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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ADVANCED MICRO DEVICES, et al.

No. C 08-00986 SI

Plaintiffs,

**ORDER DENYING AMD'S MOTION
FOR LEAVE TO FILE MOTION FOR
RECONSIDERATION**

v.

SAMSUNG ELECTRONICS CO, et al.

Defendants.

On December 6, 2010, the Court granted defendants' (collectively: "Samsung's") motion for summary judgment of non-infringement of U.S. Patent No. 5,559,990 after construing the term "Y-select circuit" in the manner requested by Samsung. Doc. 737. On December 8, 2010, plaintiffs (collectively: "AMD") filed this motion for leave to file a motion for reconsideration. In reliance on *02 Micro International Ltd. v. Beyond Innovation Technology Co.*, 521 F.3d 1351 (Fed. Cir. 2008) and amendments to the local patent rules that occurred after this case was filed, AMD argues that it should have the right to amend its infringement contentions to conform to the Court's construction of the term "Y-select circuit." AMD has requested that the Court consider its motion on an expedited basis because of the upcoming January 24 trial date. AMD br. at 12. The Court hereby DENIES AMD's motion for leave to file a motion for reconsideration.

AMD's argument is as follows. *02 Micro* holds that parties in patent litigation have the right to have claim construction disputes heard by the Court, regardless of when they arise. 521 F.3d at 1362. To protect the interests of parties whose constructions a court does not adopt in resolving such disputes, as a matter of fundamental fairness there must be a commensurate right to submit amended contentions that address the court's construction. Otherwise, parties may delay raising case-dispositive

United States District Court
For the Northern District of California

1 constructions until a time when an opposing party has no opportunity to amend its contentions in
2 response to an adverse construction. Patent Local Rule 3-6 contemplates providing litigants with such
3 an opportunity by establishing a mechanism whereby parties can amend their contentions following any
4 claim construction ruling. The 2008 amendment to the rule confirms a plaintiff's right to do what AMD
5 is attempting to do explicitly, by permitting amendment "upon a timely showing of good cause," and
6 explaining that good cause exists when "a claim construction by the Court differ[s] from that proposed
7 by the party seeking amendment." The 2000 rules, which apply to this case, recognize such a right
8 implicitly.

9 Additionally, recognizing that its motion for leave to file a motion for reconsideration is
10 governed by Civil Local Rule 7-9, AMD argues that the Court's construction of the term "Y-select
11 circuit" either created a "material difference in law" or "a change of law."

12 Under Civil Local Rule 7-9, the party moving for a motion for leave to file a motion for
13 reconsideration must specifically show:

- 14 (1) That at the time of the motion for leave, a material difference in fact or law exists
15 from that which was presented to the Court before entry of the interlocutory order for
16 which reconsideration is sought. The party also must show that in the exercise of
17 reasonable diligence the party applying for reconsideration did not know such fact or law
18 at the time of the interlocutory order;
19 or
20 (2) The emergence of new material facts or a change of law occurring after the time of
21 such order; or
22 (3) A manifest failure by the Court to consider material facts or dispositive legal
23 arguments which were presented to the Court before such interlocutory order.

24 Civ. L.R. 7-9.

25 As a preliminary matter, the Court notes that a party cannot challenge an order granting summary
26 judgment by arguing that it can amend its contentions in such a way as to create a genuine issue of
27 material fact where none existed before. No unpresented facts exist in this case that were not
28 discoverable upon the exercise of reasonable diligence. Although claim construction is a *matter* of law,
the construction of a claim does not *create new law* that could support the filing of a motion for
reconsideration. AMD points to no facts or law that the Court failed to consider, but rather attempts to
change its legal arguments and factual contentions entirely.

More importantly, perhaps, there is nothing in the case law or the new local rules (which, as

1 AMD admits, do not govern this case) that even implies that it might be appropriate for a party to file
2 a motion for reconsideration of a summary judgment motion decided seven weeks before trial and nearly
3 three years after the case was filed, in order to amend its patent contentions, merely because the Court
4 construed a claim in favor of the opposing party and in a manner that more or less conformed to
5 arguments made by that opposing party almost a year earlier.

6 Amendments to infringement contentions are permitted by current Patent Local Rule 3-6 only
7 upon “a *timely* showing of good cause.” Since this February, Samsung has argued that the Y-select
8 circuit (1) selects a column or columns and then (2) provides that information to a sense amplifier. *See*
9 Hansen Decl. Ex. 2 at 133–34. In response, AMD has argued that there is no such timing requirement
10 in its patent. *See id.* Ex. 3 at 100. Samsung’s alternate use of different articles (“a” and “the”), numbers
11 (singular and plural), and tenses (“provides” and “to be provided”) in its motion for summary judgment
12 was cosmetic to the underlying disagreement between the parties. *See* Wolfe Decl. at ¶¶ 10–11 (quoting
13 Samsung’s motion for summary judgment). AMD argues that these small differences implicated its
14 ability to analyze Samsung’s products. Assuming that is true, that does not mean that AMD’s motion
15 is a “timely showing of good cause,” which requires actual “diligence” on AMD’s part, not the wait-
16 and-see approach that it took without informing the Court sometime in the past ten months—or certainly
17 since Samsung filed its motion for summary judgment—that it could potentially prove a claim under
18 Samsung’s construction if only the construction were made slightly more specific. In its opposition to
19 the summary judgment motion, AMD did not contest that there is no evidence of infringement in the
20 event the Court were to construe the term Y-select circuit according to Samsung’s proposal.

21 AMD argues that its understanding of the local rules is necessary in order to prevent a party from
22 waiting to raise case-dispositive constructions until a time when the opposing party has no opportunity
23 to amend its contentions in response to an adverse construction. AMD’s reasoning just as readily
24 undermines its argument. As one court explained:

25 A party cannot argue that because its precise proposal for a construction of a claim term
26 is not adopted by the court, it is surprised and must prepare new infringement
27 contentions. Courts seldom simply adopt the construction of one party or the other.
28 Accepting such an argument would *encourage* parties to file narrow proposed
constructions with an eye towards hiding important contentions until shortly before trial.

Nike, Inc. v. Adidas Am. Inc., 479 F. Supp. 2d 664, 667–68 (E.D. Tex. 2007) (emphasis added).

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AMD's Motion for Leave to File Motion for Reconsideration of The Grant of Samsung's Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 5,559,990 Pursuant to Local Rule 7-9 is DENIED. (Doc. 738.)

IT IS SO ORDERED.

Dated: December 13, 2010



SUSAN ILLSTON
United States District Judge