

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.)	
)	
Plaintiff,)	
v.)	Civil Case No. 2:22-cv-203-JRG-RSP
)	
MICRON TECHNOLOGY, INC., MICRON)	JURY TRIAL DEMANDED
SEMICONDUCTOR PRODUCTS, INC., and)	
MICRON TECHNOLOGY TEXAS LLC,)	
)	
Defendants.)	
)	

JOINT NOTICE REGARDING THE CURRENT STAY

Plaintiff Netlist, Inc. (“Netlist”) and Defendants Micron Technology, Inc., Micron Semiconductor Products, Inc., and Micron Technology Texas LLC (“Micron”) file this joint notice to apprise the Court of the parties’ respective positions with respect to the current stay.

Netlist’s Position:

Micron contends that Netlist asserted the patents in this case in bad faith under Idaho Code § 48-1703, the Idaho Bad Faith Assertions of Patent Infringement Act. This issue is currently pending before this Court in *Netlist, Inc. v. Micron Tech., Inc.*, 2:23-cv-628-JRG (“Micron III”). According to Micron, the Court needs to decide infringement in this case, and should *not* decide it in *Micron III*, see *Micron III*, Dkt. 28 at 3 (“Netlist’s allegations of patent infringement... are to be decided in the cases already pending before this Court ...”), and the Court held that it does not intend to “relitigate th[is] case[.]” in *Micron III. Id.*, Dkt. 29 at 2. Successfully litigating Netlist’s underlying claims here will establish that Netlist’s patent infringement claims are not “objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits,” *Globetrotter Software, Inc. v. Elan Computer Grp., Inc.*, 362 F.3d 1367, 1376 (Fed. Cir. 2004); *Maxchief Investments Ltd. v. Wok & Pan, Ind., Inc.*, 909 F.3d 1134, 1140 n.3 (Fed. Cir. 2018). Thus, the stay needs to be lifted and Netlist needs to bring its claims before a jury. Lifting the stay would not prejudice Micron, as the parties have already fully prepared for trial. Moreover, Micron’s latest retaliatory filing in Idaho on two of the patents-in-suit is proof that Micron is prepared to incur the significant expense of litigating Netlist’s infringement claims. The more efficient path is to reactivate this case which is ready for trial.

Micron’s Position:

The stay should remain in place pending appeals. The Court stayed the case when only four of the original six asserted patents were found invalid, observing the risk of “an inefficient consumption of limited judicial resources.” Dkt. 493, 1-2. That risk has now increased. Now, *all* asserted patent claims have been found invalid. Indeed, Netlist tellingly does not argue that the

risk has somehow decreased. Moreover, a trial may never be necessary because the PTAB results are likely to be upheld on appeal. More than 70% of IPR results are affirmed. Furthermore, the claims were found obvious on multiple grounds, and there are additional grounds for the PTAB to consider even if there was a reversal. *See* Dkt. 499-2, 74; Dkt. 499-3, 67; 12/20/23 Hrg. Tr. 127:12-130:5. Impaneling a jury under these circumstances and taking people away from their daily lives to decide complex technical issues about invalid patents, is an unwarranted burden. Trying invalid patents would require substantial, and likely unnecessary, expenses and resources by the parties and the Court. Netlist's argument to the contrary is inapposite. Micron brought the Idaho bad-faith litigation claims because Netlist was asserting "facially invalid" claims from three patents, which had already been confirmed by the PTAB. *See, e.g. Micron III*, Dkt. 1-10 ¶ 3. As such, and despite Netlist's arguments to the contrary, further "litigating Netlist's underlying" infringement theories is not dispositive to those proceedings or the broader declaratory judgment action Netlist brought before this Court. The stay should remain in place.

Dated: April 12, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2024, the foregoing document was electronically filed with the Clerk of the Court using the Court's CM/ECF system, which will send notification of such filing to all counsel of record, including counsel for Plaintiff, Netlist, Inc.

/s/ Michael R. Rueckheim

Michael R. Rueckheim