the close of fact discovery and service of opening expert reports by a week;
- Extending the time between opening expert reports rebuttal expert reports by a week;
- Extending the time between rebuttal expert reports and the close of expert discovery by a week;
- Extending the time between the close of expert discovery and dispositive and Daubert motions by two weeks; and
- Extending the time between the filing of dispositive and Daubert motions and the filing of Pretrial Disclosures by a week.

To demonstrate Ocean's reasonableness, during the meet and confers about a proposed schedule, Ocean offered to counterbalance defendants' only then-alleged concern about needing more time for claim construction briefing by extending various pre-*Markman* Hearing deadlines along the lines of what the defendants propose (although there should still not be disproportionate extensions) ***provided that*** defendants agreed to shorten the post-*Markman* Hearing deadlines in a way that would get the actions to trial at roughly the time designated under the Court's default schedule. In other words, Ocean offered to give the defendants more time to deal with claim construction provided that they would agree to compress the post-*Markman* hearing deadlines. Defendants declined this offer.

During the initial meet and confers, no reasoned basis was given for defendants' sought post-*Markman* Hearing extensions. Only when providing their Joint Motion inserts to Ocean this afternoon did defendants first mention a need for more time post-*Markman* Hearing based on a contention that discovery will be "unusually lengthy and complex." Defendants' contention is inaccurate.

As illustrated in the Complaint (and in Ocean's Infringement Contentions, which Ocean will provide to the Court if the Court would like to see them), the accused processes involved in the manufacture of the infringing products are largely the same across all of the infringing products such that discovery will be comparatively simple. The fact that these actions involve third parties is no different from most other patent cases pending in this district. Further, whether or not the original assignee of a patent is involved in this action, nor whether Ocean "controls" the named inventors, has no substantial bearing on the complexity of discovery.

Further, many of the asserted patents overlap in substance and even claim scope. For example, U.S. Patent Nos. 6,907,305 and 6,968,248 are parent and child so they share a common

specification as are the two stiffener patents asserted against NVIDIA (U.S. Patent Nos. 8,120,170 and 8,847,383). Three of the other patents (U.S. Patent Nos. 6,725,402, 6,836,691, and 8,676,538) deal with the same concept—fault detection. Finally, while a significant number of claims have been initially asserted, as with most patent cases, it is likely that the number will be narrowed as the case proceeds. Indeed, the schedule includes two dates to meet and confer with respect to just such narrowing. Thus, while it is not disputed that these actions involves multiple patents, defendants have exaggerated their complexity.

The bottom line is that Ocean is committed to meeting this Court's default deadline time intervals despite any of the issues alleged by defendants and there is no reason why defendants—significantly bigger and better-resourced—should not be able to do so as well.

Still further, defendants propose to have pretrial and possibly trial in February, 2023— a time frame that coincides with lengthy Chinese New Year and when many companies shut down for multiple weeks. Given that the two principal foundries in this action (TSMC and UMC) as well as defendants NVIDIA and MediaTek are headquartered in China or Taiwan, defendants' proposal will likely end up requiring further extensions in order to accommodate parties and witnesses abroad. Thus, while it may appear on its face that defendants' proposed schedule seeks only a 4-5 month extension to the default schedule, it is almost certain that it will take substantially longer to get to trial.

Beyond all of the rest, at a minimum, Ocean's proposed schedule offers the best alternative for proceeding promptly to trial. If it is determined at a later time that unusual events and/or complexity necessitate revising the schedule to allow more time for particular pre-trial activities, or to accommodate witnesses or the Court's own schedule, the Court can re-visit the schedule, e.g., after the *Markman* hearing.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.