

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ADVANCED MICRO DEVICES, INC., ET
AL.,

Plaintiffs,

v.

TCL INDUSTRIES HOLDINGS CO., LTD.;
ET AL.,

Defendants.

Case No.: 2:22-cv-00134-JRG-RSP

JURY TRIAL DEMANDED

**PLAINTIFFS' REPLY IN SUPPORT OF OPPOSED MOTION FOR DISCRETIONARY
STAY OF REMAINDER OF ACTION PENDING FINAL DETERMINATION BY THE
INTERNATIONAL TRADE COMMISSION OF INVESTIGATION NO. 337-TA-1318**

Plaintiffs Advanced Micro Devices, Inc. and ATI Technologies ULC (collectively, “AMD” or “Plaintiffs”) respectfully submit this reply in support of its motion to stay this action against Realtek Semiconductor Corp. (“Realtek”) pending a final determination of Investigation No. 337-TA-1318 (“the ITC Investigation”).

The Court having granted TCL’s motion to stay this action, judicial economy and fundamental fairness would best be served by granting AMD’s stay motion. The TCL stay relates to the same ITC Investigation as the stay sought by AMD; TCL and Realtek are co-defendants in this district court proceeding where there is close to, if not, 100% overlap between the asserted patents, claim construction, and validity in the TCL and Realtek district court proceedings. That is because AMD’s infringement allegations against TCL are based on the use of Realtek chips and products in TCL televisions. Moreover, both TCL and Realtek are co-respondents in a parallel ITC proceeding that overlaps 100% with four of the five patents in this proceeding.

By not opposing TCL’s motion to stay while at the same time opposing AMD’s motion to stay, it is Realtek—not AMD—that seeks to “litigate the same claims twice.” Opp. at 2, 6. This Court, were it to deny AMD’s Motion, would then be obliged to re-adjudicate the identical Realtek and TCL district court cases sequentially: TCL has already stated that it refuses “to be bound by the adjudication of the E.D. Tex. litigation with respect to Realtek or the adjudication of the ITC case.” Ex. A (email from TCL counsel). Realtek, in arguing against a stay for the AMD litigation, mischaracterizes the ITC’s procedural schedule, draws false analogies between ITC and PTO proceedings, demands a one-way stipulation in which AMD (and only AMD) is bound to any adverse ITC determinations, and makes unsupported allegations against AMD’s counsel.

I. THE SCHEDULES ARE NOT STAGGERED AS REALTEK CLAIMS

Realtek mischaracterizes the procedural schedules in the ITC and district court cases as “staggered.” They are not. All but one of the “deadlines” identified by Realtek in its Opposition—from the claim construction deadlines beginning on August 15, 2022, through the Initial Determination by the Administrative Law Judge (“ALJ”) on July 7, 2023—relate only to the ITC ALJ. The ALJ’s determinations are not binding unless adopted by the Commission. The recommendations of an ALJ and the findings of an Article III judge are not legally equivalent. Only the ITC’s November 7, 2023 final determination will be appealable to the Court of Appeals for the Federal Circuit (“CAFC”). By January 2024, the CAFC may well be reviewing the Commission’s claim constructions of *the same terms* that this Court will, almost simultaneously, be construing and using to instruct the Realtek jury if it fails to stay this action.

Consequently, the same concerns for judicial economy that led Congress to provide for a mandatory stay under 28 U.S.C. § 1659 apply to AMD’s request for a discretionary stay, given the timing and the identity of the parties, patents, and subject matter in the ITC and district court cases.

As the CAFC has explained:

The legislative history explains that “use of the Commission record could expedite proceedings and provide useful information to the court.” The Commission record will be most helpful to the district court if it is a complete record of the Commission proceedings including all remand proceedings. Finally, interpreting § 1659 to permit the district court proceedings to continue while the Commission proceedings are on appeal would result in cumbersome on-again, off-again stays.

In re Princo Corp., 478 F.3d 1345, 1355 (Fed. Cir. 2007) (citation omitted).

It appears that Realtek’s true intention in opposing AMD’s stay motion is to preserve the stayed TCL district court action as a fallback vehicle to re-litigate the AMD district court action against Realtek—if AMD were to prevail—by taking advantage of TCL’s right to make all-new arguments on infringement, validity, and claim construction.¹ Realtek supported TCL’s motion to stay the district court case pending resolution of the ITC case by not opposing it, even as Realtek opposed AMD’s equivalent motion to stay. TCL, as noted above, has stated that it refuses to be bound by district court findings as to Realtek when the court lifts the stay in the TCL action, and Realtek has refused to confirm whether it intends to assist TCL in re-litigating issues upon a lift of the stay as to TCL. *See* Ex. A; Ex. B. The Court should not permit Realtek to manipulate the procedural schedule to the detriment of judicial economy and fairness.

II. AN AGREEMENT TO BE BOUND BY ADVERSE LEGAL DETERMINATIONS IN THE ITC CASE WOULD FURTHER COMPLICATE THE LITIGATION

Realtek improperly urges this Court, if it were to grant a stay, to require AMD to “agree to be bound by adverse determinations in a collateral administrative proceeding, where the collateral proceeding was initiated by the moving party to adjudicate the merits of the same claims.” Opp.

¹ Realtek argues that “first adjudicating AMD’s claims against Realtek” would “resolve the merits of AMD’s claims against TCL.” Opp. at 14. But this could only be true if TCL had agreed to be bound by the ITC’s rulings as to Realtek’s chips and GPUs incorporated therein, validity, and claim construction, which TCL refuses to do. To the extent Realtek is seeking the equivalent here of a customer/retailer exception, whereby the Realtek case is allowed to proceed while the TCL case is stayed, the Federal Circuit has found it to be highly relevant whether “the customer consented to . . . be bound by the manufacturer’s action.” *Kahn v. Gen. Motors Corp.*, 889 F.2d 1078, 1082 (Fed. Cir. 1989).

at 7. Realtek faults AMD for refusing to enter into such a blanket stipulation, claiming that AMD “wants two bites at the apple.” *Id.* at 8. Yet the stipulation Realtek proposes is fundamentally unfair, because it would operate as a one-way ratchet, binding AMD to any adverse ITC findings without an equivalent agreement to be bound by Realtek. *See* Ex. B (email from Realtek counsel).

The agreement to be bound proposed by Realtek also makes little sense given the non-preclusive nature of ITC investigations. Realtek’s argument is erroneously predicated on an equivalency between PTO and ITC determinations; each of the administrative law cases on which Realtek relies involved PTO IPR proceedings. But the PTO, unlike the ITC, does have authority to invalidate patents. Therefore it can make sense for parties to agree to be bound by the outcome of a dispositive PTO proceeding. The ITC, in contrast, does not have the authority to invalidate patents and, as Realtek recognizes, its determinations have no preclusive effect.

Another reason that a stipulation to be bound by ITC determinations makes no sense is that the dispositive issues in Commission determinations under Section 337—such as the existence of a domestic industry—are often irrelevant to district court litigation. It is not uncommon for the Commission to fail to reach any of the legal issues of concern to the district court (including claim construction, infringement, or invalidity) and to dispose of an investigation on narrow, Section 337-specific legal grounds. *See Beloit Corp. v. Valmont Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984) (authorizing the Commission to reach only some dispositive issues in Section 337 investigations).

Even if the Commission were to reach issues relevant to this Court such as infringement and invalidity, judicial resources would only be conserved if the stay requested by AMD were granted. The ITC’s “administrative determination” becomes final only after all appeals have run (and appeals of the ITC determination are likely). Only if the district court action were stayed, as requested by AMD, would this Court be able to take into account legal conclusions by the CAFC

with respect to claim construction and other overlapping issues from the ITC investigation. A stay would allow this Court to benefit from an ITC determination that reached the patent merits given that “[d]istrict courts are not free to ignore holdings of [the CAFC] that bear on cases before them.”

Texas Instruments Inc. v. Cypress Semiconductor Corp., 90 F.3d 1558, 1569 (Fed. Cir. 1996).

III. REALTEK’S CLAIM THAT AMD’S COUNSEL SEEKS A STAY FOR AN IMPROPER PURPOSE IS UNFOUNDED AND IMPROPER

Finally, in its Opposition, Realtek accuses AMD’s counsel of “an established practice of litigating infringement claims in the ITC, then modifying their theories and relitigating their claims in the district court.” Opp. at 1. Realtek then repeatedly attacks “Mintz” for allegedly engaging in “gamesmanship” and trying to get “two bites at the infringement apple.” *Id.* at 1, 6. Realtek’s allegations are baseless and improper.

It is proper for a party to proceed in district court once an ITC case has ended and a 28 U.S.C. § 1659 stay has been lifted. That is the purpose of the statutory scheme, as courts have recognized. *See Fuji Photo Film Co. v. Benun*, 463 F.3d 1252, 1256 (Fed. Cir. 2006) (“[S]ection 1659 necessarily suggests that after a final determination by the Commission, the district court may resume its consideration of the civil action”). Consequently, Realtek’s allegations of improper “gamesmanship” by Mintz are meritless. Courts take a dim view of such unsupported allegations of misconduct. *See, e.g., Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 305 (Fed. Cir. 1995) (“Such charges are as unprofessional as the conduct they purport to criticize; they waste the court’s time and squander the client’s money. They are not viewed with favor.”).

IV. CONCLUSION

For the reasons above and in AMD’s motion, AMD respectfully requests the Court to exercise its discretion in staying this action as to Realtek until the determination of the Commission in 337-TA-1318 becomes final.

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