

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

MOSAID TECHNOLOGIES INC.,

Plaintiff,

v.

MICRON TECHNOLOGY, INC. AND
POWERCHIP SEMICONDUCTOR
CORPORATION,

Defendants.

Case No. 2:06cv302-DF

**PLAINTIFF MOSAID TECHNOLOGIES INC.'S OPPOSITION TO DEFENDANTS'
MOTION FOR EXPEDITED BRIEFING AND CONSIDERATION OF EMERGENCY
MOTIONS TO STAY PENDING MOTIONS TO DISMISS AND TRANSFER**

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Defendants' "Emergency" Motion seeking a stay of this case is the latest in their repeated attempts to drag their heels and delay the trial date currently set for October 2008. Contrary to Defendants' suggestion, the Federal Circuit has not yet issued a mandate based on its recent opinion concerning declaratory judgment jurisdiction in the case filed in California by Micron on a subset of the patents involved in this case, nor is such a mandate imminent. *See* Fed. Cir. Rule 41 (2006 ed.). In the meantime, there is no valid reason to stay any of the upcoming deadlines in the present case or to expedite briefing on Defendants' motions for stay, which are clearly calculated to hinder MOSAID from proceeding with its case in the Eastern District of Texas and perpetuate Defendants' failure to complete their six-month overdue document production obligations under P.R. 3-4. Defendants acknowledge in their concurrently filed motion to dismiss and to transfer venue, (Docket No. 303), that the "work done by the parties thus far in the case can be carried over to the Northern District of California," should the Court determine that it would be appropriate to do so upon full briefing and consideration of the merits. Thus, even assuming that the Federal Circuit proceeds with the issuance of a mandate, after briefing and consideration of any further petitions available to MOSAID, remanding the case between Micron and MOSAID to the Northern District of California, there would be no material prejudice to Micron in complying with the upcoming case deadlines here. There would certainly be no prejudice for Powerchip who was not even a party to the California case. Accordingly, Defendants' Motions for Expedited Briefing should be denied as premature and unnecessary.

I. Defendants' Motion for Expedited Briefing and Consideration of Their Motions To Stay Is Part of a Continuing Scheme To Delay This Case and To Escape the Consequences of the Pending Motions Concerning Defendants' Violations of P.R. 3-4.

Following the Scheduling Conference in this case nearly a year ago, Micron and Powerchip filed motions to stay this case pending the decision of the Federal Circuit. (*See* Docket Nos. 92, 95.) Undeterred by the Court's denial of their first request for a stay, (Docket No. 98), Defendants renewed their attempts to delay the case with a motion to modify the docket control order. (*See* Docket No. 133.) Even after MOSAID accommodated Defendants' request

such that the motion to modify became moot, Defendants proceeded to unilaterally effectuate a further delay by refusing to produce documents required by P.R. 3-4. MOSAID was accordingly forced to file a motion to compel. (*See* Docket No. 160.)

Micron thereafter conceded to produce its P.R. 3-4 documents, only to renege on the agreement after the hearing on MOSAID's motion to compel, which necessitated the filing of MOSAID's motion for contempt. (*See* Docket No. 280.) As a result of its previous refusal to produce P.R. 3-4 documents and pursuant to the Court's Order granting MOSAID's motion to compel, (Docket No. 257), Powerchip is the subject of a motion for attorneys' fees and costs based on its failure to comply with P.R. 3-4. (*See* Docket No. 288.) MOSAID's motion for contempt against Micron and motion for fees and costs against Powerchip are both currently pending. Defendants' current motion to stay is the latest in their attempts to delay matters and bump the current October 2008 trial date.

When the opinion of the Federal Circuit issued four days ago concerning declaratory judgment jurisdiction over Micron's case filed in the Northern District of California involving a subset of the patents at issue in this case, Defendants seized on this event to file another motion to stay, together with a motion to dismiss and transfer.¹ (*See* Docket Nos. 300, 301, 302, 304.) To maximize the prejudice to MOSAID, Defendants also requested expedited briefing such that MOSAID's response would be due within 48 hours of their motion to stay, ignoring the fact that the mandate from the Federal Circuit has yet to issue and will not issue until after the time for filing a petition for rehearing has expired. *See* Fed. Cir. Rules 40, 41.

Granting Defendants' Motion for Expedited Briefing on the Motions To Stay would effectively reward Defendants for flouting case deadlines and discovery obligations, without the opportunity for full and complete briefing and due consideration of the status of the case before this Court compared with the earlier dismissed case filed by Micron in California and in the absence of a mandate from the Federal Circuit. MOSAID therefore urges the Court to reject

¹ Powerchip was never a party to the case filed by Micron in California, which is the subject of the Federal Circuit opinion.

Defendants' latest delay endeavors and deny their Motion for Expedited Briefing.

II. Defendants' Feigned Emergency Does Not Warrant Such Unduly Expedited Briefing or Any Stay of the Upcoming Case Deadlines.

Defendants' Motion To Expedite is built upon layer upon layer of unjustified presumptions. Defendants presume that MOSAID will either not petition for rehearing or that the Federal Circuit will reject MOSAID's petition, and that the Federal Circuit's opinion on February 28, 2008 is tantamount to the issuance of a mandate. MOSAID has until March 14, 2008 to exercise its right to file a petition for rehearing, at which point the Federal Circuit's mandate would be stayed pending the rehearing. *See* Fed. Cir. Rule 41(d) ("The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise."). Defendants further presume that the Northern District of California will not exercise its discretion to transfer the case back to the Eastern District of Texas, despite the extent of the progress of the case here and the investment of time and resources into this case by the Eastern District of Texas. Based on multiple erroneous presumptions, Defendants seek to impede even MOSAID's ability to respond by unnecessarily seeking expedited briefing.

Even if the Federal Circuit were to ultimately issue a mandate remanding the case between MOSAID and Micron back to the Northern District of California, the factors under 28 U.S.C. § 1404(a) may still weigh in favor of transferring the case back to the Eastern District of Texas, particularly in light of the additional patents at issue and the dispute between MOSAID and Powerchip pending here. *See Datamize, Inc. v. Fidelity Brokerage Servs., LLC*, 2004 U.S. Dist. LEXIS 29100, at *33 (Apr. 22, 2004) (Folsom, J.) (denying motion to stay and transfer under 28 U.S.C. § 1404(a)). The Federal Circuit's analysis of the Northern District of California's dismissal order was based upon the factual record *at the time of the ruling*: "While the well-known patent forum of the Eastern District of Texas has heard cases involving some of the same patents, the record does not show any ongoing litigation requiring consolidation." (Docket Nos. 300-4 at 13.) A great deal of work has taken place in this case since the California

case was dismissed in 2006. Claim construction discovery has closed, and MOSAID recently filed its opening claim construction brief pursuant to the Court's July 24, 2007 Docket Control Order, in preparation for the claim construction hearing scheduled to take place next month. (See Docket No. 285.) MOSAID is also awaiting resolution of its various motions addressing Defendants' misconduct and delay tactics, as well as Defendants' completion of their document production obligations under P.R. 3-4. It is hardly surprising that Defendants are desperate to obtain a stay and are seeking to hinder MOSAID's ability to fully respond to their stay request.

In the event the case is transferred, in whole or in part, to the Northern District of California, Defendants acknowledge that the progress of the case undertaken here will not be wasted "because the Northern District of California has essentially the same rules for patent cases as the Eastern District of Texas, [and] the work done by the parties thus far in the case can be carried over to the Northern District of California." (Docket No. 303 at 8.) "Thus, little-- if any-- of the Court's and the parties' resources will be wasted by transferring this action" (Docket No. 304 at 13.) Accordingly, Defendants' demand that MOSAID respond in only two days to several substantive motions that may potentially hinder the October 2008 trial date to deal with Defendants' infringement of MOSAID's patents since at least 2000, and the scheduled claim construction hearing date next month, as well as several pending motions concerning Defendants' discovery misconduct, is manifestly unreasonable. MOSAID deserves a full and fair opportunity to be heard on these matters before its patent rights are placed on hold indefinitely pending resolution of these issues.

III. Conclusion

In view of the foregoing, the existing case record, and the separate appellate procedure involving the previous dismissed California action encompassing a subset of the patents and parties at issue in this action, MOSAID respectfully requests that the Court deny Defendants' Motion for Expedited Briefing and Consideration of Their Motions To Stay as premature and inappropriate. In the alternative, MOSAID respectfully requests an opportunity for full and

adequate briefing and hearing on Defendants' various motions under the regular schedule provided by the Civil Local Rules, and such further relief as the Court deems just and proper.

Dated: March 4, 2008

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of **PLAINTIFF MOSAID TECHNOLOGIES INC.'S OPPOSITION TO DEFENDANTS' MOTION FOR EXPEDITED BRIEFING AND CONSIDERATION OF MOTIONS TO STAY** via the Court's CM/ECF system per Local Rule CV-5(a)(3) and via email and U.S. Mail on March 4, 2008 on counsel for Defendants as addressed below:

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