

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

VLSI TECHNOLOGY LLC,

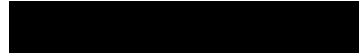
Plaintiff,

v.

INTEL CORPORATION,

Defendant.

C.A. No. 18-966-CFC



**OPENING BRIEF IN SUPPORT OF
PLAINTIFF VLSI TECHNOLOGY LLC'S SECOND MOTION
TO REINTRODUCE CERTAIN ASSERTED PATENT CLAIMS, OR TO
SEVER SUCH CLAIMS INTO A SEPARATE ACTION TO BE STAYED**

Dated: February 27, 2020

Brian E. Farnan (Bar No. 4089)
Michael J. Farnan (Bar No. 5165)
FARNAN LLP
919 N. Market St., 12th Floor
Wilmington, DE 19801
Telephone : (302) 777-0300
Fax : (302) 777-0301
bfarnan@farnanlaw.com
mfarnan@farnanlaw.com

Morgan Chu (admitted *pro hac vice*)
Benjamin Hattenbach (admitted *pro hac vice*)
Iian D. Jablon (admitted *pro hac vice*)
Christopher Abernethy (admitted *pro hac vice*)
Amy E. Proctor (admitted *pro hac vice*)
Dominik Slusarczyk (admitted *pro hac vice*)
S. Adina Stohl (admitted *pro hac vice*)

Charlotte J. Wen (admitted *pro hac vice*)
Brian M. Weissenberg (admitted *pro hac vice*)
IRELL & MANELLA LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Telephone: (310) 277-1010
mchu@irell.com
bhattanbach@irell.com
ijablon@irell.com
cabernethy@irell.com
aproctor@irell.com
dslusarczyk@irell.com
astohl@irell.com
cwen@irell.com
bweissenberg@irell.com

Attorneys for Plaintiff VLSI Technology LLC

TABLE OF CONTENTS

	<u>Page</u>
I. NATURE AND STAGE OF THE PROCEEDINGS.....	1
II. SUMMARY OF ARGUMENT.....	2
III. FACTUAL BACKGROUND.....	4
IV. ARGUMENT.....	6
A. Each Claim VLSI Seeks to Reintroduce Presents Unique Issues of Validity or Infringement, Implicating VLSI's Due Process Rights ...	6
1. The '331 Patent.....	6
a) Dependent Claim 2	6
2. The '026 Patent.....	8
a) Dependent Claim 17	9
3. The '633 Patent.....	10
a) Independent Claim 1 and Dependent Claim 13.....	11
4. The '552 Patent.....	12
a) Independent Claim 11	13
B. Granting VLSI's Request Will Not Impact Claim Construction.....	14
C. If Not Reintroduced, The Claims Must Be Severed And Stayed	14
V. CONCLUSION.....	15

...

TABLE OF AUTHORITIES

Page(s)

Cases

In re Katz Interactive Call Processing Patent Litig., Inc.,
639 F.3d 1303 (Fed. Cir. 2011)*passim*

Leeds & Catlin Co. v. Victor Talking Mach. Co.,
213 U.S. 301 (1909).....2

LML Patent Corp. v. JPMorgan Chase & Co.,
2010 WL 5140823 (E.D. Tex. Oct. 12, 2010)15

Nuance Commc'ns, Inc. v. ABBYY USA Software House, Inc.,
813 F.3d 1368 (Fed. Cir. 2016)4

Stamps.com Inc. v. Endicia, Inc.,
437 F. App'x 897 (Fed. Cir. 2011).....4

TQ Delta, LLC v. 2Wire Inc.,
Case No. 13-cv-1835 (D. Del.), D.I. 269.....15

Constitutional Provisions

U.S. Const., Amend. V3

Statutes

35 U.S.C. § 2712

35 U.S.C. § 271(d)3

35 U.S.C. § 2812

35 U.S.C. § 2822

I. NATURE AND STAGE OF THE PROCEEDINGS

On April 22, 2019, at Intel's request and over VLSI's objection, the Court issued a Memorandum Order requiring that VLSI narrow the number of patent claims asserted in this litigation in two phases: first, narrow to 25 asserted claims (across five patents) by April 26, 2019; and second, further narrow to 18 asserted claims after issuance of the Court's Claim Construction Order. D.I. 136 at 1. But the Court appropriately recognized that required case narrowing may sometimes implicate a party's due process rights. The Court's Order thus provided that "Plaintiff may seek to add at a later date asserted claims ... upon a showing of good cause that includes a demonstration that the addition ... is necessary to vindicate [VLSI's] due process rights." *Id.* at 2 n.1.

Pursuant to the Court's Order, VLSI provided Intel a first identification of 25 asserted claims on April 26, 2019, while again objecting to removal of the non-elected claims. Ex. 1 at 1-3. However, particularly given the positions Intel had taken, it became clear that certain non-elected claims raise unique issues of validity or infringement, implicating VLSI's due process rights. Accordingly, on September 20, 2019, VLSI filed a Motion To Reintroduce Certain Asserted Patent Claims, Or To Sever Such Claims Into A Separate Action To Be Stayed (hereinafter "First Motion"). *See* D.I. 276. In that First Motion, VLSI moved to reintroduce (1) Claims 5 and 8-10 of the '331 Patent, (2) Claims 3, 5-6, 8, 14-16, and 18-19 of the '026 Patent, (3) Claims

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.