

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

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SAMSUNG ELECTRONICS CO., LTD.,

Plaintiff,

-v.-

NVIDIA CORPORATION,

Defendant.

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Civil Action No. 3:14-cv-757-REP

**NVIDIA'S MEMORANDUM IN SUPPORT OF ITS MOTION IN LIMINE TO  
PRECLUDE SAMSUNG FROM PRESENTING EVIDENCE OR ARGUMENT THAT  
NVIDIA AND/OR TSMC ARE CUSTOMERS OF, OR HAVE PURCHASED REVERSE  
ENGINEERING REPORTS FROM, TECHINSIGHTS**

## I. INTRODUCTION

Defendant NVIDIA Corporation (“NVIDIA”) respectfully moves the Court *in limine* to preclude Plaintiff Samsung Electronics Co., Ltd. (“Samsung”) from presenting evidence or argument at trial that NVIDIA and/or TSMC are customers of, or have purchased reverse engineering reports from, TechInsights. Samsung relies on certain reverse engineering reports created by TechInsights to support its infringement contentions. Samsung also intends to present evidence that NVIDIA and/or TSMC purchased *other* TechInsights reports that relate to *other products* not at issue in this case, and will argue that such purchases of these other reports bolsters the accuracy or reliability of the specific reverse engineering reports Samsung relies on in this case. Such evidence and argument should be precluded under Federal Rules of Evidence 402 and 403, respectively, because (i) it is not relevant to any issue in this case, and (ii) its probative value (if any) is substantially outweighed by the danger of unfair prejudice, misleading the jury, and wasting time.

## II. FACTUAL BACKGROUND

TechInsights is a Canadian company that creates semiconductor reverse engineering reports. Samsung’s expert, Dr. Jeongdong Choe, is a consulting engineer at TechInsights. (Dkt. No. 796, Jan. 27, 2016 Tr. at 404:12-15.) Dr. Choe has provided 13 reverse engineering reports as exhibits to his expert reports, each pertaining to an accused NVIDIA chip. All but one of these reverse engineering reports were specially prepared by TechInsights for use by Samsung in this litigation.<sup>1</sup>

During the January trial, Samsung repeatedly emphasized that NVIDIA and TSMC are

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<sup>1</sup> The only “off-the-shelf” report that was not prepared for this litigation is a February 17, 2015 TechInsights report pertaining to NVIDIA’s GK107 chip (P-0077). There is no evidence that NVIDIA or TSMC have ever purchased this report.

customers of, and have purchased reverse engineering reports from, TechInsights. For example, counsel for Samsung stated (and illustrated) during opening statements:

TechInsights is a company in Canada that has some amazing machines that will look inside computer chips to see how they were made. TechInsights does this for a variety of companies around the world, companies that I am sure you recognize like Samsung, *NVIDIA*, *the parties in this case, like TSMC*, and also companies like Sony, Toshiba, Texas Instruments, Microsoft, and Panasonic.



(Dkt. No. 795, Jan. 26, 2016 Tr. at 97:22-98:7; Ex. A, Samsung Opening Demonstratives at 21.<sup>2</sup>)

Samsung elicited similar testimony from Dr. Choe during his direct examination:

Q: Can you please identify some of TechInsights' customers for the jury?

A: That would be encompassing many different companies in the semiconductor process technology area all over the world, actually. We're talking about all the companies out there. For example, Samsung, LG, Toshiba, SK Hynix, TI and also *NVIDIA and TSMC* are some of our customers.

Q: Is that the same *NVIDIA and TSMC* that we've been talking about in this litigation?

A: Yes, that's right.

(Dkt. No. 796, Jan. 27, 2016 Tr. at 409:11-20.) Samsung's counsel returned to the topic the next day:

<sup>2</sup> All emphasis added.

Q: I believe earlier in your testimony, you identified *NVIDIA and TSMC* as two TechInsights customers; isn't that correct?

A: That's correct.

Q: So those reverse engineering reports about the Samsung products could be purchased by *NVIDIA or TSMC*, correct?

A: They can, and they are.

(Dkt. 797, Jan. 28, 2016 Tr. at 514:21-17; *see also* Ex. B, Choe Demonstratives at 4.)

Samsung intends to admit 13 reverse engineering reports into evidence. There is no evidence that NVIDIA or TSMC has ever purchased, relied on, or even been in possession of any one of those 13 reverse engineering reports that Samsung will introduce in this case.

### III. ARGUMENT

#### A. Whether NVIDIA Or TSMC May Purchase *Other Reverse Engineering Reports From TechInsights Is Not Relevant To Any Claims Or Defenses In This Lawsuit*

Samsung should be precluded under Rule 402 from presenting evidence or argument that NVIDIA and TSMC are customers of, and have purchased reverse engineering reports from, TechInsights because such evidence is not relevant to any issue in this case. Rule 402 provides “[i]rrelevant evidence is not admissible.” Evidence is only relevant if “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Fed. R. Evid. 401.

Neither NVIDIA nor TSMC have purchased any of the reverse engineering reports at issue in this case. What is at issue is the reliability of the specific reverse engineering reports Dr. Choe provided to Samsung to use as evidence in this case. Whether NVIDIA and TSMC have purchased *different unnamed, unidentified reports on different products for different (business) purposes* has no bearing on whether the reports manufactured for this case are

accurate or reliable. Any such evidence or argument is therefore irrelevant and should be precluded under Rule 402.

In an analogous situation, the Court precluded admission of evidence of Samsung and NVIDIA's respective license agreements, holding that they were not comparable to the hypothetical license the parties would agree to in this case. (*See, e.g.*, Dkt. No. 795, Jan. 26, 2016 Tr. at 221:24-223:9.) The Court held that the licenses the parties entered into for *other patents* and *other technologies* with *other parties* had no bearing on the determination of the hypothetical license *in this case*. (*Id.*)

The same result follows here. There is no evidence that NVIDIA or TSMC purchased any of the reverse engineering reports at issue in this case, and there is no evidence that *other* unidentified reverse engineering reports NVIDIA or TSMC may have purchased are in any way comparable to the reports Samsung seeks to present to the jury. The accuracy or reliability of the reports manufactured for this case is based on the methodology used to create those reports. That NVIDIA or TSMC may be TechInsights customers for *other* reports has no bearing on that question. Samsung's proposed evidence and argument that NVIDIA or TSMC purchase other TechInsights reports should be precluded as irrelevant under Rule 402.

**B. The Probative Value of the Evidence is Substantially Outweighed by the Danger of Unfair Prejudice, Misleading the Jury, Confusing the Issues, and Needlessly Presenting Cumulative Evidence**

Federal Rule of Evidence 403 provides that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." A district court "has broad discretion under Rule 403 to exclude prejudicial evidence." *Schultz v. Butcher*, 24 F.3d 626, 631 (4th Cir. 1994).

The introduction of evidence that NVIDIA and TSMC are customers of, and purchase

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