

1 UNITED STATES DISTRICT COURT
 2 WESTERN DISTRICT OF TEXAS
 3 AUSTIN DIVISION

3 BELL SEMICONDUCTOR, LLC) Docket No. A 20-CA-611 ADA
 4)
 4 vs.) Austin, Texas
 5)
 5 NXP SEMICONDUCTORS, N.V.,)
 6 NXP, B.V., NXP USA, INC.,) April 1, 2021

7 UNITED STATES DISTRICT COURT
 8 WESTERN DISTRICT OF TEXAS
 9 WACO DIVISION

9 BELL SEMICONDUCTOR, LLC) Docket No. WA 20-CA-296 ADA
 10)
 10 vs.) Waco, Texas
 11)
 11 MICROCHIP TECHNOLOGY,)
 12 INC., MICROSEMI)
 12 CORPORATION) April 1, 2021

13 TRANSCRIPT OF VIDEOCONFERENCE MARKMAN HEARING
 14 BEFORE THE HONORABLE ALAN D. ALBRIGHT

15 APPEARANCES:

16 For the Plaintiff: Mr. Charles C. Koole
 17 Skiermont Derby, LLP
 18 800 Wilshire Boulevard,
 Suite 1450
 Los Angeles, California 90017

19 Mr. Alexander E. Gasser
 20 Mr. Joseph M. Ramirez
 Skiermont Derby, LLP
 21 1601 Elm Street, Suite 4400
 Dallas, Texas 75201

22 For NXP Semiconductors: Mr. Bradley D. Coburn
 23 Mr. Barry K. Shelton
 Shelton Coburn, LLP
 24 311 RR 620 South, Suite 205
 Austin, Texas 78734

1 **(Appearances Continued:)**

2 For Microchip Mr. Darryl Adams
3 Technology and Mr. Brian C. Banner
4 Microsemi Corporation: Mr. Tecuan Flores
 Slayden, Grubert, Beard, PLLC
 401 Congress Avenue, Suite 1650
 Austin, Texas 78701

5
6 Court Reporter: Ms. Lily Iva Reznik, CRR, RMR
7 501 West 5th Street, Suite 4153
8 Austin, Texas 78701
9 (512) 391-8792

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10:32:12 1 THE COURT: Good morning, everyone.

10:32:15 2 MR. ADAMS: Morning, your Honor.

10:32:16 3 THE COURT: Katherine, if you'd be so kind as to
10:32:18 4 call the case, please.

10:32:19 5 THE CLERK: Certainly.

10:32:20 6 Court calls Waco case 6:20-CV-296, Bell
10:32:26 7 Semiconductor vs. Microchip Technology, Inc., Et Al, and
10:32:29 8 Austin case 1:20-CV-611, Bell Semiconductor vs. NXP
10:32:36 9 Semiconductors, Et Al, for Markman hearing.

10:32:39 10 THE COURT: If I could have announcements from
10:32:40 11 counsel, please.

10:32:47 12 MR. ADAMS: Plaintiff -- well, your Honor, I'll
10:32:49 13 go first then. Your Honor, this is Darryl Adams
10:32:52 14 representing Defendants Microchip, Incorporated and
10:32:57 15 Microsemi Corporation. I'm joined today by my colleagues,
10:33:00 16 Brian Banner and Tecuan Flores. And also on the line is
10:33:03 17 our corporate representative, Chris Mierzejewski, who,
10:33:08 18 thanks to Zoom, is able to call in from the convenience of
10:33:11 19 his office.

10:33:12 20 THE COURT: And where is his office at?

10:33:14 21 MR. ADAMS: Chandler, Arizona, sir.

10:33:18 22 THE COURT: Lucky man.

10:33:20 23 And for the plaintiffs -- and I appreciate him
10:33:22 24 being here. For the plaintiffs?

10:33:28 25 MR. KOOLE: This is Charles Koole on behalf of

10:33:31 1 Bell Semiconductor. I'm joined with my colleagues, Joe
10:33:37 2 Ramirez and Alex Gasser, as well as corporate
10:33:40 3 representatives, Dave Sasso, John Veschi, Chad Hilyard and
10:33:46 4 Scott Widdowson.

10:33:48 5 THE COURT: Good morning all. We have a couple
10:33:52 6 -- whoops, give me one second. I have last hearing's
10:33:56 7 Markman's up. Give me one second to get to these.

10:34:01 8 MR. ADAMS: Your Honor, while we're doing that,
10:34:03 9 this is a joint hearing with NXP. So NXP's counsel should
10:34:08 10 probably identify themselves, as well.

10:34:10 11 THE COURT: Okay. Very good.

10:34:13 12 MR. SHELTON: Thanks, Darryl. Your Honor, good
10:34:14 13 morning.

10:34:14 14 THE COURT: I thought Mr. Shelton was just here
10:34:17 15 because he'd heard what a great job I do handling
10:34:20 16 Markmans, and he wanted to see it for himself.

10:34:22 17 MR. SHELTON: I try to witness as many as I can,
10:34:24 18 your Honor.

10:34:25 19 This morning, I'm here with Bradley Coburn, my
10:34:29 20 colleague. And we have three client representatives from
10:34:33 21 the NXP Defendants. We have Mikhail Lotvin, Tab Stephens
10:34:38 22 and Kevin Hess.

10:34:39 23 Good morning, your Honor.

10:34:40 24 THE COURT: Welcome all. Is that everyone? I
10:34:46 25 think so.

10:34:47 1 Okay. Let's turn to my understanding, there are
10:34:51 2 two claim terms to take up this morning. The first is "a
10:34:55 3 method, comprising steps of forming a first layer
10:34:59 4 including a plurality of rows of electrical contacts."
10:35:05 5 The Court has determined that the method may be performed
10:35:08 6 in any order, which is contrary to what the defendants
10:35:11 7 have proposed. And so, I'm assuming the plaintiff is okay
10:35:16 8 with our construction. If not, they can let me know after
10:35:19 9 I hear from the defendants.

10:35:20 10 Mr. Shelton, you're on my screen, I'm going to
10:35:23 11 ask, who is arguing this claim term?

10:35:27 12 MR. SHELTON: Your Honor, counsel for Microchip
10:35:30 13 will be arguing both terms.

10:35:35 14 MR. ADAMS: So, your Honor, that means it's me.

10:35:37 15 THE COURT: Okay.

10:35:38 16 MR. ADAMS: So I'll be arguing this term. NXP
10:35:40 17 has made the dubious decision to put it in my hands, so
10:35:44 18 we'll see how I do.

10:35:45 19 THE COURT: They couldn't do any better. Roku
10:35:49 20 made a wise decision in that regard, so I'm sure that your
10:35:54 21 client will be pleased.

10:35:56 22 MR. ADAMS: Thank you, your Honor.

10:35:56 23 So I'm going to share my screen now, your Honor.
10:36:00 24 Are you able to see the slides?

10:36:02 25 THE COURT: Yes, sir.

10:36:04 1 MR. ADAMS: Okay. So try and get my clicker to
10:36:09 2 work here. So this is from the Hall patent. We won't
10:36:15 3 belabor this. As the Court's aware, this is a method
10:36:19 4 claim, and the issue revolves around whether there's an
10:36:21 5 order of steps. And to be clear, we're not arguing all
10:36:24 6 steps necessarily have to be in order, but we're
10:36:28 7 specifically focused on the first step by the logic and
10:36:31 8 grammar of the claim language must be performed first.

10:36:34 9 And so, let's look at the claim. There's a few
10:36:38 10 important things in this claim, your Honor. The first is,
10:36:41 11 it's a method -- not just any method but a method of
10:36:44 12 forming something. So the active verbs here are forming.
10:36:49 13 So in each step, it requires the formation, the creation
10:36:54 14 of something specifically.

10:36:56 15 The second important thing here, your Honor, is
10:37:01 16 in the second step here is the word "on." So the second
10:37:08 17 step requires not just forming a layer, but it requires
10:37:11 18 forming the layer on something. So taking a step back,
10:37:15 19 the first step is forming a first electrically conductive
10:37:22 20 layer, which is a mouthful, and I'll probably refer to
10:37:24 21 that as the yellow layer. So the first step is forming a
10:37:27 22 yellow layer.

10:37:29 23 The second step is forming electrical insulating
10:37:34 24 layer on the first layer. Okay. So the blue layer is not
10:37:37 25 just formed, it's formed on something, and what it's

10:37:42 1 formed on is the yellow layer. You can't form a blue
10:37:46 2 layer on a yellow layer without there being a yellow
10:37:50 3 layer. So let's look in the order in which it's claimed,
10:37:55 4 you first form a first electrically conductive layer, the
10:38:01 5 yellow layer. In the second step, you're forming the blue
10:38:05 6 layer on the yellow layer.

10:38:08 7 So the claim requires forming it on. Not that it
10:38:12 8 exists on, not that at the end of the process, it's
10:38:16 9 located on, but the step of forming it is forming it on.
10:38:20 10 Now, if we took away the order of steps, we said it
10:38:25 11 doesn't matter what you would do -- which order, it would
10:38:28 12 permit forming the blue layer, forming the electrically
10:38:34 13 insulating layer and then, forming the yellow layer.

10:38:39 14 What's wrong with that? Well, what's wrong with
10:38:41 15 that is when you form the blue layer, you haven't formed
10:38:45 16 it on -- you haven't formed it on anything. You
10:38:48 17 specifically haven't formed it on the first electrically
10:38:53 18 conductive yellow layer. Why? Because it doesn't exist.
10:38:57 19 You have to form the first layer in order to form the
10:39:02 20 second layer, the blue layer on it. Now, at the end, we
10:39:07 21 don't dispute that the blue layer is now on the yellow
10:39:12 22 layer. That's without a doubt. But that's not what the
10:39:15 23 claim says. It doesn't say at the end, one of the -- if
10:39:19 24 the blue layer's on. It's the process of forming. This
10:39:23 25 is not an apparatus claim, and it's not just any method

10:39:28 1 claim. It's a method of forming.

10:39:29 2 Now, let's turn to the other claim, same
10:39:34 3 principle, slightly different wording. In this claim, we
10:39:38 4 have three steps that are relevant to look at. Again, we
10:39:43 5 have forming the yellow layer. We have forming the blue
10:39:47 6 layer. Instead of on, the term it uses is immediately
10:39:51 7 proximate to. Okay. We also have a third step, which is
10:39:56 8 forming layers separating the two. So under the scope of
10:40:04 9 this claim, in the order provided by the claim, you would
10:40:09 10 form the first layer, the yellow layer, you then form a
10:40:15 11 dielectric layer, a green layer between. And now, you're
10:40:18 12 going to form the blue layer and you're forming it
10:40:21 13 proximate, close to the first layer, the yellow layer.

10:40:25 14 Again, if we took away the order of steps, it
10:40:30 15 would allow for forming a blue layer. Well, now you've
10:40:33 16 formed a blue layer, but you haven't formed it immediately
10:40:37 17 proximate to anything. And you certainly haven't formed
10:40:40 18 it immediately proximate to the yellow layer because it
10:40:44 19 does not exist. So to carry this out, you would have the
10:40:49 20 blue layer -- if order didn't matter, you could put a blue
10:40:52 21 layer, a green layer, dielectric layer and yellow layer.

10:40:55 22 Well, now, the blue layer is proximate -- we
10:40:58 23 don't dispute that -- but it's not formed proximate. And,
10:41:03 24 your Honor, we don't have to cut new ground on how to
10:41:08 25 interpret claims like this because the Federal Circuit's

1 already told us how to interpret claims like this. This
2 is the Loral Fairchild case, Federal Circuit 1999. This
3 claim is factually indistinguishable from the claim the
4 Court is now construing. They're both processes for
5 making integrated circuits. They both use the term
6 "forming," and the second step is formed relative to the
7 first.

8 So in Loral -- in the claim at issue in Loral,
9 you had forming a first insulation layer and then, forming
10 -- it's not a layer, but it's a region, synonymous, and
11 that it tells us how the relationship is. The blue region
12 layer is aligned with the yellow layer, okay? Our
13 language is slightly different. We say it's on the yellow
14 layer. We say it's proximate to the yellow layer, but
15 that is indistinguishable. It says form a first layer and
16 then, form a blue layer aligned with it.

17 Federal Circuit addressed the very arguments the
18 Court is addressing today, and this is what they said. By
19 the literal language of the claim, the edges of the
20 implantation barrier, the blue, are aligned with the edges
21 of the yellow. Hence, the yellow layer must already be in
22 place. So you have to form the yellow before you form the
23 blue or you can't form something aligned to it. The same
24 way you can't form something on it and the same way you
25 can't form something proximate to it.

10:42:51 1 So, your Honor, I'm going to -- now, just
10:42:58 2 reminder -- I know the Court knows the law -- the focus of
10:43:00 3 this analysis is on the logic and the grammar of the
10:43:05 4 asserted claims, okay? And the logic and the grammar of
10:43:11 5 this claim requires forming the second layer on the first.

10:43:17 6 Now, your Honor, before I turn it over, Bell is
10:43:22 7 going to tell the Court there's boilerplate language in
10:43:26 8 the specification that says method claims can be done in
10:43:28 9 any order. The law doesn't say to look for boilerplate or
10:43:32 10 other language in the specification. It says look at the
10:43:35 11 logic and the grammar of the claims.

10:43:39 12 Bell's going to tell you industry standard says
10:43:42 13 the blue layer will be done before the yellow layer. The
10:43:45 14 law doesn't say look at industry standard on how things
10:43:50 15 are done. The law says to look at the logic and the
10:43:55 16 grammar of the claim. And the logic and grammar of this
10:43:59 17 claim requires the first step be done before the second
10:44:03 18 step. The Federal Circuit has looked at this at a
10:44:07 19 factually indistinguishable claim and decided the same
10:44:11 20 thing.

10:44:12 21 With that, your Honor, I will pass.

10:44:18 22 THE COURT: Okay. If you'll give me just one
10:44:20 23 second.

10:45:43 24 Okay. Response from the plaintiff.

10:45:46 25 MR. KOOLE: Thank you, your Honor. Let me share

10:45:53 1 the slides.

10:45:55 2 Your Honor, as we heard from defendants, the
10:46:07 3 defendants are looking at the -- at claims 1 and 10 of the
10:46:12 4 Hall 269 in a vacuum. Bell Semic believes that that is
10:46:17 5 contrary to how claim construction works. It's contrary
10:46:19 6 to claim construction standards to just ignore the
10:46:22 7 specifications, ignore what a person of ordinary skill in
10:46:25 8 the art would understand, would understand to be how these
10:46:34 9 packages are formed. The invention of the Hall 269 and
10:46:38 10 the Hall 340 patents isn't the order of the layer of --
10:46:42 11 which the layers of a package are formed. That is -- that
10:46:47 12 was standard.

10:46:48 13 If you look at the Hall 269 patent, figures 1, 2,
10:46:52 14 3 and 4 all show the structure of a prior art BGA package.
10:47:01 15 The invention of the Hall patent isn't a BGA package or
10:47:04 16 the order of the steps in which these are formed.

10:47:10 17 As counsel had alluded to, what they claim is
10:47:16 18 boilerplate language in the specification, I've included
10:47:18 19 in the slide on slide 4, which is shown here where in the
10:47:24 20 specification, which this is this -- this quote relates to
10:47:30 21 figure 9 of the Hall 269 patent, which is the only
10:47:35 22 description of the actual steps of forming a package. And
10:47:41 23 there's a line that says, unless specifically indicated,
10:47:44 24 the order and grouping of steps is not a limitation of
10:47:49 25 other embodiments that may lie within the scope of the

10:47:52 1 claims.

10:47:54 2 There is no special indication or specific
10:48:00 3 indication anywhere in the prosecution history or the
10:48:03 4 claims that these method steps must be performed in a
10:48:08 5 certain order. So as I mentioned, defendants are looking
10:48:14 6 in this instance at the claims in a vacuum, which we think
10:48:17 7 is improper.

10:48:21 8 As counsel also alluded to, restricting the order
10:48:30 9 of these method claims also contradicts the way that these
10:48:34 10 multi-layered BGA packages are formed. As shown on the
10:48:39 11 screen, I've included figure 5, and I've highlighted what
10:48:44 12 is known as the package substrate core. The way these
10:48:50 13 multi-layer BGA packages are formed, they are formed based
10:48:54 14 on top of -- of applying layers on top of that package
10:48:58 15 substrate core.

10:49:00 16 So defendants' proposed construction of having
10:49:03 17 the first layer be formed first or requiring that is
10:49:10 18 contrary to how these layers are commonly built up in the
10:49:14 19 industry. And as I mentioned, the Hall patents aren't --
10:49:19 20 didn't invent a new method of manufacturing BGA package.

10:49:26 21 And lastly, I wanted to point out that the
10:49:32 22 Defendant Microchip has filed an IPR on the Hall 269
10:49:37 23 patent. In that IPR, they did not propose any
10:49:42 24 constructions; and instead, they relied on the structure
10:49:47 25 of the prior art just as -- which Bell Semic believes is

10:49:55 1 proper. But in their arguments, Microchip believes that
10:50:00 2 or argues that the patent was invalid, regardless of the
10:50:03 3 order in which the layers were formed as long as the
10:50:07 4 overall structure was there.

10:50:09 5 Microchip in its sur-reply had indicated that
10:50:14 6 Bell Semic had adopted Microchip's proposed construction
10:50:18 7 in the POPR. But if you actually look at the POPR, what
10:50:27 8 Bell Semiconductor did was argue that under Microchip's
10:50:30 9 proposed construction in the district court, the IPR
10:50:33 10 should not be instituted because the prior art does not
10:50:37 11 meet the limitations of the method claims if you were to
10:50:42 12 adopt a specific order of these method claims.

10:50:53 13 So unless your Honor has any questions.

10:50:57 14 THE COURT: I do not.

10:50:58 15 A response, Mr. Adams?

10:51:01 16 MR. ADAMS: Yes, your Honor. And I'll address
10:51:02 17 the points in reverse order. First, with respect to if we
10:51:12 18 could get -- there. Thank you very much. In reverse
10:51:16 19 order.

10:51:17 20 First, with respect to the IPR, it's complete red
10:51:20 21 herring here, your Honor. In the IPR, Microchip argued
10:51:24 22 that the claims were obvious based on a structure. We
10:51:28 23 didn't say that it didn't require a structure. We said
10:51:32 24 that they're obvious in light of the structure, not that
10:51:35 25 they're literally within the prior art, but it's obvious.

10:51:39 1 Regardless of the order, whether there was order required
10:51:41 2 or not, it's obvious based on a structure. So that's
10:51:45 3 completely -- that's a complete red herring. We haven't
10:51:48 4 argued anything contrary there to what we're arguing here.

10:51:52 5 Second of all, your Honor, as I anticipated,
10:51:55 6 counsel's response is the specification says order doesn't
10:51:59 7 matter unless it's expressly there. And then, counsel
10:52:03 8 argued it's not expressly there. Well, it is expressly
10:52:06 9 there. In the most important place, it's expressly there,
10:52:10 10 which is not claim language. The claim language, which is
10:52:12 11 what the law tells us to focus on, says order matters. It
10:52:16 12 says you have to form something on something else, and
10:52:20 13 that requires the first thing to exist just as the Federal
10:52:24 14 Circuit found in Loral.

10:52:26 15 Second, your Honor, I used the term "industry
10:52:28 16 standard." Counsel changes, says the common way these
10:52:32 17 things are done is in the other order. Well, we're not
10:52:37 18 here to figure out the common way things to be done. By
10:52:39 19 the way, I don't know where the evidence is about common
10:52:43 20 way to do these things. There's nothing in the record to
10:52:46 21 establish the common way to do these things.

10:52:48 22 But regardless, I'll accept it's the common way.
10:52:51 23 It doesn't matter. We're here to interpret a claim that
10:52:56 24 has very specific claim language. You can't override the
10:52:58 25 claim language based on the common way things are done.

10:53:02 1 With that, your Honor, I'll be quiet.

10:53:08 2 THE COURT: It's always good to see such passion
10:53:10 3 so early in the morning over claim term that says a
10:53:15 4 method, comprising steps of forming a first layer. It's a
10:53:20 5 good day for me in that regard. I think Lily is enjoying
10:53:24 6 it, too. She's been smiling through the entire hearing.

10:53:38 7 Yes, sir. Anything you'd like to add?

10:53:46 8 MR. KOOLE: Nothing from me, your Honor.

10:53:47 9 THE COURT: I'll be back in a few seconds.

10:56:16 10 Lily, if we could go back on the record, the
10:56:19 11 Court is going to maintain its preliminary construction
10:56:21 12 that the method -- these methods may be -- steps may be
10:56:24 13 performed in any order. And I am -- to make it clear, I
10:56:27 14 am rejecting the argument that Mr. Adams made with what
10:56:30 15 has to be done first.

10:56:31 16 The second claim term is "making a partial cut in
10:56:35 17 the leadframe." Given that we did it sort of -- I think
10:56:41 18 we modified, to some extent, what the defendants sought,
10:56:47 19 let me just start by asking the defendant if you're
10:56:49 20 satisfied with the claim construction that we've
10:56:54 21 proffered, if not, what you'd like me to do with it. And
10:56:57 22 after I hear from you, I'll hear from the plaintiff.

10:57:00 23 MR. FLORES: Good morning, your Honor. This is
10:57:01 24 Tecuan Flores on behalf of the defendants.

10:57:04 25 To answer your question, as you alluded to, the

10:57:07 1 Court adopted part of defendants' proposed construction
10:57:10 2 but not all of it. And so, our position is that all of
10:57:15 3 the construction should be adopted because it is the
10:57:20 4 lexicography for the disputed term from the specification.
10:57:23 5 I can share my screen. Can you see the slides okay?

10:57:35 6 THE COURT: (Indicating affirmatively).

10:57:39 7 MR. FLORES: Okay. So the claim term at issue is
10:57:42 8 making a partial cut in the leadframe. Claim 1 here as
10:57:46 9 shown on the screen, I've highlighted the language "making
10:57:49 10 a partial cut in the leadframe" for reference. This term
10:57:55 11 "partial cut" was defined in the specification. As I've
10:57:59 12 shown here on the slide, it says in the specification, the
10:58:02 13 partial cut is -- the leadframe is not cut through in the
10:58:06 14 thickness direction nor in any other directions. And the
10:58:10 15 depth of the cut is smaller than the thickness of the
10:58:14 16 leadframe.

10:58:15 17 So what I'm showing on this table is the
10:58:17 18 specification's definition and the Court's preliminary
10:58:21 19 construction. And as you can see, the Court adopted part
10:58:26 20 of the definition for partial cut specification. But
10:58:31 21 defendants' construction is the full definition that the
10:58:35 22 applicants gave to the term "partial cut" in the
10:58:38 23 specification.

10:58:39 24 So defendants' position is that the full
10:58:41 25 definition that the applicants gave for partial cut should

10:58:44 1 be adopted, instead of a partial -- a portion of that
10:58:48 2 definition that's from the specification.

10:58:51 3 THE COURT: Let me break this into two questions
10:58:55 4 for you. The first is, what does the parenthetical "nor
10:59:00 5 in any other directions" add that you think is necessary
10:59:03 6 for a claim construction? And then, second, what do you
10:59:08 7 think "and the depth of the cut is smaller than the
10:59:11 8 thickness of the leadframe" adds to what I already have in
10:59:16 9 there, which is the leadframe is not cut through in its
10:59:20 10 thickness direction?

10:59:23 11 MR. FLORES: Well, I think the important part is
10:59:25 12 that the applicants gave a very specific definition to
10:59:28 13 what this term should mean. And we're okay if the
10:59:32 14 parenthetical, the "nor in any other directions" is
10:59:37 15 removed from that definition but there's -- it's clear
10:59:40 16 from the definition that there's an "and" there and that
10:59:43 17 the depth of the cut is smaller than the thickness of the
10:59:46 18 leadframe and that that is part of the definition that the
10:59:50 19 applicants gave; and so, it should be included in the
10:59:52 20 Court's construction under the applicant's own
10:59:55 21 lexicography.

10:59:57 22 THE COURT: Okay. Anything else you'd like to
10:59:59 23 add?

11:00:01 24 MR. FLORES: Nothing further, your Honor.

11:00:02 25 THE COURT: You're very welcome. I don't think

11:00:04 1 I've had you in my court before. Welcome. It's a
11:00:06 2 pleasure seeing you.

11:00:08 3 MR. FLORES: Thank you, your Honor.

11:00:09 4 THE COURT: Counsel for plaintiff.

11:00:12 5 MR. KOOLE: Thank you, your Honor.

11:00:22 6 I think your Honor touched on why Bell
11:00:30 7 Semiconductor rejected defendants' construction. The
11:00:34 8 Court's construction -- preliminary construction is
11:00:36 9 acceptable to Bell Semiconductor. And it's one thing the
11:00:40 10 Court touched on, the same question that we've asked
11:00:42 11 ourselves, we don't understand what the difference or what
11:00:47 12 practical implication there is for adding the portion,
11:00:54 13 "the depth of the cut is smaller than the thickness of the
11:00:56 14 leadframe." Bell Semiconductor believes that the
11:00:59 15 leadframe is not cut through in its thickness direction,
11:01:02 16 or just the general meaning of partial cut already implies
11:01:06 17 that the depth of the cut is smaller than the thickness of
11:01:09 18 the leadframe.

11:01:09 19 So obviously if the depth of the cut was the same
11:01:15 20 -- was the same as the thickness of the leadframe or
11:01:17 21 larger, it would be cut through in its thickness
11:01:21 22 direction. So Bell Semiconductor is fine with the Court's
11:01:27 23 proposed construction, but we think the defendants'
11:01:31 24 proposed construction is just bulky, redundant and
11:01:33 25 unnecessary.

11:01:39 1 THE COURT: Okay. Anything else from the
11:01:40 2 defendant?

11:01:47 3 MR. FLORES: Nothing further from defendants,
11:01:50 4 your Honor.

11:01:52 5 THE COURT: Okay. I'll be back in a few seconds.

11:04:40 6 Lily, we're going to go back on the record. The
11:04:43 7 Court finds that the addition of the words "and the depth
11:04:47 8 of the cut is smaller than the thickness of the
11:04:50 9 leadframe," which defendants propose we add in, is
11:04:55 10 redundant and unnecessary and, in fact, I think might
11:04:58 11 confuse a jury; therefore, the Court is going to maintain
11:05:02 12 its preliminary construction.

11:05:05 13 I wanted to let you all know that as of -- there
11:05:09 14 are two Markmans in this case, is that correct?

11:05:14 15 MR. FLORES: Yes.

11:05:17 16 MR. KOOLE: That is correct, your Honor.

11:05:18 17 THE COURT: In case there's any question,
11:05:21 18 discovery will open as of today, and so, you all can start
11:05:26 19 sending out discovery. And we have a trial date set in
11:05:29 20 this case, do we not?

11:05:31 21 MR. ADAMS: Your Honor, if I might go back, the
11:05:33 22 parties have agreed that discovery would open as of the
11:05:37 23 second Markman hearing.

11:05:38 24 THE COURT: Oh, okay.

11:05:39 25 MR. ADAMS: I assume the parties --

11:05:40 1 THE COURT: And you all -- I'll defer -- I was
11:05:43 2 afraid someone -- you would have a disagreement and that's
11:05:45 3 why I thought I would put -- force all that. But if
11:05:49 4 you've agreed, as you know, Mr. Adams, whatever you guys
11:05:52 5 want to do is fine with me.

11:05:55 6 MR. ADAMS: We appreciate that.

11:05:56 7 THE COURT: So I'm glad you worked that out.
11:05:58 8 Is there anything, I'll start with you, Mr.
11:05:59 9 Adams, that you need to take up?

11:06:02 10 MR. ADAMS: Your Honor, there is one thing we'd
11:06:05 11 bring to the Court's attention. This case is currently
11:06:09 12 split between an Austin case and a Waco case. There is a
11:06:12 13 unopposed motion to transfer to Austin, and we would bring
11:06:16 14 that to the Court's attention.

11:06:18 15 THE COURT: Yeah. I'm -- we're not doing
11:06:21 16 anything in terms of transferring right now because of
11:06:24 17 what's going on with COVID and things opening and closing.
11:06:27 18 I know it's set for a while down. But, you know, I still
11:06:31 19 don't know what's going to happen in the Austin
11:06:34 20 courthouse, you know, whey they -- if -- I shouldn't say
11:06:37 21 if. When Austin opens back up, it's not going to be in
11:06:41 22 April, it's not going to be in May. If it is in June, if
11:06:46 23 it is in July, then they're going to be having, I'm told,
11:06:51 24 a lot of criminal trials going first.

11:06:52 25 So I'm waiting really to figure out what is

11:06:55 1 happening in Austin to make sure what I can do in terms of
11:07:00 2 transferring the case there or keeping it in Waco. So
11:07:06 3 just to make sure we can keep things on time. As we get
11:07:09 4 closer to trial, if I haven't transferred it, let me know,
11:07:14 5 and I'll take into consideration all of the relevant
11:07:17 6 witnesses there are going to be and wherever they're going
11:07:21 7 to be. I'll make a determination of which of the
11:07:25 8 courthouses is more convenient.

11:07:27 9 MR. ADAMS: Your Honor, I would raise one more
11:07:29 10 thing. There is another unopposed motion that's possibly
11:07:32 11 less nailbiting, which is, there's an unopposed motion to
11:07:37 12 join a necessary party. Again, it's unopposed. I think
11:07:41 13 it would streamline discovery if the Court --

11:07:44 14 THE COURT: Granted.

11:07:46 15 MR. ADAMS: Thank you, your Honor. If everything
11:07:47 16 was that easy, we'd all be good.

11:07:49 17 THE COURT: And I wouldn't have a job, and we
11:07:52 18 don't want that. I'd have to go back to practicing law.
11:07:57 19 And Lily could probably improve and work for a much better
11:08:02 20 judge, so only she would benefit.

11:08:05 21 So is there anything else we need to take up, Mr.
11:08:07 22 Adams?

11:08:08 23 MR. ADAMS: Not from Microchip, your Honor.

11:08:11 24 THE COURT: Mr. Shelton?

11:08:13 25 MR. SHELTON: No, your Honor. For the NXP

11:08:14 1 Defendants, thank you very much.

11:08:15 2 THE COURT: Anything for the plaintiff?

11:08:18 3 MR. KOOLE: No, your Honor.

11:08:19 4 THE COURT: You all have a wonderful Easter. We
11:08:22 5 are -- if you care, we are picking a jury this afternoon
11:08:27 6 for a patent case that will start Monday. You are welcome
11:08:30 7 to listen in by Zoom. And then, of course, next week, the
11:08:33 8 trial will be available on the phone, on Zoom, as well.
11:08:37 9 So have a great weekend. Have a great Easter. And I hope
11:08:39 10 to see some of you in person soon. Take care.

11:08:43 11 MR. ADAMS: Thank you, your Honor.

11:08:44 12 MR. KOOLE: Thank you, your Honor.

11:08:45 13 MR. SHELTON: Thank you, your Honor.

14 (Proceedings concluded.)

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UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, LILY I. REZNIK, Certified Realtime Reporter,
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LILY I. REZNIK, CRR, RMR
Official Court Reporter
United States District Court
Austin Division
501 W. 5th Street,
Suite 4153
Austin, Texas 78701
(512)391-8792
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