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 SYSTEMS, INC.

13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN FRANCISCO DIVISION

17 NXP SEMICONDUCTORS USA, INC.,  
 18 a Delaware corporation,  
 19 Plaintiff and Counterdefendant,  
 20 v.  
 21 LSI CORPORATION d/b/a LSI LOGIC  
 CORPORATION, a Delaware corporation,  
 22 and AGERE SYSTEMS, INC., a Delaware  
 corporation,  
 23 Defendants and Counterclaimants.  
 24

Case No. C 08-05682 MMC  
**SUPPLEMENTAL JOINT CASE  
 MANAGEMENT CONFERENCE  
 STATEMENT AND ~~PROPOSED~~ ORDER  
 CONTINUING CASE MANAGEMENT  
 CONFERENCE**

1 Pursuant to Civil L.R. 16-10(d), Plaintiff and Counterclaim-Defendant NXP  
2 Semiconductors USA, Inc. (“NXP”) and Defendants and Counterclaimants LSI Corp. d/b/a LSI  
3 Logic Corp. (“LSI”) and Agere Systems, Inc. (“Agere”) (together “LSI”) jointly submit this  
4 supplement to their March 27, 2009 Joint Case Management Statement and Proposed Order (Dkt.  
5 No. 20).

6 On July 7, 2009, the parties participated in a mediation session with the Honorable  
7 Edward A. Infante (Ret.). Although unable to settle the case at that mediation, the parties made  
8 progress and scheduled another mediation session with Judge Infante for September 10, 2009.  
9 On July 28, 2009, the parties filed a Stipulation and [Proposed] Order Vacating Case Deadlines  
10 Pending Further Mediation by the Parties. Dkt. No. 31. On July 30, 2009, the Court filed an  
11 Order vacating the then-existing case schedule, advancing the case management conference to  
12 October 16, 2009, and ordering the parties to file a supplemental case management conference  
13 statement by October 9, 2009 that addresses, among other things, the status of the parties’  
14 settlement discussions. Dkt. No. 32.

15 **I. BACKGROUND**

16 **A. Patents at Issue In the Litigation**

17 NXP brought this action under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*,  
18 seeking damages and injunctive relief for Defendants’ direct or indirect infringement of U.S.  
19 Patent No. 6,529,035 (the “NXP ‘035 patent”), U.S. Patent No. 6,369,427 (the “‘427 patent”),  
20 U.S. Patent No. 6,104,589 (the “‘589 patent”), U.S. Patent No. 6,483,847 (the “‘847 patent”), and  
21 U.S. Patent No. 6,657,477 (the “‘477 patent”) (collectively, the “NXP patents”). *See* Dkt No. 1.  
22 Defendants have denied directly or indirectly infringing any of the NXP patents, and assert that  
23 one or more claims of the NXP patents are invalid.

24 LSI brought its counterclaims under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et*  
25 *seq.*, and the United States Patent Act, 35 U.S.C. §§ 101 *et seq.*, seeking declarations of non-  
26 infringement and/or invalidity relating to the NXP patents and seeking damages and injunctive  
27 relief relating to U.S. Patent Nos. 6,798,035 (the “LSI ‘035 patent”), 6,184,700 (the “‘700  
28 patent”), 6,777,803 (the “‘803 patent”), 5,895,968 (the “‘968 patent”), and 6,313,683 (the “‘683

1 patent”) (collectively, the “LSI patents”). *See* Dkt. No. 22. Plaintiff has denied directly or  
2 indirectly infringing any of the LSI patents, asserts that one or more claims of the LSI patents are  
3 invalid, and counterclaimed under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*  
4 seeking declarations of non-infringement and/or invalidity relating to the LSI patents.

5 On June 23, 2009, the parties filed a Stipulation And [Proposed] Order Regarding  
6 Dismissal Of Certain Claims And Counterclaims Relating To U.S. Patent No. 6,529,035. *See*  
7 Dkt. No. 29. On June 25, 2009, the Court entered an order based on this stipulation dismissing all  
8 claims/counterclaims regarding the NXP ‘035 patent. *See* Dkt. No. 30.

9 **B. Case Status**

10 On May 29, 2009, the parties disclosed their respective asserted claims and preliminary  
11 infringement contentions pursuant to Patent L.R. 3-1. On June 29, 2009, the parties exchanged  
12 their respective invalidity contentions pursuant to Patent L.R. 3-3. On July 13, 2009, the parties  
13 each proposed patent claim terms for construction pursuant to Patent L.R. 4-1.

14 On July 28, 2009, the parties filed a Stipulation and [Proposed] Order Vacating Case  
15 Deadlines Pending Further Mediation by the Parties. Dkt. No. 31. On July 30, 2009, the Court  
16 filed an Order vacating the then-existing case schedule and continuing the case management  
17 conference to October 16, 2009. *See* Dkt. No. 32.

18 **II. UPDATE REGARDING SETTLEMENT DISCUSSIONS**

19 On July 7, 2009, the parties participated in a mediation session, conducted by the  
20 Honorable Edward A. Infante (Ret.), in an attempt to settle this and the co-pending case (assigned  
21 to Judge Ware, Case No. C 08-0775 JW, RS). While the parties did not settle, the parties agreed  
22 to participate in, and did participate in, a further session with Judge Infante on September 10,  
23 2009. The parties believe they made substantial progress toward a settlement of this and the co-  
24 pending litigation assigned to Judge Ware during the September 10, 2009 mediation session.

25 The parties remain optimistic that further settlement discussions will be successful and are  
26 currently negotiating over the terms of a draft settlement agreement. To the extent necessary, the  
27 parties have also scheduled a further settlement conference with Judge Infante for October 29,  
28 2009. Accordingly, the parties believe a continuance of the Case Management Conference in this

1 action until November 13, 2009 would best serve their interests in pursuing settlement and avoid  
2 the expense and potential waste of judicial resources associated with the current Case  
3 Management Conference schedule.

4 **III. REQUEST TO CONTINUE CASE MANAGEMENT CONFERENCE**

5 The parties jointly request that the Court continue the October 16, 2009 Case Management  
6 Conference until November 13, 2009 to allow the parties to try to reach a binding resolution of  
7 the co-pending cases. The parties request that the Court continue the stay of proceedings in this  
8 case pending the continued Case Management Conference. No later than seven (7) calendar days  
9 prior to the continued Case Management Conference, the parties will submit a supplemental  
10 report to the Court in the event their discussions have not resulted in a settlement of the litigation.  
11 If it appears at that time that settlement is not likely, the parties will, in that report, propose that  
12 the stay on discovery be lifted and will propose a schedule for further proceedings in the case.

13  
14 Respectfully submitted,

15 Dated: October 7, 2009

MORGAN, LEWIS & BOCKIUS LLP

17  
18 By /s/ Michael J. Lyons

Michael J. Lyons  
Attorneys for Plaintiff

19  
20 Dated: October 7, 2009

IRELL & MANELLA LLP

21  
22 By /s/ Samuel K. Lu

Samuel K. Lu  
Attorneys for Defendants

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IT IS SO RECOMMENDED

Dated: October 7, 2009

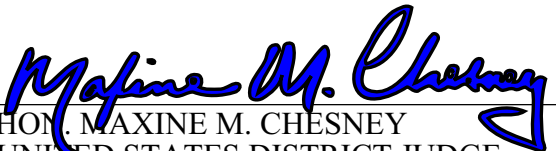
By /s/ Hon. Edward A. Infante (Ret.)  
Hon. Edward A. Infante (Ret.)

~~PROPOSED~~ ORDER

The Case Management Conference scheduled for October 16, 2009 is continued to  
November 20, 2009. The parties shall file a Supplemental Joint Case Management  
Conference Statement by November 13, 2009.

**IT IS SO ORDERED.**

Dated: October 8, 2009

By   
HON. MAXINE M. CHESNEY  
UNITED STATES DISTRICT JUDGE