

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STC.UNM,

Plaintiff,

v.

Civil No. 10-CV-01077

INTEL CORPORATION,

Defendant.

**INTEL CORPORATION'S OPPOSITION TO STC'S MOTION TO
DISMISS COUNTERCLAIM FOR UNENFORCEABILITY AS MOOT**

Plaintiff STC.UNM's ("STC") Motion to Dismiss Intel's Counterclaim for Unenforceability ("Motion") is now moot because Defendant Intel Corporation has concurrently filed today its Answer and First Amended Counterclaims to STC.UNM'S Complaint [Docket No. 38] , pursuant to Fed. R. Civ. P. 15(a). Pursuant to Rule 15(a)(1)(B), Intel may amend its counterclaim as a matter of right "if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Intel's amendment is timely, as STC filed the instant Motion (without meeting-and-conferring as required by Local Rule 7.1) and its response to Intel's other counterclaims on January 31, 2011. [Docket Nos. 26, 28]. Accordingly, Intel had until February 22, 2011 to amend its counterclaims, including its third counterclaim for declaratory judgment of unenforceability, and has now done so.

Because STC's motion is directed to a pleading that is no longer operative due to Intel's amendment, its Motion should be denied as moot.

Respectfully submitted,

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By /s/ Douglas A. Baker

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 14, 2011, the foregoing *Intel Corporation's Opposition to STC's Motion To Dismiss Counterclaim For Unenforceability* was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

ATKINSON, THAL & BAKER, P.C.

By: /s/ Douglas A. Baker