

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

XMTT, INC., :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 18-1810-RGA
 :
 INTEL CORPORATION, :
 :
 Defendant. :

MEMORANDUM ORDER

I received an unbecoming series of letters regarding claim construction. (D.I. 171, 173, 174, 175, 176, 178).

The genesis of the letters is that there was an IPR and the PTAB did claim construction.¹ Both parties agreed that the scheduling order I entered after the PTAB decision should include a procedure for considering and deciding whether any further claim construction should occur. (D.I. 170 at 2-4). I ordered the parties to meet and confer and, if there was a lack of agreement, to submit the dispute according to a schedule. (*Id.* at 3). If there were a dispute, XMTT’s opening letter was due July 9th. July 9th came and went with no submission from XMTT.

A week later, the first letter came, with Intel proposing a claim construction order of a number of related terms, which Intel described as the “plain and ordinary meaning.” (D.I. 171 at 4). The “plain and ordinary meaning” took about four times as many words to describe as was used in the term. XMTT responded that it too wanted the “plain and ordinary meaning,” but that

¹ Intel has appealed. *Intel Corp. v. XMTT, Inc.*, No. 21-2127 (Fed. Cir. filed July 12, 2121).

it was not what Intel said it was. Thus, the parties now have a claim construction dispute, albeit one that is befogged by the miasma of accusations back and forth in the letters.

I will take another shot at getting the parties on track in regard to claim construction, using the formal process that is embodied in my form patent scheduling order. The parties need to start at the beginning, as in the original scheduling order in this case. (D.I. 25 at ¶¶ 10-12). Within one week, the parties are to submit a stipulated schedule for conducting the process.

IT IS SO ORDERED this 7th day of October 2021.

/s/ Richard G. Andrews
United States District Judge