IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INTEL CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 14-377-LPS
	:	
FUTURE LINK SYSTEMS, LLC,	:	
	:	
Defendant.	:	

MEMORANDUM ORDER

At Wilmington this **27th** day of **January, 2017**:

Pending before the Court are disputes related to the parties' privilege logs. (*See* D.I. 436) On August 17, 2016, the Court held a teleconference to hear argument on the parties' disputes related to their privilege logs. (*See* Transcript, D.I. 404 ("Tr.")) At the conclusion of the call, the Court instructed the parties to "pick ten specific entries from the other side's privilege log" and then meet and confer regarding the chosen entries. (*Id.* at 36) After resolving as many disputes as possible via meeting and conferring, the parties were instructed to submit their remaining disputes, and the related documents, to the Court for *in camera* review. (*Id.* at 37; *see also* D.I. 409) Thereafter, Plaintiff Intel Corporation submitted nine documents for review (along with a list of the names of the people on the documents) and Defendant Future Link Systems, LLC submitted seven documents for review (along with supporting declarations from Amit Garg, Rowena Young, and Brian Marcucci). (D.I. 436 at 1)

The Court has reviewed the disputed documents and privilege log entries. For the reasons below, and in accordance with the Court's instructions below, **IT IS HEREBY ORDERED**

that:

(1) Future Link's requested relief – that Intel produce certain documents withheld as privileged – is **GRANTED IN PART** and **DENIED IN PART**, as indicated below;

(2) Intel's requested relief – that Future Link produce certain documents withheld as privileged or attorney work product – is **DENIED**;

(3) the parties shall meet and confer and submit, no later than **February 3, 2017**, a joint status report, providing their proposal(s) for how the Court should now proceed with respect to resolving any remaining issues relating to privilege logs; and

(4) the parties shall meet and confer and submit, no later than **January 31, 2017**, a proposed redacted version of this Memorandum Order.

I. FUTURE LINK'S REQUESTED RELIEF

Future Link challenges Intel's assertion of the attorney-client privilege for nine documents submitted as exhibits *in camera*. (*See* D.I. 433) The Court refers to the documents by their exhibit numbers.

Exhibit 1: This document shall be produced to Future Link. There is no indication that the document was ever actually sent to a lawyer for legal review, and it is unclear what "legal review process" is referred to in the top-level email sent August 5, 2008 at 9:58 a.m. This could refer to simple review by a paralegal or analysis by software or something other than review by an attorney for the purpose of giving legal advice. Moreover, the attached slide-show presentation appears to be entirely technical in nature, raising no issues that would clearly require review by an attorney. Intel has not met its burden of establishing that Exhibit 1 may properly be withheld from production as privileged.

Exhibits 2-3: These documents are properly redacted. Only the redacted versions need to be produced to Future Link (if they have not already been produced in the format submitted to the Court).

Exhibit 4: This document shall be produced to Future Link in unredacted form. Intel has not met its burden to justify its redactions for privilege because the only indication that the document may have been communicated to an attorney is a "Legal Review pending" designation on the first redacted page, which is insufficient evidence for the entire redacted portion to be deemed privileged. There is nothing in the content of what was redacted that would indicate what legal advice was sought or obtained, if any. Moreover, there is no indication of any communication to an attorney of the redacted portion of the document ***for the purpose of obtaining legal advice***. *United States v. Costanzo*, 625 F.2d 465, 468 (3d Cir. 1980) ("[A] communication is not privileged simply because it is made by or to a person who happens to be a lawyer . . . .") (internal quotation marks omitted); *see also Weil Ceramics & Glass, Inc. v. Work*, 110 F.R.D. 500 (E.D.N.Y. Feb. 19, 1986) ("[I]n an *in camera* review, the party asserting the privilege bears the burden of proof.").

Exhibit 5: This document shall be produced to Future Link in unredacted form. The only redacted portion simply indicates that someone wanted a lawyer to attend a meeting. The fact that a lawyer was requested to be at a meeting, or even the fact that a lawyer attended a meeting, is not privileged.

Exhibit 6: The redactions in the emails from Jeremy B. McCormick, sent November 20, 2009 at 1:45 p.m. and November 18, 2009 at 9:50 a.m., are not warranted. The fact that a document was reviewed by an attorney is not enough, by itself, to make the statements which

have been redacted privileged. Intel shall produce the document removing the two redactions just noted.

Exhibit 7: Intel has met its burden to assert privilege with respect to this document.

Exhibit 8: This document is properly redacted. The redacted version must be produced to Future Link, if it has not already been produced.

Exhibit 9: The redactions are improper because the fact that a document was reviewed by an attorney is not enough, by itself, to make these redacted statements privileged. The document must be produced to Future Link in unredacted form.

II. INTEL'S REQUESTED RELIEF

Having review Future Link's documents challenged by Intel, the Court determines that **Exhibits 1-5** are privileged and that **Exhibits 6-7** were properly redacted.

III. REDACTIONS

The parties shall meet and confer and, no later than January 31, 2017, submit a proposed redacted version of this Memorandum Order.

HON. LEONARD P. STARK
UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF DELAWARE

INTEL CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 14-377-LPS
	:	
FUTURE LINK SYSTEMS, LLC,	:	
	:	
Defendant.	:	

MEMORANDUM ORDER

Having reviewed the parties' briefing and filings with respect to Future Link Systems, LLC's ("Future Link") Motion for Reconsideration (D.I. 463) and Motion for Leave to File a Reply Brief (D.I. 484),

IT IS HEREBY ORDERED that:

1. Future Link's Motion for Leave (D.I. 484) is GRANTED.

2. Future Link's Motion for Reconsideration (D.I. 463) is DENIED.

Pursuant to Local Rule 7.1.5, a motion for reconsideration should be granted only "sparingly." The decision to grant such a motion lies squarely within the discretion of the district court. *See Dentsply Int'l, Inc. v. Kerr Mfg. Co.*, 42 F. Supp. 2d 385, 419 (D. Del. 1999); *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1241 (D. Del. 1990). These types of motions are granted only if the Court has patently misunderstood a party, made a decision outside the adversarial issues presented by the parties, or made an error not of reasoning but of apprehension. *See Schering Corp. v. Amgen, Inc.*, 25 F. Supp. 2d 293, 295 (D. Del. 1998); *Brambles*, 735 F. Supp. at 1241. "A motion for reconsideration is not properly grounded on a request that a court

rethink a decision already made." *Smith v. Meyers*, 2009 WL 5195928, at *1 (D. Del. Dec. 30, 2009); *see also Glendon Energy Co. v. Borough of Glendon*, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993). It is not an opportunity to "accomplish repetition of arguments that were or should have been presented to the court previously." *Karr v. Castle*, 768 F. Supp. 1087, 1093 (D. Del. 1991). A party may seek reconsideration only if it can show at least one of the following: (i) there has been an intervening change in controlling law; (ii) the availability of new evidence not available when the court made its decision; or (iii) there is a need to correct a clear error of law or fact to prevent manifest injustice. *See Max's Seafood Café ex rel. LouAnn, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). In no instance should reconsideration be granted if it would not result in amendment of an order. *See Schering Corp.*, 25 F. Supp. 2d at 295.

The Court has considered all briefing and filings, including those related to Future Link's Motion for Leave, in deciding the motions.

The Court agrees with Intel Corporation ("Intel") that "Future Link's Motion [for Reconsideration] simply repeats arguments that were previously raised [at the March 1, 2016 hearing], and does not add anything that could not have been presented to the Court before the Court's September 28, 2016 ruling [on summary judgment]." (D.I. 478 at 5) To the contrary, counsel for Future Link formulated the argument on which the request for reconsideration is based no later than the day before the March 2016 hearing and presented it at that hearing. (*See, e.g.*, D.I. 463 at 2-3) ("The night before the March 1, 2016 hearing on Intel Delaware's license claim, while preparing for the hearing, Future Link's counsel first noticed that contrary to Intel Delaware's representations, the license agreement at issue in this case stated that it was between Philips and Intel, a corporation of the State of California . . . not Intel Delaware . . . .") (emphasis

omitted) Thereafter, between March and August 2016, Future Link took discovery on this issue (*see* D.I. 478 at 4), but it was not until after the Court ruled on the summary judgment motion – agreeing, in large part, with Intel's licensing arguments – that Future Link chose to press its argument. These circumstances do not satisfy any of the narrow criteria for reconsideration.

In any event, Future Link's Motion for Reconsideration also fails on the merits. The licensing agreement at issue (D.I. 227 Ex. A.1) demonstrates that the signing entities intended for the agreement to be more than the nullity that it would amount to if the Court were to interpret the agreement as being between the Philips entities and a corporation (Intel California) that both parties agree did not exist at the time the license agreement was entered into.[1] "[A] contract can be reformed on the basis of mutual mistake if the writing does not accurately reflect the mutual intention of the parties . . . ." *Inv'rs Ins. Co. of Am. v. Dorinco Reinsurance Co.*, 917 F.2d 100, 105 (2d Cir. 1990). The agreement at issue here clearly indicates that all parties to the agreement intended for the signatory Intel Corporation (i.e., Intel Delaware) to be bound by the agreement and to receive all rights granted to Intel therein. Future Link points to no evidence (intrinsic or extrinsic) that would indicate that the signatory parties intended for the agreement to be a nullity. The reference in the agreement to Intel California rather than Intel Delaware is an obvious mistake.

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[1]Future Link does not appear to dispute Intel's representation that "Intel California had merged into Intel Delaware and ceased to exist more than a year ***before*** the effective date of the Intel-Philips License, such that Intel California had become Intel Delaware by operation of law by the time of the license." (D.I. 478 at 1)

IT IS FURTHER ORDERED that the parties shall meet and confer and, no later than January 31, submit a proposed redacted version of this Memorandum Order.

January 27, 2017
Wilmington, Delaware

HON. LEONARD P. STARK
UNITED STATES DISTRICT COURT