

**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 INTRODUCING EVIDENCE OR PRESENTING  
ARGUMENT RELATED TO ANY INVALIDITY CONTENTIONS OR PRIOR ART  
REFERENCES THAT WILL NOT BE PURSUED AT TRIAL**

## I. INTRODUCTION

Defendant NVIDIA Corporation (“NVIDIA”) respectfully moves the Court *in limine* to preclude Plaintiff Samsung Electronics Co., Ltd. (“Samsung”) from introducing evidence or presenting argument related to any invalidity contentions or prior art references that will not be pursued at trial

At Samsung’s request, the Court ordered NVIDIA in February 2016 to narrow its prior art references to those “it expects to rely on at trial in support of its invalidity defenses.” (Dkt. No. 821 at 3.) Samsung should not be permitted now to present evidence or argument related to those dropped prior art references or invalidity contentions. Arguments concerning withdrawn prior art references and contentions are not relevant to the remaining issues in the case. Even if marginally relevant, such arguments unfairly imply that because NVIDIA has withdrawn some prior art references and invalidity contentions, the jury should be skeptical of the arguments NVIDIA will present at trial. As such, whatever minimal probative value these arguments would have would be substantially outweighed by their prejudice to NVIDIA. Accordingly, any such evidence and argument should be precluded under Federal Rules of Evidence 402 and 403. The introduction of such evidence is nothing more than an invitation for the jury to deliberate and reach decisions on issues other than the merits of evidence and argument actually presented at trial.

The Court has already ordered that the parties are precluded from presenting evidence or argument related to dropped claims, patents, and parties. (Dkt. No. 504.) Samsung similarly should not be permitted to present evidence or argument related to dropped prior art references or invalidity contentions.

## II. RELEVANT FACTUAL BACKGROUND

NVIDIA served its initial invalidity contentions on May 8, 2015, and narrowed their scope on May 27, 2015 and August 7, 2015. (*See* Dkt. No. 202 at 2-3.) On January 19, 2016, the Court instructed NVIDIA to identify the invalidity contentions it intended to pursue at trial. (*See* Ex. A, Jan. 19, 2016 Tr. at 101:17-22 (“I would like to have from you in the most truncated of forms on each patent what are the invalidity contentions for that patent.”)) On January 21, 2016, pursuant to the Court’s request and in an effort to narrow the issues for trial, NVIDIA submitted its invalidity contentions, which identified six prior art references for each patent that “may be pursued at trial.” (Dkt. No. 714 at 1-2.)

During a February 8, 2016 teleconference, Samsung urged the Court to require NVIDIA further narrow the scope of prior art, ostensibly so that it could prepare its case for trial:

MR. SNYDER: It would certainly aid in the preparation for all the pretrial proceedings if that *narrowing occurred sooner rather than later*. ... Could that be done on the 20th along with the pretrial submissions?

(Dkt. No. 804, Feb. 8, 2016 Tr. at 5:23-25, 7:2-3.<sup>1</sup>) Counsel for NVIDIA agreed to that schedule. (*Id.* at 5:19-22; 6:4-7; 7:4.)

## III. ARGUMENT

### A. Evidence of Withdrawn Prior Art References or Invalidity Contentions is Irrelevant

Evidence or argument related to prior art references or invalidity contentions that NVIDIA will *not* pursue at trial should be precluded under Rule 402 because it is not relevant to any issue in this case. Rule 402 provides: “Irrelevant 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

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<sup>1</sup> All emphasis added.

without the evidence; and (b) the fact is of consequence in determining the action.” Fed. R. Evid. 401.

Evidence or argument relating to a withdrawn invalidity contention is not relevant to any question before the jury in the invalidity phase of this case. All that is relevant is whether the ’902 patent or ’675 patent is valid in light of *the prior art references that will be presented at trial*. In *Multimedia Patent Trust v. Apple Inc.*, the court excluded “any evidence and argument related to undisclosed/stricken prior art references,” concluding that such evidence or argument was irrelevant because defendants could not rely on the undisclosed/stricken prior art references at trial. No. 1-cv-2618, 2012 U.S. Dist. LEXIS 191199, at \*12-14 (S.D. Cal. Nov. 20, 2012). The same is true here. Pursuant to the Court’s request and to narrow the issues for trial, NVIDIA has withdrawn certain invalidity contentions and, consequently, NVIDIA cannot rely on them at trial. As in *Multimedia Patent Trust*, such evidence is irrelevant and should be precluded.

Samsung has recognized that evidence withdrawn before trial is not relevant to any issue at trial and should therefore be precluded. For example, in its Motion *in Limine* No. 1, Samsung argued that “Any claims, patents, or parties *that have been removed from the case are no longer relevant to any jury issues remaining in this litigation*, and all references to them should be excluded as irrelevant.” (Dkt. No. 309 at 3.) Samsung’s arguments in favor of its Motion *in Limine* No. 1 apply with equal force here.

**B. Evidence of Withdrawn Prior Art References or Invalidity Contentions is Unfairly Prejudicial and Will Mislead the Jury**

Any evidence or argument of withdrawn invalidity contentions should also be precluded under Rule 403. Rule 403 provides that even relevant evidence may be excluded “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting

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.)

Evidence or argument of withdrawn invalidity contentions would cause unfair prejudice and mislead the jury. First, any mention of withdrawn invalidity contentions would be highly prejudicial to NVIDIA’s invalidity defense. For example, Samsung may reference such withdrawn contentions to improperly suggest that NVIDIA raised many invalidity issues during the case and that its current invalidity case is all that is left of a “kitchen sink” approach. Second, the jury may be misled into reaching decisions based on considerations other than the issues and arguments presented at trial. For example, evidence of withdrawn contentions may lead the jury to believe that NVIDIA was wrong about its prior contentions, and that the invalidity contentions it will present at trial (the only relevant invalidity contentions) therefore lack merit. But NVIDIA has narrowed its invalidity case per the Court’s order, not due to lack of merit of any of its arguments. The Court should not allow the jury to speculate about the strength of unrepresented evidence or NVIDIA’s motives for withdrawing its prior contentions. *See Paltak Holdings, Inc. v. Microsoft Corp.*, No. 2:06-cv-367, Dkt. No. 226 at 4 (E.D. Tex. Feb. 25, 2009) (Ex. B) (finding evidence or argument of dropped claims, causes of action, or other forms of relief to be “highly prejudicial” because “the jury is ill-equipped to determine whether [plaintiff’s] abandonment of previous claims occurred for purely strategic reasons or occurred because [the defendant] possessed legitimate defenses”).

During meet and confer, Samsung generally agreed with the relief requested by this motion *in limine*, but sought to preserve the ability to cross-examine an expert about prior opinions regarding other prior art for purposes of challenging the expert’s credibility. But such

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