

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDERSECRETARY AND DIRECTOR OF
THE UNITED STATES PATENT AND TRADEMARK OFFICE

OPENSKY INDUSTRIES, LLC,
INTEL CORPORATION,
Petitioners,

v.

VLSI TECHNOLOGY LLC,
Patent Owner.

IPR2021-01064¹
Patent 7,725,759 B2

Before KATHERINE K. VIDAL, *Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

ORDER
*Denying Request for Stay or Two-Month Extension
Granting Two-Week Extension*

¹ Intel Corporation (“Intel”), which filed a petition in IPR2022-00366, has been joined as a party to this proceeding. Paper 43.

On December 23, 2021, the Patent Trial and Appeal Board (“Board”) issued a Decision granting institution of an *inter partes* review of claims 1, 14, 17, 18, 21, 22, and 24 of U.S. Patent No. 7,725,759 B2 (“the ’759 patent”), as requested by OpenSky Industries, LLC (“OpenSky”). Paper 17 (“Institution Decision”). VLSI Technology LLC (“Patent Owner”; “VLSI”) subsequently filed a rehearing request and a request for Precedential Opinion Panel (“POP”) review. *See* Paper 20; Ex. 3002. I initiated Director review of the Board’s Institution Decision on June 7, 2022, and the POP dismissed the rehearing and POP review requests. Papers 41, 42. On June 8, 2022, the Board joined Intel as a Petitioner in this case. Paper 43.

On July 7, 2022, I issued a Scheduling Order in this proceeding, and in the Scheduling Order I instructed, *inter alia*, the parties to exchange certain categories of information as Mandated Discovery by July 21, 2022. Paper 47, 9–11. I also authorized the parties and *amici curiae* to submit briefs by August 4, 2022. *Id.* at 12. The parties were further authorized to submit responsive briefs by August 18, 2022. *Id.*

On the evening of July 15, 2022, counsel for OpenSky sent an email to the Director review mailbox requesting “an immediate order either (a) staying the ‘Mandated Discovery’ and briefing schedule in Paper No. 47 or (b) extending the deadlines set in Paper No. 47 by two months for each deadline.” Ex. 3012. In its email, counsel disputes the “premise” of the Director review and argues that a stay or extension is required in order to provide counsel with time “in which to attempt to retain counsel who is familiar with Constitutional law, administrative procedure, and overreach of administrative agencies.” *Id.* Intel indicates that it neither opposes nor joins OpenSky’s requested stay or extension. Ex. 3013. VLSI indicates that it opposes a stay or extension. Ex. 3014.

Additionally, by email, VLSI requests that “that the underlying due dates in these instituted IPRs (IPR2021-01064 and IPR2021-01229 [filed by Patent Quality Assurance, LLC, with Intel as a joined petitioner]) be stayed or suspended pending completion of Director Review.” Ex. 3015. Intel opposes such a stay of the merits proceeding, *see* Ex. 3013, and OpenSky opposes an indefinite stay but would consider a limited stay, if requested. Ex. 3016.

I have considered OpenSky’s request and I deny the requested stay and two-month extension of the discovery and briefing deadlines identified in the Scheduling Order for this Director review. This Director review will proceed with dispatch. Nonetheless, I recognize counsel’s desire for additional time to, e.g., consult with other counsel regarding the scope of this review. Accordingly, I grant a two-week extension of the discovery and briefing deadlines identified in the Scheduling Order.

The parties are reminded that, as set forth in the Scheduling Order, a party may lodge legitimate, lawful grounds for withholding documents, and shall maintain a privilege log of documents withheld. *See* Paper 47, 10–11 (“The parties shall exchange the aforementioned evidence . . . unless a good faith claim of attorney-client privilege, work product doctrine, or any other applicable privilege or immunity exists in which case the evidence may be withheld from production . . . If evidence is withheld, that party shall maintain a privilege log of any responsive evidence that is withheld as privileged and shall exchange that privilege log on the date the documents are to be exchanged.”).

I have also considered VLSI’s request for a stay of the underlying merits proceedings in this case, and deny such request. *See* Paper 41, 3; Paper 47, 12.

ORDER

Accordingly, based on the foregoing, it is:

ORDERED that the deadline for exchanging Mandated Discovery is extended to August 4, 2022;

FURTHER ORDERED that the deadline for the parties and *amici curiae* to submit briefs is extended to August 18, 2022;

FURTHER ORDERED that the deadline for the parties to submit responsive briefs is extended to September 1, 2022;

FURTHER ORDERED that all other provisions and instructions identified in the July 7, 2022, Scheduling Order remain in effect;

FURTHER ORDERED the *inter partes* review is not stayed and will proceed according to the schedule stipulated to by the parties; and

FURTHER ORDERED that the parties shall meet and confer before making any future request during the Director review process, and the requesting party shall indicate the position of all other parties regarding the requested relief.

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