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By Email

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Re: *Concurrent Ventures, LLC and XtreamEdge, Inc., v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.*, No. 4:25-cv-09567-JST

Dear Counsel:

We write regarding Defendants' Invalidity Contentions and Accompanying Document Production, served February 13, 2026. We have identified several deficiencies that require your immediate attention. Please provide a substance response to this letter by March 6, 2026. To the extent you disagree with any of the issues discussed below, please provide your availability to meet and confer the week of March 2.

Violation of *Sotera* Stipulation

Defendants' invalidity contentions violate the *Sotera* stipulation submitted in this litigation and relied on in the Patent Office.

On April 22, 2025, Defendants stipulated that, if the Board instituted *inter partes* review of the '753, '943, '596, and '634 patents, then they would not pursue in district court any invalidity ground that was raised or reasonably could have been raised before the Board (*i.e.*, any ground that could be raised under §§ 102 or 103 on the basis of prior art patents or printed publications). *See* Dkt. 78 at 3–4.

Despite this stipulation, Defendants invalidity contentions contain numerous §§ 102 or 103 assertions based on prior art patents and printed publications. Defendants explicitly state that these paper references anticipate or render obvious the asserted claims "alone or in combination with knowledge of one of skill in the art or other prior art," *See, e.g.*, Defs. Invalidity Contentions, Ex. 596-01 at 1, in direct violation of their stipulation to this Court and the Patent Office.

Based on Plaintiffs' review of the contentions, at least the following prior art references were improperly asserted:

'596 Patent
- Alexander
- Buchko

IPR2025-00478
Concurrent Ventures LLC, XtreamEdge Inc. EX2037

- Chavan
- Dongare
- Drews
- Gewirtz
- Goyal
- Hammer
- Kanai
- Khawand
- Kolinummi
- Mannava
- Matsunami
- Michaylov
- Ohkawa
- Rosenthal
- Van Loo
- Borkowski
- Hughes
- Kim
- Tuan

<u>’753 Patent</u>

- Stroud
- Jana
- Pierson
- Da Silva
- Cragon
- RFC 791
- Saulsbury
- Cullison
- Ramanujan

<u>’943 Patent</u>

- Jacobson
- Schultz
- Pogliani et al.
- Bernat
- Abdelfattah
- Rahim
- Cervero et al.
- Seshadri
- Atsatt-113
- Biederman
- Tarafdar et al.
- Kulkarni
- Atsatt-923

Defendants must withdraw these contentions based on paper references immediately. Plaintiffs are prejudiced by being forced to spend time and resources analyzing and addressing references and grounds that Defendants told this Court and the Patent Office would not be a part of this litigation.

Plaintiffs intend to move to strike these contentions should Defendants not agree to withdraw these contentions.

Identification of System Prior Art

Defendants have also failed to sufficiently identify their asserted system prior art with the level of specificity required by the Local Rules.

Patent Local Rule 3-3(a) requires that "[e]ach alleged sale or public use shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known." P.L.R. 3-3(a).

Despite these unambiguous requirements, Defendants rely on broad, open-ended categories of systems that fall far short of the specificity the rules mandate. For example, Defendants asserted that "ARM System[s]" anticipate or render obvious the '596 patent, "including but not limited to TCP/IP RTOS, ARM1156T2-S, Cortex-R5, Cortex-A, ARMv7, [and] Corelink CCI-400." *See* Defs. Invalidity Contentions at 8. Patent Local Rule 3-3(a) does not permit parties to disclose an unspecified category of systems. Leaving open unlimited categories of systems prefaced by "including but not limited to" is improper.

Defendants also fail to disclose "the date the offer or use took place or the information became known" and "the identity of the person or entity which made the use or which made and received the offer," even for the alleged prior art systems they do identify. P.L.R. 3-3(a). Using the same "ARM System[s]" example, Defendants provide no dates of first sale, first public use, or public availability for TCP/IP RTOS, ARM1156T2-S, Cortex-R5, Cortex-A, ARMv7, and Corelink CCI-400. Likewise, Defendants' identification of "ARM, the public, and third-party customers" as the relevant persons or entities is wholly insufficient—Rule 3-3(a) requires concrete identification of the specific entity that made the use or offer and the specific entity that received it, not a diffuse list that encompasses the entire marketplace.

These deficiencies apply to each of the prior art systems asserted in the invalidity contentions. Defendants have therefore failed to adequate notice of their invalidity theories. In particular, Defendants have not disclosed any systems other than those explicitly identified in their contentions (e.g., "CP/IP RTOS, ARM1156T2-S, Cortex-R5, Cortex-A, ARMv7, [and] Corelink CCI-400") and have not adequately disclosed the required date and persons information for ***any*** alleged system art. Accordingly, because Defendants have failed to provide the specificity required by Rule 3-3(a), Defendants may not rely on any of the system art implicated in their contentions. Plaintiffs intend to move to strike at the appropriate time.

IPR2025-00478
Concurrent Ventures LLC, XtreamEdge Inc. EX2037

Obviousness Assertions

Defendants additionally violated the Patent Local Rules by seeking to rely on obviousness combinations that are not adequately disclosed in their invalidity contentions.

Patent Local Rule 3-3 requires Defendants to identify "each combination of prior art" on which they intend to rely, and courts routinely strike undisclosed or vaguely disclosed combinations for failing to provide fair notice. Here, for each asserted patent, Defendants included only the following boilerplate statement in lieu of identifying actual combinations:

> A person of ordinary skill in the art would have been motivated to combine any reference in Table [A/B/C/D/E] with any other reference(s) in Table [A/B/C/D/E]. To the extent that any prior art identified in Table [A/B/C/D/E] above is deemed to not anticipate an Asserted Claim, the prior art in Table [A/B/C/D/E] may be combined with one or more prior art references in Table [A/B/C/D/E] to render the claim obvious.

See Defs. Invalidity Contentions at 10–11, 46, 61, 78-79, 103. Further, Defendants did not provide charts mapping any of these combinations, but instead generally claim that the references could be combined to render the asserted patents obvious. *See, e.g.*, *id.*, Ex. 596-18 at 1 ("The asserted claims of U.S. Patent No. 8,924,596 are anticipated and/or rendered obvious in view of the ARM System alone or in combination with knowledge of one of skill in the art or other prior art.").

Courts in this District are clear that defendants are limited to the obviousness combinations they mapped in their contentions. *See, e.g.*, *Slot Speaker Technologies, Inc. v. Apple Inc.*, No. 13-cv-01161-HSG (DMR), 2017 WL 235049, at *6-7 (N.D. Cal. Jan. 19, 2017) (disclosure that included the phrase "in combination with the other charted prior art references" overly vague because it was not clear whether it referred to any, some, or all of the references); *Life Techs. Corp. v. Biosearch Techs. Inc.*, No. C 12-00852 WHA, 2012 WL 4097740, at *3 (N.D. Cal. Sept. 17, 2012) ("[v]aguely disclosing that one prior art can substitute for another is insufficient under our local rules."); *Mitsubishi Electric Corporation. v. Sceptre, Inc.*, No. 2:14-cv-049994-ODW (AJWx), 2015 WL 2369557, at *3 (N.D. Cal. May 18, 2015) (the "catch-all phrase 'any element of an asserted claim can easily be identified by cross-reference to the same particular claim element in other charted prior art reference to show that the element was known in the prior art'" was insufficient under Rule 3-3(b)).

Simply listing prior art references and asserting that some unspecified "combination of one or more" of those references might render unnamed claims obvious does not comply with Patent Local Rule 3-3(b). By attempting to reserve every conceivable combination without actually mapping any of them, Defendants fail to provide the notice required under the Local Rules. Plaintiffs cannot determine from Defendants' contentions which references—if any—are being combined for obviousness, how those combinations allegedly operate, or which claim limitations each reference supposedly discloses or suggests.

Defendants therefore may not rely on any obviousness combination that are not explicitly identified and charted in their invalidity contentions. To the extent Defendants attempt to rely on these undisclosed, unmapped combinations later in the case, Plaintiffs will move at the appropriate time to strike such reliance as improperly withheld and not timely disclosed.

IPR2025-00478
Concurrent Ventures LLC, XtreamEdge Inc. EX2037

Specificity of Claim Charts

Defendants' claim charts also lack the required level of specificity regarding the elements mapped to each claim limitation.

Defendants provide limited prose in each chart, typically identifying a single element in the prior art while framing the disclosures "as non–limiting examples." For example, Defendants state that "NVIDIA/Mellanox System teaches at least one second processing element in communication with said first processing element, by disclosing, as non–limiting examples, an adapter." *See, e.g.*, Defs. Invalidity Contentions, Ex. 596-20 at 17.

This is improper. Patent Local Rule 3-3(c) requires that Defendants serve "[a] chart identifying specifically where and how in each alleged item of prior art each limitation of each asserted claim is found . . ." P.L.R. 3-3(c). The purpose of this rule is to provide reasonable notice of a party's invalidity theories. *See Geovector Corporation v. Samsung Electronics Co. Ltd.*, No. 16-cv-02463-WHO, 2017 WL 76950, at *3 (N.D. Cal. Jan. 9, 2017). As such, Defendants are limited to the elements they identified in their charts.

Further, Defendants may not reserve the right to amend their invalidity contentions. Patent Local Rule 3-6 provides that amendment of final invalidity contentions "may be made only by order of the Court upon a timely showing of good cause," one example being "[r]ecent discovery of material, prior art despite earlier diligent search." P.L.R. 3-6. Despite this, Defendants include language throughout their charts seeking to reserve the right to amend the contentions if they discover new evidence. *See, e.g.*, Defs. Invalidity Contentions, Ex. 596-20 at 22 ("Accordingly, Defendants reserve the right to supplement this chart and Defendants' Invalidity Contentions after new evidence is produced by NVIDIA.").

Defendants are limited to the theories expressly disclosed in prose in their invalidity contentions. If Defendants disagree, please let us know immediately. To the extent Defendants attempt to rely on any theories or identifications not expressly disclosed in prose in their invalidity contentions, Plaintiffs will move at the appropriate time to strike such reliance as improperly withheld and not timely disclosed.

Document Production Accompanying Invalidity Contentions

Defendants' document production accompanying their invalidity contentions is equally deficient.

Defendants did not comply with Patent Local Rule 3-4(a), requiring an identification "by production number" of the "source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its Patent L.R. 3-1(c) chart." P.L.R. 3-4(a). Defendants merely state that they "have produced the source code for the Accused Instrumentalities for inspection at the office of Sheppard Mullin in Menlo Park, California," without reference to any production number or non-source code documentation. This level of detail does not comply with P.L.R. 3-4(a). *See* Defs. Invalidity Contentions at 140. Defendants must promptly provide the required information: an identification "by production number" of the "source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of" the accused functionality and products.

IPR2025-00478
Concurrent Ventures LLC, XtreamEdge Inc. EX2037

Defendants likewise did not comply with Patent Local Rule 3-4(b), which requires "[a] copy or sample of the prior art identified pursuant to Patent L.R. 3-3(a) which does not appear in the file history of the patent(s) at issue." P.L.R. 3-4(b). Defendants merely state that "[s]ource code for prior art has been made available for inspection," but they do not specific which prior art source code is available. *See* Defs. Invalidity Contentions at 140. Plaintiffs should not be required to guess which prior art code, if any, is available for inspection, nor may Defendants obscure what prior art materials they possess. Defendants must promptly provide the required information.

Finally, Defendants did not comply with Patent Local Rules 3-4(c) and (e), separately requiring "[a]ll agreements that may be related to the accused instrumentality or may be comparable to a license that would result from a hypothetical reasonable royalty negotiation" and "[a]ll agreements that may be used to support the party denying infringement's damages case." P.L.R. 3-4(c), (e). Defendants limited their response by stating that "[a]dditional responsive agreements are being produced to Plaintiffs." *See* Defs. Invalidity Contentions at 140–41. This is insufficient. The Patent Local Rules require that Defendants provide a complete identification of the agreements they may use to support their damages case. Accordingly, Defendants may not rely on agreements that were not produced with and identified in their invalidity contentions absent leave of the Court. To the extent Defendants attempt to rely on any agreements not identified in their invalidity contentions, Plaintiffs will move at the appropriate time to strike such reliance as improperly withheld and not timely disclosed.

Best Regards,

Zach Jacobs

IPR2025-00478
Concurrent Ventures LLC, XtreamEdge Inc. EX2037