

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

SAMSUNG ELECTRONICS CO., LTD., and  
SAMSUNG ELECTRONICS AMERICA,  
INC.,

Plaintiffs,

v.

NVIDIA CORPORATION, OLD MICRO,  
INC. F/K/A VELOCITY MICRO, INC., AND  
VELOCITY HOLDINGS, LLC

Defendants.

CIVIL ACTION NO. 3:14-cv-00757-REP

JURY TRIAL DEMANDED

**JOINT SUBMISSION REGARDING DISCOVERY  
RELATING TO NVIDIA'S COUNTERCLAIMS**

Plaintiffs Samsung Electronics Co., Lt. and Samsung Electronics America, Inc. (collectively, "Samsung"), and Defendants NVIDIA Corporation ("NVIDIA"), Old Micro, Inc. f/k/a Velocity Micro, Inc., and Velocity Holdings, LLC (collectively, "Defendants") by counsel and pursuant to Docket Nos. 98 & 99<sup>1</sup> jointly file this submission regarding a discovery dispute relating to NVIDIA's infringement counterclaims against Samsung.

Samsung initiated this litigation more than five months ago, with a complaint filed against Defendants on November 4, 2014. On April 6, 2015, pursuant to the Court's Scheduling Order, the parties conducted a conference pursuant to Fed. R. Civ. P. 26(f) opening discovery in this case. On April 14, 2015, before the April 15, 2015 pretrial conference in this litigation and before the Court Ordered deadline for filing counterclaims as a matter of right, NVIDIA filed a motion for leave to file counterclaims. That same day, NVIDIA served discovery requests on

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<sup>1</sup> Referring discovery disputes through May 8 in this action to U.S. Magistrate Judge David J. Novak and establishing the procedure for raising such a discovery dispute.

Samsung relating to its counterclaims. At the pretrial conference, the Court instructed Samsung to file a motion to sever the counterclaims from the current action and set a briefing schedule for the parties relating to the severance motion.

Samsung believes that the counterclaim discovery should not proceed until the Court has ruled on the motion to sever and the parties have conducted a discovery conference on the counterclaims, pursuant to Fed. R. Civ. P. 26(f), which would give Samsung a reasonable amount of time to investigate NVIDIA's recently-filed counterclaims. NVIDIA believes that the motion to sever is irrelevant because NVIDIA's counterclaims will proceed regardless of severance, that Samsung has been on notice of NVIDIA's claims for at least thirteen months and that pursuant to the Federal Rules and the Orders entered by the Court, the parties have conducted the Rule 26(f) conference, discovery is open and NVIDIA's counterclaim discovery is properly served.

Although the parties have made good faith efforts to resolve this issue, they have not come to a resolution. Accordingly, the parties seek guidance from the Court.

## **I. POSTURE OF THE LITIGATION**

Samsung filed this litigation on November 4, 2014, asserting infringement of eight patents against Defendants. (Dkt. No. 1.) Samsung also asserted Virginia false advertising claims against NVIDIA. (*Id.*) Samsung served the Defendants with the summons and complaint on November 11, 2014 and November 12, 2014. (Dkt. Nos. 5-6.) To more fully comply with the Court's pleading requirements for patent infringement actions, Samsung filed a First Amended Complaint on December 19, 2014. (Dkt. No. 30.) Samsung's First Amended Complaint was over 400 pages in length and included over 3,200 numbered allegations.

On January 12, 2015, Defendants filed a motion to transfer, sever, and stay the litigation. (Dkt. Nos. 46-47.) Specifically, Defendants asked the Court to transfer venue of Samsung's

claims against NVIDIA to the Northern District of California and to sever and stay the claims against the Velocity defendants. (Dkt. No. 46 at 1.)

Defendants filed their first answers on January 19, 2015. (Dkt. Nos. 50-52.) Defendants filed their First Amended Answers on March 3, 2015, and Second Amended Answers on March 31, 2015, to address concerns raised by Samsung.<sup>2</sup> None of NVIDIA's first three answers contained any counterclaims. (Dkt. Nos. 50, 59, & 70.)

On March 26, 2015, the Court entered a Scheduling Order (Dkt. No. 65) requiring that motions for joinder of additional parties or amendment of the pleadings be filed by April 10, 2015. On April 10, 2015, the Court granted Defendants' unopposed motion for an extension of time to file Amended Answers and Counterclaims, allowing Defendants until April 15, 2015 to assert counterclaims. (Dkt. No. 80.) Also, on April 10, 2015, Samsung filed its Second Amended Complaint, which amended the First Amended Complaint by changing the name of the defendant originally identified as "Velocity Micro, Inc. d/b/a Velocity Micro" to "Old Micro, Inc. f/k/a Velocity Micro, Inc." See Second Amended Complaint (Dkt. No. 81) at fn. 1.

On March 26, 2015, the Court scheduled a pre-trial conference for April 15, 2015. (Dkt. No. 64.) The Court denied Defendants' motion to sever, transfer, and stay on April 3, 2015. (Dkt. No. 75.) On April 6, 2015, the parties held their Rule 26(f) conference, and that same day they also exchanged their first sets of written discovery related to Samsung's claims.

On April 14, 2015, Defendants filed a motion for leave to file their Answer and Counterclaims to the Second Amended Complaint. (Dkt. No. 83-84.) NVIDIA's counterclaims asserted that Samsung infringes four NVIDIA patents relating to graphics processing technology

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<sup>2</sup> The parties dispute whether the Defendants' answers have been sufficient. The Defendants filed their first and second amended answers in response to Samsung's position that Defendants' answers had not adequately responded to Samsung's First Amended Complaint.

(“NVIDIA Counterclaim Patents”). NVIDIA asserts that Samsung has been on notice of the patents asserted in NVIDIA’s counterclaims for more than a year, since early 2014, when NVIDIA provided detailed claim charts setting forth its claims of infringement. Also on April 14, 2015, NVIDIA served its second set of written discovery requests, including 63 requests for production and four interrogatories, relating to NVIDIA’s infringement counterclaims (“counterclaim discovery”).

The Court held the pretrial conference on April 15, 2015. At that conference, the Court set a trial date of January 11, 2016, and corresponding case dates. The parties dispute whether this trial date and schedule apply to NVIDIA’s counterclaims or only to Samsung’s claims against the Defendants. During the conference, the Court also instructed Samsung to file a motion to sever NVIDIA’s counterclaims by April 24, 2015. (Dkt. No. 85 at 1.) Defendants’ severance response is due on May 8, 2015, and Samsung’s reply is due on May 15, 2015. (*Id.*)

On April 16, the day after the initial pretrial conference, the Court granted NVIDIA’s motion for leave to file its Answer and Counterclaims to the Second Amended Complaint and NVIDIA filed its Answer and Counterclaims that day. NVIDIA has agreed to Samsung’s request for a two-week extension on the time for Samsung to respond to NVIDIA’s counterclaims. Accordingly, Samsung’s response to the counterclaims is due on May 21, 2015.<sup>3</sup>

## **II. NATURE OF THE DISCOVERY DISPUTE**

NVIDIA served counterclaim discovery on April 14, 2015. Samsung believes that this discovery is premature and that discovery for NVIDIA’s counterclaims should not properly begin until the Court rules on the motion to sever, and the parties hold a Rule 26(f) conference relating to the counterclaims. Samsung will agree that the discovery be deemed served on the

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<sup>3</sup> Samsung will submit an unopposed motion and proposed order providing for this extension.

same day as a timely Rule 26(f) conference on NVIDIA's counterclaims. NVIDIA believes that under the Court's pretrial orders, discovery relating to the counterclaims is already open and that a second Rule 26(f) conference is neither necessary nor contemplated by the Rules. NVIDIA has agreed to a 14-day discovery extension, making Samsung's objections due May 13, 2015, and its responses due May 28, 2015.

### **III. EFFORTS MADE BY THE PARTIES TO RESOLVE THE DISPUTE**

In addition to email correspondence, the parties have conducted numerous telephone conferences on this dispute. Specifically, counsel for the parties met and conferred to discuss this issue, sometimes in conjunction with other issues, on at least the following dates: April 17, April 18, April 19, and April 20, 2015.

### **IV. EACH SIDE'S POSITION AS TO COUNTERCLAIM DISCOVERY**

#### **A. SAMSUNG'S POSITION**

NVIDIA's counterclaim discovery is premature, as Samsung has not had a reasonable opportunity to investigate NVIDIA's recently filed counterclaims. NVIDIA's opposition ignores Samsung's need to have a reasonable amount of time to investigate NVIDIA's counterclaims, and it likewise ignores the significance of the motion to sever that the Court instructed Samsung to file. The Court should order that the discovery will be deemed served after the Court rules on the requested motion to sever and the parties have conducted a Rule 26(f) conference relating to the counterclaims.

#### **1. Samsung Requests Only that Discovery Open, As Required by the Rules, with the Rule 26(f) Conference**

NVIDIA seeks to upend the flow of litigation developed by the Federal Rules of Civil Procedure and the rules of this Court. Both sets of rules provide a defendant time to analyze and answer claims before responding to discovery. Under NVIDIA's proposal, Samsung must serve

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