UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

BROADPHONE LLC,
Patent Owner.

Case IPR2024-00154
Patent 8,594,698

PETITIONER'S RESPONSE TO
PATENT OWNER'S MOTION TO EXCUSE LATE FILING

Petitioner responds to Patent Owner's motion to excuse the late filing of its preliminary response to provide the Board with additional context as it decides whether to grant or deny Patent Owner's motion. Because Petitioner cannot confirm Patent Owner's representations regarding any attempts it may have made to timely file its preliminary response (other than Patent Owner's service email which was sent a few minutes before midnight, Mot. 2), Petitioner takes no position on Patent Owner's motion.

First, Patent Owner states that it "sent several emails to counsel for Petitioner to ask for Petitioner's position on this motion," Mot. at 3, but omits that Patent Owner's request to the Board to excuse its late filing was made only after Petitioner twice requested Patent Owner to provide additional detail as to the cause for its late filing. Ex. 2002 at 3. Specifically, Petitioner asked Patent Owner to explain the technical difficulties it encountered that prevented it from timely filing its preliminary response. Ex. 2002 at 3. Rather than providing the requested detail, Patent Owner vaguely responded that "[d]ue to an internal miscommunication, our filing staff was unexpectedly unable to log into the new electronic filing system." *Id.* at 2. Notably, Patent Owner's motion makes no mention of a miscommunication, and instead explains that Patent Owner neglected to "previously register[] its administrative staff as an authorized filer in this action," that its "lead counsel was temporarily unavailable" when the preliminary response was being filed, and that it

only realized the issue around midnight, at which point it served the preliminary response on Petitioner. *See* Mot. at 1-2. Moreover, although Patent Owner acknowledges that the changes to the P-TACTS system went into effect on January 31, 2024, it fails to acknowledge that the PTAB has been reminding practitioners about the change to its system since last year. Indeed, Patent Owner's own counsel in this matter has filed papers with the PTAB after the changes went into effect and before the preliminary response here was filed. *See, e.g.*, IPR2024-00342, Paper 6 (filed Feb. 9, 2024); IPR2024-00148, Paper 9 (filed Feb. 12, 2024).

Second, Patent Owner's late filing occurs within the broader context of its conduct in the related district court litigation. There, Patent Owner has delayed serving proper infringement contentions and repeatedly ignored Petitioner's communications regarding deficiencies in the contentions that were served. *See* Ex. 1077 (letter to Patent Owner summarizing conduct). Patent Owner's conduct in district court, together with the issues identified above, should be considered in evaluating Patent Owner's motion.[1]

[1] In contrast to Patent Owner's behavior, when Patent Owner asked Petitioner if it would agree to a *Sotera* stipulation so that Patent Owner could avoid briefing *Fintiv*-related issues in its preliminary response, Petitioner promptly agreed.

Ultimately, Petitioner defers to the Board on whether to excuse Patent Owner's late filing, but respectfully wants the Board to be aware of the broader context of Patent Owner's conduct.

Respectfully submitted,

Dated: February 29, 2024

By: /Naveen Modi/
Naveen Modi (Reg. No. 46,224)
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2024, I caused a true and correct copy of the foregoing Petitioner's Response to Patent Owner's Motion to Excuse Late Filing to be served electronically on counsel for Patent Owner at the following addresses:

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