

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-CJB

MEMORANDUM ORDER

Defendant Intel has filed a motion to exclude certain testimony of Plaintiff VLSI's technical expert, Dr. Thomas M. Conte. D.I. 787.

I.

Resolution of the motion is governed by Federal Rules of Evidence 402, 403, and 702. Rule 402 provides that

[r]elevant evidence is admissible unless . . . provide[d] otherwise [by] the United States Constitution; a federal statute; these rules; or other rules prescribed by the Supreme Court. Irrelevant evidence is not admissible.

Fed. R. Evid. 402.

Under Rule 403,

[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the

issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Fed. R. Evid. 403.

Rule 702 provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702.

II.

Intel asks first that I exclude Conte's testimony "about Intel's purported litigation misconduct, corporate culture, and ethics." D.I. 788 at 1. Intel argues that Conte's opinions on these matters "are baseless, irrelevant, beyond his technical expertise, highly prejudicial to Intel, and likely to mislead the jury." D.I. 788 at 1. I lack sufficient information to judge whether Conte's opinions on these matters are baseless, but I agree with Intel that any opinions Conte might offer on such matters are irrelevant, beyond his expertise, highly prejudicial to Intel, and

likely to mislead a jury; and they are therefore inadmissible under Rules 403 and 702.

The jury will be asked to decide in the first phase of the trial whether Intel infringed the asserted patents and whether the asserted patents are invalid. If the jury decides that at least one of the asserted patents was infringed and is not invalid, it will be tasked with deciding whether VLSI is entitled to damages. Intel's purported litigation misconduct, corporate culture, and ethics have no relevance to any of the infringement, invalidity, or damages issues that will be presented to the jury. And any conceivable probative value Intel's purported litigation misconduct, corporate culture, and ethics could have would be substantially outweighed by the danger of unfair prejudice against Intel, confusing the issues, misleading the jury, and wasting time. In addition, Conte is an engineer with no qualifications that would enable him to offer reliable opinions about litigation misconduct and ethics. Accordingly, I will exercise my discretion and preclude him under Rules 402, 403, and 702 from offering opinions at trial about Intel's purported litigation misconduct, corporate culture, and ethics.

VLSI says Conte's testimony on these issues is appropriate because his expert analysis was limited by "the onerous conditions Intel placed on his code review, and Intel's delayed productions and non-production of pertinent materials." D.I. 865 at 1. VLSI seems to be alleging here that Intel violated its discovery

obligations under the Court's orders and/or the Federal Rules of Civil Procedure. But if VLSI thought that Intel failed to comply with its discovery obligations and that that failure prejudiced Conte's analysis, VLSI should have sought relief from the Court. It is not the province of the jury to hear and decide discovery disputes.

VLSI insists that it needs to offer Conte's opinions about "Intel's repeated violations of Intel's 'Corporate Conduct/Ethics,'" because Intel intends to "argue its corporate ethics provide a defense to patent infringement." D.I. 865 at 2–3 (citation omitted). But Intel has promised that it "will demonstrate noninfringement on the merits." D.I. 900 at 1–2. If Intel does not abide by that representation and offers at trial self-serving testimony to the effect that it does not infringe patents because of its ethics policies, it may open the door to allow VLSI to introduce evidence that Intel does not comply with those policies. But even if Intel opened that door, I do not see how Conte could be the source of such counterevidence, as he is not offered as a fact witness with percipient knowledge of Intel's alleged misconduct, and VLSI has not suggested that he is an expert on corporate ethics.

Accordingly, Conte may not testify at trial about Intel's purported litigation misconduct, corporate culture, and ethics.

III.

Intel next asks that I bar Conte from testifying at trial that Intel derives more “benefit” from infringing the dependent claims of an asserted patent (the #027 patent) than it does from infringing the independent claims from which the dependent claims depend. D.I. 788 at 1, 5. Independent claims 1, 8, and 18 of the #027 patent require adjusting voltage levels of an integrated circuit based on an “analog variation parameter.” D.I. 789-1, Ex. 2 at claims 1, 8, 18. Dependent claims 3, 5, and 10 (which depend from claims 1 or 8) “further” require adjusting voltage levels based on a “digital variation parameter.” D.I. 789-1, Ex. 2 at claims 3, 5, 10. Thus, although the independent claims cover devices that use an “analog variation parameter” both with and without a “digital variation parameter,” the dependent claims cover only devices that use both analog and digital variation parameters.

In his expert report, Conte says that he “expect[s] each of the Accused Products [that uses only the analog variation parameter] to obtain at least a 1.18% power savings benefit from Intel’s infringement of claims 1, 8, and 18,” and he “expect[s] each of the Accused Products [that uses both the analog and digital variation parameters] to obtain at least a 2.63% power savings benefit from Intel’s infringement of claims 3, 5, and 10.” D.I. 789-1, Ex. 1 ¶¶ 828–29. Conte further opines that “[t]he[] benefits” obtained from infringing the dependent claims “are

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