

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

**REPLY IN SUPPORT OF SAMSUNG'S MOTION
TO SEVER NVIDIA'S PATENT INFRINGEMENT COUNTERCLAIMS**

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I. INTRODUCTION

NVIDIA's opposition brief fails to rebut the demonstrated prejudice to Samsung if NVIDIA's eleventh-hour patent infringement counterclaims are allowed to proceed as part of the original action filed over six months ago. NVIDIA instead argues that a purported overlap in technology might lead to some "efficiencies" in the course of the litigation. Not only is that argument not sufficiently supported by the facts, but vague promises of judicial economy cannot outweigh the unfair burden on the Court and on Samsung from combining these distinct sets of claims in one proceeding. These are the precise circumstances for which this Court's discretion to sever peripheral claims was designed, and the Court should exercise that discretion to sever NVIDIA's patent infringement counterclaims.

II. JOINDER SERVES NVIDIA'S STRATEGIC GOALS, NOT THE INTERESTS OF JUSTICE

A. NVIDIA Has No Legitimate Explanation for Its Delay in Filing Its Counterclaims

NVIDIA admits that it considered asserting the NVIDIA Counterclaim Patents against Samsung in early 2014 (*see* Opp. at 14), but fails to explain why it waited over a year to actually file. NVIDIA further offers no justification or explanation about why, when it finally elected to sue Samsung on these patents, it did so as infringement counterclaims in this action the day before the pretrial conference. NVIDIA could have (but did not) assert the NVIDIA Counterclaim Patents on September 4, 2014 when it filed a complaint in the International Trade Commission (the "932 ITC Investigation"). NVIDIA also could have (but did not) assert the NVIDIA Counterclaim Patents on January 26, 2015, March 3, 2015 or March 31, 2015 when it filed its first three Answers in this action. (Dkt. Nos. 50, 59, 70.) That NVIDIA waited until 11:14 PM on April 14, 2015—46 minutes before the day of the Court's scheduling conference to

set the trial date—to assert these patents as counterclaims in this action reveals its intentions: to maximize the disruption to the Court’s pretrial schedule sufficient to justify a later trial date.

Neither Samsung nor this Court knew that NVIDIA would assert the NVIDIA Counterclaim Patents when the parties exchanged proposed pretrial schedules in early April. NVIDIA first notified Samsung that it would assert patent infringement counterclaims on April 13—two days before the scheduling conference to set the trial date; even then, NVIDIA did not identify which patents it would assert. NVIDIA first identified the NVIDIA Counterclaim Patents just 11 hours before the Court’s scheduled pretrial conference, providing so little notice that the Court was unable to review NVIDIA’s counterclaims before the pretrial conference.

NVIDIA’s opposition brief ignores this timeline of events and its practical effect on the parties. Instead, NVIDIA repeatedly asserts that its counterclaims were “timely.” (Opp. at 1-2, 11, 14-15.) But the technical timeliness of the counterclaims is not at issue; had NVIDIA not met the Court’s extended filing deadline, the need for severance would never have arisen. Procedurally proper counterclaims may be severed if they are peripheral and severance would promote fundamental fairness and judicial economy. *See e.g., Koh v. Microtek Int’l, Inc.*, 250 F. Supp. 2d 627, 632 (E.D. Va. 2003). And that is the situation here: while technically timely, NVIDIA’s counterclaims were not asserted until mid-April, in an effort to delay the proceedings in this action, including the trial schedule, and distort the principles of fundamental fairness and judicial economy.

NVIDIA attempts to minimize its gamesmanship by mischaracterizing Samsung’s and the Court’s actions. NVIDIA protests that “Samsung advocated for an aggressive schedule ... knowing that NVIDIA had already filed its counterclaims.” (Opp. at 12.) NVIDIA also claims, without further explanation, that the “Court set trial for January 11, 2016.” (Opp. at 4.) At the

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