

IPR2023-00756 (U.S. Patent No. 9,369,545)
PO's Sur-Reply

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
U.S. Patent No. 9,369,545

**PATENT OWNER'S SUR-REPLY TO PETITION FOR *INTER PARTES*
REVIEW OF UNITED STATES PATENT NO. 9,369,545**

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PATENT OWNER'S EXHIBIT LIST

IPR2023-00756 (U.S. Patent No. 9,369,545)

Exhibit No.	Description
2001	<i>Lenovo Holding Co, Inc. et al. v. DoDots Licensing Sols.</i> , IPR2019-01278 (P.T.A.B. Jan. 19, 2021)
2002	<i>Lenovo Holding Co. v. DoDots Licensing Sols. LLC</i> , 2021 U.S. App. LEXIS 36126, at *2 (Fed. Cir. Dec. 8, 2021)
2003	Jones and Brown considered by Patent Examiner (IDS)
2004	Fintiv Memo, dated June 21, 2022
2005	Agreed Scheduling Order, dated December 29, 2022
2006	Excerpts from Dr. Schmidt's three declarations in support of Samsung's petitions in IPR2023-00621, IPR2023-00756, and IPR2023-00701
2007	Samsung's counsel's first email to DoDots' counsel regarding meet and confer on the alleged typographical error
2008	July 27, 2023 Order from the United States District Court, Western District of Texas in <i>DoDots Licensing Solutions LLC v. Samsung Electronics Co., Ltd. et al.</i> , 6:22-cv-00535-ADA, (W.D. Tex.)
2009	INENTIONALLY LEFT BLANK
2010	Declaration of Ted Selker, Ph.D.
2011	Curriculum Vitae of Ted Selker, Ph.D.
2012	INENTIONALLY LEFT BLANK
2013	INENTIONALLY LEFT BLANK
2014	Introduction to Active Channel Technology, dated 08/15/2017
2015	U.S. Patent No. 7,660,868
2016	What is Data Structure? (available at https://www.geeksforgeeks.org/data-structure-meaning/)
2017	HTML Data Guide, W3C Interest Group Note 08 March 2012

2018	Specifications of Personal Computers Over Time (available at https://www.hp.com/us-en/shop/tech-takes/specifications-personal-computers-over-time)
2019	Barnett, S., Palm VII: Like its predecessors, the Palm VII doesn't do all that a desktop does, but it just might do enough
2020	CNET: Windows CE to become "Windows powered" (available at https://www.itprotoday.com/windows-78/cnet-windows-ce-become-windows-powered#close-modal)
2021	Declaration of John Kembel
2022	Imagining a Web Beyond the Browser; Fortune Magazine, February 21, 2000
2023	Lyons, D., Browser Bashers; Forbes, May 15, 2000
2024	Baig, E., Bits of organization clear clutter; USA Today
2025	Heim, K., Tools turn browser into galaxy, July 7, 2000
2026	Mossberg, W., New Metabrowsers Allow You To Create a Quilt of Web Pages, May 18, 2000
2027	A New World Needs a New Internet
2028	DoDots Technical Overview
2029	How to Build Dots
2030	Declaration of George Kembel
2031	June 15, 1999 Email from Tom Kosnik to investors re: Periphio (next steps)
2032	SOFTBANK Venture Capital's Technology Fund Invests in DoDots, Inc., October 13, 1999
2033	DoDots Website
2034	DoDots Technology Embraced by ABC Television Network and ABC.com to Deliver Innovative ABC Dots on the Internet, October 2, 2000
2035	Leading Online Companies Do Dots With DoDots ; DoDots ' Technology Delivers Internet Packaging and Distribution for Internet Content, Applications and Services, March, 13, 2000

2036	Excite@Home Partners With DoDots to Enhance Service for Business Professionals On Work.com, March 13, 2000
2037	DoDots Announces Partnership With Wireless Solution Provider 2Roam at DEMOmobile 2000 Wireless Conference in Pasadena, California, September 7, 2000
2038	Dots Go Live; Web Sites Now Offer Internet Applications, Content, and Services in Dots, April 3, 2000
2039	Conference Guide to Demo 2000
2040	DemoMobile Conference Program, September 6-8, 2000
2041	Demo 2000: The innovation Continues, March 6, 2000
2042	DoDots Named “Investors’ Choice” Winner at Telenologic Partners’ Internet Outlook Conference in Burlingame, California, September 20, 2000
2043	Stanford Business School Case Study of DoDots, June 2000
2044	Stanford Business School Case Study of DoDots, September 2001
2045	Dots Messaging and XML specification
2046	Yurko, C., DoDots: The Web without a browser, April 7, 2000
2047	Back to the launch pad: after a few dormant years, tech entrepreneurs are returning to the game.
2048	U.S. Patent No. 8,099,332
2049	U.S. Patent No. 8,935,690
2050	U.S. Patent No. 9,325,795
2051	U.S. Patent No. 9,817,545
2052	U.S. Patent No. 10,180,831
2053	U.S. Patent No. 10,955,994
2054	U.S. Patent No. 8,020,083
2055	The App Store turns 10, July 5, 2018

2056	Samsung Launches Its Own App Store for WM and Symbian Devices, February 4, 2009
2057	Internet Explorer 4.0 for Windows
2058	Slob, A., I Installed Internet Explorer 5, but where's my Active Desktop?, May 12, 1999
2059	Markoff, J., Microsoft v. Netscape: The Border War Heats Up, September 29, 1997
2060	Lewis, P., State of the Art; The year of Big Bandwidth, February 11, 1999
2061	King, J., Windows 95 Y2K fix was kept from users, May 3, 1999
2062	Dunn, A., Technology: Computers Face 9/9/99 in a Warmup to Year 2000, September 9, 1999
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2065	U.S. Patent No. 8,510,407
2066	Ha, P., Motorola PageWriter 2000, October 25, 2010
2067	Declaration of Rakesh Ramde, IPR2019-00988, DoDots Exhibit 2003, December 23, 2019
2068	Declaration of Rakesh Ramde, IPR2019-01279, DoDots Exhibit 2003, April 27, 2020
2069	Internet Explorer 4, October 1, 1997

I. INTRODUCTION

A quarter century of hindsight bias by the biggest companies in the world has proven insufficient to defeat the patent. Petitioner's primary reference (Brown) describes Microsoft's Active Desktop. It was released as part of Internet Explorer 4.0 in 1997. DODOTS-2057–2058, DODOTS-2069. Active Desktop was not hidden prior art; Microsoft exerted its market strength to put it on almost every PC in the world. DODOTS-2059. But, as explained in the Patent Owner Response and below, Brown / Active Desktop and other PDA/pager prior art fail to obviate DoDots' novel, fully configurable, browser-less solution.

DoDots burst onto the scene in 2000-2001 by succeeding where Microsoft and others failed—i.e., by developing the modern-day apps and app ecosystem, an alternative to the browser-controlled Internet. DODOTS-2058; DODOTS-2021, ¶20; DODOTS-2022.

This IPR is the third time the patent has been challenged, and it should fail like the previous two attempts. Notably, only Samsung was so bold as to attempt to invalidate the patent over Active Desktop from the Y2K era or Shimada/Buchholz prior art technology from the decade of limited-function PDAs/pagers and dial-up modems. DODOTS-2010, ¶143-46; DODOTS-2060–2062.

But history tells the real story. A community of investors backed DoDots despite Active Desktop having been widely distributed for years at the time. And Samsung's IPR, meanwhile, rests on the premise that the entire world failed to realize that the one missing piece to escaping the browser was simply downloading HTML. It was not. It was the NIM template and the NIM that was instantiated from it. But for the collapse of the dot-com bubble, this novel invention was on track to obtain millions in potential investments.

II. THE BROWN/WECKER COMBINATIONS FAIL

A. Failure to establish a prima facie case.

1. Undeveloped grounds.

Petitioner's arguments are fluid. Petitioner originally relied on the application of one allegedly known technique (“rendering content using templates/script files”) and the potential to somehow render “Brown’s desktop components ... as ‘mobile channels.’” Pet., 11-13.¹ DoDots addressed that faulty logic. POR,² 17-21. On reply, Petitioner recharacterizes the technique to that of “requesting a template” that is “part of” a channel. Reply, 1-4.

¹ Emphasis added unless otherwise noted.

² Citations to the POR and DODOTS-2010 are to the “corrected” versions of those filings.

Petitioner and its two experts have spun those positions into fog of terminology that never clearly address NIM templates or fully configurable frames. They conflate clearly distinct terms (*e.g.*, “components” vs. “HTML instructions” vs. user-viewable “content”, “mobile channels” vs. “part of a channel” vs. “CDF files,” “rendering” vs. “downloading”, “scripts” vs. “templates” vs. “scripts that define templates”³). *Compare* DODOTS-2010, ¶45, 49-50, 116-18, 120, 123, 125-29, 145, 147, 160. Petitioner also leaves behind a wake of alternative positions it never resolved (*e.g.*, “a POSITA would have recognized or found obvious”)⁴.

The Petition thus fails to satisfy 35 U.S.C. § 312(a)(3), 37 C.F.R. §§ 42.22(a)(2), and 42.104(b)(4)-(5) due to the above inconsistencies and confused positions—as well as those addressed below in this Section. Petitioner has not provided DoDots a coherent position to which to respond. *Dell Inc. v. Acceleron, LLC*, 818 F.3d 1293, 1301 (Fed. Cir. 2016); *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1080 (Fed. Cir. 2015).

The failure of coherence across the Petition in Reply arises in part from a failure to conduct any analysis under *Graham v. John Deere Co.*, 38 U.S. 1 (1966) factor 2 at all. *Compare* Pet. with IPR2023-00701 Paper No. 2, p. 8 (“single feature

³ SAMSUNG-1006, 3:17.

⁴ *Cf. Yita LLC v. MacNeil IP LLC*, 69 F.4th 1356, 1367 (Fed. Cir. 2023).

of claim 1 not explicit in Brown”). Petitioner has never articulated the actual deficiencies that it seeks to use Wecker to fill in, e.g.: (1) the difference between each of Brown’s HTML tags⁵ and each of the claimed NIM templates (sometimes relying on Wecker’s scripts) or (2) the difference between the undisclosed data Brown receives when components are added to the desktop and the claimed NIMs or NIM templates. Pet., 13; *Arctic Cat Inc. v. Bombardier Rec. Prods.*, 876 F.3d 1350, 1358 (Fed. Cir. 2017).

2. Improper New Evidence and Arguments.

Without stating why—or how his approach is different than Dr. Schmidt’s—Petitioner’s second expert submitted a new summary on motivation to combine. SAMSUNG-1029, ¶46-47. He also introduced Straub as additional prior art on reply. SAMSUNG-1029, ¶52. Such new evidence adds to the confusion and is improper at this stage. It should be stricken or disregarded.

3. Unsupported, generalized obviousness assertions.

Petitioner fails, on reply, to support the generalized assertions made in the Petition (e.g., improving technology “and/or other relevant business or technical reasons”). *See, e.g.*, Pet., 14, 67. Such statements are insufficient as a matter of law. *Hulu, LLC v. Sound View Innovations, LLC*, Case IPR2018-00582, Paper 34,

⁵ Brown does not use the word “template.” It is Petitioner’s label.

p. 21-22 (August 5, 2019) (informative decision) (“a generic desire for ‘improved access times’ is “merely a bald statement”).

At most, the Reply seeks to establish compatibility of different Windows operating systems. They were not compatible—certainly not CE and 95. DODOTS-2010, ¶150-54. But it would not matter if they were, because “mere compatibility of references is insufficient to support obviousness.” *Johns Manville Corp. v. Knauf Insulation, Inc.*, IPR No. 2018-00827, Paper 9, p. 17 (citation omitted).

Further, Petitioner evidently conducted a cursory search of the claim language and cobbled together its combinations through hindsight bias. For example, Petitioner does not contest making an error when evidently trying to match words across references: conflating the word “desktop” in Wecker (a physical computer) with the active desktop in Brown (a software rendered layer). *Compare* Pet., 12 *with* POR, 20.

4. Failure to address a reasonable expectation of success or predictable results.

The Reply fails to even mention the term “predictable” or the phrase “reasonable expectation” in connection with Brown and Wecker under its reconstituted theories. Reply, 1-5. And the generalized recitations in the original Petition would not suffice even if applicable. *Broadcom Corp. v. Emulex Corp.*,

732 F.3d 1325, 1335 (Fed. Cir. 2013); *A/S v. Coolit Sys. Inc.*, No. 19-cv-00410-EMC, 2022 U.S. Dist. LEXIS 246288, at 23-24 (N.D. Cal. Sep. 11, 2022).

5. Failure to establish motivation to combine.

The Petition initially asserted that Brown provided a motivation to retrieve Brown's "desktop components" Pet., 12 (citing SAMSUNG-1005, 4:16-21). On reply, Petitioner asserted that "Brown already suggests local storage and remote download of its templates." Reply, (citing SAMSUNG-1005, 4:16-21, 4:49-52, 5:45-47).

The cited portions of Brown are even more inapplicable to the new theory. SAMSUNG-1020, ¶158-60; SAMSUNG-1005, 4:16-21 (discussing user-viewable components selected from different web pages, not templates), 4:49-52 (generalized statement about remote tasks), 5:45-47 (generalized statement that computers can to one another remotely).

The Reply also mischaracterizes Dr. Selker's testimony. It asserts that Dr. Selker stated that the ability to download and store HTML "components" was "absolutely" possible. Reply, 4 (citing SAMSUNG-1030, 92:4-6). He was asked about storing HTML code in memory, not the act of downloading. *Id.*

B. Petitioner's Failure Is Not One of Bodily Incorporation.

1. Incompatibility.

The Reply does not contest that Wecker discloses a method that is “more complex than [the] conventional” method “where full HTML pages are transferred from a server to a client.” POR, 17-18.

Instead, Petitioner seeks to justify its failures by reciting the lack of a need to establish “bodily incorporation” of the references Reply, 3. That principle does not obviate Petitioner's need to provide an explicit analysis, with articulated reasoning and rational underpinnings, in support of an asserted motivation to combine. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007); *Johns Manville*, IPR No. 2018-00827, Paper 9, p. 11-12. It is also notable that the technology at issue in this IPR is more varied, complex, and unpredictable than the mechanical components in *KSR. Id.* at 422-26 (mounting a sensor on a fixed location).

Further, the bodily-incorporation problem arises where there is no “factual” record establishing that references were incompatible. *Intel Corp. v. Pact XPP Schweiz AG*, No. 2022-1038, 2023 U.S. App. LEXIS 4436, at *8-9 (Fed. Cir. Feb. 24, 2023). And “fundamental differences between the references are central to th[e] motivation to combine inquiry” and the predictability inquiry. *Id.*; *Adidas AG v. Nike, Inc.*, 963 F.3d 1355, 1359 (Fed. Cir. 2020) (quoted); *TriVascular, Inc. v.*

Samuels, 812 F.3d 1056, 1060 (Fed. Cir. 2016); *Samsung Elecs. Co. v. Elm 3DS Innovations, LLC*, 925 F.3d 1373, 1381 (Fed. Cir. 2019).

The Reply then contends that the only modification necessary to “Brown’s HTML desktop components is that these components would have to be downloaded and stored.” Reply, 4.

That new, explicit assertion forecloses Petitioner from any other (previous or future) position as to how or why Wecker and Brown might be combined. It is also an impossible one, which a POSITA would not have considered.

First, Brown’s components contain user-viewable content (e.g., image files), not templates. DODOTS-2010, ¶51, 160; SAMSUNG-1005, 11:12-24.

Second, the individual tags in the desktop.htt file are just a few of the many tags (lines) contained within the file. Those “fragments” (which are “not separate HTML files/documents”) could not simply be downloaded, or even accessed by Brown. DODOTS-2010, ¶50, 164-66. And the present record only speaks to entire files being downloaded. SAMSUNG-1003, ¶64.

Third, Brown’s tags result from a registry that is created by user choices input to, and stored locally on, the computer. DODOTS-2010, ¶45-46, 96, 165 (e.g., data typed by the user); SAMSUNG-1005, 3:1-2, 6:20-32.

Fourth, Brown's desktop.htt file is generated locally from data in that registry. *Id.* It is generated by a browser (Internet Explorer 4.0), which executes an undisclosed driver (deskhtml.dll):

1. <!--
2. ***** This file is automatically generated by Microsoft Internet Explorer 4.0 (deskhtml.dll)*****
3. ----->

Id.; SAMSUNG-1005, 11:43-46.

The Internet Explorer 4.0 function is a black box. DODOTS-2010, ¶164-66. It takes in data and outputs a collection of tags in a single file. DODOTS-2010, ¶46-49.

Fifth, a computer could not obtain remotely what Brown expressly creates locally—by allowing a local user to choose positions and layout of content on the Active Desktop. Dr. Greenspun agrees. SAMSUNG-1026, ¶58.

Sixth, Wecker only receives Internet content in three discrete files. POR, 15. Wecker then uses a “loadable transport” (220) to execute a visual basic (VB) script to “blend” those files together into an HTML file (224) for display (45). DODOTS-2010, ¶129; SAMSUNG-1006, 2:17-19, 3:18-20, 10:41-46. Wecker Figure 6 and Brown Figure 7 show the above concepts visually. Wecker receives three files; Brown receives data from the registry (706) and then uses Internet Explorer to generate one HTT file (714).

Indeed, there is no record evidence that Wecker discloses how the content it receives is split in the first place.

Seventh, there is no evidence Wecker's files are transmitted in response to a user request. DODOTS-2010, ¶168.

Eighth, Wecker expressly teaches away from Brown. It first explains the rationale: "The bit rate of conventional wireless channels is very low." SAMSUNG-1010, ¶121-24; SAMSUNG-1006, 1:59-60. As a result, Wecker only uses channels that are of a "very low bit rate." *Id.*; SAMSUNG-1006, 4:53-62, 3:1-7. It then prohibits sending entire webpages like Brown's desktop.htt or even "Web page desktop component 310." "[T]he delivery of very large content (such as HDML content) is highly impractical." *Id.* SAMSUNG-1006, 1:60-62, 10:41-15. In fact, Wecker states that "[t]here is presently no reasonable way to deliver push style content (such as hypertext mark-up language (HTML) content provided on a global network such as the internet and world wide web) to such [mobile] devices in a wireless manner." SAMSUNG-1006, 1:55-58.

Notably, even if the individual HTML tags in Brown cloud be split, they would still constitute the type of combined content Wecker states cannot be transmitted. Each would still constitute HTML (SAMSUNG-1010, ¶123)—not content split into data files, CDF files, and scripts, as Wecker requires.

2. Combining Brown and Wecker Would Eliminate the Concept of Separate NIMs.

Modifying Brown's desktop as the Reply suggests would destroy the basic objective of Brown. *TriVascular*, 812 F.3d at 1060; *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984). Allowing Internet Explorer to fuse NIM templates together in a single desktop.htm file would create the antithesis of the patent. The patented invention allows developers full control over their own NIMs. SAMSUNG-1010, ¶¶28-31. The claims are clear about the need for separate NIMs/NIM templates. Various claims recite separate NIMs, separate instructions, separate GUIs, NIMS that communicate with one another, and the ability to update the features of NIMs in response to content as it is received. *See, e.g.*, DODOTS-2054, claims 4-6; DODOTS-2064, claim 12; DODOTS-2065, claims 2 and 12. Since every claim, in each patent, recites a NIM and NIM template; these concepts must cohere. The Brown-Wecker combination precludes all of that.

C. The prior art fails to disclose crucial claim limitations.

1. Fully configurable.

a. Fully configurable NIM.

The Reply states that "Brown places no restriction on the frames of its desktop components and, thus, Brown discloses fully configurable frames." Reply, 13-14. That conclusion is flawed—e.g., under the affirming-the-consequent

fallacy. It was Petitioner's burden to demonstrate that Brown's frames were fully configurable.

The patent states that for a NIM to be “fully configurable,” everything (controls, content, frame, and branding) must be fully configurable; they cannot be “trapped within the frame of a browser.” POR, 5-7, 38-39, 79, SAMSUNG-1001, 1:38-40; *see also* SAMSUNG-1030, 103:3-20. Brown discloses the opposite. It expressly gives Internet Explorer 4.0, not the developer, full authority over its frames/components. And Petitioner does not contest that Brown's components are restricted by external controls (*see below*), cannot describe their own control characteristics, and cannot change or revise any of the content that appears in them. POR, 36-40.

b. Control Characteristics

The Reply asserts that the word “characteristic” broadens the scope of the word “control.” Reply, 6-7. The logic fails here. The term “control” is a noun. By contrast, the word “control” in the claimed phrase “control characteristic” is an adjective; it modifies another noun (“characteristic”). A NIM template is “a data structure that defines the characteristics of a NIM, including the NIM frame, view, and control characteristics”—under the agreed construction. Thus, the object of the claim is a characteristic, not a control.

Moreover, Petitioner incorrectly equates the phrase “control characteristics” with the word “control.” *Id.* That is an attempt to modify the agreed upon claim construction—one that would render superfluous the word “characteristic.”

In terms of the prior art disclosures, Petitioner expressly relies upon “control calls.” *Id.* A reference (or call) to a “control” is not a “characteristic” of the thing being called. DODOTS-2010, ¶¶61-64.

Petitioner’s only attempt at identifying a characteristic is the “resizable” attribute disclosed in Brown. Reply, 7. Even so, Petitioner is forced to acknowledge that “this patent supports the idea that ‘resizable’ is an example ‘frame characteristic’” Reply, 7 n.3. And simply “changing the size of the control area by resizing the NIM” (*id.*) excludes the “control” aspect. SAMSUNG-1010, ¶¶65, 72-74. It merely states that the frame is resizable. It does not “define” the “characteristics” of a “control”, e.g., how the frame is resized or controlled in any other “fully configurable manner.” DODOTS-2010, ¶¶61-64.

c. Location of Controls

Petitioner provides a single argument for asserting that the control characteristic need not define a control located “in a control space.” It erects a strawman about disavowal. Reply, 6. But DoDots did not rely on any alleged disavowal; thus this issue is uncontested on reply.

Petitioner's approach also fails for two additional reasons. First, a fully configurable frame is not one that, from the perspective of a developer "can be affected by controls located/defined external to the NIM template." POR, 37. Second, the control cannot be defined by "a data structure," if it is not part of **that** data structure. POR, 37-38. Petitioner asserts that the IFRAME and IMG tags in Brown are NIM templates: 306 on lines 6-9, 308 on lines 14-17, and 310 on lines 10-13. Pet., 23-24; SAMSUNG-1005, 11:50-12:10. The control characteristics would have had to be included in those tags (on those lines of HTML), since they define the purported NIMs. They are not. They are positioned in two separate and distinct OBJECT tags. DODOTS-2010, ¶68-70; SAMSUNG-1005, 12:18-39.

2. Data structures / NIM template.

Brown never mentions the word "template." Petitioner's only support for arguing that Brown disclosed the claimed "data structure" is to assert the theoretical possibility that a data structure could be written in HTML. Reply, 10-12. Petitioner offers no affirmative evidence that the desktop.htm file (or tags) in Brown are the claimed data structures. Nor does Petitioner identify multiple, independent NIMs, each with its own template. DODOTS-2010, ¶107. It thus fails to support its burden for these reasons alone.

Moreover, Petitioner does not contest that the desktop.htt file (and its tags) is generated by Internet Explorer 4.0. POR, 36. Nor does Petitioner contest that it contains tags (lines of HTML) that are read sequentially. POR, 35.

Petitioner does not contest that “a data structure is a way of organizing and storing data in a computer so that it can be accessed and used efficiently” and “[i]t refers to the logical or mathematical representation of data” DODOTS-2010, ¶¶99-104. The desktop.htt file is not arranged or used that way. *Id.*

Indeed, Brown explicitly states that it stores its data in a registry, not in the desktop.htt file. SAMSUNG-1005, 14:6-12, Fig. 7.

3. Content.

Petitioner makes two arguments on reply as to the [content] limitations: (1) XML and CDF files are internet content, and (2) using various newly identified disclosures in Brown. Reply, 15-17. Regardless of which markup language is used, Brown discloses referencing a location of a CDF file, which would, in turn, reference a piece of content (e.g., jpg image). DODOTS-2010, ¶¶116-17.

As to the second, they constitute new arguments on reply.

4. Request for NIM Template over a network.

The Reply relies on Wecker for the proposition that purported NIM templates could be requested over a network. As discussed above, Wecker is not compatible with Brown and teaches away from Brown.

The Reply asserts that download of templates would have been obvious in view of Wecker's "description of server-based templates and channel subscriptions." Reply, 21. Wecker's templates, however, are not requested by a user and otherwise bear no resemblance to the claimed templates—other than using the word "template." DODOTS-2010, ¶¶120, 129, 168. Matching words out of context from disparate disclosures is not enough to establish obviousness. And, substantively, Wecker's templates are executable scripts. *Id.*

Further, the "mobile channels" in Wecker are complete, "self describing web site[s]." DODOTS-2010, ¶126; SAMSUNG-1006, 3:8-10. As described above, none of those is a NIM template.

On reply, Petitioner pivots to focusing on Brown. But DoDots offers no factual basis to cure the lack of detail regarding what is transmitted from the server in Brown. POR, 43-44 (citing DODOTS-2010, ¶¶163-68). The Reply cites a new disclosure of Brown (Fig. 4) in an attempt to backfill those details. But that figure does not address what information is transferred. DODOTS-2010, ¶¶165-68. The

most Brown has to say is that “component selection control 406 is implemented as an ActiveX control or as a link to a CDF file that describes the component.” *Id.*; SAMSUNG-1005, 10:35-37. Indeed, only information describing the component is sent. And it is sent to the registry. *Id.*; SAMSUNG-1005, 3:1-2, 6:20-32. And the only means disclosed in Brown to retrieve the component is “by using the API described above” to download data to the system registry. *Id.*; POR. 43-44; DODOTS-2010, ¶165; SAMSUNG-1005, 9:61 (“Just save it to the registry”), 10:42-45.

5. Darnell.

DoDots does not substantively contest the failed disclosure of Darnell (POR) except to assert that Darnell discloses XML. Reply, 29-30. But that ignores DoDots’ argument that Petition only relies upon Darnell for XML in general. POR, 71-72. The existence of XML as a markup language does not describe anything until a developer “develop[s]” such a file. DODOTS-2010, ¶268. And only Petty allegedly discloses the parsing of an XML template. But Petty is not asserted as grounds for obviousness.

D. No motivation to add Beer.

Petitioner has not satisfied its burden to show that a combination with Beer would create predictable results. The Reply does not contest that (1) Beer bears no

resemblance to the purpose, structure, function, or environment of Brown or Wecker, (2) instead of Internet content, Beer addresses the visual appearance of local applications (POR, 45-47), or (3) Beer's interfaces are built from the ground up (*see, e.g.*, POR, 46-47; SAMSUNG-1007,3:34-40).

E. Petitioner misapplies Krishna.

The Reply attempts to excuse the lack of any detailed discussion of Krishna by simply stating that references need not “have the exact same purpose to be combined.” Reply, 30 (emphasis in original). True. But that does not allow for the complete lack of any detailed analysis. Krishna puts dynamic content into simple, standard webpages. POR, 72-73; SAMSUNG-1021, 3:30-36. Buchholz pulls them apart DODOTS-2010, ¶205.

III. THE SHIMADA/BUCHHOLZ COMBINATION FAILS

A. Failure to establish a prima facie case of obviousness.

The Reply does not meaningfully contest DoDots' arguments related to the lack of reason or motivation to combine Shimada and Buchholz. POR p. 55-58. It simply seeks to transfer Petitioner's burden to establish obviousness to DoDots. *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1376 (Fed. Cir. 2016); *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

Petitioner initially asserted that “the ‘screen configuration data’ of Shimada and the ‘templates’ of Buchholz are both implemented in HTML.” Pet., 67.

DoDots identified a critical error because Buchholz discloses an undisclosed, custom variant of HTML for a limited-function mobile device. POR, 57. The Reply offers no response, other than to attempt to shift the burden of persuasion. It states that “[t]he POR does not elaborate on what this ‘custom variant’ could be” Reply, 24. It admits that Buchholz is “completely silent regarding any details of its templates.” *Id.*

The assertion of similarity between the markup languages was the sole support offered by Petitioner to demonstrate that a POSITA would have had a “reasonable chance of success” in combining Shimada and Buchholz. SAMSUNG-1003, ¶146. That is Petitioner’s burden to prove, not DoDots’. Petitioner has admittedly failed to carry it.

The omission of crucial details is not a surface-level concern. The references are materially distinct.

Shimada is a server-based “data converting device.” DODOTS-2010, ¶175; SAMSUNG-1008, 2:13-19. Petitioner does not contest that Shimada engages in an 11-step, iterative process, back and forth with the client, before sending a final web page to the client. POR, 49-52; DODOTS-2010, ¶179-193.

Petitioner does not address any details of Shimada's process (POR, 50-52) or how or why it might be used with Buchholz's "structure" (i.e., pagers on a radio network). Reply, 24. And it actively ignores the crucial role Shimada's "expanding device" plays. In short, the terse description of the references is legally insufficient. Reply, 23. *Johns Manville*, IPR No. 2018-00827, Paper 9, p. 12-13.

B. Petitioner never addresses the structure in Buchholz.

Petitioner also fails to address the "structure of Buchholz." It does not acknowledge that the subscriber units of Buchholz are two-way pagers with "impoverished capability" (Motorola PageWriter™ 2000) that communicate over a "conventional radio frequency (RF)" network using Motorola base stations and a Motorola paging terminal. DODOTS-2066; DODOTS-2010, ¶196, 209; SAMSUNG-1009, 3:9-12, 2:65-67, 3:7-9 (base stations), 3:3-6 (paging terminal).

The record contains no indication that a POSITA would attempt to send the type of HTML data Shimada discloses to those pagers—let alone all at the same time (as in step 10). To the contrary, the templates in Buchholz were limited to presentation aspects such as location, color, and size of displayed data. DODOTS-2010, ¶206; SAMSUNG-1009, 5:11-13. And Buchholz criticizes the approach of Shimada in this regard. It rejects systems that sent files ("decks" or "cards") that "combined the data to be displayed, with the formatting instructions used in

controlling the display of the data, thereby disadvantageously causing data downloads to be larger than necessary.” DODOTS-2010, ¶200; SAMSUNG-1009, 1:39-48. That rejected approach is exactly how Shimada operates, i.e., ultimately combining data and formatting instructions.

Petitioner's new expert underscores the reasons the combination would not work. He admits that (1) routine storage aspects could create a problem and (2) devices prior to the 2007 iPhone were ill-suited to rendering conventional webpages. SAMSUNG-1029, ¶58, 80 n.4, 82.

C. Shimada does not disclose the claimed templates.

The Reply does not substantively contest the fact that Shimada discloses its own templates separate from the data Petition asserts to be “templates.” *Compare* POR, 59-62 *with* Reply, 28 (final two sentences).

Shimada's actual templates are stored on a remote server. They are separate and distinct from the “screen configuration data” that the Petition asserts to be the claimed templates. POR, 61 (citing SAMSUNG-1008, Figs. 3, 11, 15).

On reply, Petitioner merely incorporates by reference Petitioner's collateral assertion that HTML files might sometimes be data structures. Reply, 28.

D. Shimada does not disclose the claimed view characteristics.

The Petition did not address view characteristics. POR, 62-63. Petitioner's Reply tacitly admits its failing. Reply, 25-26. It then pivots to referencing the ultimate display of a webpage as seen by the user. *Id.* Petitioner does not identify any specific view characteristic contained within any purported NIM template of Shimada.

E. Shimada does not disclose the claimed control characteristics

Petitioner admits that Shimada does not disclose control "characteristics." On reply, Petitioner relies solely on its subjective determination that the distinction between a "control" and "control characteristics" is "insignificant." Reply, 26-27.

The Reply also makes belated attempt at inherency, asserting that controls "manifest[] 'characteristics'" *Id.* Petitioner does not provide the legal basis for that untimely inherency argument.

F. Shimada does not disclose the claimed NIM.

The Petition recites the term "fully configurable frame," but simply identifies a client screen showing an image of a car with a border (Fig. 18) and "anchor tags." Pet., 63, 76-79.

For example, DoDots explained that the Shimada-Buchholz combination does not disclose a NIM, namely that (1) anchor tags are not fully configurable

frames (or even something “through which content is presented to a user”) and (2) the screens have a “similar and specific layout.” POR, 69-71.

The Reply does not contest those facts. It flatly asserts, without explanation, that DoDots’ argument is “circular.” Reply, 29. There is nothing circular about the assertion that a simple, anchor tag (mostly just a URL) is not a fully configurable frame, as construed. DODOTS-2010, ¶¶264-67 Nor is it circular to assert that linking to content that is displayed on an entirely separate page is not presented in a frame on a current page (as Shimada discloses). *See* POR, 69-70.

IV. SECONDARY CONSIDERATIONS

Secondary considerations are secondary in time only, not importance. *Truswall Sys. Corp. v. Hydro-Air Engineering, Inc.*, 813 F.2d 1207, 1212 (Fed. Cir. 1987). They are often “the most probative and cogent evidence in the record.” *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed. Cir. 1983).

A. Nexus.

The Reply challenges a portion of Dr. Selker’s deposition testimony as to nexus as “conclusory.” Reply, 31-32. But it mischaracterizes his testimony regarding unclaimed features and other patents and ignores his applicable testimony. *Id.*; POR, 75-78 (citing DODOTS-2010, ¶¶279-285). Regardless, the Federal Circuit has “never held” that unclaimed features alone defeat the

presumption. *Teva Pharms. Int'l GmbH v. Eli Lilly & Co.*, 8 F.4th 1349, 1361 (Fed. Cir. 2021).

Petitioner does not contest Dr. Selker's reliance on discussions with John Kembel, his review of "detailed technical manuals and source code," or his application of the limitations of an exemplary claim (claim 1) to the DoDots' technology. DODOTS-2010, ¶¶279-285.

Further, the testimony of both Kembel brothers demonstrates that the Dot was coextensive with the claims and that the secondary considerations were each the direct result of the unique characteristics of the invention. They testified that the Dot is the NIM and that the Dot definition is the NIM template. SAMSUNG-1031, 18:3-20. Petitioner flatly asserts that purportedly unclaimed features such as "Home Dot," "Dot sharing," and "DevDot" led to success. Reply, 32-33. And it cites other DoDots' patents, with no analysis whatsoever. *Id.* By contrast, the Kembel's testimony is explicit and unequivocal. The "dot template" was the "something special" to make the Dot work, to allow developers to "unlock their imagination," and allow dots to be collected and shared. SAMSUNG-1030, 19:3-22; *see also* DODOTS-2054, claims 4-6; DODOTS-2064, claim 12 (communication between dots); DODOTS-2065, claims 2 and 12. The "gist" of the inventions centered around the NIM template. *Id.*; *see also* SAMSUNG-1030,

18:7-9, 21:3-5 (“All of those things based on the concept of a Dot and a Dot definition is what made our ecosystem of technologies work.”), 21:19-23:14 (“So the magic that made this work was the concept of a Dot and the Dot definition.... What enabled us to develop statistics, you know, host and develop our ecosystem. But all of that was built on the concept of the Dot and the Dot template.”), 48:17-19 (communication system built on that “core premise”), 21:3-5, 21:19-23:14, 48:17-19; SAMSUNG-1032, 23:14-25 (dot definitions “unlocked all the latent value”); DODOTS-2021, ¶¶30, 50. The record supports their testimony that investments were made on that basis. *See, e.g.*, DODOTS-2044, p. 2; DODOTS-2032.

The above, unrebutted testimony is sufficient. *See, e.g., Google v. Home Bondholders*, No. IPR2015-00662, Paper 40, p. 30-40 (testimony from expert, named inventor, and technology officer, who cited articles in support, sufficed even without corroboration). Indeed, “there is a presumption of nexus for objective considerations when the patentee shows that the asserted objective evidence is tied to a specific product and that product ‘is the invention disclosed and claimed in the patent.’” *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1329 (Fed. Cir. 2016). Dr. Selker and the Kembels provide that evidence. Petitioner offers no “evidence” to rebut it. *Id.* Thus, even without a presumption, Petitioner’s attempts fail to contest

the record evidence that the DoDots' products were all the direct result of the NIM/Dot templates. *Volvo Penta of the Ams., LLC v. Brunswick Corp.*, 81 F.4th 1202, 1210 (Fed. Cir. 2023).

B. Failure of Others.

In 2000—three years after Active Desktop was introduced—Bill Gates and Microsoft had still failed to make the browser “just go away.” DODOTS-2022, DODOTS-2069.

C. Industry praise.

The Reply does not contest that the patent bucked “convention[.]” POR, 1-6. And for that DoDots received industry praise. POR p. 81-82; DODOTS-2067, ¶2-3.

The Reply asserts that Dr. Selker relied solely upon “the co-founder/inventor duo.” Reply, 33-34. It is a thinly veiled attempt to establish bias. But neither inventor stands to gain financially from assertion of the patent. SAMSUNG-1030, 71:25-72:6, 73:3-122; SAMSUNG-1032, 64:2-20.

The assertion also misrepresents the record. For example, DoDots-2035 establishes industry praise by high-ranking individuals from companies such as Merriam-Webster, Epinion.com, mySimon, PC World, PhotoPoint, Work.com, ZD

Net, and Zupit. Additionally, DoDots-2042 identifies DoDots' receipt of the Investors' Choice Award. *See also* DODOTS-2068, ¶4.

Petitioner cites Dr. Selker's testimony about Microsoft. But he only articulated what Microsoft was "trying to do," as a "goal." SAMSUNG-1030, 117:17-118:7. Dr. Selker acknowledges that did not personally know about DoDots, sure. That only renders more credible his surprise that DoDots' patents enabled future technology so far in advance of Apple and Samsung. SAMSUNG-1030, 136:5-137:5.

D. Commercial success.

Petitioner focuses solely on profits to rebut commercial success. But profits are not the sine qua non of success. *See, e.g., Amarin Pharma v. Hikma Pharm*, 449 F. Supp. 3d 967, 1014 (D. Nev. 2020). And, even in this regard, Petitioner focuses on profits from March 2000 and April 2000. Reply, 35-36. That is the exact moment the tech bubble burst. DODOTS-2044 p. 3-4 (NASDAQ Composite Index); DODOTS-2068, ¶6; DODOTS-2069.

Additionally, the early goal of Internet-based tech companies has always been to cultivate a large user base. Indeed, the entire corpus of documents submitted by DoDots evinces an intent to prioritize partnership/user growth over profits.

Petitioner does not contest that DoDots obtained immediate and noticeable success, registering “over 250,000 users.” DODOTS-2027, p. 29, 88; Ramde Decl.

¶4. Nor does it contest that DoDots shot up to a \$275 million valuation based solely on the patented Dot technology shortly before the tech bubble burst.

DODOTS-2067, ¶5; DODOTS-2068; SAMSUNG-1044.

Nor does Petitioner contest the number of users, partners, and investors DoDots had. DODOTS-2043, p. 3-5, 27; *see also* DODOTS-2038, p. 1-2; POR, 8; DODOTS-2067, ¶3 and Ex. A; DODOTS-2068; SAMSUNG-1044.

E. Long-felt need.

The Response sets forth the long-felt need, including a detailed list of reasons the conventional Internet and webpages were undesirable. POR, 78-81.

Petitioner has not contested any fact establishing that DoDots solved it. *See, e.g.:*



DODOTS-2022.

It only baselessly asserts that evidence after the critical date cannot establish long-felt need. Reply, 33. That is not the law. *Cf., e.g., Apple Inc. v. Int’l Trade Comm’n*, 725 F.3d 1356, 1366 (Fed. Cir. 2013) (2007 article cited as industry praise for patent filed in 2004).

Petitioner cites DODOTS-2023. Reply, 33-34. Petitioner pulls from that exhibit the name of several companies that it purports to have “solved the [browser] problem at least as well as DoDots.” *Id.* Petitioner is wrong. For example, the “chief hypermedia architect” of one company Petitioner cites (Amaze Ltd.) said the opposite: he “admit[ted] it will be a struggle to get the world to scrap

the old browser.” DODOTS-2023, p. 2. Only DoDots succeeded in actually

“[e]liminating the browser. DODOTS-2023, p. 5.; *see also*: DODOTS-2027, p. 4.

There is no mention of Microsoft or any other prior art in this record.

Dated: July 5, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the portions of the above-captioned PATENT OWNER'S RESPONSE TO PETITION FOR *INTER PARTES* REVIEW OF UNITED STATES PATENT NO. 9,369,545 specified in 37 C.F.R. § 42.24 has 5,577 words in compliance with the 5,600 word limit set forth in 37 C.F.R. § 42.24. This word count was prepared using automated count of typed words using Microsoft Word for Office 365 and a visual count of words in the figures of the document.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PATENT OWNER'S
RESPONSE TO PETITION FOR *INTER PARTES* REVIEW OF UNITED
STATES PATENT NO. 9,369,545 was served electronically via email on July 5,
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