



IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

INTEL CORPORATION,

Plaintiff,

v.

NVIDIA CORPORATION,

Defendant.

CIVIL ACTION NO.

REDACTED PUBLIC VERSION

DATED: February 18, 2009

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff Intel Corporation ("Intel"), by its undersigned counsel, alleges with respect to itself and its own acts, and upon information and belief as to all other matters, as follows:

Nature of the Case

1. This action is for injunctive and declaratory relief relating to a disagreement between Intel and NVIDIA Corporation ("NVIDIA" or "Defendant") over NVIDIA's rights to market certain core-logic Media and Communications Processor ("MCP") products, commonly known as "chipsets," under its license agreements with Intel. Intel contends that NVIDIA is not licensed to market MCPs for use with any Intel processor that has integrated memory controller functionality, including Intel's "Nehalem" architecture (hereinafter "Disputed NVIDIA MCPs"). NVIDIA, however, insists that those products are licensed. Intel therefore seeks a declaration from the Court resolving this dispute by adjudging that NVIDIA is not licensed under its agreements with Intel to market Disputed NVIDIA MCPs.

2. Intel further contends that NVIDIA has not complied with its contractual obligations to refrain from making false or misleading statements to third parties about the parties' licensing agreements. NVIDIA has unequivocally told third parties, including customers of Intel and the trade press, that its agreements with Intel license it to market the Disputed

NVIDIA MCPs. NVIDIA's statements are false and misleading, and therefore in breach of the parties' licensing agreements, because, *inter alia*, they fail to acknowledge that Intel vigorously contests NVIDIA's claim to be licensed.

3. NVIDIA has failed to comply with Intel's requests that it retract or correct statements declaring unequivocally that Disputed NVIDIA MCPs are licensed. NVIDIA also has not accepted Intel's invitation to issue a joint statement providing complete and accurate information. Intel therefore seeks an injunction preventing NVIDIA from continuing to make false and misleading claims to third parties that Disputed NVIDIA MCPs are licensed. Intel further requests an order requiring NVIDIA to provide complete and accurate information to third parties to correct NVIDIA's prior misrepresentations.

4. Finally, NVIDIA has asserted that Intel advised customers, in violation of these same contractual obligations, that NVIDIA is not licensed to market the Disputed NVIDIA MCPs. Contrary to NVIDIA's accusations, Intel has in statements to third parties truthfully disclosed that the parties disagree as to the scope of the license agreements. Intel therefore seeks a declaration from the Court adjudging that Intel has complied with its obligations under the licensing agreements with NVIDIA to refrain from making false or misleading statements regarding those agreements or their terms.

5. Intel has worked diligently with NVIDIA to attempt to resolve the parties' disagreement regarding the scope of NVIDIA's licenses and to look for alternative business solutions, including participating in a private dispute resolution process. Unfortunately, the gap between the parties' positions is so great that it is necessary to seek the intervention of the Court. Resolution of Intel's Complaint for Injunctive and Declaratory Relief will enable both companies to better understand and adhere to their respective obligations.

6. Intel seeks equitable relief and, accordingly, asserts subject matter jurisdiction pursuant to 10 Delaware Code § 341. In addition, this action involves a technology dispute pursuant to 10 Delaware Code § 346. Intel and NVIDIA have consented to the jurisdiction of the courts of the State of Delaware pursuant to the parties' Chipset License Agreement.

Parties

7. Intel is a Delaware corporation with its principal place of business at 2200 Mission College Blvd., Santa Clara, California 95052. Intel is a world leader in developing advanced integrated technology products for industries such as computing and communications. Intel markets products in a broad range of categories, including processors and chipsets.

8. NVIDIA is a Delaware corporation with its principal place of business at 2701 San Tomas Expressway, Santa Clara, California 95050. NVIDIA markets products for the computing industry, including MCPs.

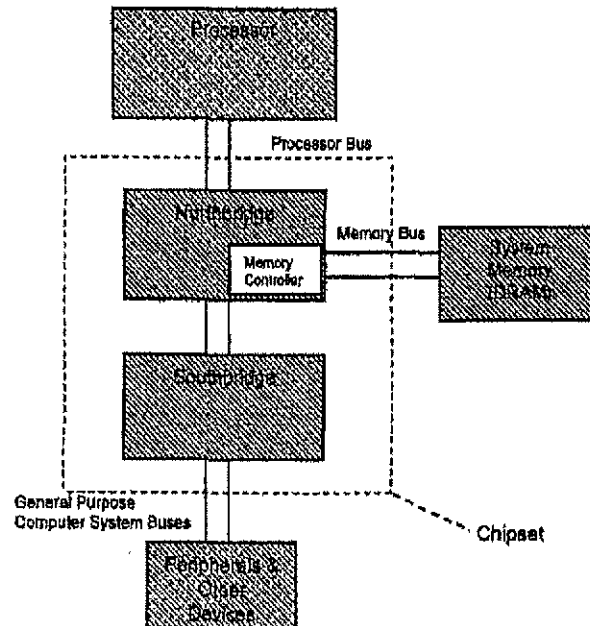
Background

The Technology

9. Personal computers are comprised of many different components. They typically include a central processing unit ("processor"), which processes system data and controls other devices in the system, acting as the "brains" of the computer. Personal computers also normally include one or more integrated circuits (commonly called "chipsets"), which provide an interface between the processor and other parts of the system and perform essential logic functions such as balancing system performance and removing bottlenecks. In addition to performing these functions, chipsets also extend the graphics, audio, video, and other capabilities of many systems. Traditionally, chipsets are comprised of two chips (hence "chipset"): a "Northbridge," which connects the processor to the computer's system memory, and a "Southbridge," which

connects the processor to general computer system buses; those buses, in turn, connect to a variety of peripheral devices such as graphics cards, disk drives, keyboards, the mouse, and monitors. A traditional chipset is illustrated in Figure 1 below:

FIGURE 1
Traditional Chipset Architecture



10. Intel owns many patents and other intellectual property pertaining to chipsets, particularly chipsets designed for use with Intel processors. Intel has been very selective in licensing third parties to make chipsets that are compatible with Intel's processors.

The License Agreements

11. On November 18, 2004, Intel and NVIDIA entered into two related patent licensing agreements, a Patent Cross License Agreement (the "Cross License") and a Chipset License Agreement (the "CLA") (collectively, the "Agreements"). The Agreements were executed after arms-length negotiations in which each party was represented by counsel, and are annexed hereto under seal as Exhibits A and B, respectively.

12. In the Cross License, Intel grants NVIDIA, *inter alia*, a license to use, sell, offer to sell, and import certain products. However, products constituting "Intel Compatible Chipsets" are expressly carved out of NVIDIA's license. (See Cross License §§ 3.2, 1.18, 1.16, 1.9.)

13. The CLA carves back in rights to some but not all of the products excluded from the Cross License by granting NVIDIA a non-exclusive, non-transferable, royalty bearing, worldwide license, without the right to sublicense, to "Intel Chipsets." (See CLA §§ 3.1, 2.14, 2.8.)

14. The CLA's carve-in (§ 2.8) is much narrower than the carve-out in the Cross License (§ 1.9), as it applies only to products that satisfy three enumerated conditions. In other words, through these two provisions, the parties expressly agreed that NVIDIA would be licensed to make only certain types of chipsets that are compatible with Intel's processors and defined those chipsets narrowly in § 2.8 of the CLA:

Cross License Carve-Out (§ 1.9)

CLA Carve-In (§ 2.8)

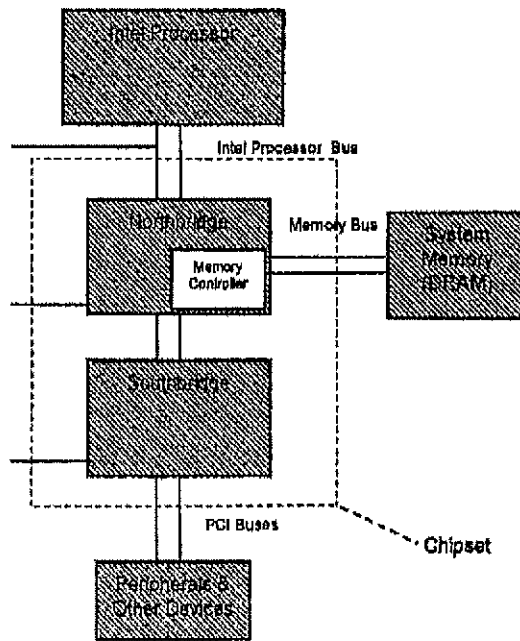
REDACTED

15.

REDACTED

FIGURE 2
Traditional Chipset Architecture and § 2.8

REDACTED



Intel's Nehalem Architecture

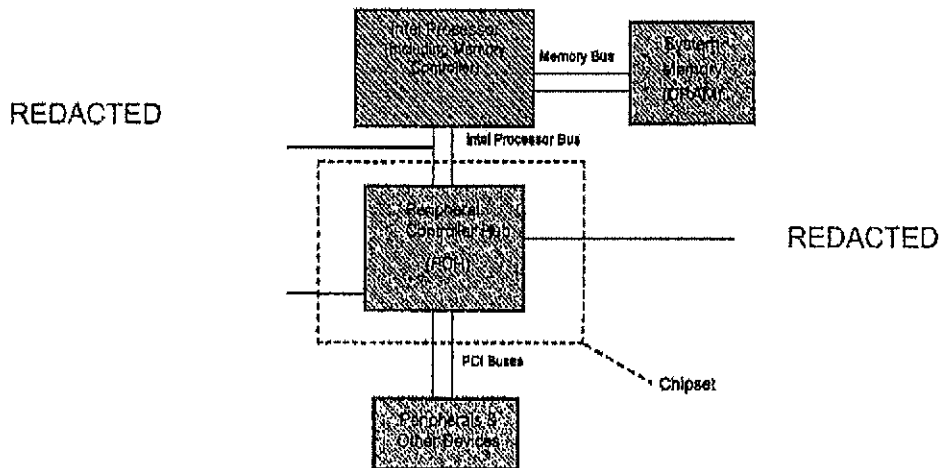
16. Intel recently launched a new processor architecture codenamed Nehalem. One feature of the Nehalem architecture that improves system performance is the removal of memory controller functionality from the chipset and its integration to the processor. Figure 3 depicts chipset architecture that is compatible with a processor (such as Intel's Nehalem processor) that incorporates an integrated memory controller.

REDACTED

Instead, the

processor communicates directly with DRAM through its integrated memory controller.

FIGURE 3
Nehalem Architecture and § 2.8 of the CLA



17. Because the Nehalem processors have an integrated memory controller as depicted in Figure 3, any chipset compatible with the Nehalem architecture. REDACTED

REDACTED

Accordingly, the Disputed NVIDIA MCPs are not licensed under the CLA.

Intel's Dispute With NVIDIA

Intel Informs NVIDIA that it is Not Licensed

18. In early 2007, Intel informed NVIDIA that it planned to introduce Nehalem architecture processors in 2008.

19. A series of discussions ensued between Intel and NVIDIA as to whether Disputed NVIDIA MCPs are licensed under the Agreements. It was, and is, Intel's position that Disputed NVIDIA MCPs are not licensed under the CLA because they cannot provide an interface between an Intel processor and system memory. Despite the clear and unambiguous language of the CLA, NVIDIA informed Intel that it disagreed with Intel's position.

20. In early 2008, NVIDIA advised Intel that NVIDIA plans to design, market, and sell Disputed NVIDIA MCPs. In August 2008, NVIDIA reiterated to Intel its intention to market and sell Disputed NVIDIA MCPs notwithstanding Intel's position that those products are not licensed under the Agreements. For much of 2008, Intel and NVIDIA worked diligently to attempt to resolve their differences regarding the scope of NVIDIA's licenses and to look for alternative business solutions. This included completion of the numerous dispute resolution steps, including private mediation, required by Section 8.10 of the CLA.

21. There is a substantial controversy between Intel and NVIDIA as to whether Disputed NVIDIA MCPs are licensed under the CLA. Resolution of this controversy is both necessary and appropriate because Intel recently released its Nehalem architecture processors, and neither Intel, NVIDIA, nor third-party system developers and sellers can adequately plan their business operations absent a judicial determination of Intel and NVIDIA's respective rights.

NVIDIA's Breaches of the Agreements

22. Section 7.2 of the CLA states:

REDACTED

Section 6.2 of the Cross License includes similar language. Intel is informed and believes, and thereupon alleges, that NVIDIA has made statements to third parties, including Intel's customers and the trade press, unequivocally asserting that Disputed NVIDIA MCPs are licensed. For example, a June 2, 2008 *Maximum PC* article discussing Intel's Nehalem architecture quotes NVIDIA spokesperson Brian Burke as saying, "We do have full licensing in our licensing agreement (to build for Nehalem)."

23. In contrast to NVIDIA, Intel has accurately disclosed that there is a dispute between the parties as to whether Disputed NVIDIA MCPs are licensed. NVIDIA has nevertheless accused Intel of making unequivocal statements that Disputed NVIDIA MCPs are not licensed. Despite making these accusations, NVIDIA has ignored Intel's request that it provide specific information in support of its claims.

24. In a letter dated July 1, 2008, Intel wrote to NVIDIA, *inter alia*, asking NVIDIA to cease making false and misleading statements concerning its purported rights under the CLA to make Disputed NVIDIA MCPs. Intel also offered to jointly draft and issue a press release with NVIDIA stating, in substance, that the parties disagree as to the scope of NVIDIA's rights to market Disputed NVIDIA MCPs but are attempting to resolve their disagreement, which is an accurate statement. NVIDIA never responded to this letter.

25. Instead, NVIDIA continued to make false and misleading statements concerning its purported rights under the CLA to make Disputed NVIDIA MCPs. For example, an August 29, 2008 *bit-tech* article states that during an interview with Tom Petersen, NVIDIA's Director of Technical Marketing for chipsets, "Petersen was adamant that NVIDIA's cross-licensing agreement with Intel includes a Quick Path Interface license, enabling the company to develop chipsets for Intel's latest [Nehalem] processors." Again, an August 29, 2008 *CustomPC* article entitled "NVIDIA has license to make Nehalem QPI Chipsets" repeats Petersen's claim that NVIDIA is licensed to market Disputed NVIDIA MCPs.

26. Likewise, Intel is informed and believes, and thereupon alleges, that NVIDIA has represented to third parties, including Intel's customers and the trade press, that NVIDIA is developing and intends to sell Disputed NVIDIA MCPs. For example, the August 29th, 2008 *bit-tech* article quotes NVIDIA's Petersen as saying NVIDIA "chose to focus our engineering resources on developing [Nehalem-compatible] DMI chipsets at this time."

27. NVIDIA's unequivocal statements that it is licensed to market Disputed NVIDIA MCPs are misleading—and therefore in violation of § 7.2 of the CLA—because they imply that NVIDIA's rights are uncontested when in fact there is an ongoing disagreement between the parties regarding this issue. The statements are also false because Disputed NVIDIA MCPs are not licensed under the CLA.

28. Intel has notified NVIDIA of these breaches and has requested that NVIDIA cure them by making corrective statements to all third parties to whom it made the misrepresentations. NVIDIA has ignored Intel's request.

29. NVIDIA's false and misleading public statements will cause Intel significant and irreparable injury. Original equipment manufacturers ("OEMs")—companies that use

components such as Intel processors in their own products (such as desktop or mobile computer systems)—are making decisions now about which chipsets they will use in future product offerings. Unequivocal representations by NVIDIA that its Disputed NVIDIA MCPs are licensed by Intel may mislead these customers to incorporate Disputed NVIDIA MCPs into Nehalem-based computer systems based on the belief that there exists no issue as to whether the Disputed NVIDIA MCPs are licensed. If it is later determined that NVIDIA does not have a license for Disputed NVIDIA MCPs, these OEMs will be (i) selling unlicensed technology and/or (ii) planning to incorporate unlicensed technology into future products. Any effort by Intel at that point to enforce its intellectual property rights against Disputed NVIDIA MCPs will strain Intel's relationships with its own customers, who may have, based on NVIDIA's misstatements, decided to use Disputed NVIDIA MCPs along with Intel processors. Accordingly, if NVIDIA is permitted to continue making false and misleading representations to Intel's customers and the market generally about its right to build Disputed NVIDIA MCPs, Intel's reputation and relationships with its customers will be irreparably harmed.

30. In addition, the parties negotiated and agreed to be bound by the terms of § 7.2 of the CLA. The purpose of this provision will be thwarted if NVIDIA is permitted to flout its obligations. Intel will be denied the benefit of the bargain it received when it agreed to be bound by the terms of the CLA.

31. There is a substantial controversy between Intel and NVIDIA as to whether NVIDIA has breached § 7.2 of the CLA, and injunctive relief is necessary both to prevent NVIDIA from making further misrepresentations and to correct its past misrepresentations.

Count I
(Declaratory Judgment)

32. Intel repeats and realleges the allegations of paragraphs 1 through 31 of this Complaint as if fully set forth herein.

33. The Agreements are valid and enforceable contracts. Intel has substantially performed under those contracts, is not in breach of those contracts, and is willing and able to perform its remaining obligations thereunder.

34. There is a substantial controversy between Intel, on the one hand, and NVIDIA, on the other hand, and the adverse legal interests of the parties are real and immediate. Expeditious resolution of this controversy is both necessary and appropriate. Intel has no adequate remedy at law.

35. Under the clear and unambiguous terms of the Agreements, Disputed NVIDIA MCPs are not licensed. NVIDIA has nonetheless informed Intel that it believes Disputed NVIDIA MCPs are licensed and that it plans to manufacture and sell Disputed NVIDIA MCPs. NVIDIA has also proceeded to market Disputed NVIDIA MCPs to third parties.

36. Intel is entitled to a declaration that NVIDIA is not licensed under the Agreements to use, import, sell, offer to sell, make, have made, or otherwise dispose of Disputed NVIDIA MCPs.

Count II
(Breach of Contract)

37. Intel repeats and realleges the allegations of paragraphs 1 through 36 of this Complaint as if fully set forth herein.

38. The Agreements are valid and enforceable contracts. Intel has substantially performed under those contracts, is not in breach of those contracts, and is willing and able to perform its remaining obligations thereunder.

39. The Agreements prohibit the parties from making any false or misleading statements concerning the Agreements. NVIDIA has breached the Agreements by making false and misleading statements regarding the Agreements and their terms.

40. NVIDIA has failed to cease making these false and misleading statements and/or to take action to correct past misrepresentations.

41. Without injunctive relief, NVIDIA will continue to make false and/or misleading statements concerning the Agreements to third parties. This conduct is causing and will continue to cause confusion in the marketplace and damage to Intel's reputation and business relationships. The resulting harm cannot be redressed by an award of money damages, and Intel has no adequate remedy at law.

42. Intel is entitled to a decree enjoining NVIDIA from making false and/or misleading statements concerning the Agreements and requiring NVIDIA to provide complete and accurate information to third parties to correct NVIDIA's prior misrepresentations.

Count III
(Declaratory Judgment)

43. Intel repeats and realleges the allegations of paragraphs 1 through 42 of this Complaint as if fully set forth herein.

44. The Agreements are valid and enforceable contracts. Intel has substantially performed under those contracts, is not in breach of those contracts, and is willing and able to perform its remaining obligations thereunder.

45. The Agreements prohibit the parties from making any false or misleading statements concerning the Agreements or their terms.

46. Intel is entitled to a declaration that Intel has substantially performed under the Agreements and has not made false and/or misleading statements regarding the Agreements and their terms.

WHEREFORE, Intel prays for judgment:

- A. declaring that NVIDIA is not licensed under the Agreements to make Disputed NVIDIA MCPs;
- B. declaring that NVIDIA has breached the Agreements;
- C. enjoining NVIDIA from stating to third parties that it is licensed to make and sell Disputed NVIDIA MCPs and requiring it to correct past misrepresentations to third parties;
- D. declaring that Intel has not breached the Agreements and that Intel's licenses under the Agreements remain in full force and effect;
- E. awarding Intel its attorneys' fees, costs and other expenses; and
- F. awarding Intel such other and further relief as the Court may deem appropriate.

Respectfully Submitted,

YOUNG CONAWAY STARGATT
& TAYLOR, LLP

/s/ C. Barr Flinn

OF COUNSEL:

George M. Newcombe
Jeffrey E. Ostrow
Patrick E. King
SIMPSON THACHER
& BARTLETT LLP
2550 Hanover Street
Palo Alto, CA 94304
Tel: (650) 251-5000
Fax: (650) 251-5002

C. Barr Flinn (No. 4092)
John Shaw (No. 3362)
Tammy L. Mercer (No. 4957)
The Brandywine Building, 17th Floor
1000 West Street
Wilmington, DE 19801
Tel: (302) 571-6689
Fax: (302) 571-3334

DATED: February 16, 2009

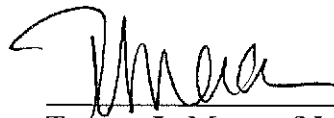
Counsel for Intel Corporation

CERTIFICATE OF SERVICE

I, Tammy L. Mercer, Esquire, hereby certify that on February 18, 2009 a copy of the foregoing document was served on the following counsel in the manner indicated below:

BY LEXISNEXIS FILE & SERVE

Gregory P. Williams, Esquire
John D. Hendershot, Esquire
Rudolf Koch, Esquire
Richards, Layton, & Finger
One Rodney Square
920 North King Street
Wilmington, DE 19801



Tammy L. Mercer (No. 4957)