

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CONVERSANT INTELLECTUAL
PROPERTY MANAGEMENT INC.

Plaintiff,

LSI CORPORATION, and AGERE
SYSTEMS, LLC,

Involuntary Plaintiffs,

v.

XILINX, INC.

Defendant.

C.A. No.: 6:12-cv-00847
LEAD CASE

JURY TRIAL DEMANDED

CONVERSANT INTELLECTUAL
PROPERTY MANAGEMENT INC.

Plaintiff,

LSI CORPORATION, and AGERE
SYSTEMS, LLC,

Involuntary Plaintiffs,

v.

ST MICROELECTRONICS, INC.

Defendant.

C.A. No.: 6:12-cv-00848
CONSOLIDATED WITH
C.A. No.: 6:12-cv-847

JURY TRIAL DEMANDED

THIRD AMENDED COMPLAINT AGAINST XILINX, INC.
FOR PATENT INFRINGEMENT

Plaintiff Conversant Intellectual Property Management Inc. f/k/a Mosaid Technologies Inc. (“Conversant” or “Plaintiff”), and Involuntary Plaintiffs LSI Corporation (“LSI”) and Agere Systems LLC (“Agere”), by and through their undersigned counsel, file this Third Amended Complaint for Patent Infringement against Defendant Xilinx, Inc. (“Xilinx”) and hereby state:

THE PARTIES

1. Plaintiff Conversant is a corporation subject to the laws of Canada with its principal place of business at 11 Hines Road, Suite 203, Ottawa, Ontario, Canada K2K 2X1. Conversant's United States principal place of business is located at 5700 Granite Parkway, Suite 960, Plano, Texas 75024.

2. Involuntary Plaintiff LSI is a Delaware corporation, with its principal place of business at 1320 Ridder Park Drive, San Jose, California 95131. LSI and its subsidiary Agere appear involuntarily pursuant to Rule 19 of the Federal Rules of Civil Procedure, as the owners of the LSI Patents, defined below. LSI and its subsidiaries, including Agere, entered into an exclusive Patent License Agreement with Conversant assigning, transferring, and conveying to Conversant all right, title, and interest in and to all causes of action and enforcement rights during the term of the Agreement in certain LSI patents, including, without limitation, all rights to pursue damages, injunctive relief, or other remedies for past, current, and future infringement of certain LSI patents. The relevant LSI patent include: United States Patent No. 6,397,240; United States Patent No. 5,577,230; and United States Patent No. 5,724,505 (the "LSI Patents"). Neither LSI nor its subsidiaries currently possesses any rights to enforce the LSI Patents, including claims or causes of action for infringement.

3. Involuntary Plaintiff Agere is a Delaware limited liability company, with its principal place of business at 1621 Barber Lane, Milpitas, CA 95035. A subsidiary of LSI, Agere appears involuntarily as the owner of the LSI Patents.

4. Defendant Xilinx, Inc. ("Xilinx") is a Delaware corporation with its principal place of business at 2100 Logic Drive, San Jose, California 95124. Defendant Xilinx may be served

through its registered agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, TX 75201-4234. Xilinx is authorized to do business in the State of Texas, and regularly conducts such business within the State and within this judicial district by way of sales and product distributions.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code.

6. Subject-matter jurisdiction over Conversant's claims are conferred upon this Court by 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

7. This Court has personal jurisdiction over Xilinx, which has conducted and continues to conduct business in the State of Texas and in this Judicial District. Xilinx directly and/or through intermediaries makes, offers for sale, sells and/or advertises (including through a website) products and services in the State of Texas and in this Judicial District. Xilinx committed acts of patent infringement alleged herein within the State of Texas and, more particularly, within this Judicial District. Xilinx purposefully and voluntarily placed its infringing products into the stream of commerce with the expectation that they will be purchased by consumers in the State of Texas and in this Judicial District. These infringing products have been and continue to be purchased by consumers in the state of Texas and in this Judicial District.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and §1400(b).

ASSERTED PATENTS

9. On May 28, 2002, United States Patent No. 6,397,240 ("the '240 Patent," entitled

“Programmable accelerator for a programmable processor system”) duly and legally issued. The '240 Patent relates to, among other things, a programmable multi-mode accelerator for use with a programmable processor. Conversant is the exclusive licensee of the '240 Patent and is the current owner of all rights to enforce the '240 Patent with respect to the Defendant. A copy of the '240 Patent is attached as Exhibit A to Plaintiff’s original Complaint (Dkt. No. 1-1 at 1).

10. On November 19, 1996, United States Patent No. 5,577,230 (“the '230 Patent,” entitled “Apparatus and Method for Computer Processing Using an Enhanced Harvard Architecture Utilizing Dual Memory Buses and the Arbitration for Data/Instruction Fetch”) duly and legally issued. The '230 Patent relates to, among other things, computer processors and memory architectures. Conversant is the exclusive licensee of the '230 Patent and is the current owner of all rights to enforce the '230 Patent with respect to the Defendant. A copy of the '230 Patent is attached as Exhibit B to Plaintiff’s original Complaint (Dkt. No. 1-1 at 23).

11. On March 3, 1998, United States Patent No. 5,724,505 (“the '505 Patent,” entitled “Apparatus and Method for Real-Time Program Monitoring via a Serial Interface”) duly and legally issued. The '505 Patent relates to, among other things, monitoring computer program execution in microprocessor devices. Conversant is the exclusive licensee of the '505 Patent and is the current owner of all rights to enforce the '505 Patent with respect to the Defendant. A copy of the '505 Patent is attached as Exhibit C to Plaintiff’s original Complaint (Dkt. No. 1-1 at 35).

12. The '240 Patent, '230 Patent, and '505 Patent are collectively referred to as the “Asserted Patents.”

GENERAL ALLEGATIONS

13. Defendant Xilinx has directly infringed and continues to directly infringe the Asserted Patents by making, using, offering to sell, selling, or importing devices within the scope of one

or more of the claims of the Asserted Patents. The infringing devices include, but are not limited to processors and system on chip devices.

14. Defendant Xilinx has indirectly infringed and continues to indirectly infringe one or more of the Asserted Patents by contributing to and actively inducing infringement of one or more of the claims of the Asserted Patents. Defendant Xilinx has notice of the Asserted Patents. The infringing devices are known by Defendant Xilinx to be especially made or especially adapted for use in an infringement of one or more of the Asserted Patents, and are not staple articles or commodities of commerce suitable for substantial noninfringing uses. Defendant Xilinx contributes to the infringement of one or more of the Asserted Patents by selling or importing the infringing devices to third parties, such as end-users, resellers, partners, and distributors who incorporate the infringing devices into their products and/or practice one or more claims of the Asserted Patents. Defendant Xilinx actively induces infringement by encouraging the use of the infringing devices by the third parties in ways that infringe one or more of the claims of the Asserted Patents. Defendant Xilinx knew or should have known that such encouragement would induce infringement. Such induced and/or contributory infringement has occurred at least since Defendant Xilinx became aware of the Asserted Patents.

15. As a result, Defendant Xilinx has been and still is infringing one or more of the claims of the Asserted Patents as defined by 35 U.S.C. § 271. Conversant has suffered damage by reason of such infringement and will continue to suffer additional damage until this Court enjoins the infringing conduct.

16. Defendant Xilinx has continued its infringing activities after receiving notice of at least some of the Asserted Patents as early as 2008, despite the objectively substantial and high likelihood that it is liable for infringement of valid patent rights, and, therefore, such

infringement is willful, entitling Conversant to the recovery of increased damages under 35 U.S.C. § 284. More specifically, as of at least February 25, 2009, as a result of notice provided by Conversant, Xilinx became aware that products with PowerPC 440 infringe claims 1, 2, 6, 7, and 8 of the '230 Patent. As of at least March 16, 2010, as a result of notice provided by Conversant, Xilinx became aware that products with Microblaze and XMTC blocks infringe claims 1, 5, and 7 of the '505 Patent. As of at least June 10, 2011, as a result of notice provided by Conversant, Xilinx became aware that products with a Microblaze core infringe claims 1, 2, 3, 6, and 8 of the '230 Patent.

17. Infringement of the Asserted Patents by Defendant Xilinx renders this an "exceptional case" justifying an award of attorneys' fees and costs to Conversant under 35 U.S.C. § 285.

18. Conversant believes that Defendant Xilinx will continue to infringe one or more of the Asserted Patents unless enjoined by this Court. Such infringing activity causes Conversant irreparable harm and will continue to cause such harm without the issuance of an injunction.

COUNT ONE
Xilinx's Infringement of the '240 Patent

19. Conversant incorporates by reference each of the foregoing paragraphs of this Complaint as though fully set forth herein.

20. Defendant Xilinx has been and is still directly infringing one or more of the claims of the '240 Patent. Defendant Xilinx's infringing acts include, but are not limited to, making, using, offering to sell, selling, or importing within the United States devices which practice one or more of the claims of the '240 Patent, including but not limited to the following:

- a) Zynq 7000 Family, including the Z-7010, Z-7015, Z-7020, Z-7030, Z-7045, and Z-7100, as well as any other family member products incorporating the DSP48E slice;

- b) Virtex-5 FPGAs.
- c) Virtex-6 FPGAs.
- d) Virtex-7 FPGAs.
- e) EasyPath-6 FPGAs.
- f) EasyPath-7 FPGAs.
- g) Artix-7 FPGAs.
- h) Kintex-7 FPGAs.
- i) Ultrascale, including:
 - 1. Virtex
 - 2. Kintex
- j) Any and all products identified in the L.P.R. 3-1 Preliminary Infringement Contentions which Conversant has timely served upon Xilinx, including the claim charts attached hereto as **Exhibit A** (Chart #X3) and **Exhibit B** (Chart #X5), the contents of which are incorporated by reference as if restated fully herein.

21. Defendant Xilinx has been and is still contributing to the infringement of and/or actively inducing third parties, such as end users, that directly infringe one or more of the claims of the '240 Patent. Defendant Xilinx's actions are in violation of one or more of the provisions of 35 U.S.C. § 271(a), (b), (c), (f), and (g).

COUNT TWO
Xilinx's Infringement of the '230 Patent

22. Conversant incorporates by reference each of the foregoing paragraphs of this Complaint as though fully set forth herein.

23. Defendant Xilinx has been and is still directly infringing one or more of the claims of the '230 Patent. Defendant Xilinx's infringing acts include, but are not limited to, making, using,

offering to sell, selling, or importing within the United States devices within the scope of one or more of the claims of the '230 Patent, including but not limited to the following:

- a) Virtex-5 FPGAs, including but not limited to Virtex-5 FPGAs with PowerPC 440.
- b) Virtex-6 FPGAs with MicroBlaze Processor.
- c) Any and all products identified in the L.P.R. 3-1 Preliminary Infringement Contentions which Conversant has timely served upon Xilinx, including the claim charts attached hereto as **Exhibit C** (Chart #X1) and **Exhibit D** (Chart #X2), the contents of which are incorporated by reference as if restated fully herein.

24. By at least February 25, 2009, Xilinx became aware that certain of its products infringe the claims of the '230 Patent. Specifically, through a series of written, telephonic and in-person communications, by at least February 25, 2009, Conversant provided notice and explanation to Defendant Xilinx that products with PowerPC 440 infringe claims 1, 2, 6, 7, and 8 of the '230 Patent.

25. Additionally, through a series of written, telephonic and in-person communications, by at least June 10, 2011, Conversant provided notice and explanation to Defendant Xilinx that products with a Microblaze core infringe claims 1, 2, 3, 6, and 8 of the '230 Patent.

26. Defendant Xilinx's notice set forth the manner in which these products infringe the '230 Patent, and detailed the basis for Conversant's claims that Defendant Xilinx's above-referenced products infringe the '230 Patent.

27. As a result, Defendant Xilinx has known (or at a minimum should have known) since at least February 25, 2009 of an objectively high likelihood that that the making, importation, use, offer for sale, or sale of the above-referenced products in the United States constitutes direct infringement of one or more valid claims of the '230 Patent.

28. Despite awareness of the objectively high risk of such infringement of valid patent claims, Defendant Xilinx has been and is still contributing to the infringement of and/or actively inducing third parties, such as end users, that directly infringe one or more of the claims of the '230 Patent, with willful disregard of Conversant's rights in such Patent.

29. Defendant Xilinx's actions are in violation of one or more of the provisions of 35 U.S.C. § 271(a), (b), (c), (f), and (g). As a result of Defendant Xilinx's willfulness, Conversant is entitled to enhanced damages pursuant to 35 U.S.C. § 284 and attorney's fees pursuant to 35 U.S.C. § 285.

COUNT THREE
Xilinx's Infringement of the '505 Patent

30. Conversant incorporates by reference each of the foregoing paragraphs of this Complaint as though fully set forth herein.

31. Defendant Xilinx has been and is still directly infringing one or more of the claims of the '505 Patent. Defendant Xilinx's infringing acts include, but are not limited to, making, using, offering to sell, selling, or importing within the United States devices within the scope of one or more of the claims of the '505 Patent, including but not limited to the Xilinx MicroBlaze Processor, and any and all products incorporating the Mciroblaze Processor, including any and all products identified in the L.P.R. 3-1 Preliminary Infringement Contentions which Conversant has timely served upon Xilinx, including the claim chart attached hereto as **Exhibit E** (Chart #X4), the contents of which are incorporated by reference as if restated fully herein.

32. By at least March 16, 2010, Xilinx became aware that certain of its products infringe the claims of the '505 Patent. Specifically, through a series of written, telephonic and in-person communications, by at least March 16, 2010, Conversant provided notice and explanation to Defendant Xilinx that products with Microblaze and XMTC blocks infringe claims 1, 5, and 7 of

the '505 Patent.

33. Defendant Xilinx's notice set forth the manner in which these products infringe the '505 Patent, and detailed the basis for Conversant's claims that Defendant Xilinx's above-referenced products infringe the '505 Patent.

34. As a result, Defendant Xilinx has known (or at a minimum should have known) since at least March 16, 2010 of an objectively high likelihood that the making, importation, use, offer for sale, or sale of the above-referenced products in the United States constitutes direct infringement of one or more valid claims of the '505 Patent.

35. Despite awareness of the objectively high risk of such infringement of valid patent claims, Defendant Xilinx Defendant Xilinx has been and is still contributing to the infringement of and/or actively inducing third parties, such as end users, that directly infringe one or more of the claims of the '505 Patent, with willful disregard of Conversant's rights in such Patent.

36. Defendant Xilinx's actions are in violation of one or more of the provisions of 35 U.S.C. § 271(a), (b), (c), (f), and (g). As a result of Defendant Xilinx's willfulness, Conversant is entitled to enhanced damages pursuant to 35 U.S.C. § 284 and attorney's fees pursuant to 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Conversant prays for entry of judgment and an order that:

- (1) Defendant Xilinx has infringed one or more of the claims of the Asserted Patents, either literally and/or under the doctrine of equivalents;
- (2) Defendant Xilinx account for and pay to Conversant all damages, assessment of interest, and costs of Conversant caused by Defendant's patent infringement;
- (3) Conversant be granted permanent injunctive relief pursuant to 35 U.S.C. § 283

enjoining Defendant Xilinx, its officers, agents, servants, employees, affiliates and those persons in active concert of participation with Xilinx from further acts of patent infringement of the Asserted Patents;

- (4) In the event the Court determines that it will not enter injunctive relief, Defendant Xilinx continues to pay royalties to Conversant for its infringement of the Asserted Patents on a going-forward basis;
- (5) Defendant Xilinx account for and pay for increased damages for willful infringement of the '230 and '505 Patents under 35 U.S.C. § 284;
- (6) Costs and attorney's fees be awarded to Conversant, as this is an exceptional case under 35 U.S.C. § 285; and
- (7) Conversant be granted such further and additional relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Conversant demands trial by jury on all claims and issues so triable.

May 1, 2014

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CERTIFICATE OF SERVICE

I certify that on May 1, 2014, all counsel who are deemed to have consented to electronic service are being served with a copy of this document by the Court's Electronic Filing System, pursuant to Local Rule CV-5(a)(3)(A).

/s/ Elizabeth L. DeRieux