IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INTEL CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 14-377-LPS
	:	**REDACTED**
FUTURE LINK SYSTEMS, LLC,	:	**PUBLIC VERSION**
	:	
Defendant.	:	

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MEMORANDUM OPINION

September 28, 2016
Wilmington, Delaware

STARK, U.S. District Judge:

Pending before the Court are (1) Intel Corporation's ("Plaintiff" or "Intel") partial motion for summary judgment that certain patents owned by Future Link Systems, Inc. ("Defendant," "FLS," or "Future Link") are licensed to Intel (D.I. 211) ("Intel's Motion"), and (2) FLS's motion to strike arguments and evidence submitted by Intel in support of Intel's Motion (D.I. 246) ("FLS's Motion to Strike"). For the reasons discussed below, the Court will grant in part and deny in part Intel's Motion as well as FLS's Motion to Strike.

I. INTEL'S PARTIAL MOTION FOR SUMMARY JUDGMENT (D.I. 211)

Intel moves for summary judgment that it is licensed to U.S. Patent Nos. 5,608,357 ("'357 patent"); 5,870,570 ("'570 patent"); 6,008,823 ("'823 patent"); 6,108,738 ("'738 patent"); and 6,622,108 ("'108 patent") (collectively, "FLS Patents")[1] for the life of these patents under a cross-license agreement between Philips Electronics N.V. and the North American Philips Corporation (collectively, "Philips") and Intel. (*See* D.I. 212 at 1-3)

A. The Philips Cross-License

Philips and Intel entered into a cross-license agreement, effective July 15, 1990, in which Philips granted Intel "a non-exclusive, indivisible, royalty free license" under certain "Philips Patents" to "make, to have made, to use, to lease, and to sell or otherwise dispose of" certain semiconductor products described in the agreement. (*See* D.I. 227 Ex. A.1 ("Agreement" or "License") § 3.01)[2] The Agreement references other cross-license agreements between Philips

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[1]The FLS Patents are attached as exhibits to Intel's First Amended Complaint. (D.I. 95)

[2]Intel, FLS, and the License refer to numbered parts of the License as "sections," "paragraphs," and "articles," respectively. The Court will refer to them as sections.

and Intel dating back to 1977, stating that the 1990 Agreement was meant to convey "rights and licenses under patent rights not licensed" under prior agreements. (*Id.* at 1) The parties dispute the meaning of many terms in the Agreement, which are discussed below.

In 2006, "Philips 'spun off' its semiconductor business to form NXP Semiconductors" ("NXP") and provided NXP with "Philips's semiconductor patents and products," including the FLS Patents. (D.I. 212 at 5 (quoting D.I. 213-3 Ex. 8 at 69-70); *see also* D.I. 224 at 17) In 2012, NXP assigned the FLS Patents to an entity named "Partners for Corporate Research International" which later, in January 2013, assigned the patents to FLS. (D.I. 212 at 6) The parties dispute the effect of Philips's assignment of the FLS Patents to NXP under the terms of the Agreement discussed below.

1. Licensed Patents

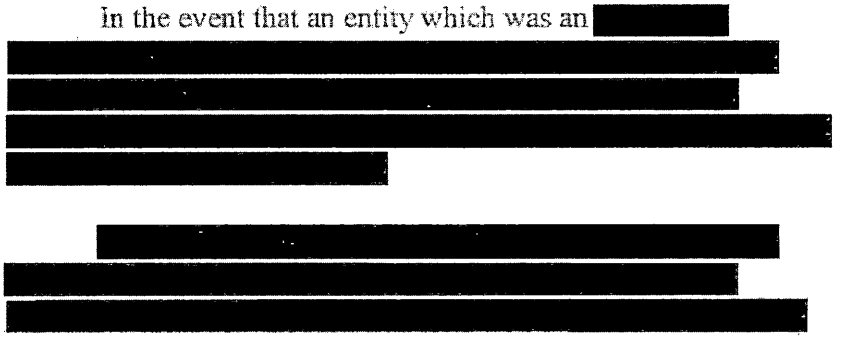
The Agreement grants Intel a license to certain "Philips Patents" and "Philips Circuitry Patents." (License § 3.01(a)-(b)) "Philips Circuitry Patents" are a subset of "Philips Patents" that include claims covering "circuit function means or circuit function(s)." (*See id.* § 1.11) The Agreement states:

> The term "PHILIPS Patents" shall mean and include [redacted][3]

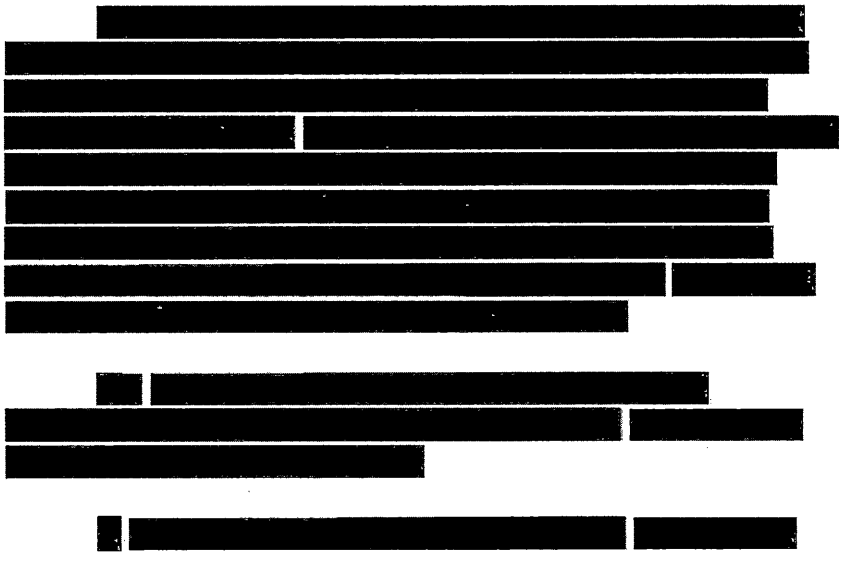
(*Id.* § 1.09)

[3]All emphasis to language from the Agreement is added to identify terms that are disputed by the parties.

"Philips Group of Companies" is defined in § 1.04 to mean "PHILIPS ELECTRONICS, NAPC and any and all of the ***Associated Companies*** . . . thereof and any and all '***Related Companies***,' ***to whom sublicenses have been granted pursuant to Article 5.04***." Section 5.05 explains what happens when an "Associated Company" ceases to be an "Associated Company" under the License:



As quoted above from § 1.04, the Philips Group of Companies includes certain "Related Companies" to which sublicenses have been granted pursuant to § 5.04. The following excerpt from § 5.04 provides pertinent context for the parties' present disputes involving §§ 1.04 and 5.04:



[redacted] . . . .

2. Licensed Products

The licensed products include "Digital MOS Integrated Circuits" and "Digital MOS Integrated Circuits Data Processing Groups and combinations thereof." (*Id.* § 3.01(a)-(b)) The Agreement defines these terms in a series of nested definitional clauses:

> The term "Digital MOS Integrated Circuit Data Processing Group" shall mean and include any [redacted] however, with the understanding that
>
> - the ***Digital MOS Integrated Circuits*** of said complex may be [redacted] and/or
>
> - said complex may incidentally include as a subordinate addition to the same, circuit function means . . . [redacted]; and/or
>
> - the ***Digital MOS Integrated Circuits*** of said complex and [redacted].

(*Id.* § 1.17) A license to Digital MOS Integrated Circuit Data Processing Groups "does not include a license" under the "Circuitry Patents, ***to the extent they*** [redacted]" (*Id.* § 3.01(b)(ii))

The term "Digital MOS Integrated Circuit" shall mean and include [redacted]

(*Id.* § 1.15)

The term "MOS Integrated Circuit" shall mean and include [redacted]

(*Id.* § 1.14)

The term 'Integrated Circuit' shall mean and include any and all [redacted] . . . .

(*Id.* § 1.13)

The term 'Semiconductor Device' shall mean and include any and all [redacted] . . . .

(*Id.* § 1.12)

a. **Printed Circuit ("PC") Boards**

Section 3.02 of the Agreement states that, notwithstanding the license grants in § 3.01, "no license is granted under PHILIPS Patents covering processes or technology for [redacted]."

b. **Products Designed for Image Display Systems**

Section 3.03 of the Agreement states that, notwithstanding the license grants in § 3.01, "no license is granted to INTEL by PHILIPS under this Agreement for any product [redacted] . . . ."

c. **Commercialization**

Section 3.06 of the Agreement sets forth a requirement that a member of the Philips Group of Companies [redacted]:

> [T]he licenses under PHILIPS Circuitry Patents are granted ***only to the extent that such Patents cover such circuit function means as*** [redacted] and shall be further subject to the following conditions:
>
> INTEL shall be licensed under a PHILIPS Circuitry Patent for incorporating the relevant circuitry functions [sic] means within a Digital MOS Integrated Circuit or a Digital MOS Integrated Circuit Data Processing Group, respectively, ***only if, when, and as of the date –*** [redacted]

[redacted] . . . .

4. **Effect of Assignment**

The Agreement specifies that "[n]either party shall assign or permit the assignment by its Associated Companies . . . of patent rights or applications therefor which qualify as INTEL Patents or PHILIPS Patents licensed hereunder . . . ***if such assignment would adversely affect the rights and licenses granted hereunder to the other party***." (*Id.* § 7.05)

B. Procedural History

Intel filed this declaratory judgment action on March 24, 2014, in response to FLS's demand that Intel's customers take a license to the FLS Patents. (D.I. 1 at 1; D.I. 212 at 1) Intel argues that the FLS Patents – in addition to other patents – are "not infringed, [and are] invalid, licensed, and/or exhausted." (D.I. 1 at 1-2) On August 14, 2014, the parties submitted a Joint Proposed Scheduling Order, which included Intel's proposal for "early disposition of its license claim" and FLS's opposition thereto. (D.I. 21 Attachment C at 6) After a case management conference, the Court granted Intel's request for adjudication of an early summary judgment motion on the license issue and ordered the parties to exchange contentions regarding the license issue. (D.I. 23) Between November 18, 2014 and October 14, 2015, the parties exchanged license contentions. (D.I. 57, 67, 155, 161, 169, 180, 186) On December 21, 2015, Intel moved for partial summary judgment on the license issue. (D.I. 211) The parties completed briefing on Intel's Motion on February 22, 2016. (D.I. 212, 224, 242) The Court heard argument on March 1, 2016. (*See* D.I. 284 ("Tr."))

C. Legal Standards

1. Summary Judgment

Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The moving party bears the burden of demonstrating the absence of a genuine issue of material fact. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86 (1986). An assertion that a fact cannot be – or, alternatively, is – genuinely disputed must be supported either by citing to "particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(A) & (B). If the moving party has carried its burden, the nonmovant must then "come forward with specific facts showing that there is a genuine issue for trial." *Matsushita*, 475 U.S. at 587 (internal quotation marks omitted). The Court will "draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000).

To defeat a motion for summary judgment, the nonmoving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586; *see also Podobnik v. U.S. Postal Serv.*, 409 F.3d 584, 594 (3d Cir. 2005) (stating party opposing summary judgment "must present more than just bare assertions, conclusory

allegations or suspicions to show the existence of a genuine issue") (internal quotation marks omitted). The "mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment;" a factual dispute is genuine only where "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50 (internal citations omitted); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (stating entry of summary judgment is mandated "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial"). Thus, the "mere existence of a scintilla of evidence" in support of the nonmoving party's position is insufficient to defeat a motion for summary judgment; there must be "evidence on which the jury could reasonably find" for the nonmoving party. *Anderson*, 477 U.S. at 252.

2. Choice of Law

"'The conflict of laws rules to be applied by the federal court in Delaware must conform to those prevailing in Delaware's state courts.'" *Underhill Inv. Corp. v. Fixed Income Disc. Advisory Co.*, 319 F. App'x 137, 140 (3d Cir. 2009) (quoting *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941)). Under Delaware law, "where the parties agree to a choice-of-law provision to govern their contractual rights and duties, that choice should be enforced." *Id.* at 141 (internal quotation marks omitted).

The License states: "The validity, construction, and performance of this Agreement shall be governed by the laws of the State of New York." (License § 14) The parties appear to agree

that interpretation of the License is governed by New York law. (*See* D.I. 212 at 7-8; D.I. 224 at 3) The Court will interpret the License under New York law.

3. Contract Interpretation Under New York Law

"When interpreting a contract [under New York law], the intention of the parties should control, and the best evidence of intent is the contract itself." *Gary Friedrich Enterprises, LLC v. Marvel Characters, Inc.*, 716 F.3d 302, 313 (2d Cir. 2013) (internal quotation marks omitted). "Under New York law, unambiguous contracts are interpreted as a matter of law" by the Court. *See 82-11 Queens Blvd. Realty, Corp. v. Sunoco, Inc. (R & M)*, 951 F. Supp. 2d 376, 381 (E.D.N.Y. 2013) (citing *Metro. Life Ins. v. RJR Nabisco, Inc.*, 906 F.2d 884, 889 (2d Cir. 1990)). However, "when a term or clause is ambiguous and the determination of the parties' intent depends upon the credibility of extrinsic evidence or a choice among inferences to be drawn from extrinsic evidence, then the issue is one of fact." *Amusement Bus. Underwriters, a Div. of Bingham & Bingham, Inc. v. Am. Int'l Grp., Inc.*, 489 N.E.2d 729, 732 (N.Y. 1985). "[A] contractual provision is ambiguous only 'when it is reasonably susceptible to more than one reading.'" *Reyes v. Metromedia Software, Inc.*, 840 F. Supp. 2d 752, 755 (S.D.N.Y. 2012) (quoting *U.S. Fire Ins. Co. v. Gen. Reinsurance Corp.*, 949 F.2d 569, 572 (2d Cir. 1991)).

D. Discussion

Intel argues that "Intel and Philips squarely bargained for Intel's products accused in this case to be licensed" and that "Future Link now wants to nullify the 1990 Agreement through unreasonable interpretations of the license provisions." (D.I. 212 at 7) As discussed below, the Court agrees with Intel that many of FLS's interpretations of the License are unreasonable and

incorrect as a matter of law.[4] Nevertheless, there are disputed issues of material fact regarding some parts of the License that preclude granting summary judgment that the FLS Patents are licensed to Intel.

The parties' disputes relate to (1) which patents are licensed; (2) which products are licensed; and (3) the effect of Philips's assignment of the FLS Patents to NXP. FLS also argues that Intel's Motion should be denied because Intel's license contentions are inconsistent with Intel's non-infringement contentions and because Intel's Motion relies on previously undisclosed exhibits. The Court addresses each of these disputes below.

The Court concludes that Intel's Motion will be granted in all respects except as to the issues of (1) whether § 3.01's commercialization requirement has been satisfied and (2) whether the License grants Intel a right to import. These are the only two issues that Intel must prove going forward in order to prevail on its license defense with respect to the patents at issue in Intel's Motion.

1. Licensed Patents

Intel moves for partial summary judgment that the FLS Patents come within the license grants of §§ 3.01(a) and 3.01(b) of the License. (D.I. 211) Intel argues that the FLS Patents are "Philips Patents," as defined in the License, because they have [redacted] and were owned or controlled by one or more of the "Philips Group of Companies," as defined by §§ 1.04 and 1.09. (D.I. 212 at 9) Intel also argues that the FLS Patents are "Philips Circuitry

[4]FLS argues that the Court should "not only deny Intel's motion, but should resolve Intel's license claim in Future Link's favor." (D.I. 224 at 2) Because FLS's arguments are based on incorrect interpretations of the License, FLS's request will be denied.

Patents" under the License because they meet the additional requirements of § 1.11.[5] (*Id.* at 10)

Section 1.04 of the License defines the Philips Group of Companies to include, in pertinent part, "PHILIPS ELECTRONICS, NAPC and any and all of the Associated Companies . . . thereof and any and all 'Related Companies,' ***to whom sublicenses have been granted pursuant to Article 5.04***." Intel avers, and FLS does not dispute, that the '357, '570, '823, and '738 patents "were originally assigned to Philips's associated company Philips Semiconductors VLSI Inc. ['Philips Semiconductors VLSI'] on July 2, 1999." (*See* D.I. 212 at 6) In addition, Intel asserts, and FLS does not dispute, that Philips Semiconductors VLSI is an "Associated Compan[y]" under the License. (*See id.* at 9)

FLS argues that the '357, '570, '823, and '738 patents are not Philips Patents because, under § 1.09 of the License, they were never owned or controlled by a company that would qualify as one of the Philips Group of Companies. (D.I. 224 at 18-19) Specifically, FLS argues that § 1.04 should be interpreted as requiring an Associated Company like Philips Semiconductors VLSI to be sublicensed "pursuant to Article 5.04" in order to be included in the Philips Group of Companies. (D.I. 224 at 19) FLS points to use of a comma in § 1.04 after "Associated Companies" and "Related Companies" but "before the sublicense requirement" as evidence that both Associated Companies ***and*** Related Companies are "subject to a sublicensing requirement." (D.I. 224 at 19 n.5) Intel counters that only ***Related Companies***, and not Associated Companies, require sublicenses to qualify as members of the Philips Group of

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[5]For the reasons set forth in its opening brief, Intel has met its burden of showing that the '108 patent is a Philips Patent and Philips Circuitry Patent. (*See* D.I. 212 at 6, 8-10) FLS did not argue in its brief or at the hearing that the '108 patent does not qualify as a Philips Patent or Philips Circuitry Patent.

Companies, because § 5.04 only allows Philips to sublicense Related Companies. (D.I. 242 at 10)

The Court agrees with Intel's interpretations of §§ 1.04 and 5.04. Reading these sections together indicates that a sublicensing requirement does not extend to Associated Companies. Section 5.04, which spans three pages of the 30-page License, makes no mention at all of "Associated Companies," so an Associated Company could ***never*** be sublicensed "***pursuant to Article 5.04***." The fact that punctuation in § 1.04 may result in some grammatical ambiguity does not change the meaning of § 1.04 when read in the context of the License as a whole. "'[A] purported plain-meaning analysis based only on punctuation is necessarily incomplete.'" *Serdarevic v. Centex Homes, LLC*, 760 F. Supp. 2d 322, 332 n.3 (S.D.N.Y. 2010) (quoting *U.S. Nat. Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 454 (1993)). Therefore, the Court rejects FLS's reading of these provisions and determines, as a matter of law, that § 1.04 does not require sublicensing of Associated Companies like Philips Semiconductors VLSI under § 5.04 in order for these companies to be included among the Philips Group of Companies.

Intel has met its burden of showing that the FLS Patents are Philips Patents and Philips Circuitry Patents under the License. FLS has failed to rebut Intel's showing. Therefore, Intel's Motion will be granted with respect to these issues.

2. Licensed Products

In an exhibit accompanying its opening brief, Intel identifies the products that it believes are licensed. (D.I. 213-4 Ex. 10) Intel's Motion, however, only relates to the computer ***processor*** and ***chipset*** products ("Intel's Products") listed in this exhibit. (*See* D.I. 211 (Intel's Motion); D.I. 242 at 5 n.4 (Intel noting that certain accused products are not part of Intel's

Motion); Tr. at 41 (same); *see also generally* D.I. 213-4 Ex. 10 (Intel exhibit listing Intel's Products)) Intel argues that Intel's Products are licensed as "Digital MOS Integrated Circuits" and "Digital MOS Integrated Circuit Data Processing Groups" under §§ 3.01(a) and 3.01(b) of the License. (D.I. 212 at 11-14)

a. Digital MOS Integrated Circuits

Section 3.01(a) of the Agreement grants a license to Intel for certain "Digital MOS Integrated Circuits," which are defined in § 1.15 of the License to cover digital-processing circuitry and certain "ancillary" circuitry.

i. "ancillary"

FLS argues that Intel's Products are not Digital MOS Integrated Circuits because "they contain numerous analog components that perform non-ancillary functions." (D.I. 224 at 4) The License defines Digital MOS Integrated Circuits as "MOS Integrated Circuits" that may include [redacted]" (License § 1.15) FLS argues that Intel's Products contain "significant analog components that perform critical, non-ancillary functions involving analog signals." (D.I. 224 at 5) FLS lists "thermal sensors," "voltage controlled oscillators," "VGA ports," "number generators," and "DACs" (digital to analog converters) as examples of non-ancillary components included in Intel's Products. (*Id.* at 5-6)

Intel counters that FLS is improperly equating "ancillary" with "significant" instead of giving the word "ancillary" its plain meaning in the context of the License. Intel argues that FLS's definition of "ancillary" is contradicted by examples of "ancillary" functionality provided

in the License, such as [redacted]," which are significant but also ancillary. (D.I. 242 at 2) (quoting License § 1.15) Intel also argues that Intel's and Philips's intent at the time of contracting was to license such ancillary, but significant, functionality ***in combination with*** digital functionality, as evidenced in exhibits describing Intel's products on the market at the time of contracting. (*See, e.g.*, D.I. 227 Ex B.111 at 5-2, 5-78)

The Court agrees with Intel. The License makes clear that significant components can nevertheless be ancillary. The common thread running between all of the "[redacted]" listed in § 1.15 is that ancillary functionality ***facilitates*** digital processing. As shown in documents cited by Intel, analog functionality was present in Intel products at the time of contracting and assisted or enabled digital processing. (*See. e.g.*, D.I. 227 Ex B.111 at 5-2, 5-78) The contracting parties clearly intended for thermal sensors, voltage regulators, digital to analog converters, and the other exemplary components identified by FLS to qualify as "ancillary" circuitry that would not remove Intel's Products from the scope of the License.

For the foregoing reasons, the Court rejects FLS's interpretation of "ancillary" and adopts Intel's interpretation as a matter of law.

ii. "only for the . . [redacted]"

FLS argues that Intel's Products are not Digital MOS Integrated Circuits because they are not "used 'only for the [redacted].'" (D.I. 224 at 6-7) (quoting License § 1.15) FLS avers that Intel's Products perform operations that do not constitute the [redacted], such as "sensing their environment," "measuring their own performance," "generating new data independent from any input," "storing data," "monitoring and supervising external systems," "executing code,"

"routing data internally," "translating data generated internally," and "measuring the speed of mechanical fans." (D.I. 224 at 7) (citing Intel product specifications) Intel counters that all of the foregoing exemplary operations "support the chips' undisputed primary function" which is [redacted]" and therefore do not contravene the definition in § 1.15.

The Court agrees with Intel. Section 1.15 merely requires that each of Intel's Products serve the ***primary purposes*** of [redacted]. This is evidenced by inclusion of the "[redacted]" exception, which permits the [redacted] in products ***primarily*** designed for digital processing. Intel's product specifications cited by FLS indisputably show that the products described therein are designed for the primary purposes of [redacted]. (*See generally* D.I. 227 Exs. A.8, A.9, A.29, A.30, A.31, A.32, A.33, A.34, A.35, A.36, A.37)

For the foregoing reasons, the Court rejects FLS's interpretation of § 1.15 and adopts Intel's interpretation as a matter of law. Intel has met its burden of showing that Intel's Products are Digital MOS Integrated Circuits under the License. FLS has failed to rebut Intel's showing. Therefore, the Court will grant summary judgment in favor of Intel on this issue.

b. Digital MOS Integrated Circuit Data Processing Groups

Section 3.01(b) of the Agreement grants a license to certain "Digital MOS Integrated Circuit Data Processing Groups," which are defined in § 1.17 to cover "[redacted]" Thus, products must comprise "Digital MOS Integrated Circuits" in order to be "Digital MOS Integrated Circuit Data Processing Groups." FLS argues that Intel's Products are not Digital MOS Integrated Circuit Data Processing Groups because they are not

Digital MOS Integrated Circuits. The Court has already rejected FLS's arguments with respect to Digital MOS Integrated Circuits in the context of § 3.01(a), as discussed above. The Court also rejects these arguments in the context of § 3.01(b).

FLS also argues that Intel's Products are not Digital MOS Integrated Circuit Data Processing Groups because they (1) are application-specific, (2) contain "other components" which are unlicensed, and (3) implement functionality that is not "[redacted]" (D.I. 224 at 7-10) (quoting License §§ 1.17, 3.01(b))

i. "[redacted]"

FLS argues that none of Intel's Products are licensed under § 3.01(b) because all of Intel's Products "'relate to and cover circuit function means for a [redacted]'" (D.I. 224 at 7-8) (quoting § 3.01(b)(ii))

In support of its arguments, FLS selects for analysis certain Intel products that are not the subject of Intel's Motion. For example, FLS argues that "the Intel 82599" – a "Gigabit Ethernet Controller" – is designed for the specific application of "connect[ing] a computer to an Ethernet network" and that "the RMS25KB080" – a "PCI Express RAID controller" – is designed for the specific application of "connect[ing] a computer to a RAID array over a PCI Express bus." (*Id.* at 8) (citing D.I. 227 Ex. A.40 at 1, A.41 at 4) FLS's arguments with respect to these exemplary products may be correct, in that these products appear to include circuitry for specifically dedicated applications. However, as indicated in Intel's reply brief, these exemplary products "are not part of Intel's Motion." (D.I. 242 at 5 n.4) Because Intel is not moving for summary judgment as to these products, the Court declines to decide at this time whether these products

are [redacted].[6]

FLS alternatively argues that Intel's Products are [redacted] because they are designed to work in "platforms" for specific products, such as tablets or notebook computers, and because Intel's chipsets are designed for specific processors and Intel's processors are designed for specific chipsets.[7] (D.I. 224 at 8-9) Intel counters that "the Agreement does not exclude circuit function means for 'specifically dedicated ***end products***' – only [redacted]" (D.I. 242 at 4) (emphasis in original) In addition, Intel argues that one must analyze the "***combination*** of the individual subcomponents" as a whole in evaluating whether a product is a Digital MOS Integrated Circuit Data Processing Group, rather than focusing on individual subcomponents. (D.I. 242 at 4)

The Court agrees with Intel. Section 3.01(b)(ii) specifies that products are not licensed "***to the extent*** they [redacted]. Intel's Products, and the accused functionality, primarily "[redacted]" and "[redacted]" general-purpose computing functionality, whether or not this functionality is included in particular end products or platforms. (*See generally* D.I. 227 Exs. A.11, A.14) (FLS's preliminary infringement contentions) For example, FLS accuses functionality in Intel's "Haswell architecture" that is used for "retiming of incoming data," regardless of the source or destination of the processed data and regardless of what end product or platform the processing functionality is part of. (*See* D.I. 227 Ex. A.11 at 1-2) The

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[6]FLS accuses, *inter alia*, multiple Ethernet and RAID products. (*See, e.g.*, D.I. 227 Ex. A.11 Ex. A at 1) Discovery is still ongoing in this case and additional products may be accused of infringement. (*See* D.I. 441 at 1) Thus, a determination as to which accused products are [redacted] could be incomplete if made at this time.

[7]As support for this proposition, FLS avers that Intel's processors must load an initial program called a "BIOS" that is associated with a specific chipset. (D.I. 224 at 9)

accused functionality is agnostic to whether other components may be adapted for a [redacted]

[redacted]"

Moreover, FLS's overly broad reading of "[redacted]," if adopted, could exclude ***all*** of Intel's Products from coverage by the License. (D.I. 242 at 4) As argued by FLS, almost ***all*** of Intel's Products eventually end up in end products and/or platforms for products designed for specific purposes. (D.I. 224 at 9) It seems implausible that Intel and Philips would bargain for so little, given the numerous exceptions and definitions provided in the License to ostensibly cover a significant of swath of Intel's processor and chipset products.

For the foregoing reasons, the Court rejects FLS's interpretation of § 3.01(b)(ii) and adopts Intel's interpretation as a matter of law.

ii. "other components"

Section 3.01(b) excludes from its license grant a right to "make or to have made Semiconductor Devices or ***other components***," except "insofar as such manufacture is licensed" pursuant to § 3.01(a). FLS again refers back to its arguments with respect to Digital MOS Integrated Circuits in arguing that this language from § 3.01(b) excludes Intel's Products from being licensed under § 3.01(b). For the same reasons articulated above with respect to the "Digital MOS Integrated Circuit" term, the Court rejects FLS's interpretation of this portion of § 3.01(b) and adopts Intel's interpretation as a matter of law.

iii. "[redacted]"

Section 1.17 of the License defines Digital MOS Integrated Circuit Data Processing Groups as "any complex of Digital MOS Integrated Circuits" which [redacted]

[redacted]" FLS argues that this language requires

that ***all*** functionality in Digital MOS Integrated Circuit Data Processing Groups be [redacted] (D.I. 224 at 9-10) FLS then gives examples of components in Intel's Products that are not [redacted], including a finite state machine for adjusting processor core operating frequency, deskew functionality, and thermal sensors. (*Id.*) Intel counters that it is enough for Intel's Products to have ***some*** functionality [redacted] under § 1.17. (D.I. 242 at 5)

The Court agrees with Intel. The plain meaning of § 1.17 requires [redacted], not ***exclusive*** control of [redacted] Moreover, § 1.17 does not require that *every* component be [redacted]. While FLS has once again succeeded in identifying non-digital components that facilitate digital processing, FLS has failed to show that such digital processing is accomplished [redacted] Indeed, FLS admits that Intel's products process digitally under at least ***some*** control of [redacted] (D.I. 224 at 9) Partial control by [redacted] is enough for purposes of § 1.17.

For the foregoing reasons, the Court rejects FLS's interpretation of § 1.17 and adopts Intel's interpretation as a matter of law. Intel has met its burden of showing that Intel's Products are Digital MOS Integrated Circuit Data Processing Groups under the License. FLS has failed to rebut Intel's showing. Therefore, the Court will grant summary judgment in favor of Intel on this issue.

c. "Semiconductor Devices," "Integrated Circuits," and "MOS Integrated Circuits"

i. "produced . . . [redacted]"

Sections 1.12 and 1.13 of the License define "Semiconductor Devices" and "Integrated Circuits," respectively, to include "any and all devices ***consisting of***" either (1) a "[redacted]" or (2) "a[redacted]" of [redacted]" Products must be Semiconductor Devices and Integrated Circuits in order to be Digital MOS Integrated Circuits or Digital MOS Integrated Circuit Data Processing Groups under the License. (License §§ 1.13, 1.14, 1.15, 1.17)

FLS argues that Intel's "multi-chip packages" ("MCPs") are not Semiconductor Devices or Integrated Circuits because they include "multiple silicon chips that were fabricated at different times and places" and, therefore, contain silicon chips that were not[redacted]" (D.I. 224 at 10) FLS also argued at the hearing that the phrase "consisting of" should be read as it would be in the context of a patent claim, i.e., to mean "consisting ***only*** of." (Tr. at 64-65) Therefore, according to FLS, products "can't have other types of materials" other than[redacted] and still qualify as Semiconductor Devices or Integrated Circuits under the License. (*Id.*)

Intel counters that §§ 1.12 and 1.13 only require that Intel's MCPs include at least one[redacted] to come within the first alternative definition in §§ 1.12 and 1.13 and that FLS does not dispute that Intel's MCPs each contain at least one silicon body. (D.I. 242 at 6) Intel also argues that FLS's interpretation of the word "consisting" cannot be correct, because § 1.14 of the License defines "MOS Integrated Circuits" as a subset of "Integrated Circuits" and further

defines MOS Integrated Circuits as including [redacted]. (Tr. at 90; *see also* License § 1.14 (including, e.g., "[redacted]" as part of [redacted]))

The Court agrees with Intel. FLS's interpretation of "consisting" must be rejected in light of the License's definition of MOS Integrated Circuits, as argued by Intel. Using this open-ended interpretation of "consisting," the Court agrees with Intel that Intel's MCPs come within the definitions in §§ 1.12 and 1.13, as it is undisputed that they each contain at least one [redacted] under the first alternative definition in these sections. The Court agrees with Intel that "[c]ombining separately licensed products does not remove MCPs from the 'Semiconductor Devices' definition" or the Integrated Circuits definition. (D.I. 242 at 6)

For the foregoing reasons, the Court rejects FLS's interpretation of §§ 1.12 and 1.13 and adopts Intel's interpretation as a matter of law.

ii. "[redacted]"

Section 1.14 requires that MOS Integrated Circuits include a "[redacted]." FLS argues that the aforementioned "[redacted]" must be planar rather than tunnel-shaped, the latter being how FLS characterizes Intel's "3-D Tri-Gate transistors." (D.I. 224 at 11-12) FLS argues that current flows ***through*** this tunnel-shape rather than ***underneath***, taking Intel's Tri-Gate transistors outside the scope of the License. (*Id.*) FLS also argues that current must be controlled by a ***silicon*** body, unlike transistors built by Intel that include other materials such as "silicon germanium," "indium arsenide," "indium antimonide," or "indium gallium arsenide." (*Id.* at 12) (citing D.I. 227 Exs. B.135 at 2, B.136, B.137, B.138 at 16)

Intel counters that the plain meaning of [redacted]" includes flow through a tunnel-shaped structure. (D.I. 242 at 6) Intel explained at the hearing that Intel's Products all include silicon bodies that control electrical flow, even though other materials, such as those identified by FLS, may also be included "on top" of the silicon. (*See* Tr. at 89) FLS does not appear to dispute these contentions.

The Court agrees with Intel. The plain meaning of [redacted]" includes flow through the tunnel-shaped structures in Intel's Tri-Gate transistors. In addition, the documents cited by FLS in support of its position regarding the inclusion of non-silicon materials appear to support *Intel's* position that Intel's Products are built using "[redacted]," even if non-silicon materials may be included in them as well. (*See* D.I. 227 Exs. B.135 at 2 (describing "metal-gate technology ***on silicon***"), B.136 at 2:4-12 (describing "silicon germanium layer" which may exert "net compressive stress into a ***silicon channel region*** of the transistor"), B.137 at Abstract (describing gallium arsenide "quantum well with a ***silicon substrate***"), B.138 at 10, 14 (describing "silicon technology" involving "***silicon*** substrate[s]"))

For the foregoing reasons, the Court rejects FLS's interpretation of § 1.14 and adopts Intel's interpretation as a matter of law. Intel has met its burden of showing that Intel's Products are Semiconductor Devices, Integrated Circuits, and MOS Integrated Circuits. FLS has failed to rebut Intel's showing. The Court will grant summary judgment in favor of Intel that Intel's Products are Semiconductor Devices, Integrated Circuits, and MOS Integrated Circuits, as these terms are defined in the License.

d. [redacted]

Section 3.02 of the License excludes from the license grant certain products involving

[redacted]." FLS argues that all of Intel's Products are excluded from being licensed because "every Intel processor and chipset at issue is assembled on a passive package substrate on which conductive wiring is routed." (D.I. 224 at 13-14) Intel points out that § 3.02 merely addresses "[redacted]" and that the FLS Patents do not cover manufacturing processes or technology. (D.I. 242 at 7)

The Court agrees with Intel. Section 3.02 only addresses manufacturing technology and processes which are not accused by FLS and do not appear to be covered by the FLS Patents.

For the foregoing reasons, the Court rejects FLS's interpretation of § 3.02 and adopts Intel's interpretation as a matter of law. Intel has met its burden of showing that the accused functionality in Intel's Products does not involve processes or technology for the [redacted]. FLS has failed to rebut Intel's showing. Therefore, the Court will grant summary judgment in favor of Intel on this issue.

e. Products Designed for [redacted]

Section 3.03 of the License excludes from the license grant certain products designed for use in [redacted]." FLS argues that Intel's Products are all "subject to this express exclusion" because they are designed for platforms that support use of [redacted] and are included in end products that include [redacted]. (D.I. 224 at 12) Intel counters that the presence of an ***interface*** for connecting to a [redacted] "does not transform a general-purpose chip into one '***designed for use in*** [redacted]'" (D.I. 242 at 7) (emphasis in original)

The Court agrees with Intel. Section 3.03 excludes from the License products that are

designed for use ***in*** an [redacted], not products that are designed to [redacted] FLS does not dispute that Intel's Products are general-purpose processors and chipsets that are not designed for use ***in*** any particular [redacted]. (*See, e.g.*, D.I. 224 at 16-17) (FLS stating that "[n]one of Intel's products at issue appear to have been designed for use in TVs") Moreover, at the time of contracting, Intel's general-purpose microprocessors included ***interfaces*** for ***connecting*** to displays but were not clearly designed for use ***inside*** [redacted] (*See, e.g.*, D.I. 227 Ex. B.111 at 2-273 Fig. 3a) (depicting block diagram of Intel processor capable of interfacing with "***peripheral*** device[s]" such as "keyboards, [redacted] sensors and other components" (emphasis added))

For the foregoing reasons, the Court rejects FLS's interpretation of § 3.03 and adopts Intel's interpretation as a matter of law. Intel has met its burden of showing that Intel's Products are not designed for use in [redacted]. FLS has failed to rebut Intel's showing. Therefore, the Court will grant summary judgment in favor of Intel on this issue.

f. Commercialization

Section 3.06 of the License sets forth a requirement that each "circuitry function means" be [redacted] in order for said circuitry function means to be licensed. FLS argues that Intel's products do not satisfy this requirement for a number of reasons discussed below. (D.I. 224 at 14-18)

i. the "[redacted]" circuitry function means

Section 3.06 states that "INTEL shall be licensed under a PHILIPS Circuitry Patent for incorporating the relevant circuitry functions means" within Intel's Products only if "a member of the PHILIPS Group of Companies [redacted]. Intel

argues that this requirement is satisfied because members of the Philips Group of Companies [redacted] "PCI Express," "Multi-function PCI," "write combining," and/or "standardized DDR3 SDRAM" that FLS accuses of infringement. (D.I. 212 at 12-13)

FLS counters that Intel "has not even identified the specific circuitry in any Philips or NXP products discussed in its motion." (D.I. 224 at 14; *see also* Tr. at 45 (counsel for FLS arguing that Intel "talk[s] about products as a whole for part of their analysis and they talk about very specific digital circuitry for other parts of their analysis to get them through those provisions. But then when you get to the commercialization provision, as an example, they're not talking about very specific digital circuitry . . . .")) FLS further argues that the word "[redacted]" in § 3.06 means that ***identical*** circuitry function means must be found in Intel and Philips products in order for Intel to be licensed.

Regarding FLS's criticism of the level of detail in Intel's brief (D.I. 212 at 12-13) and license contentions (D.I. 227 Ex. D at 23-30), the Court agrees with FLS that Intel has not produced sufficiently detailed contentions to identify which "[redacted]" were [redacted]. Instead, Intel refers to broad areas of technology (such as "multi-function PCI") or generalized technical concepts (such as "write combining") and cites documents showing that Philips's companies commercialized products in these areas of technology or that used these general concepts. (*See* D.I. 212 at 12-13) The level of detail in Intel's contentions regarding the commercialization requirements contrasts with that in FLS's preliminary infringement contentions, which match specific functionality with specific language from claims of the FLS Patents on an limitation-by-limitation basis. (*See generally* D.I. 227 Exs.

A.11, A.14)

With respect to FLS's argument that Intel's products must include circuitry that is ***identical*** to circuitry in Philips's products, the Court disagrees with FLS. The introductory sentence in § 3.06 specifies that "licenses under PHILIPS Circuitry Patents are granted [redacted]." Subsequent language in § 3.06 refers to "the relevant circuitry function means," referring back to the ***same*** "circuit function means" that must be [redacted] and which must be "[redacted]" by the patents.

Thus, read as a whole, the Court determines as a matter of law that § 3.06 defines the circuitry function means that must be [redacted] as structures or functionality that are covered by the FLS Patents ***as claimed***. Under this definition, it is not necessary for Intel to show that its products include [redacted] to that found in [redacted]. It is only necessary that Intel and [redacted] cover the [redacted]. Intel must make this showing for each limitation of every claim that Intel wishes to be licensed under. As already discussed, Intel has not made this showing.

In light of the above, Intel has not met its burden of showing that Intel's Products are licensed because Intel's showing under § 3.06 is insufficient. For this reason, Intel's partial motion for summary judgment that Intel's Products are licensed under the Agreement will be denied. However, FLS's interpretation of the "[redacted]" circuitry function means in § 3.06 is rejected, as discussed above.

ii. "Digital MOS Integrated Circuits"

Section 3.06 requires that [redacted] products be Digital MOS Integrated Circuits.

FLS argues that Intel has failed to show that [redacted] products are Digital MOS Integrated Circuits, relying on the same overly-narrow definition of "ancillary" that the Court has already rejected above. The Court again rejects FLS's definition of ancillary in the context of § 3.06 as a matter of law. If Intel wishes to prevail on the [redacted] issue, however, it must show that [redacted] products were Digital MOS Integrated Circuits under the Court's interpretation of this term, which is articulated above.

iii. "[redacted]"

[redacted] must be [redacted]" as Intel's products in order for Intel's products to be licensed. (License § 3.06) FLS argues that this requirement is not met because (1) [redacted] are "stand-alone PCI Express PHYs" whereas Intel's products are not, (2) [redacted] "do not implement any digital communications" whereas Intel's products do, and (3) at least some of [redacted] were designed for TVs whereas Intel's are not. (D.I. 224 at 16-17) Intel responds that FLS misconstrues this requirement as again requiring the same end product rather than [redacted] (D.I. 242 at 9)

The Court agrees with FLS that products built for use in TVs are not built for "[redacted]" as products built for personal computers and. therefore, that Intel cannot point to Philips products designed for TVs as meeting the requirements of § 3.06 for Intel's Products. However, FLS's interpretation of [redacted]" is too narrow, incorrectly distinguishing products that are "stand-alone" from those that are not and products that implement digital communications from those that do not.

In Intel's reply brief, Intel argues that Intel's Products and [redacted] come within

the "personal computer" field of applications, thereby satisfying the [redacted]" requirement of § 3.06. (D.I. 242 at 9) The Court agrees with Intel that the relevant "[redacted]" associated with Intel's Products is personal computing and, therefore, that Intel must point to [redacted] if it is to satisfy the requirements of § 3.06. Any narrower interpretation of the relevant field would be improper, in light of § 3.06's express reference to plural "[redacted]" in a "[redacted]," implying that there may be multiple applications or ways of implementing technology that nevertheless come within the same [redacted].

For the foregoing reasons, the Court rejects FLS's interpretation of "[redacted]" and construes this phrase as a matter of law to mean the "personal computer" field, for purposes of Intel's Products.

iv. [redacted] by NXP

Section 3.06 requires that "a member of the PHILIPS Group of Companies" [redacted] FLS argues that NXP "became an independent company from the Philips Group in September 2006" and, therefore, [redacted]. (D.I. 224 at 17) Intel does not dispute that NXP was not in the Philips Group after September 2006. Rather, Intel argues that two sections of the License – §§ 5.05 and 7.05 – should be read as [redacted]

Section 5.05 specifies that "[redacted]" to Intel under patents owned by a former member of the Philips Group, such as NXP, [redacted] by NXP's leaving the Philips Group. This provision applies to any licenses and rights granted to Intel by NXP prior to

NXP's leaving the Philips Group but does not apply to NXP's actions after leaving the Philips Group. Therefore, the Court rejects Intel's interpretation of § 5.05 with respect to NXP's offers for sale after September 2006.

Section 7.05 states that "[n]either party shall assign . . . patent rights . . . to parties outside their respective Groups of Companies, if such assignment would adversely affect the rights and licenses ***granted*** hereunder to the other party." Intel argues that this provision prevents ***prospective*** harm to Intel resulting from Philips's assignment to NXP of Philips's semiconductor business and the FLS Patents. However, this section only addresses rights and licenses that were already granted to Intel ***before*** NXP left the Philips Group. Rights or licenses that may or may not be granted in the future by non-Philips companies such as NXP are not addressed in this part of the License. Therefore, the Court rejects Intel's interpretation of § 7.05.

For the reasons discussed above, the Court holds as a matter of law that [redacted] by NXP after September 2006 does not qualify as [redacted] by a member of the Philips Group of Companies under § 3.06.

v. "only if, when, and as of the date"

Section 3.06 provides that Intel is licensed "only if, when, and as of the date" of [redacted] a member of the Philips Group of Companies. FLS argues that this provision requires that a member of the Philips Group [redacted] circuitry throughout the same period that Intel was [redacted] circuitry. (D.I. 224 at 17-18) Intel argues that this provision instead creates a springing license, "becoming effective upon the date of [redacted]" (D.I. 212 at 20).

Intel's interpretation comports with the plain meaning of this provision in the context of

the License. Therefore, the Court construes "only if, when, and as of the date" as a matter of law to mean that Intel has a springing license as soon as the relevant circuitry is [redacted] a member of the Philips Group.

However, as explained above, Intel has failed to show that it meets the [redacted] requirements in § 3.06. Therefore, the Court will deny Intel's partial motion for summary judgment that Intel's Products are licensed.

g. Right to [redacted]

The grant provisions in § 3.01 convey rights to "[redacted] the covered products. FLS argues that Intel is not licensed to [redacted] products under this language. (D.I. 224 at 18) In support of its argument, FLS cites other license agreements in which Intel allegedly distinguished between "[redacted]" and "[redacted]" products. (*Id.*) (citing D.I. 227 Exs. B.144 § 3.1, B.145 § 3.1(a)(1), B.146 § 3.1.1) Intel counters by arguing that "FLS's interpretation would eliminate the [redacted] grant from the license and would vary the plain meaning of the Agreement." (D.I. 242 at 10)

It is unclear from reading the License alone whether "[redacted]" in § 3.01 of the License includes [redacted]." Moreover, the proper interpretation of this provision may turn on "inferences to be drawn from extrinsic evidence," *Amusement Bus. Underwriters*, 489 N.E.2d at 732, including inferences to be drawn from the other licenses cited by FLS. While FLS has presented some evidence showing that there is no license to [redacted] under § 3.01, the Court would benefit from further development of the record on what the parties' intentions were with respect to the Philips-Intel License before deciding whether § 3.01 conveys a right to [redacted]

3. Effect of Philips's Assignment to NXP

Intel moves for partial summary judgment that the License is "valid, not amended, and not terminated." (D.I. 211) FLS argues that, "[e]ven if Intel had ever been licensed to any of the patents at issue . . . , the license would have ceased upon assignment of the patents to NXP, which is not part of the Philips Group of Companies." (D.I. 224 at 19 n.6) Intel responds that the anti-assignment provision in § 7.05 should be interpreted to mean that "neither party shall assign patent rights" if the assignment would "'adversely affect the rights and licenses granted hereunder.'" (D.I. 242 at 9) (quoting § 7.05) Intel further avers that NXP inherited Philips's "products, patents, obligations, and encumbrances" under the License. (*Id.* at 19-20)

The Court agrees with Intel. As already discussed with respect to § 5.05 above, NXP's separation from the Philips Group did not extinguish or otherwise change the rights and licenses already given to Intel. Section 7.05 reinforces an understanding that the NXP spinoff was not meant to affect Intel's rights under the License. Furthermore, FLS has presented no argument refuting Intel's assertion that NXP inherited all encumbrances from Philips's semiconductor business, including encumbrances under the License. (*See* Tr. at 8) (counsel for Intel stating that "this license has been recognized as a license and an encumbrance on what is now the Future Link patent portfolio")

Intel has met its burden of showing that the License is valid, not amended, and not terminated. FLS has failed to rebut Intel's showing. Therefore, Intel's Motion will be granted with respect to this issue.

4. Intel's Allegedly Inconsistent Non-Infringement Positions

FLS argues that Intel's Motion should be denied because Intel's non-infringement

positions are inconsistent with Intel's licensing contentions. (*See* D.I. 224 at 19-20) The Court declines to deny summary judgment on this basis.

In Intel's Supplemental Licensing Contentions, Intel states:

> Intel bases these contentions on its present understanding of Future Link's application of the claims. ***Intel denies infringement and accordingly does not adopt any constructions or interpretations impliedly or expressly in these contentions. Assuming that Future Link's assertions of infringement are correct, however, the Intel products described below are licensed.*** By providing these contentions, Intel is not waiving or limiting its right to make arguments in the future about the proper scope of the claims or to advance alternative constructions to those for which Future Link advocates. Intel expressly reserves the right to argue for narrower or different claim constructions during the course of this litigation, and to prove non-infringement.

(D.I. 227 Ex. A.2 at 3) (emphasis added) Because discovery is still ongoing and FLS's infringement contentions (and, as a result, Intel's non-infringement contentions) may change, the Court will not hold Intel to its current non-infringement positions for purposes of deciding Intel's Motion and will not deny Intel's Motion based on purported inconsistencies between Intel's non-infringement and licensing contentions.

5. Intel's Reliance on Previously Undisclosed Exhibits[8]

FLS argues that Intel's Motion should be denied under Rule 56(d) for Intel's failure to respond to FLS's discovery requests. Rule 56(d) states: "If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition,

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[8]FLS includes what appears to be a motion to strike in its brief opposing Intel's Motion. (*See* D.I. 224 at 20) Specifically, FLS moves to strike exhibits, and arguments based on the exhibits, that were allegedly not disclosed in Intel's license contentions. The Court will deny this motion to strike as procedurally improper, because it does not comply with the Court's "New Procedures" which are available on the Court's website (and which FLS properly complied with in connection with its Motion to Strike (D.I. 246)).

the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." A Rule 56(d) defense in an opposition brief is not the proper vehicle for challenging a party's discovery conduct. The proper procedures are described on the Court's website, in the scheduling order, and have already been utilized six times by the parties in this litigation. (*See* D.I. 40, 130, 188, 204, 361, 415) The Court declines to deny Intel's Motion on the basis of a procedurally defective challenge to Intel's discovery conduct.[9]

II. DEFENDANT'S MOTION TO STRIKE (D.I. 246)

FLS moves to strike certain arguments and evidence included in, and submitted with, Intel's reply brief in support of Intel's Motion. (*See* D.I. 247-6 at 3-19) (listing fifteen sections of Intel's arguments/evidence, FLS's grounds for striking said sections, and Intel's responses to said grounds) FLS's Motion to Strike will be granted in part – only as to Intel's belatedly disclosed dictionary definitions for the word "application." (D.I. 243-1 Exs. 52, 53) These dictionary definitions were not timely disclosed to FLS. The Court did not rely on them in reaching its opinions with respect to Intel's Motion.

In considering FLS's Motion to Strike, the Court weighs the factors outlined in *Meyers v. Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894, 904-05 (3d Cir. 1977), including "prejudice or surprise" to FLS, ability "to cure the prejudice," whether allowing the challenged evidence or argument would "disrupt the orderly and efficient trial of the case or of other cases in the court," and any evidence of Intel's "bad faith or willfulness in failing to comply" with its

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[9]FLS's Rule 56(d) defense is also improperly briefed, because the bases for this defense are provided in an accompanying declaration from one of FLS's attorneys, a tactic that appears intended to circumvent the page limits for FLS's opposition brief.

discovery obligations.

FLS's Motion to Strike will be denied as to all other relief requested by FLS. Intel has shown that it timely disclosed the substance of all of its other challenged arguments and evidence in its supplementary contentions. (*See* D.I. 247-6 at 3-19) Because FLS was put on notice that Intel would rely on the substance of these arguments, the Court finds that FLS has not suffered prejudice sufficient to warrant striking these arguments and evidence. FLS did not ask to file a supplemental brief responding to the allegedly new arguments/evidence, and FLS had almost a full month after Intel submitted its reply brief in support of Intel's Motion to review the allegedly new arguments and evidence in preparation for the hearing on March 1, 2016.

III. CONCLUSION

For the foregoing reasons, the Court will grant in part and deny in part Intel's Motion and FLS's Motion to Strike. An appropriate Order follows.