

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,

Petitioner,

v.

NETLIST, INC.,

Patent Owner

IPR2023-00847

Patent 10,268,608 B2

**PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO
STRIKE TEXT IN CERTAIN FIGURES OF PETITIONER'S REPLY**

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Artic Cat, Inc. v. Polaris Indus. Inc.</i> , IPR2017-00433, Paper 15 (PTAB June 22, 2017)	5
<i>Comcast Cable Commc'ns, LLC v. Rovi Guides, Inc.</i> , IPR2019-01413, Paper 10 (PTAB Dec. 17, 2019)	5
<i>Gen. Elec. Co. v. Pratt & Whitney Canada Corp.</i> , IPR2020-00083, Paper 11 (PTAB Apr. 20, 2020)	1
<i>Google, Inc. v. Ji-Lee</i> , IPR2016-00022, Paper 25 (PTAB Nov. 23, 2016)	5
<i>Samsung Elecs. Co. v. Netlist, Inc.</i> , IPR2022-00711, Paper 36 (PTAB June 23, 2023)	2

I. INTRODUCTION

Netlist's motion (Paper 25), seeking to strike text from certain figures in Samsung's Reply (Paper 23), should be denied. Annotated figures (even with words not included in Microsoft Word's word count) are common in briefs, as shown by Netlist's own Patent Owner Response, *see, e.g.*, Paper 20 at 5, 7, 12, 15 (top), 15 (bottom), 16, 21, 34, 39, 47, 48, 69, 75, and are "helpful to the reader" as explained by the Board, *Gen. Elec. Co. v. Pratt & Whitney Canada Corp.*, IPR2020-00083, Paper 11, at 5–6 (PTAB Apr. 20, 2020). Furthermore, the text added to certain figures in Samsung's Reply mirrors the written words already included in the brief and the word count, as explained below, so there is no unfairness or circumvention of the word count.

II. ARGUMENT

The Board has previously rejected word-count arguments like the one raised by Netlist: "Petitioner's use of figures and application of certain descriptive annotations to the figures" is not "an abuse of [the] word count requirement." *Gen. Elec. Co.*, IPR2020-00083, Paper 11, at 5, 6. Such "explanatory annotations" are "helpful to the reader" and comply with the rules. *Id.*

Samsung did not "evade the word limit," Mot. at 5, and merely did what Netlist did in its brief, *see* Paper 20 at 5, 7, 12, 15, 16, 21, 34, 39, 47, 48, 69, 75. Annotations are helpful to the reader, and should be encouraged, not penalized.

There is no unfairness or circumvention of the word count because the figures in Samsung's Reply simply visualize written arguments already included in the word count, as explained in more detail below, similar to demonstratives for oral argument: "Demonstratives are not a mechanism for making new arguments. Demonstratives also are not evidence, and will not be relied upon as evidence. Rather, demonstratives are visual aids to a party's oral presentation regarding arguments and evidence previously presented and discussed in the papers. . . . Due to the nature of the Board's consideration of demonstratives . . . the Board does not anticipate that objections to demonstratives are likely to be sustained." *Samsung Elecs. Co. v. Netlist, Inc.*, IPR2022-00711, Paper 36, at 3, 4 (PTAB June 23, 2023).

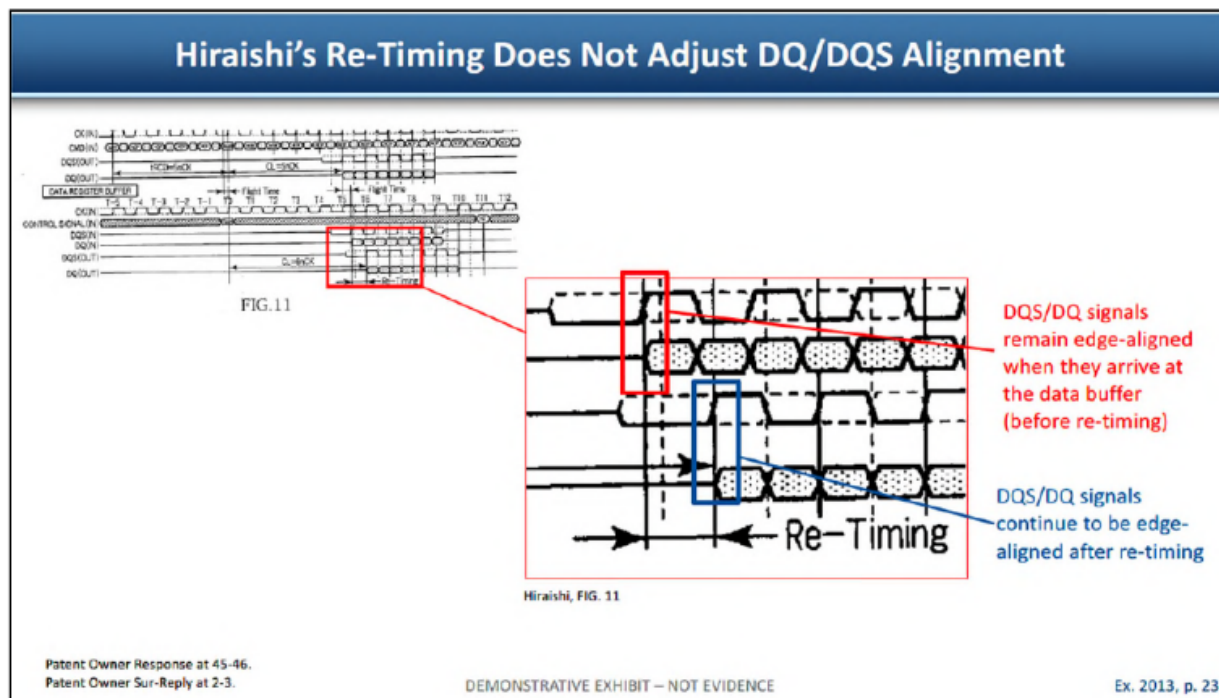
Tellingly, Netlist does not dispute that Samsung's figures do not raise new arguments; instead Netlist contends that "[t]he words in the figures are **framed differently** and . . . make additional arguments and elaborations using color coding," Mot. at 4 (emphasis added). But the only two specific examples cited by Netlist, *see id.* (citing pages 10 and 38–39 of the Reply) do not include **any** words added by Samsung and instead merely reprint the evidence **exactly** as it is:

Page 10: Samsung simply reprinted this figure exactly as it appears in the record (EX1086, 23) with the text in the figure **added by Netlist (not Samsung)**.

Samsung's Reply brief discusses and explains the relevant text in the figure:

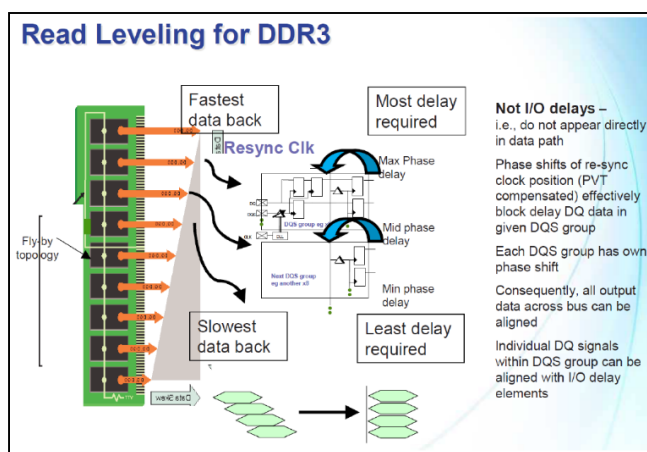
"Netlist itself . . . has argued that the DQ/DQS signals **must** remain aligned with

each other: [reprinting figure below]”



Paper 23 at 10 (reprinting EX1086, 23). The figure above is helpful to the reader because it shows what it means for DQ/DQS to be **aligned** with each other.

Page 39: Again, Samsung reprinted this figure exactly as it appears in the record (EX1085, 7), and as it was used during the deposition of Netlist's expert, **with no text added by Samsung.**



Samsung's Reply brief discusses and explains the relevant text in the figure above:

“Netlist's expert . . . conceded that JEDEC's DDR3 standard adopted a **fly-by**

The other figures in Samsung's Reply (which Netlist cites but does not discuss) are discussed below. Netlist asserts (without explanation) that Samsung's figures added "853 words," Mot. at 2, but as explained above it appears that Netlist is counting words that already existed in the underlying evidence and were not added by Samsung in its Reply. For example, on **Pages 40 and 42** of the Reply, Samsung reprinted an exhibit (EX1078, 1–2, shown in part below) **exactly** as it appears in the record, and exactly as it was used during the deposition of Netlist's

appears to be the bulk of the “853 words” counted by Netlist (apparently counting this block quote twice). Samsung’s Reply brief cited, quoted, and explained the relevant portions from that block quote: “[Netlist’s expert] conceded that as the



DDR3 clock speeds got faster . . . the horizontal delays could be **greater** than one clock cycle, meaning that ‘before one module control signal reaches an end of the signal line, another module control signal appear on the signal line,’ EX1001, 9:52-10:6, as illustrated [above, EX1078, 2].” Paper 23 at 39–42.

Page 5: The relevant text added to the figure was quoted in the Reply on page 4 (quoting EX1001, 4:23–:25) and page 5 (quoting EX1001, 3:57–:60).

Page 22: The text added in the red box mirrors footnote 7 on pages 24–25 and the discussion on page 40 of “horizontal” delays. The text added in the green box mirrors the discussion (and further annotations of the same figure) on pages 21–28 of “vertical” delays on L1/L2 of 0.3 or 0.7 clock cycles, and the discussion on page 25 and footnote 8 about CAS latency (CL) of 5 clock cycles.

Pages 27 (top), 28 (bottom), and 30 (top): The relevant text in these figures from ¶¶[0130] and [0135], highlighted in blue and yellow, is repeatedly quoted in the Reply (e.g., on pages 15, 24, 26, 28, and 30).

The cases cited by Netlist (Mot. at 1–2, 3) are distinguishable, because they involved words **added** to figures that apparently were **not** discussed in the brief, thus raising new arguments (not included in the word count) that the other side felt it was unfair to have to address. *See, e.g.*, IPR2019-01413, EX1027, 14–16.

Dated: July 19, 2024

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CERTIFICATE OF COMPLIANCE

I hereby certify that this **Petitioner's Opposition to Patent Owner's Motion to Strike Text in Certain Figures of Petitioner's Reply**, excluding the parts of the brief exempted by 37 C.F.R. § 42.24, complies with the page limits provided by the Board in Exhibit 3002 (July 1, 2024), which stated: "The Board authorizes Patent Owner's request to file a motion to strike blocks of text in certain figures of Petitioner's Reply. Patent Owner's motion shall not exceed 5 pages, and is due within 7 business days of this email. Petitioner may file an opposition to the motion, not to exceed 5 pages, which is due within 7 [business¹] days after the filing of Patent Owner's motion."

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¹ The Board clarified on July 2, 2024, that "Petitioner's opposition to the motion is due within 7 business days after the filing of Patent Owner's motion."

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 19th day of July, 2024,

Petitioner's Opposition to Patent Owner's Motion to Strike Text in Certain

Figures of Petitioner's Reply was served by email on the following counsel for

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