

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

3
4 TESSERA, INC.,

No. C 05-4063 CW

5 Plaintiff,

ORDER GRANTING
DEFENDANTS' MOTION
TO FILE
SUPPLEMENTAL BRIEF
AND PERMITTING
PLAINTIFF TO FILE
RESPONSE
(Docket No. 1473)

6 v.

7 ADVANCED MICRO DEVICES, INC., et.
8 al.,

9 Defendant.
10 _____/

11 AND ALL RELATED COUNTERCLAIMS
12 _____/

13 On June 16, 2014, Defendants STMicroelectronics, Inc. and
14 STMicroelectronics N.V. filed a motion to submit a ten page
15 supplemental brief addressing the Supreme Court's June 2, 2014
16 decision in Nautilus, Inc. v. Biosig Instruments, Inc., 134 S. Ct.
17 2120 (2014). In Nautilus, the Supreme Court reversed the Federal
18 Circuit's decision and articulated a new standard on
19 indefiniteness. Plaintiff Tessera, Inc. opposes the motion or, in
20 the alternative, requests that it be afforded the opportunity to
21 respond to the newly-asserted arguments.

22 By Defendants' own description, presently before the Court
23 are: the parties' competing proposals for claim construction,
24 Tessera's motion for summary judgment on indefiniteness, and
25 Defendants' motion for summary judgment of non-infringement. The
26 Supreme Court's new standard on indefiniteness impacts Tessera's
27 motion for summary judgment on indefiniteness and Defendants'
28 response to that motion. Thus, supplemental briefing on the issue
is warranted.

1 However, Defendants' proposed supplemental brief not only
2 rebuts Tessera's summary judgment motion, but also urges the Court
3 to "grant summary judgment that the asserted claims of Tessera's
4 patents are invalid as indefinite," which the Court construes as
5 an affirmative summary judgment motion of indefiniteness raised
6 for the first time. Docket No. 1473-1 at 8. If Defendants wish
7 to make an additional summary judgment motion after briefing has
8 concluded, they generally must show good cause for the argument's
9 late inclusion. Tessera opposes the motion on much the same
10 grounds, arguing that ST never raised an indefiniteness defense
11 during fact or expert discovery and such a defense should be
12 barred under Rule 37. Docket No. 1476 (citing Yeti By Molly Ltd.
13 v. Deckers Outdoor Corp., 259 F.3d 1101, 1106 (9th Cir. 2001)).

14 Although ST should have made explicit its intention to bring
15 an affirmative summary judgment motion and shown good cause, ST's
16 justification for not bringing this motion sooner is readily
17 apparent. The new indefiniteness standard might alter the
18 indefiniteness findings on Tessera's patents reached by this Court
19 and others. Because the new law emerged only after the parties
20 completed summary judgment briefing, and Defendants sought leave
21 to address the issue shortly thereafter, Defendants were justified
22 in not disclosing this defense earlier. Yeti by Molly, Ltd., 259
23 F.3d at 1106 (citing Fed. R. Civ. P. 37(c)(1)) ("The information
24 may be introduced if the parties' failure to disclose the required
25 information is substantially justified or harmless."). Allowing
26 Defendants' new indefiniteness argument will be substantially
27 harmless because Tessera themselves brought a motion on
28

1 indefiniteness, and so both experts should already have examined
2 the issue. Id.

3 Even though ST's motion for leave to file is not strictly
4 proper procedurally, in the interest of efficiency, the Court
5 admits Defendants' supplemental brief. Tessera may file a ten
6 page supplemental brief in response no later than ten days after
7 entry of this order. No replies will be permitted.

8 IT IS SO ORDERED.

9
10 Dated: 6/30/2014


CLAUDIA WILKEN
United States District Judge