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

- - -

VLSI TECHNOLOGY LLC, : CIVIL ACTION
 :
Plaintiff, :
 :
vs. :
 :
INTEL CORPORATION, :
 :
Defendant. : NO. 18-966 (CFC)

- - -

Wilmington, Delaware
Tuesday, November 6, 2019
9:00 o'clock, a.m.

- - -

BEFORE: HONORABLE COLM F. CONNOLLY, U.S.D.C.J.

- - -

APPEARANCES:

FARNAN LLP
BY: BRIAN E. FARNAN, ESQ.

-and-

Valerie J. Gunning
Official Court Reporter

1 APPEARANCES (Continued):

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7 BEN HATTENBACH, ESQ.
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1 PROCEEDINGS

2

3 (Proceedings commenced in the courtroom,
4 beginning at 9:00 a.m.)

5

6 THE COURT: Good morning. Please be seated.
7 (Counsel respond, "Good morning, Your Honor.")

8 THE COURT: All right. So I guess, Mr. Farnan?

9 MR. FARNAN: Yes, Your Honor. Good morning.

10 THE COURT: Welcome.

11 MR. FARNAN: Good morning, Your Honor. Brian

12 Farnan on behalf of the plaintiff. And with me is Chris

13 Abernathy, Dominik Slusarczyk, Adina Stohl and Ben

14 Hattenbach, all from Irell Manella.

15 THE COURT: All right. Thank you.

16 MR. FARNAN: Thank you.

17 THE COURT: Mr. Blumenfeld?

18 MR. BLUMENFELD: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. BLUMENFELD: Jack Blumenfeld from Morris

21 Nichols for Intel.

22 At counsel table are Gregory Lantier and Dominik

23 Massa from Wilmer Hale. Behind them is Mashood Rassam from

24 Intel. Behind Mr. Rassam is Kimberly Schmidt, also from

25 Intel. And in the corner, Richard Crudo and Calvin Walden

1 from Wilmer Hale. And behind them, Joshua Stern, also from
2 Wilmer Hale.

3 And with Your Honor's permission, Mr. Lantier
4 and Mr. Massa and I are going to split the presentation
5 today. And I can -- well, I will wait until we start before
6 handing up our slides.

7 THE COURT: All right.

8 MR. BLUMENFELD: Thank you.

9 THE COURT: Thank you very much.

10 MR. BLUMENFELD: Oh, and, Your Honor, Mr. Lee
11 wanted to be here today. He's two floors up trying a case
12 before Judge Stark, so was unable to be here.

13 THE COURT: Okay. Judge Stark has two trials
14 today going on.

15 All right. Why don't we begin? Let's go claim
16 by claim, or term by term, I should say.

17 So I got this joint claim construction chart
18 with many, many attachments, and then I got the joint
19 appendix in support of the joint claim construction brief,
20 so when I was just really looking at the appendix of the
21 brief just for clarity in case anybody wants to know, I
22 basically ignored the attachment to the joint claim

1 addresses -- just leave it as it says, they don't get
 2 further construction?
 3 MS. LANTIER: We would prefer that over VLSI's
 4 proposed construction.
 5 THE COURT: VLSI says they can live with that.
 6 That's how I'm not going to construe it. I'm not going to
 7 construe the term. VLSI has already said they can live with
 8 that. And it's not your first choice, Intel, but you can
 9 live with it. Right?
 10 MS. LANTIER: It's not our first choice. I
 11 understand Your Honor's ruling. I am not disputing it. For
 12 the record, we would preserve our position that the right
 13 construction is the one that we proposed.
 14 THE COURT: That's understood.
 15 MR. LANTIER: Yes.
 16 THE COURT: VLSI already said at the outset they
 17 don't need construction of this material, so I'm going to go
 18 with VLSI's proposed or secondary proposal, which is --
 19 actually, their primary proposal, it did not need
 20 construction, I will go with that, and you can argue your
 21 position to the Federal Circuit if need be. And, of course,
 22 if something comes to my attention, because it sounds like
 23 there's going to be expert testimony about virtual
 24 addressing, then I will revisit claim construction at that
 25 point.

1 MS. LANTIER: Yes, Your Honor. I understand.
 2 THE COURT: VLSI is good with that? You
 3 understand my ruling?
 4 MR. ABERNATHY: Yes, Your Honor.
 5 THE COURT: All right. Let's go to the next
 6 term.
 7 MS. STOHL: Good morning, your Honor.
 8 THE COURT: What's your name just, for the
 9 record?
 10 MS. STOHL: Adina Stohl for the plaintiff.
 11 THE COURT: Ms. Stohl? Okay. Thank you.
 12 MS. STOHL: THE '027 patent discusses a
 13 determination of an analog variation parameter that is
 14 representative of an integrated circuit fabrication process
 15 variance of the integrated circuit, and an operational
 16 temperature as well as a digital variation parameter with
 17 the purpose being to optimize power consumption on an
 18 IC-by-IC basis.
 19 Intel is taking construction of three terms for
 20 this patent. The first two are very similar and are put
 21 together. Determining an analog or a digital variation
 22 parameter, and the third being determining an operational

1 other phrases of the claim language as well for which
 2 construction is not being sought.
 3 So just starting with this term determining,
 4 VLSI proposes that no construction is needed for --
 5 THE COURT: Actually, can I just ask you: Could
 6 you live with quantifying or quantify?
 7 MS. STOHL: Your Honor, I don't believe that
 8 that would be an appropriate construction here.
 9 THE COURT: So you wouldn't agree to that?
 10 MS. STOHL: We would not agree to that at this
 11 time.
 12 THE COURT: Okay.
 13 MS. STOHL: And I'm happy to explain --
 14 THE COURT: Yes.
 15 MS. STOHL: -- further why.
 16 So here -- well, first of all, aside from the
 17 fact that determining is the plain and ordinary understood
 18 word, in fact, as we noted in the briefs, they don't
 19 actually argue for the term determining to be the
 20 construction of other terms in other cases.
 21 Intel's proposal of sense or sensing is much
 22 more limited. It's a subset of determining and doesn't stay
 23 honest to the patent.
 24 Specifically, Intel's proposal imports
 25 limitations from a preferred embodiment. Here, so the

1 specification is replete with numerous ways in which
 2 determining is discussed. Intel hones in on the word
 3 sensing sometimes with determining, sometimes without, but
 4 as Your Honor will notice, the inventors knew the word
 5 sensing. In fact, they used it in the specification, but
 6 when it came time to actually claim their invention, they
 7 chose to use the broader word determining. You see it here
 8 in claim 1.
 9 THE COURT: Help me out. I'm a juror and I'm
 10 reading your claim. An analog variation parameter. You're
 11 accusing Intel of doing that. What are you going to say
 12 Intel does to determine an analog variation parameter?
 13 MS. STOHL: There are -- we have multiple
 14 theories of infringement, Your Honor, but specifically, the
 15 separate issue, but an analog variation parameter which will
 16 be discussed shortly as another --
 17 THE COURT: Help me out with the verb. What are
 18 you going to say to the jury? Ladies and gentlemen, Intel
 19 determines in implementing this method for power supply
 20 optimization, it determined an analog variation parameter.
 21 What is it they do? What are you going to tell
 22 the jury?

1 reaching a conclusion. It might be --
 2 THE COURT: Wait. They studied study and reach
 3 a conclusion?
 4 MS. STOHL: There are multiple examples.
 5 THE COURT: When you are in front of the jury,
 6 what are you going to say to the jury when you say, ladies
 7 and gentlemen, Intel infringed this claim because they
 8 determined an analog variation parameter. Here's what they
 9 did to determine an analog variation parameter. Tell me,
 10 what are you going to tell them?
 11 MS. STOHL: So one of the options is that they
 12 went and they read that parameter.
 13 THE COURT: They read it. What does that mean?
 14 MS. STOHL: They read the value of it.
 15 THE COURT: So read, they measured it?
 16 MS. STOHL: It can be a measurement.
 17 THE COURT: Well --
 18 MS. STOHL: And the patent explicitly includes
 19 that as measuring.
 20 THE COURT: What else?
 21 MS. STOHL: It can be a calculation. It can be
 22 a generation as discussed in determining --
 23 THE COURT: They detected it?
 24 MS. STOHL: They detected it. If I just --
 25 THE COURT: So why not go with measure?

1 MS. STOHL: Because --
 2 THE COURT: What is the difference between read
 3 and measured?
 4 MS. STOHL: So measure I agree is encompassed
 5 within the term determining, but it doesn't define it.
 6 THE COURT: I'm on read.
 7 MS. STOHL: Sorry?
 8 THE COURT: I'm on read. You are going to argue
 9 to the jury they read some parameter. Right?
 10 MS. STOHL: Well, I would argue that the
 11 claim word determining is used repeatedly throughout the
 12 patent.
 13 THE COURT: I know. We're trying to determine
 14 what it means. We're trying to determine what it means.
 15 Right?
 16 And to do that, we have to employ some analysis.
 17 We have to do something. So what do you have to do to
 18 determine an analog variation parameter?
 19 MS. STOHL: So here, just as an illustrated
 20 example, kind of, there are all of these options that can be
 21 determining, and the patent actually uses these other words
 22 for determining. So to limit it to any one of these words,

1 THE COURT: But you want to read determining to
 2 mean causing. Isn't that really what you want?
 3 MS. STOHL: As causing?
 4 THE COURT: Yes. Like in the passive.
 5 MS. STOHL: No, I would not agree with that,
 6 Your Honor.
 7 THE COURT: No?
 8 MS. STOHL: And then part of my pushback on
 9 measuring is that, well, the term is also used in relation
 10 to the adjustment signal. That's not something that can be
 11 measured. Right?
 12 Looking at the claim language, the adjustment
 13 signal is actually determined using the analog variation
 14 parameter in relation to the operational temperature and/or
 15 with the digital variation parameter. None of that can be
 16 done through measuring. It's a metric that didn't exist
 17 before.
 18 Can you put me back at 68, please.
 19 Your Honor, may I continue?
 20 THE COURT: I'm sorry?
 21 MS. STOHL: May I continue?
 22 THE COURT: Yes, please.
 23 MS. STOHL: So here what is very clear is going
 24 back to the same principle, determining does not mean
 25 sensing. To limit it would be improper.

1 Intel's proposal also restricts the claim scope
 2 contrary to law. What's very clear is that varied use of a
 3 disputed term demonstrates the breadth of the term rather
 4 than providing a limited definition. So I mentioned a
 5 couple ways in which determining is discussed in the
 6 specification, in the claims themselves. Those aren't
 7 limiting and, in fact, again, are all just examples of the
 8 way in which it can be done.
 9 As one example here, we see in claims 5 and 11,
 10 so it's the claims themselves, it requires determining a
 11 digital variation parameter comprising measuring and
 12 comparing. So determining includes comparing measured
 13 values, something that's different from sensing.
 14 Turning to the specification, we see that
 15 determining can include counting iterations. We see that in
 16 column 9, 6 through 27. As well we see that determining
 17 includes calculating ratios and that's actually back in the
 18 claims as well.
 19 So claim 16 notes that determining the digital
 20 variation parameter is done as a ratio. That also is
 21 different than sensing. You don't sense a ratio.
 22 Looking back again at the abstract, this is in

1 determining to just measuring.
 2 And it goes even further than that. Not only
 3 does it's restrict the word contrary to what -- to the
 4 claims themselves and contrary to law, but it actually goes
 5 a step further and renders the claims unintelligible.

6 So as I mentioned a moment ago, determining
 7 includes measuring and comparing as two examples. Very
 8 simply, sensing does not compare those two.

9 And for claim 16, determining as a ratio, again,
 10 a ratio is not sensing.

11 The Federal Circuit has been clear on this, that
 12 if a construction would render a claim nonsensical, it
 13 simply can't be correct, and here restricting it to sensing
 14 or measuring would do that.

15 I'm happy to move on to the next portion of this
 16 claim.

17 THE COURT: Sure.

18 MS. STOHL: So the next dispute that relates to
 19 these first two terms, determining an analog or a digital
 20 variation parameter is this idea of, well, what is
 21 variation?

22 So VLSI proposes that an analog variation
 23 parameter is an analog portion of the integrated circuit.
 24 That means the area on an IC-by-IC base basis. Similarly,
 25 the construction is the same for digital variation

1 parameter, obviously related to the digital portion. Intel,
 2 however, proposes that variation somehow requires that it
 3 vary during operation. That simply just doesn't exist.

4 VLSI's proposal is taken directly from the
 5 patent itself if you look at the abstract. Going back
 6 again, what is the purpose of the determination of an analog
 7 parameter representative of an integrated circuit
 8 fabrication process? It is to optimize power consumption on
 9 an IC-by-IC basis. Whether or not it varies over time is
 10 immaterial. It can or it cannot, but it's not required to
 11 do so. What's required simply is that it's optimized on an
 12 IC-by-IC basis.

13 Intel will argue that the purpose of the claims
 14 is this idea of determining adjustment signals, something
 15 that happens over time. But the disconnect there is they're
 16 ignoring that there's another element. They are ignoring
 17 that there's an operational element from temperature or, for
 18 example, there can be other elements that are expressed in
 19 the variation parameters at all.

20 We're sitting in a room with walls. I can
 21 determine the thickness of the walls, which has an effect on
 22 the acoustics in this room, perhaps noise coming in from the

1 THE COURT: So are you going to external
 2 evidence now?

3 MS. STOHL: It's not necessary. It's just to
 4 further explain.

5 THE COURT: If it's not necessary, don't make
 6 your argument using it.

7 MS. STOHL: On the flip side, Intel's proposal
 8 address a non-claim limitation. So specifically, their
 9 argument is that the claim uses the plain meaning of
 10 variation to refer to a value that changes over time. Their
 11 only citation for this plain meaning requiring a change over
 12 time is their own expert. Variation doesn't require that.
 13 There's a multitude of ways that things can vary. Sizes
 14 and shapes vary. None of that requires over time.

15 THE COURT: Intel essentially, they are accusing
 16 you of this read only thing, that you are just trying to
 17 read a fixed value. Can you maybe explain to me what that
 18 means in the process?

19 MS. STOHL: What they are arguing?

20 THE COURT: Well, what does it mean? A fixed
 21 value?

22 MS. STOHL: So the purpose --

23 THE COURT: As you understand it. I realize
 24 it's their argument. I'm going to ask them the same thing.
 25 I'm just curious. Can you explain to a non-integrated

1 circuit engineer, what does that mean?

2 MS. STOHL: At the time that a chip is
 3 fabricated, there are a number of elements to that chip to
 4 identify that specific chip as different from other chips.
 5 So when a chip is fabricated, it's fabricated on this large
 6 wafer. Other chips, there might be hundreds, there might be
 7 thousands on a wafer, they are supposed to be identical.
 8 They are printed and they are supposed to be really carbon
 9 copies of each other. In reality, that doesn't happen.
 10 There are small natural variations, natural errors that
 11 create differences between two chips that are supposed to be
 12 the same.

13 What had previously been done is that all of the
 14 chips on a single wafer or all of the chips on a single, in
 15 a single batch were set to operate such that they would work
 16 even for the chip that was kind of not necessarily the dud,
 17 but the one that was a little bit more imperfect than the
 18 others, and that might be that, you know, the wires are a
 19 little bit wider, so it requires more energy to push
 20 through, or the transistor shape and size was a little bit,
 21 a little bit different.

22 And what happens at that time is you test all of

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