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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TriQuint Semiconductor, Inc., a Delaware corporation,

Plaintiff/Counterdefendant,

v.

Avago Technologies Limited, a Singapore corporation; Avago Technologies U.S., Inc., a Delaware corporation, Avago Technologies Wireless IP (Singapore) Pte., Ltd., a Singapore corporation,

Defendants/Counterclaimants.

CIVIL ACTION NO. 11-91114

AFFIDAVIT OF LAURA T. EWBANK IN SUPPORT OF TRIQUINT'S MOTION TO COMPEL SKYWORKS' COMPLIANCE WITH SUBPOENA

LAURA T. EWBANK, declares as follows:

1. I am an attorney with the law firm of Perkins Coie LLP and counsel of record for the plaintiff in the above-captioned action, TriQuint Semiconductor, Inc. ("TriQuint"). I make this declaration based on personal knowledge of which I am competent to testify.

2. Attached as Exhibit A is a true and correct copy of TriQuint's First Amended Complaint filed in a case pending in the United States District Court for the District of Arizona,

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3 (the "Arizona action").

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5 3. Attached as Exhibit B is a true and correct copy of the Protective Order governing
6 documents disclosed in the Arizona action.
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10 4. Attached as Exhibit C is a true and correct copy of the subpoena served on
11 Skyworks by TriQuint in the Arizona action, served September 15, 2010.
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14 5. Attached as Exhibit D is a true and correct copy of Skyworks' annual report from
15 2010, downloaded from www.skyworks.com on April 28, 2011, indicating that Skyworks had
16 nearly a billion dollars in revenue in 2010.
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21 6. Since serving the subpoena attached as Exhibit C to the Memorandum on
22 Skyworks Solutions, Inc. ("Skyworks") in September 2010, counsel for TriQuint have entered
23 into extensive negotiations with Skyworks to try and reach a mutually acceptable solution
24 regarding the subpoena served on Skyworks. Robert Terry of Skyworks first responded to the
25 subpoena on October 5, 2010, confirming that Skyworks does have responsive documents but
26 requested an extension to respond. TriQuint agreed to extend the deadline to November 5, 2010,
27 and subsequently conferred with Skyworks on multiple occasions, including October 15, October
28 21, and November 2, 2010. Skyworks did not produce documents by the November 5, 2010
29 deadline.
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35 7. While relevant supporting documents are prohibited from disclosure by the
36 protective order, through discovery TriQuint has become aware that Skyworks and Avago have
37 engaged in substantial discussions regarding their respective IP portfolios, including BAW
38 technology, during the 2007-2009 time period, as alleged in the complaint.
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1 8. TriQuint and Skyworks conferred again on December 7, 2010, and February 25,
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3 March 10, April 15, and April 19, 2011 in an attempt to reach a compromise, and exchanged
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5 emails and phone calls on April 26-May 3 (true and correct copies of which are attached to the
6
7 accompanying Motion to Seal), but has been unable to reach a resolution of these issues.
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10 9. As summarized in these emails, counsel for Skyworks informed TriQuint that
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12 Skyworks does not now manufacture or sell BAW filters and does not plan to re-enter the BAW
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14 technology market. However, Skyworks has asserted that it objects to production on the grounds
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16 that Avago and TriQuint are current competitors of Skyworks in other wireless products and the
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18 requested documents reveal sensitive business information. Skyworks also claims that its
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20 decision to leave the BAW market was based on economic concerns, not because of Avago's
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22 anticompetitive acts, making its documents effectively irrelevant to TriQuint's claims of
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24 anticompetitive acts. Finally, Skyworks has asserted that this subpoena is overly burdensome,
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26 claiming, without support, that a search for responsive documents will involve millions of pages
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28 and cost hundreds of thousands of dollars.
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33 10. On May 3, 2011, TriQuint and Skyworks met via telephone one final time to
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35 attempt to reach a compromise. Skyworks reiterated its position as stated above. TriQuint
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37 offered to limit the scope of the subpoena by subject area and custodian. TriQuint reiterated this
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39 offer formally by email and provided a specific list of documents requested, identified one
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41 custodian to search by name and 3 others by job description, and offered to work out search
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43 terms or search strategies in an effort to focus the inquiry and refine the universe of potentially
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45 responsive data. Skyworks has refused this offer, but offered to search for a much more limited
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47 set of documents from the one identified custodian.
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1 11. TriQuint has attempted to negotiate in good faith to narrow the scope of its
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3 subpoena and has offered to pay the reasonable costs of production. In return Skyworks has
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5 offered to produce three documents: a redacted report from a Board of Directors meeting in
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7 which Skyworks announced its decision to leave the BAW filter market, the minutes of that
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9 Board meeting, and a summary of Skyworks' sales of BAW over the life of the product line.
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11 Other than the limited search of one custodian's email, Skyworks has refused to search for or
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13 produce any other responsive documents in its possession. In lieu of searching for documents,
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15 Skyworks has offered to provide a Declaration presumably setting forth its version of relevant
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17 facts.
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21 I declare under penalty of perjury under the laws of the United States of America that the
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23 foregoing is true and correct.
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27 EXECUTED this 5th day of May, 2011, at Seattle, Washington.
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33 Laura T. Ewbank
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