IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

INNOVATIVE FOUNDRY TECHNOLOGIES LLC, Plaintiff, v. SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION; SEMICONDUCTOR MANUFACTURING INTERNATIONAL (SHANGHAI) CORPORATION; SEMICONDUCTOR MANUFACTURING INTERNATIONAL (BEIJING) CORPORATION; SEMICONDUCTOR MANUFACTURING INTERNATIONAL (TIANJIN) CORPORATION; SEMICONDUCTOR MANUFACTURING INTERNATIONAL (BVI) CORPORATION; SEMICONDUCTOR MANUFACTURING NORTH CHINA (BEIJING) CORPORATION; SEMICONDUCTOR MANUFACTURING SOUTH CHINA CORPORATION; BROADCOM INCORPORATED; BROADCOM CORPORATION; CYPRESS SEMICONDUCTOR CORPORATION; and DISH NETWORK CORPORATION. Defendants.	C.A. No.: 6:19-cv-00719-ADA JURY TRIAL DEMANDED

JOINT MOTION FOR ENTRY OF SCHEDULING ORDER
AND DISCUSSION OF DISPUTED PROCEDURAL SCHEDULE DEADLINES

Pursuant to the Court's Order Governing Proceedings – Patent Case (ECF 44), Plaintiff Innovative Foundry Technologies LLC ("IFT") and Defendants Semiconductor Manufacturing International Corporation; Broadcom Incorporated and Broadcom Corporation (collectively,

"Broadcom"); Cypress Semiconductor Corporation ("Cypress"); and DISH Network Corporation ("DISH Network"); (collectively, "Defendants")[1] submit this Joint Motion for Entry of Scheduling Order, and also submit their respective discussions of disputed procedural schedule deadlines relating to the timeline for Defendants to file a motion for summary judgment on licensing defenses.

In particular, the agreed and remaining disputed dates are listed in the attached Exhibit A, with the disputed dates marked in **bold**. Apart from the dates marked in **bold**, the parties are in agreement as to the procedural schedule that should govern this matter.

The parties' respective positions on the disputed dates are as follows:

I. Procedural Deadlines Relating to Timeline for Defendants To File Motion for Summary Judgment on Licensing and Exhaustion Defenses

A. Plaintiff's Position

At the case management conference held on April 8, 2020 ("CMC"), Defendant DISH argued that, in a "recent DISH case" before the Court, the case was dismissed pursuant to a licensing issue, and "there's a similar license issue here and we don't think we should wait to address it[.]" *See* Dkt. No. 60, CMC Tr. at 19:3-10 (Apr. 8, 2020). Defendants have the discovery they need. Yet, now over a week after IFT has produced the "critical IFT license agreement" that DISH had been requesting prior to the CMC, along with all other relevant agreements in IFT's possession, custody, or control, Defendants now seek a months-long delay for their own motion for summary judgment brief on licensing (if any) to be filed, and that the briefing also be set contemporaneously with IFT's *Markman* briefing obligations in August. *See* Ex. A.

[1] Defendants Semiconductor Manufacturing International (Shanghai) Corporation; Semiconductor Manufacturing International (Beijing) Corporation; Semiconductor Manufacturing International (Tianjin) Corporation; Semiconductor Manufacturing International (BVI) Corporation; Semiconductor Manufacturing North China (Beijing) Corporation; and Semiconductor Manufacturing South China Corporation have not yet been served with the operative complaint.

It would not be reasonable to allow Defendants a period of four months after the CMC to review their own documents and prepare their own motion for summary judgment (if one is to be filed) in August, only to have IFT respond to such a motion within 14 days, on the same day as IFT's responsive claim construction brief, August 19, 2020. *See* Ex. A. Particularly where relevant documents already exist in Defendants' possession, custody, or control relating to licensing defenses asserted almost two months ago,[2] and where Defendants demand early discovery from Plaintiff IFT to produce documents in IFT's possession, custody, or control, it would not be reasonable for Defendants to withhold their own documents another two months, until July 3, 2020. *See* Ex. A. Further, it would not be reasonable to allow Defendants to produce only documents "supporting" such a motion, and withhold other documents "relevant to" the motion—such a procedure would be inconsistent with the Court's directives. *See* Dkt. No. 60, CMC Tr. at 19:3-10 (Apr. 8, 2020) ("If DISH intends to rely on any document of any kind in support of its motion for summary judgment, I would anticipate them producing it to the plaintiff well in advance of the filing of the motion…I do agree that anything that DISH intends to rely on affirmatively or defensively,…anything they intend to use with respect to the summary judgment or that – …they know should be relevant to the summary judgment that can assist the plaintiff in drafting their response." (emphasis added)).

Plaintiff IFT respectfully submits that (i) the "Deadline for Defendants to Produce Documents Relevant to MSJ re Licensing and Patent Exhaustion Issues" be set for June 1, 2020, (ii) Defendants' motion for summary judgment (if any) be filed by July 1, 2020, (iii) the opposition deadline for the motion (if any) be set for July 17, 2020, and (iv) the reply deadline (if needed) be set for July 29, 2020. *See* Ex. A (plaintiff's proposed dates). These dates would allow for

[2] Defendants Broadcom, Cypress, and DISH Network have each filed Answers to IFT's Complaint, asserting licensing defense as their Third Affirmative Defenses. *See, e.g.*, Dkt. Nos. 29, 30, 37 (filed Mar. 6, 2020).

Defendants' documents—"relevant to" and not just "supporting" Defendants' motion on licensing defenses—be produced one month prior to the filing of any such motion, in accordance with the Court's directives. *See* Dkt. No. 60, CMC Tr. at 19:3-10 (Apr. 8, 2020) ("If DISH intends to rely on any document of any kind in support of its motion for summary judgment, I would anticipate them producing it to the plaintiff well in advance of the filing of the motion…at least a month."). These dates would also allow for the entire briefing on Defendants' motion for summary judgment (if any) to be completed prior to all parties' *Markman* briefing in August.

Finally, while the Defendants seek to impose an additional deadline in the schedule "for Plaintiff to produce unredacted copies of all agreements providing any interests or rights to any of the patents in suit" on May 20, 2020 (*see* Ex. A), IFT submits that this deadline is not necessary or appropriate. *See* Dkt. No. 60, CMC Tr. at 20:8 - 21:18 (Apr. 8, 2020) ("I will if I need to, but I'm not going to put a time limit on the plaintiff now to provide whatever licenses are relevant to this issue to DISH and the other parties under -- if a protective order's needed, I don't know… again, no hard deadline right now"). Just eight days after the CMC, IFT obtained necessary third-party consent to produce the "critical IFT license agreement" DISH had been seeking, and IFT has also produced all other relevant agreements DISH and the other Defendants have requested in IFT's possession, custody, or control. Defendants have provided no basis for production of any additional document or removal of any remaining redactions of financial information—nor could they. To the extent they provide such a basis (including pursuant to any relevant protective order yet to be entered), IFT will consider those requests in light of the Court's guidance as provided on the CMC, while also reserving its rights to seek the assistance of the Court. *See* Dkt. No. 60, CMC Tr. at 21:13-18 (Apr. 8, 2020) ("I think you all will be able to work this out with that level of guidance, but if…for the plaintiff's sake if you feel like DISH or others are asking you for licenses

or other materials that are inappropriate for them to have for some reason, let Josh Yi know and I'll take it up within a day by phone."). Thus, IFT respectfully submits that such a deadline in the schedule is not necessary.

B. Defendants' Position

After hearing from DISH at the Scheduling Conference that IFT's patents are widely licensed, and that many (if not all) of the chips in DISH's products are licensed and/or subject to patent exhaustion, the Court agreed to hear an early summary judgment motion on these issues on the same day as the claim construction hearing. 4-8-20 Sched. Conf. Tr. at 20:13-15. The Court also ordered IFT to produce its license agreements, without redactions, after entry of a protective order. *Id*. at 23:13, 23–25 ("I would not allow them to be redacted"). The Court further indicated that "once they [DISH] see the licenses," then at least one month in advance of the summary judgment brief being filed, DISH should produce "anything that Dish intends to rely on affirmatively or defensively" for that briefing. *Id*. at 26:21–27:1. DISH is proposing production deadlines and a briefing schedule consistent with the Court's direction, while IFT is attempting to flip discovery obligations and unreasonably accelerate briefing deadlines. The following deadlines are at issue:

- **IFT to produce unredacted copies of license agreements**. Consistent with this Court's directive that IFT produce unredacted copies of licenses, DISH proposes a deadline to do so 14 days after the agreed deadline for the parties to submit a protective order to the Court.
- **Deadline for DISH to produce materials related to the license and exhaustion MSJ**. Consistent with this Court's directive, DISH proposes a deadline one month in advance of the deadline for an early MSJ on license and exhaustion issues. Also, as this Court made clear, this deadline comes "once they [DISH] see the licenses," and not before that, as IFT suggests. *Id*. Moreover, DISH's proposed requirements for this production deadline are consistent with the Court's directives during the scheduling conference.
- **Briefing Deadlines**. Given that the MSJ will be heard on the same day as the *Markman* hearing, DISH proposes briefing deadlines for the MSJ that are aligned with the briefing deadlines for claim construction issues. In contrast, IFT proposes briefing deadlines to

begin two months earlier (in June) and to be completed by early July. Defendants submit that the accelerated briefing schedule proposed by IFT is unnecessary in view of the September 18 hearing date, and Defendants are unaware of any reason why the briefing deadlines for the two issues to be heard on that day should not be aligned.

For all these reasons, Defendants respectfully request the Court enter Defendants' proposed deadlines regarding the production dates and briefing schedule related to the patent licensing and exhaustion issues.

II. Conclusion

Through this joint submission, the parties respectfully request that the Court enter a scheduling order with procedural deadlines governing this matter.

Dated: April 24, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 24, 2020, a copy of the foregoing was filed electronically and that it is available for viewing and downloading on the Court's CM/ECF system by the parties.

/s/ Matthew A. Karambelas
Counsel for Plaintiff
Innovative Foundry Technologies LLC

EXHIBIT A

PROPOSED SCHEDULING ORDER

DEADLINE	PLAINTIFFS' AND DEFENDANTS' AGREED DATES (unless otherwise noted in bold)	
Deadline for Motions to Transfer	Wednesday, April 22, 2020 (2 weeks after CMC)	
Deadline to file Agreed Scheduling Order/ Deadline to file Agreed Scheduling Order & Joint Motion Submitting Party Positions re Disputed Deadlines	Friday, April 24, 2020	
Deadline for Semiconductor Manufacturing International Corp., Broadcom Inc., Broadcom Corp., Cypress Semiconductor Corp., and DISH Network Corp. to respond to Amended Complaint	Wednesday, April 29, 2020	
Deadline to file Joint Motion for Entry of a Confidentiality and Protective Order	Wednesday, May 6, 2020	
Deadline for Plaintiff to produce unredacted copies of all agreements providing any interests or rights to any of the patents in suit	**[Plaintiffs' schedule omits this deadline]**	**[Defendants' proposal: Wednesday, May 20, 2020]**
Defendants serve preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce all prior art referenced in the invalidity contentions	Wednesday, May 27, 2020 (7 weeks after CMC)	

Deadline for Defendants to Produce Documents Relevant to MSJ re Licensing and Patent Exhaustion Issues	**[Plaintiff's proposal: Monday, June 1, 2020]**	**[Defendants' schedule lists Friday, July 3, 2020 for supporting documents, *see infra*]**
Deadline for Defendants to produce (1) technical documents, including software where applicable, sufficient to show the operation of the accused product(s), and (2) summary, annual sales information for the accused product(s) for the prior two years, unless the parties agree to some other timeframe.	Wednesday, July 8, 2020	
Parties exchange claim terms for construction.	Wednesday, July 1, 2020 (12 weeks after CMC)	
Deadline for Defendants to Produce Documents Supporting MSJ re Licensing and Patent Exhaustion Issues	**[Plaintiff's schedule lists date for relevant documents on Monday, June 1, 2020, *see supra*]**	**[Defendants' proposal: Friday, July 3, 2020]**
Deadline for early MSJ re Licensing and Patent Exhaustion Issues	**[Plaintiff's proposal: Wednesday July 1, 2020]**	**[Defendants' proposal: Wednesday, August 5, 2020]**
Parties exchange proposed claim constructions.	Wednesday, July 15, 2020 (14 weeks after CMC)	
Deadline for Response to MSJ re Licensing and Patent Exhaustion Issues	**[Plaintiff's proposal: Friday July 17, 2020]**	**[Defendants' proposal: Wednesday, August 19 2020]**
Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall also provide a summary of the witness's expected testimony including the opinions to be expressed and a general description of the basis and reasons therefore. A failure to summarize the potential expert testimony in a good faith, informative fashion may result in the exclusion of the	Wednesday, July 22, 2020 (15 weeks after CMC)	

proffered testimony. With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.		
Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.	Wednesday, July 29, 2020 (16 weeks after CMC)	
Deadline for Reply in Support of MSJ re Licensing and Patent Exhaustion Issues	**[Plaintiff's proposal: Wednesday July 29, 2020]**	**[Defendants' proposal: Wednesday, August 26, 2020]**
Parties file Opening claim construction briefs, including any arguments that any claim terms are indefinite. To the extent any party is relying upon an expert declaration in support of claim construction, that party must produce the expert declaration at this time and provide proposed deposition dates for the expert.	Wednesday, August 5, 2020 (17 weeks after CMC)	
Parties file Responsive claim construction briefs.	Wednesday, August 19, 2020 (19 weeks after CMC)	
Parties file Reply claim construction briefs. Parties shall also submit Joint Claim Construction Statement. In addition to filing, the parties shall jointly submit, via USB drive, cloud-storage, or email to the law clerk pdf versions of all as-filed briefing and exhibits. Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other Joint filings.	Wednesday, August 26, 2020 (20 weeks after CMC)	

Markman Hearing & MSJ Hearing on Licensing and Patent Exhaustion Issues	Friday, September 18, 2020[3]
Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).	Friday, September 25, 2020 (1 week after *Markman*)
Deadline to add parties.	Friday, October 30, 2020 (6 weeks after *Markman*)
Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to Infringement or Invalidity contentions. This deadline does not relieve the Parties of their obligation to seasonably amend if new information is identified after initial contentions.	Friday, November 13, 2020 (8 weeks after *Markman*)
Deadline to amend pleadings. A motion is not required unless the amendment adds patents or claims.	Friday, December 11, 2020 (12 weeks after *Markman*)
Close of Fact Discovery.	Friday, April 16, 2021 (30 weeks after *Markman*)
Opening Expert Reports.	Friday, April 23, 2021 (31 weeks after *Markman*)
Rebuttal Expert Reports.	Friday, May 21, 2021 (35 weeks after *Markman*)
Close of Expert Discovery.	Friday, June 11, 2021 (38 weeks after *Markman*)
Deadline to meet and confer to discuss narrowing the number of claims asserted and prior art references at issue. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.	Friday, June 18, 2021 (39 weeks after *Markman*)

[3] To the extent the *Markman* hearing moves for any reason, the deadlines following the *Markman* hearing will be moved correspondingly based on the change in the *Markman* hearing.

Deadline to file Joint Report of Meet & Confer re: Narrowing number of claims asserted and Prior Art References at issue	Friday, June 25, 2021 (5 business days after Meet & Confer)
Dispositive motion deadline and *Daubert* motion deadline.	Friday, June 25, 2021 (40 weeks after *Markman*)
Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).	Friday, July 9, 2021 (42 weeks after *Markman*)
Serve objections to pretrial disclosures/rebuttal disclosures.	Friday, July 23, 2021 (44 weeks after *Markman*)
Serve objections to rebuttal disclosures and File Motions *in limine*.	Friday, July 30, 2021 (45 weeks after *Markman*)
File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions *in limine*	Friday, August 6, 2021 (46 weeks after *Markman*)
Deadline to meet and confer regarding remaining objections and disputes on motions *in limine*.	Friday, August 13, 2021 (47 weeks after *Markman*)
File joint notice identifying remaining objections to pretrial disclosures and disputes on motions *in limine*.	Tuesday, August 24, 2021 (3 business days before Final Pre-Trial Conference)
Final Pretrial Conference. The Court expects to set this date at the conclusion of the *Markman* Hearing.	Friday, August 27, 2021 (49 weeks after *Markman*)
Jury Selection/Trial. The Court expects to set this date at the conclusion of the *Markman* Hearing.	Friday, September 17, 2021 (52 weeks after *Markman*)