

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY



WILLIAM J. MARTINI
JUDGE

MARTIN LUTHER KING JR. FEDERAL BLDG. & U.S. COURTHOUSE
50 WALNUT STREET, P.O. BOX 419
NEWARK, NJ 07101-0419
(973) 645-6340

LETTER ORDER

November 16, 2004

VIA REGULAR MAIL

Liza M. Walsh
Connell Foley LLP
85 Livingston Avenue
Roseland, New Jersey 07068
(Attorney for MOSAID)

Thomas R. Curtin
Graham, Curtin & Sheridan
4 Headquarters Plaza
P.O. Box 1991
Morristown, New Jersey 07962
(Attorney for Infineon)

Donald A. Robinson
Robinson & Livelli
Two Penn Plaza East
Newark, New Jersey 07105
(Attorney for Samsung)

Re: MOSAID Technologies Inc. v. Samsung Electronics Co., Ltd., et al.,
Civil Action Nos. 01-4340 and 03-4698 (WJM)

Dear Counsel:

This matter comes before the Court on a letter from Infineon Technologies et al. ("Infineon") seeking a telephone conference to discuss supplemental expert reports belatedly filed by MOSAID Technologies Inc. ("MOSAID"). In response, MOSAID submitted a letter explaining why it served the expert reports beyond the time allowed and asking that the reports be permitted. Having reviewed the parties' positions, and after conducting a telephone conference concerning this matter, the Court rules as follows:

On September 28, 2004, this Court held a conference to provide the parties with ample notice of the scheduling deadlines it was going to impose leading up to a February 1, 2005 trial date in the *MOSAID v. Samsung Electronics Co. et al.* case. Given the number of significant pretrial events that needed to take place to make that trial date feasible, the Court proposed an accelerated pretrial schedule. Although Infineon's case is separate from the Samsung case and will not go to trial in this District, because both cases are consolidated for purposes of all pretrial proceedings, the Court made it clear at the conference that the proposed schedule applied to both cases.

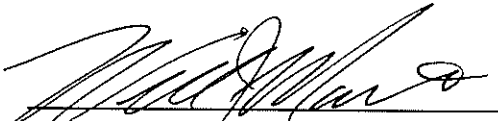
As part of that schedule, the Court proposed that there be two rounds of expert reports – affirmative and rebuttal reports, which were due by October 15, 2004 and October 29, 2004 respectively. The Court knew that the schedule was demanding, but stated that it expected the parties to adhere to the schedule because any deviation or postponement would put the trial date in jeopardy. No party objected to the schedule or to having only two rounds of expert reports. On October 1, 2004, the Court entered an order reflecting the proposed schedule.

Given that background, it is easy to understand why the Court must strike MOSAID's supplemental expert reports. MOSAID, as the owner of the patents in suit, bears the burden to prove infringement. Because only two rounds were allotted for expert reports, MOSAID knew that its experts' opinions regarding infringement would have to be submitted as part of its affirmative expert reports, which were due by October 15, 2004. And yet, MOSAID served supplemental expert reports almost one month after the deadline.

If this Court allowed MOSAID's supplemental reports, and precluded Infineon and Samsung from filing any of its own, Infineon and Samsung would be unfairly penalized and deprived of an opportunity to have their experts expand upon or otherwise refine their opinions simply because they obeyed this Court's order. On the other hand, if this Court allowed all parties to file supplemental reports, the Court's carefully crafted pretrial schedule, which allows for a February 1 trial date, would be placed in jeopardy because the supplemental reports would likely impact the parties' summary judgment motions. Since affirmative summary judgment motions have already been filed, and the parties are in the midst of preparing their opposition briefs, this Court refuses to alter the schedule to allow for the exchange of any supplemental reports.

In short, this Court is left with no alternative but to strike MOSAID's supplemental expert reports served on Infineon and Samsung on November 11, 2004.

SO ORDERED.


William J. Martini, U.S.D.J.

cc: The Hon. Ronald J. Hedges, U.S.M.J.