UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

DODOTS LICENSING SOLUTIONS LLC,
Patent Owner.

Case IPR2023-00756
Patent 9,369,545

PETITIONER'S REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE

EXHIBITS

SAMSUNG-1001 U.S. Patent No. 9,369,545 to Kembel, et al. ("the '545 Patent")

SAMSUNG-1002 Excerpts from the Prosecution History of the '545 Patent ("the Prosecution History")

SAMSUNG-1003 Declaration of Dr. Douglas C. Schmidt

SAMSUNG-1004 Curriculum Vitae of Dr. Douglas C. Schmidt

SAMSUNG-1005 U.S. Patent No. 6,278,448 B1 ("Brown")

SAMSUNG-1006 U.S. Patent No. 6,449,638 B1 ("Wecker")

SAMSUNG-1007 U.S. Patent No. 5,793,368 ("Beer")

SAMSUNG-1008 U.S. Patent No. 6,789,263 B1 ("Shimada")

SAMSUNG-1009 U.S. Patent No. 6,088,340 ("Buchholz")

SAMSUNG-1010 U.S. Patent No. 6,819,345 B1 ("Jones")

SAMSUNG-1011 *HTML 4 Unleashed* ("Darnell")

SAMSUNG-1012 IPR2019-00988 Final Written Decision

SAMSUNG-1013 U.S. Patent No. 6,342,907 B1 ("Petty")

SAMSUNG-1014 *Lenovo Holding Company, Inc. v. DoDots Licensing Solutions LLC*, No. 2021-1247, 2021 WL 5822248 (Dec. 8, 2021).

SAMSUNG-1015 U.S. Patent No. 6,311,058 B1 ("Wecker 2")

SAMSUNG-1016 U.S. Patent No. 5,737,560 ("Yohanan")

SAMSUNG-1017 CNET News, "PointCast unveils free news service," https://web.archive.org/web/20110616130215/http://news.cnet.com/PointCast-unveils-free-news-service/2100-1023_3-204658.html, last accessed Feb. 16, 2023

SAMSUNG-1018 Declaration of June Ann Munford

SAMSUNG-1019 Complaint, *DoDots Licensing Solutions LLC v. Samsung Electronics Co., Ltd. et al.*, 6:22-cv-00535, W.D. Tex., filed May 24, 2022

SAMSUNG-1020 U.S. Patent No. 6,094,681 ("Shaffer")

SAMSUNG-1021 U.S. Patent No. 6,055,522 ("Krishna")

SAMSUNG-1022 U.S. Patent No. 6,185,614 B1 ("Cuomo")

SAMSUNG-1023 *Board's email of August 14, 2023, authorizing Petitioner's reply*

SAMSUNG-1024 Joint Claim Construction Statement, 6:22-cv-00535, W.D. Tex., filed May 15, 2023.

SAMSUNG-1025 IPR2019-00988, Paper 40 (CAFC Decision)

Samsung Electronics Co., Ltd. ("Petitioner" or "Samsung") submits this reply to Patent Owner's preliminary response ("POPR"), as authorized by the Board on August 14, 2023. SAMSUNG-1023. As detailed below, the arguments advanced by Patent Owner ("DoDots") lack merit and should be rejected.

I. THE PETITION RELIES ON THE CORRECT CLAIM CONSTRUCTION STANDARD

As clearly explained in the Petition, "Petitioner submits that all claim terms should be construed according to the *Phillips* standard. *Phillips v. AWH Corp*., 415 F.3d 1303 (Fed. Cir. 2005); 37 C.F.R. §42.100." Petition, 2. As the Petition goes on to explain, in no unclear terms, "[u]nder the *Phillips* standard, the 'words of a claim are generally given their ordinary and customary meaning as understood by a person of ordinary skill in the art when read in the context of the specification and prosecution history," and, moreover, "Petitioner submits that all claim terms should be given their ordinary and customary meaning in the context of the specification under the *Phillips* standard[.]" *Id.*, 2-3. Thus, DoDots' contention that "the petition rests on a completely wrong legal standard" is wrong. POPR, 2.

DoDots' contention that the Petition "applies the incorrect claim construction standard ***under 37 C.F.R. 42.100(b)***" similarly misses the mark. POPR, 14 (emphasis added). In his declaration, Petitioner's expert Dr. Schmidt expressly referred to "37 C.F.R. § 42.100(b)" as the basis of his interpretations of the claim terms at issue. SAMSUNG-1003, ¶26. Although Dr. Schmidt quoted an

earlier version of 37 C.F.R. § 42.100(b) that mentioned the "broadest reasonable construction," such a typographical error does not deter the soundness of his opinions, especially when considering that Dr. Schmidt is not a lawyer nor has he ever professed to be one.[1] Rather, Dr. Schmidt's understanding of legal principles is based on information received from Samsung's counsel—who as noted above applied the correct *Phillips* standard. *See id.*, ¶¶15-18, 26.

The fact that Dr. Schmidt, despite the typographical error, applied the correct claim construction standard becomes abundantly clear upon reviewing his actual claim construction analysis. Indeed, for the only two terms for which Dr. Schmidt provided a separate claim construction analysis—"networked information monitor" and "networked information monitor template"—Dr. Schmidt expressly adopted constructions from IPR2019-00988, which were endorsed by the Federal Circuit under the *Phillips* standard. *See* SAMSUNG-1003, ¶¶28-29; SAMSUNG-1025. These constructions provided by Dr. Schmidt are also fully aligned with the agreed upon constructions by Samsung and DoDots for these same terms in the co-pending district court case. *See* SAMSUNG-1024, 2. DoDots certainly cannot

[1] If institution is granted, Petitioner plans to submit an updated declaration from Dr. Schmidt, which corrects the typographical error, as supplemental information.

dispute that the correct claim construction standard was used in those additional proceedings—and by extension in this one.

Although DoDots contends that it was somehow unduly burdened and prejudiced for allegedly being "forced to consider the arguments set forth in the petition and the expert declaration under both the *Phillips* standard and the BRI standard," it is unclear what additional work had to be done, particularly when, as noted above, Dr. Schmidt's only claim construction analysis relied on constructions endorsed by the Federal Circuit under the *Phillips* standard. *See* POR, 16-18. To the extent extra work was needed to cover both standards, which Petitioner does not concede, it is unclear, then, why DoDots would choose to expend resources analyzing Petitioner's arguments under a claim construction standard it knew was incorrect. Ultimately, because no additional claim constructions were presented in the Petition or the Schmidt Declaration beyond those that the Federal Circuit endorsed and DoDots expressly agreed to in earlier/parallel proceedings, the argument that Patent Owner was unduly burdened by Dr. Schmidt's typo misses the mark.

DoDots further asserts that Dr. Schmidt's entire testimony should be ***disqualified*** because it applies the wrong legal standard. *See* POPR, 15-16. In so doing, DoDots cites to *In re Novatel* and *Herbert v Lisle Corp*. *Id.* However, in *In re Novatel*, the Defendant's expert clearly and incorrectly described the

requirements for "loss causation," something that was crucial to his entire opinion and testimony. Similarly, in *Herbert*, a patent law expert held an incorrect understanding of "patent law," which again was crucial to his entire opinion and testimony. In the present proceeding, DoDots does not and cannot point to any such impact on Petitioner's and Dr. Schmidt's invalidity arguments.

Aside from a single instance of a typo in Dr. Schmidt's declaration where he was citing to 37 C.F.R. § 42.100(b), DoDots fails to show how Dr. Schmidt incorrectly applied the BRI standard in his assessment of the prior art and its applicability to the Challenged Claims. On the other hand, it is undisputed that the Petition itself is based on the correct *Phillips* standard and that Dr. Schmidt's claim construction analysis is wholly consistent with the invalidity arguments set forth in the Petition. DoDots does not raise any dispute over claim construction, much less explain why a different claim construction standard would result in a different construction of any term in the Challenged Claims. Indeed, as discussed above, the only claim constructions presented in Dr. Schmidt's declaration were constructions endorsed by the Federal Circuit under the *Phillips* standard and constructions with which DoDots agrees. With these facts, the typographical error in Dr. Schmidt's declaration has no bearing on the substance of his analysis or the soundness of the technical reasoning provided in his declaration.

II. SAMSUNG'S IPR AND DISTRICT COURT CONSTRUCTIONS ARE FULLY ALIGNED

DoDots alleges that, "[t]o preserve its rights in the district court, petitioner adopts the patent owner's construction 'only for this IPR,' but then fails to offer a construction as required under 37 C.F.R. §§ 42.104(b)(3) for a means-plus-function claim limitation." POPR, 2-3. As part of this argument, DoDots contends that the Petition is somehow deficient because it allegedly fails to account for Samsung's constructions in the co-pending litigation. *Id.* Such arguments are misleading and flawed.

Samsung has never advanced means-plus-function treatment for any claim feature of the '545 patent in any district court filing. *See* SAMSUNG-1024. While Samsung submitted ***initial*** claim construction pleadings to treat the noted "instructions configured to..." phrase as a means-plus-function limitation, such positions were only preliminary and never filed with the court. Moreover, Samsung subsequently revised these initial constructions, upon agreement with DoDots, in a ***Joint*** Claim Construction Statement dated May 15, 2023, (which was signed by DoDots two months before the POPR was filed) where it was indicated

that means-plus-function treatment was not being pursued. *See* SAMSUNG-1024.[2] This joint statement was the only document ever presented to the court as Samsung's official claim construction position. *Id*. Consequently, because means-plus-function claims are not at issue—in this proceeding or in the co-pending district court case—Patent Owner's arguments directed to the same are moot and there is nothing to reconcile between the two proceedings.

III. THE PETITION SHOULD NOT BE DISCRETIONARILY DENIED UNDER *FINTIV*

As explained in the Petition and as further detailed below, the *Fintiv* factors weigh against discretionary denial.

Factor 1: The Board should disregard Patent Owner's speculation regarding a future motion to stay. POPR, 28. The Board has consistently declined to predict such outcomes, and that same approach is warranted here. *Sotera*, IPR2020-01019 Paper 12 at 14 (PTAB Dec. 1, 2020) (precedential). Factor 1 remains neutral.

Factor 2: Director Vidal's observation in the Interim *Fintiv* Guidance "that scheduled trial dates are unreliable and often change" and that median time-to-trial

[2] It is remarkable that DoDots did not provide an up-to-date representation of the district court claim construction positions in its POPR. It is even more remarkable that DoDots has since filed a POPR in a related case (IPR2023-00701) citing the same superseded initial pleading after Samsung alerted DoDots to the issue.

statistics provide an accurate estimate of trial dates remain apt in this case. And the fact that an estimated trial date for the district court case, based on median time-to-trial date is likely to occur ***after*** the expected FWD date in this proceeding is not disputed. Thus, Factor 2 continues to weigh against discretionary denial.

Factor 3 continues to weigh against discretionary denial—or is at worst neutral—because the parties' investment of resources in resolving the '545 patent's validity in the parallel litigation remains low, and Petitioner was diligent in filing its Petition. The purported "significant resources" Patent Owner points to are mostly related to claim construction, and much work still remains before the litigation is ripe for a jury trial.

Factor 4 continues to weigh against discretionary denial. Contrary to Patent Owner's assertions, a *Sotera* stipulation is not a requirement in all cases, especially in a case such as this where the FWD is likely to come before the district court trial based on median time-to-trial data.

As noted in the Petition, **Factors 5 and 6** also do not favor discretionary denial. In particular, the Petition set forth two independent theories of obviousness based on each of Brown and Shimada. While the POPR included cursory attorney arguments directed to certain aspects of Shimada (which Petitioner strongly disagrees with), it remained silent with respect to any such deficiencies in Brown. Thus, the compelling merits of the Petition weigh against discretionary denial.

Respectfully submitted,

Dated August 23, 2023

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4) and 42.205(b), the undersigned certifies that on August 23, 2023, a complete and entire copy of this Petitioner's Reply to Patent Owner's Preliminary Response and accompanying exhibits were provided by email to the Patent Owner by serving the correspondence address of record as follows:

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