UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.;
SAMSUNG ELECTRONICS AMERICA, INC.,

Petitioners,

v.

SLYDE ANALYTICS, LLC,

Patent Owner.

Patent No. 10,198,085
Filing Date: October 31, 2017
Issue Date: February 5, 2019

Inventors: Alex Bezinge, Adrian Mohni, Daniel Pfeifer, and Musa Dogan
Title: METHOD AND CIRCUIT FOR SWITCHING A WRISTWATCH FROM A FIRST POWER MODE TO A SECOND POWER MODE

PATENT OWNER'S PRELIMINARY SUR-REPLY

Case No. IPR2024-00041

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35 U.S.C. § 314(b)(1).....2

LIST OF EXHIBITS

Exhibit No.	Description of Document
2001	Second Amended Docket Control Order, Dkt. 33, *Slyde Analytics LLC v. Samsung Elecs. Co.*, No. 2:23-cv-00083-RWS-RSP (E.D. Tex., October 5, 2023)
2002	Defendants' Joint Patent L.R. 3-3 Invalidity Contentions and Subject Matter Ineligibility Contentions, *Slyde Analytics LLC v. Samsung Elecs. Co.*, No. 2:23-cv-00083-RWS-RSP, served November 14, 2023

I. THE BOARD SHOULD DISREGARD PETITIONERS' LATE SOTERA STIPULATION

A Sotera stipulation is not a carte blanche to sidestep the Board's discretion to deny institution. This Board may still exercise its discretion to deny institution, where Patent Owner shows that it had been prejudiced by the timing of the stipulation. *Accord BMW of N. Am., LLC v. NorthStar Sys. LLC*, IPR2023-01017, Paper No. 12, at 10 (P.T.A.B., Dec. 8, 2023) ("Patent Owner [does not] allege that it has been prejudiced by the timing of the stipulation. Therefore, we are not persuaded that we should disregard Petitioner's *Sotera* stipulation because of its timing.") (footnote omitted).

Patent Owner has been prejudiced by Petitioners' late Sotera stipulation. Petitioners filed their Petition for this proceeding on November 2, 2023. Petitioners filed invalidity contentions in the related district court litigation on November 14, 2023, which included the same prior art and combinations relied upon in this proceeding. *See generally* Ex. 2002, at 128-168 (describing various combinations of Yeung, Ruiz, Alameh, Joselli, and Yano). Petitioners' invalidity contentions specifically include a footnote that "Defendants further incorporate its IPR Petition IPR2024-00041 and accompanying exhibits." *Id.*, 128, n.6. Therefore, despite knowing its alleged bases of invalidity, Petitioners nonetheless filed a Petition with the same bases without a Sotera stipulation. Petitioners only filed a Sotera stipulation

on January 31, 2024. The parties are scheduled to exchange proposed claim terms and preliminary constructions on March 22, 2024 and April 19, 2024, respectively. Ex. 2001, at 5.

Petitioners' late filing of a Sotera stipulation forces Patent Owner to litigate validity on the same prior art and combinations in both the PTAB and the district court under different standards (preponderance of the evidence and clear and convincing evidence, respectively), and craft claim constructions based on these standards ***prior to*** the statutory deadline for institution, May 21, 2024. *Id.*; *see* 35 U.S.C. § 314(b)(1) ("three months after receiving a preliminary response to the petition under section 313"). In view of the prejudice to Patent Owner due to the timing of Petitioner's late Sotera stipulation, Patent Owner's *Fintiv* arguments should be considered and the Petition should be discretionarily denied.

Respectfully submitted,

Dated: March 1, 2024 By: */ Peter Lambrianakos /*

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CERTIFICATE OF SERVICE

A copy of PATENT OWNER'S PRELIMINARY SUR-REPLY has been served on Petitioner's counsel of record as follows:

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