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18 CYPRESS SEMICONDUCTOR
CORPORATION

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 CYPRESS SEMICONDUCTOR
23 CORPORATION,

24 Plaintiff,

25 v.

26 GSI TECHNOLOGY, INC.,

27 Defendant.
28

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Case No. 3:13-cv-02013-JST

**AMENDED JOINT CASE
MANAGEMENT STATEMENT AND
[PROPOSED] ORDER, RULE 26(f)
REPORT, and STIPULATION RE
CONSOLIDATION WITH MINNESOTA
LAWSUIT**

1 Pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 26(f), Civil Local Rule 16-
2 9(a), Patent Local Rule 2-1(a), ADR Local Rule 3-5, Standing Order for All Judges of the Northern
3 District of California, the Guidelines Relating to the Discovery of Electronically Stored Information
4 (“ESI Guidelines”), Standing Order for All Civil Cases Before District Judge Jon S. Tigar, this
5 Court’s May 1, 2013 Clerk’s Notice of Setting Case Management Conference, and rulings made
6 during the July 31, 2013, Case Management Conference for this matter, Plaintiff Cypress
7 Semiconductor Corp. (“Cypress”) and Defendant GSI Technology, Inc. (“GSI”) have conferred
8 through their respective legal counsel and jointly submit this Case Management Statement and
9 proposed Order under Civil Local Rule 16-9(a).

10 **I. JURISDICTION AND SERVICE**

11 This court has subject matter jurisdiction over Cypress’s claims under 28 U.S.C. §§ 1331
12 and 1338(a) because this case involves a dispute over patent infringement under 35 U.S.C. § 271.
13 Venue is proper in this court under 28 U.S.C. §§ 1391 and 1400(b). No party remains to be served.

14 **II. FACTS**

15 Plaintiff Cypress is a corporation organized and existing under the laws of the State of
16 Delaware, with its principal place of business located at 198 Champion Court, San Jose, California.
17 Cypress filed this action in the United States District Court for the Northern District of California
18 on May 1, 2013. Cypress’s Complaint alleges that GSI infringes United States Patents Nos.
19 6,069,839 (“the ‘839 patent”), 6,292,403 (“the ‘403 patent”), 6,385,128 (“the ‘128 patent”),
20 6,445,645 (“the ‘645 patent”), and 6,967,861 (“the ‘861 patent”) (collectively, the “Asserted
21 Patents”). Cypress seeks, *inter alia*, an injunction, damages, fees, and costs.

22 Defendant GSI is a corporation organized and existing under the laws of the State of
23 Delaware and having its principal place of business at 1213 Elko Drive, Sunnyvale, California. GSI
24 seeks an entry of judgment in its favor and against Cypress on Cypress’s claims against GSI for
25 patent infringement; a finding that GSI does not infringe any asserted claims of any of the Asserted
26 Patents; a finding that the asserted claims of the Asserted Patents are invalid; a finding that this case
27 is exceptional and entry of an Order directing Cypress to pay GSI its costs and attorneys’ fees; and
28 such other relief as the Court deems just and proper under the circumstances.

1
2 **III. PRINCIPAL FACTUAL AND LEGAL ISSUES IN DISPUTE**

3 The parties have identified the following principal disputed issues:

4 (a) The proper construction of disputed claim terms in the Asserted Patents;

5 (b) Whether GSI infringes any claims of the Asserted Patents;

6 (c) Whether any asserted claim of the Asserted Patents is invalid for any reason
7 including under 35 U.S.C. §§ 101, 102, 103 and/or 112;

8 (d) Whether Cypress is barred from obtaining relief under the doctrine of prosecution
9 history estoppel; and

10 (e) Appropriate forms of relief due to either party, including declaratory, injunctive and
11 monetary relief.

12 **IV. MOTIONS**

13 There are no pending motions at this time. The parties anticipate that summary judgment
14 motions will be filed that may address issues of patent infringement and/or non-infringement,
15 validity and/or invalidity, enforceability and/or unenforceability, and/or remedies.

16 **V. AMENDMENT OF PLEADINGS**

17 The parties may seek to add additional claims, counterclaims and affirmative defenses as
18 discovery proceeds. The parties propose April 4, 2014, as the deadline for amending pleadings.

19 **VI. EVIDENCE PRESERVATION**

20 The parties have reviewed the ESI Guidelines and the parties have met and conferred
21 pursuant to Fed. R. Civ. P 26(f) regarding reasonable and proportionate steps taken to preserve
22 evidence relevant to the issues reasonably evident in this action. Such reasonable and proportionate
23 steps shall include issuing document preservation instructions to the key individuals likely to have
24 such documents, directing such individuals to take affirmative steps to preserve such documents,
25 whether in hardcopy or electronic form, and to suspend applicable document destruction/deletion
26 procedures.

1 **VII. DISCLOSURES**

2 The parties have made their initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) on July
3 31, 2013. Each party reserves its right to amend such disclosures as discovery progresses.

4 **VIII. DISCOVERY**

- 5 (i) **Discovery Taken to Date:** Initial sets of written discovery have been served.
- 6 (ii) **Anticipated Scope of Discovery:** The parties anticipate discovery on the claims
7 for patent infringement, affirmative defenses thereto, claim construction, and prayers
8 for relief.
- 9 (iii) **Limits on Discovery:** The parties agree to the following limits on discovery:
- 10 (a) **Fact Depositions:** The parties agree to a total presumptive limit of 114 hours of
11 deposition per side and a presumptive limit of seven (7) hours per individual
12 deposition. Multiple days of deposition of a single witness will count as multiple
13 depositions.
- 14 The parties further agree that depositions taken pursuant to Fed. R. Civ. P.
15 30(b)(6), expert depositions, and non-party depositions will not count toward
16 these limits.
- 17 For depositions taken pursuant to Fed. R. Civ. P. 30(b)(6), the parties agree to a
18 limit of twenty-one (21) hours of deposition testimony per party, irrespective of
19 the number of topics or witnesses designated.
- 20 The parties reserve the right to revisit the issue of the number and length of
21 depositions as discovery progresses. If any party seeks to exceed the above
22 limits, the parties agree to meet and confer in good faith to attempt to resolve the
23 issue without intervention by the Court. Each party reserves the right to seek
24 leave of Court in order to take additional depositions.
- 25 (b) **Expert Depositions:** The parties agree that each side may take up to seven (7)
26 hours of deposition testimony of each expert identified by an adverse party for
27 each report provided. Notwithstanding the foregoing, if any party identifies a
28 single expert to provide a report related to both infringement and validity, the

1 seven (7) hour limit shall be expanded to fourteen (14) hours.

2 **(c) Interrogatories:** The parties agree to the presumptive limits set forth in the
3 Federal Rules of Civil Procedure regarding interrogatories.

4 **(d) Requests for Admission:** The parties agree that each side may serve a
5 maximum of fifty (50) requests for admission.

6 **(iv) Discovery Plan:** The parties intend to pursue discovery by taking depositions and
7 by serving document requests, interrogatories, and requests for admission, subject
8 to the limits in the previous section.

9 **(a) Protective Order:** The parties agree that a protective order will be necessary, in
10 light of the sensitive and proprietary information that will be exchanged during
11 discovery. The parties intend to meet and confer on and submit a proposed
12 Stipulated Protective Order to the Court.

13 **(b) Privilege Logs:** The parties agree that privileged communications and
14 documents covered by work product protection and dated after the filing of this
15 lawsuit need not be included in any privilege log. In addition, the parties agree
16 that privileged communications and documents covered by work product
17 protection relating to the ITC Investigation (discussed below), the Minnesota
18 Action, and the Antitrust Lawsuit (discussed below) need not be included in any
19 privilege log.

20 **(c) Expert Reports:** In addition to the provisions of the Federal Rules of Civil
21 Procedure, the parties agree that document discovery concerning testifying
22 experts shall be limited to the final versions of the testifying experts' reports and
23 any materials relied upon by the testifying expert in forming his or her opinion(s)
24 in this case. Testifying experts' draft reports, notes, and conversations or
25 communications with counsel will not be subject to discovery and do not need to
26 be logged in a privilege log unless such materials are relied upon by a testifying
27 expert in forming his or her final report, trial or deposition testimony, or any
28 opinion in this case. If an expert indicates in deposition that he or she relied

1 upon a document or source not otherwise specified in the final report, that
2 document or source also is discoverable.

3 **(d) Method of Service:** The parties agree that service by electronic mail by 11:59
4 P.M. Pacific Time on a given day will be treated as service by personal delivery.

5 **(e) Electronic Discovery:** Pursuant to the ESI Guidelines, the parties agree to
6 cooperate to develop protocols to lessen the burden of producing electronic
7 discovery. The parties are continuing to meet and confer to reach an agreed upon
8 plan for electronic discovery and will submit an agreed electronic discovery plan
9 or a joint submission highlighting any remaining disputed issues.

10 **IX. CLASS ACTIONS**

11 This is not a class action.

12 **X. RELATED CASES**

13 The parties are aware of the following pending litigation between the same parties: *Cypress*
14 *Semiconductor Corp. v. GSI Technology, Inc.*, Case No. 11-cv-00789-PJS (D. Minn.), filed March
15 30, 2011 (the “Minnesota Lawsuit”), and *GSI Technology, Inc. v. Cypress Semiconductor Corp.*,
16 Case No. 11-cv-03613-EJD (N.D. Cal.) (the “Antitrust Lawsuit”). The Antitrust Lawsuit was found
17 by Judge Davila not to be related to the above-captioned matter. *See* D.I. 9. The Minnesota
18 Lawsuit was transferred to this District on August 8, 2013.

19 **XI. RELIEF**

20 Cypress seeks judgment that GSI has infringed and continues to infringe the Asserted
21 Patents. Cypress seeks a permanent injunction, damages under 35 U.S.C. § 284, attorney fees under
22 35 U.S.C. § 285, and such relief at law and in equity as the Court may deem just and proper.

23 GSI seeks an entry of judgment in its favor and against Cypress on Cypress’s claims
24 against GSI for patent infringement; a finding that GSI does not infringe any asserted claims of any
25 of the Asserted Patents; a finding that the asserted claims of the Asserted Patents are invalid; a
26 finding that this case is exceptional and entry of an Order directing Cypress to pay GSI its costs and
27 attorneys’ fees; and such other relief as the Court deems just and proper under the circumstances.

28

1 **XII. SETTLEMENT AND ADR**

2 The parties are willing to engage in settlement discussions following a ruling on claim
3 construction issues. The parties have met and conferred regarding ADR pursuant to Civil Local
4 Rule 16-18 and ADR Local Rule 3-5, have reviewed the ADR procedures in ADR Local Rule 3-5,
5 and have stipulated to a settlement conference with a Magistrate Judge following a ruling on claim
6 construction issues. The parties do not believe any motions are necessary to facilitate settlement.

7 **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

8 The parties do not consent to have this case proceed before a Magistrate Judge.

9 **XIV. OTHER REFERENCES**

10 The parties do not believe that this case is suitable for reference to a binding arbitration or to
11 a Special Master. This case is also not appropriate for reference to the Judicial Panel on
12 Multidistrict Litigation.

13 **XV. NARROWING OF ISSUES**

14 The parties are not aware of issues that can be narrowed by agreement or by motion at this
15 time and do not have suggestions to expedite the presentation of evidence at this time. The parties
16 anticipate that as discovery proceeds, the issues will be narrowed for trial.

17 **XVI. EXPEDITED SCHEDULE**

18 Because of the nature and complexity of the claims and defenses in this action, the parties
19 submit that this is not the type of case that can be handled on an expedited basis or with short-
20 circuited procedures.

21 **XVII. SCHEDULING**

22 Pursuant to consultation amongst the parties and rulings made by the Court during the July
23 31, 2013, Case Management Conference, the parties propose following dates for scheduling in this
24 case consistent with the Patent Local Rules, with certain minor modifications:

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26

Dates	Event/Authority
July 31, 2013	Initial Case Management Conference

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28

Dates	Event/Authority
July 31, 2013	Last day for parties to make initial disclosures [Fed. R. Civ. P. 26(a)(1)]
Sept. 13, 2013	Plaintiff's Disclosure of Asserted Claims & Preliminary Infringement Contentions & accompanying document production [Patent L.R. 3-1 & 3-2]
Nov. 27, 2013	Defendants' Invalidity Contentions & accompanying document production [Patent L.R. 3-3 & 3-4]
Dec. 11, 2013	Parties to exchange Proposed Terms & Claim Elements for Construction [Patent L.R. 4-1(a)]
Jan. 6, 2014	Parties to exchange Preliminary Claim Constructions [Patent L.R. 4-2(a)]
Jan. 27, 2014	Parties to file Joint Claim Construction & Prehearing Statement; parties to exchange expert declarations or other disclosures on claim construction for any experts who will submit declarations or testify regarding claim construction at the Claim Construction Hearing. [Patent L.R. 4-3]
See entry under section XX.C.	Claim Construction Discovery Cut-Off [Patent L.R. 4-4]
Feb. 26, 2014	Plaintiff to file Opening Brief on Claim Construction [Patent L.R. 4-5(a)]
Mar. 19, 2014	Defendant to file Responsive Brief on Claim Construction [Patent L.R. 4-5(b)] (14 days)
Mar. 31, 2014	Plaintiff to file Reply Brief on Claim Construction [Patent L.R. 4-5 (c)] (7 days)
April 4, 2014	Last day to amend pleadings
Apr. 15, 2014 at 1:30 p.m.	Court conducts Claim Construction tutorial
Apr. 29, 2014 at 9:30 a.m.	Claim Construction (<i>Markman</i>) Hearing
50 days after <i>Markman</i> Ruling	Last day to disclose advice of counsel [Pat. L.R. 3-7]

1 **XVIII. TRIAL**

2 A jury demand has been made. The parties estimate that the expected total length of trial is
3 nine days, with trial time to be split equally between the two sides.

4 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

5 The parties have filed their respective Certifications of Interested Entities or Persons with
6 the Court. There are no other non-party interested entities or persons.

7 **XX. OTHER MATTERS**

8 **A. Consolidation of This Action With the Minnesota Lawsuit**

9 The parties hereby stipulate, subject to the Court's approval, that this Action be consolidated
10 for all purposes including trial, with the Minnesota Lawsuit (*Cypress Semiconductor Corp. v. GSI*
11 *Technology, Inc.*, Case No. 11-cv-00789-PJS (D. Minn.)) which was transferred to this District on
12 August 8, 2013.

13 **B. Privilege log:**

14 The parties will exchange initial privilege logs, whose format will be agreed to in advance,
15 prior to the close of fact discovery. For any documents produced after the exchange of privilege
16 logs, and before the close of fact discovery, the parties will provide supplemental privilege logs by
17 the earlier of ten (10) days after the production of the documents or before any deposition for which
18 any such privilege log entries may be relevant.

19 **C. Scope and Timing of Claim Construction Discovery:**

20 The parties may use expert witness reports or declarations in support of one or more of their
21 claim construction positions. The parties will provide any expert declaration in support of one or
22 more of their claim construction positions with their respective claim constructive briefs and will
23 make their respective experts available for deposition within a reasonable time after their respective
24 claim construction briefs and, in the case of Cypress's opening and GSI's opposition brief, before
25 the responsive briefing is due, and, in the case of Cypress's reply brief, before the claim
26 construction tutorial.

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1 **D. Format of Claim Construction Hearing and Technology Tutorial:**

2 The parties do not anticipate live testimony at the claim construction hearing. The parties
3 anticipate that five (5) hours will be required for argument at the claim construction hearing, split
4 evenly between the sides. Unless the Court prefers a different format, the parties will separately
5 argue each disputed term.

6
7 Dated: August 14, 2013

Respectfully Submitted,

8
9 FISH & RICHARDSON, P.C.

10 By: /s/ Thomas L. Halkowski

11 Thomas L. Halkowski

12 Attorneys for Plaintiff
13 CYPRESS SEMICONDUCTOR CORP.

14 DLA PIPER LLP

15 By: /s/ Michael G. Schwartz, by permission

16 Michael G. Schwartz

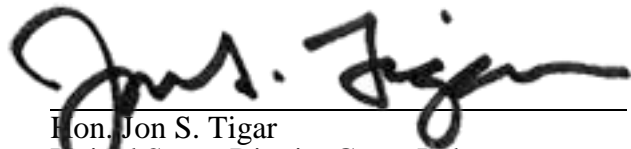
17 Attorneys for Defendant
18 GSI TECHNOLOGY, INC.

19 **CASE MANAGEMENT ORDER**

20 The above AMENDED JOINT CASE MANAGEMENT STATEMENT & [PROPOSED]
21 ORDER is approved as the Case Management Order for this case and all parties shall comply with
22 its provisions.

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24 IT IS SO ORDERED.

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26 Dated: August 20, 2013

27 
28 Hon. Jon S. Tigar
United States District Court Judge

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SIGNATURE ATTESTATION

Pursuant to Civil Local Rule 5-1, I attest that concurrence in the filing of this document has been obtained from the signatory listed above.

Dated: August 14, 2013

FISH & RICHARDSON P.C.

By: /s/ Thomas L. Halkowski
Thomas L. Halkowski