

United States District Court,  
E.D. Texas, Sherman Division.

**STMICROELECTRONICS, INC,**  
v.  
**SANDISK CORPORATION.**

No. 4:05CV44

**Oct. 20, 2005.**

Bruce S. Sostek, Frank Finn, Jane Politz Brandt, Thompson & Knight, James Patrick Bradley, Kelley Anne Conaty, Thomas N. Tarnay, Sidley Austin, Dallas, TX, Clyde Moody Siebman, Lawrence Augustine Phillips, Siebman Reynolds Burg & Phillips LLP, Sherman, TX, for Plaintiff.

Carl R. Roth, The Roth Law Firm, P.C., Michael Charles Smith, Siebman Reynolds Burg Phillips & Smith, LLP, Marshall, TX, James C. Yoon, Julie M. Holloway, Lance G. Kavanaugh, Michael A. Ladra, S. Michael Song, Wilson Sonsini Goodrich & Rosati, Palo Alto, CA, Mark Nolan Reiter, Steven Mark Geiszler, Gibson Dunn & Crutcher, Dallas, TX, Sheila D. Gray, Wilson Sonsini Goodrich & Rosati, Austin, TX, Steven S. Baik, Orrick Herrington & Sutcliffe, Menlo Park, CA, for Defendants.

***REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE***

**DON D. BUSH, Judge.**

Pursuant to 28 U.S.C. s. 636(b)(1), the Honorable Richard A. Schell referred this matter to the undersigned United States Magistrate Judge for consideration of pretrial matters and for entry of a Report and Recommendation on dispositive matters. On June 23, 2005, the Court ordered that a claim construction hearing be held before Gaynell C. Methvin, whom the Court appointed as Special Master pursuant to Federal Rule of Civil Procedure 53 to make recommendations to the Court as to the meaning of disputed terms. Special Master Methvin previously construed some of the terms of the patent at issue, U.S. Patent 4,592,802 ("802 Patent"), in August of 2004 in *Motorola v. STMicroelectronics, N.V., et al.*, Civil Action 1:03-CV-407 (E.D. Tex., Beaumont Div.). As Defendant was not a party to the first claim construction, the Court found that a second claim construction hearing was necessary in this case.

Having been granted authority to do so under Rule 53, Special Master Methvin conducted a *Markman* hearing and fully considered the arguments, evidence, and briefs presented by the parties on the claims construction issue. Special Master Methvin also took post-hearing letter briefs and exhibits into consideration. The Special Master, as directed, has propounded his Claims Construction Report to the Court.

***RECOMMENDATION***

The Court has reviewed the Special Master's report and agrees with Mr. Methvin's findings. Accordingly,

the undersigned United States Magistrate Judge recommends that the District Court enter an order adopting the Special Master's Claims Construction Report, attached hereto as Exhibit A. The undersigned further recommends that, upon entry of the District Court's order adopting this Report and Recommendation as well as the Special Master's Claims Construction Report, that Special Master Methvin's findings and conclusions of law become those of the Court. The Order Adopting should accordingly constitute the Court's ruling on the construction of the disputed patent claims in this proceeding.

Within ten (10) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C.A. s. 636(b)(1)(C).

Failure to file written objections to the proposed findings and recommendations contained in this report within ten days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir.1988).

E.D.Tex.,2005.

STmicroelectronics, Inc. v. Sandisk Corp.

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