

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

Ocean Semiconductor LLC,

Plaintiff

v.

Western Digital Technologies, Inc.,

Defendant.

Civil Action No.: 6:20-cv-1216

JURY TRIAL DEMANDED

PATENT CASE

**PLAINTIFF OCEAN SEMICONDUCTOR LLC'S SUR-REPLY TO DEFENDANT  
WESTERN DIGITAL TECHNOLOGIES, INC.'S MOTION TO DISMISS**

DATED: April 9, 2021

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**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. ARGUMENT ..... 1

    A. The Patents Challenged by WDT Are Directly Related to the Manufacture of Physical Products and Are Encompassed Within the Scope of § 271(g) ..... 1

        1. WDT Mischaracterizes the Relevant Caselaw, Which Does Not Exclude the Asserted Patents from § 271(g) Infringement..... 1

        2. The Method of the ‘402 Patent Is Used Directly in the Manufacture of a Physical Product ..... 3

        3. The Method of the ‘691 Patent Is Used Directly in the Manufacture of a Physical Product ..... 4

        4. The Method of the ‘538 Patent Is Used Directly in the Manufacture of a Physical Product ..... 5

        5. The Method of the ‘305 and 248 Patents Is Used Directly in the Manufacture of a Physical Product..... 6

        6. The Method of the ‘330 Patent Is Used Directly in the Manufacture of a Physical Product ..... 6

        7. The Method of the ‘651 Patent Is Used Directly in the Manufacture of a Physical Product ..... 7

    B. Ocean Asserts Knowledge and Specific Intent in the Complaint by Showing WDC’s Contacts with WDT and that WDT Contracts with Third-Party Importers to Infringe the Asserted Patents ..... 8

    C. WDT’s Use of Case Law From the JMOL Stage Cannot Heighten the Pleading Standard for Willful infringement ..... 9

    D. WDT Concedes that, in All Events, Fact Issues Preclude Dismissal and that, at Worst, Leave to Amend Should Be Granted Rather Than Dismissal..... 10

III. CONCLUSION ..... 10

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Bayer AG v. Housey Pharm., Inc.</i> , 340 F.3d 1367 (Fed. Cir. 2003) .....	3
<i>Bayer Healthcare LLC v. Baxalta Inc.</i> , 989 F.3d 964 (Fed. Cir. 2021) .....	10
<i>James v. J2 Cloud Servs., LLC</i> , 887 F.3d 1368 (Fed. Cir. 2018) .....	9
<i>Momenta Pharms., Inc. v. Teva Pharms. USA Inc.</i> , 809 F.3d 610 (Fed. Cir. 2015) .....	2
<i>Motiva Patents, LLC v. Sony Corp.</i> , 408 F. Supp. 3d 819 (E.D. Tex. 2019).....	9
<i>Parity Networks, LLC v. Cisco Sys.</i> , C.A. No. 19-00207-ADA, 2019 U.S. Dist. LEXIS 144094 (W.D. Tex. July 26, 2019) .....	8, 9
<i>Phillip M. Adams &amp; Assocs., LLC v. Dell Comput. Corp.</i> , 519 F. App'x 998 (Fed. Cir. 2013). .....	2
<i>RK Sols., LLC v. Vitajoy USA Inc.</i> , No. 18-06608-CAS, 2018 U.S. Dist. LEXIS 200681 (C.D. Cal. Nov. 26, 2018).....	8
<i>Sharafabadi v. Univ. of Idaho</i> , No. C09-1043JLR, 2009 U.S. Dist. LEXIS 110904 (W.D. Wash. Nov. 27, 2009).....	3

## I. INTRODUCTION

WDT's Reply continues either to mischaracterize or ignore relevant precedent while attempting to blur the early threshold requirements to survive a motion to dismiss. The cases, from this Court, the Federal Circuit, and the Supreme Court, all support denial of WDT's Motion to Dismiss.

When properly analyzed both factually and legally, it is clear that the methods of the asserted patents fall squarely within the coverage of § 271(g), and Ocean's pleading allegations more than sufficiently present plausible cases of indirect and willful infringement. Moreover, as conceded by WDT, fact issues would in all events preclude dismissal.

## II. ARGUMENT

### A. **The Patents Challenged by WDT Are Directly Related to the Manufacture of Physical Products and Are Encompassed Within the Scope of § 271(g)**

Mis-stating Ocean's Opposition, WDT insists that Ocean's position is: "because the patented processes are allegedly used 'during' production of the accused products, the processes allegedly 'relate[] directly to the manufacture of [the] products.'" (Dkt. 20 at 1.) Ocean's position, however, is far more robust, is supported by both the claims and the specifications of the patents, and is wholly in keeping with precedent, including the cases relied on by WDT (including *Momenta* and *Phillip M. Adams*).

#### 1. **WDT Mischaracterizes the Relevant Caselaw, Which Does Not Exclude the Asserted Patents from § 271(g) Infringement**

WDT attempts a bait-and-switch by now focusing on cases it failed to expound on in its opening brief, and attacks Ocean for not addressing those cases in its Opposition (Dkt. 20 at 1). Analyzing these "newfound" cases, however, demonstrates why WDT originally cited them only in passing. While WDT now argues a blanket exclusion for "quality control and testing" based on these cases, that contention misapplies not only these newly-discussed cases, it ignores the significance of *Bayer* and other primary Federal Circuit precedent squarely on point.

WDT broadly and repeatedly cites to *Momenta* in its arguments as to all seven challenged patents. Notably, WDT cites to only a single quote, which in WDT's mind stands for the proposition that § 271(g) "does not extend to product testing, quality control or data generation." (Dkt. 20 at each of 2-8, citing *Momenta Pharms., Inc. v. Teva Pharms. USA Inc.*, 809 F.3d 610, 616 (Fed. Cir. 2015).) *Momenta*, however, involved a testing process that was performed on samples of intermediate products and that destroyed the samples on which the tests were performed. *Momenta*, 809 F.3d at 616-17. As a result, there could never be any subsequent importation of any unit of product actually made using the patented invention.

Unlike in *Momenta*, the patented methods recited in the asserted patents here are performed *during manufacturing* and on *all wafers*, and so the same wafers that are imported were themselves made using the patented methods. This alone distinguishes *Momenta* and WDT's simplistic characterization of the decision as blanketly precluding "quality control" goes too far.

WDT also repeatedly cites to *Phillip M. Adams*, again focusing on a single quote: "[t]he mere production of information is not covered by § 271(g), even if the information is 'integrated' into a manufacturing process." (Dkt. 20 at 2, citing *Phillip M. Adams & Assocs., LLC v. Dell Comput. Corp.*, 519 F. App'x 998, 1005 (Fed. Cir. 2013). In *Phillip M. Adams*, however, the patent at issue was directed solely toward "discover[ing] a data corruption defect affecting Floppy Disk Controllers ("FDC") in certain Super I/O computer chips." *Id.*, 519 F. App'x at 999. At no point was this defect discovery process incorporated into the manufacturing process. This is vastly different from the inventions of the patents here, as each of the patented methods are expressly involved in the manufacture of semiconductors.<sup>1</sup>

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<sup>1</sup> Moreover, *Phillip M. Adams* concerned issues at the JMOL stage, not the pleading standard for

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