

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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FUJITSU LIMITED, *et al.*,

Plaintiffs,

v.

NETGEAR, INC.,

Defendant and  
Third Party Plaintiff,

v.

ATHEROS COMMUNICATIONS, INC., *et al.*,

Third Party Defendants.

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ORDER

07-cv-710-bbc

On May 27, 2008, third party defendants Atheros and Broadcom, along with plaintiffs Fujitsu, LGE and Philips jointly moved to relieve Atheros and Broadcom from having to file invalidity claim charts until they file a responsive pleading that puts the validity of any asserted patent at issue. (On May 23, Atheros and Broadcom each responded to the third-party complaint by moving to dismiss it. *See* dks. 113 and 115.) As the parties note, invalidity claim charts are due from all parties on May 30, 2008, followed by claims construction briefing and a *Markman* hearing on August 15, 2008.

In theory, the court is willing to relieve Atheros and Broadcom of chores that might turn out to be unnecessary. As a practical matter, however, the court is chary of this proposal if it could have a ripple effect on other deadlines. If Atheros and Broadcom do not obtain dismissal but are required to answer eight to ten weeks from now, and if at that time they raise challenges different from the other parties, then they could end up on a slower pretrial track that might lead to a request for a different trial date. Howsoever remote this possibility, it is unpalatable in a complex patent case in which the trial date already has been pushed back once.

Therefore, the court will grant the instant joint motion with the following condition: if Atheros or Broadcom chooses not to participate in the currently-scheduled claims construction proceedings, then they waive their right separately to litigate claims construction and shall be bound by the court's rulings. Alternatively, if Atheros and Broadcom wish to have input on claims construction while avoiding immediate production of invalidity claim charts, the court would honor any relaxation of the pre-hearing submissions deadlines that Atheros or Broadcom negotiates with the other parties, so long as all affected parties are ready to proceed on August 15, 2008 at 9:00 with the claims construction hearing.

Entered this 29<sup>th</sup> day of May 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge