1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

2 PATENT TRIAL AND APPEAL BOARD

3

4 IN RE PATENT OF:)
) U.S. PATENT NO. 9,986,303
5) PROCEEDING NO. IPR2024-00327
)
6) U.S. PATENT NO. 10,218,995
) PROCEEDING NO. IPR2024-00372
7)
) U.S. PATENT NO. 8,090,025
8) PROCEEDING NO. IPR2024-00374
SAMSUNG ELECTRONICS CO.,)
9 LTD.,) HON. REPKO
PETITIONER,) HON. ENGELS
10 V.) HON. GERSTENBLITH
)
11 ADVANCED CODING)
TECHNOLOGIES, LLC)
12)
Patent Owner.)
13 _____)

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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 TUESDAY, MAY 21, 2024

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23 REPORTED BY: TAMARA HOUSTON, CA CSR 7244, RPR, CCRR 140

24 REFERENCE NUMBER 39843-0168IP1, 39843-0171IP1, 39843-0172IP1

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Exhibit 1023
Samsung v. ACT
IPR2024-00374

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2

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I N D E X

MAY 21, 2024

CHRONOLOGICAL AND ALPHABETICAL INDEX OF WITNESSES

NONE

EXHIBITS

NONE

PROCEEDINGS VIA TELEPHONE; TUESDAY, MAY 21, 2024

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JUDGE REPKO: This is conference call for IPR2024-327, 372, 374. Judge Repko from the Patent Trial Appeal Board, and I'm joined by Judges Gerstenblith and Engels.

Let's begin with the appearances.

Who do we have on the call for Petitioner?

UNIDENTIFIED SPEAKER: Hi, Your Honor -- go ahead. I'm sorry.

MR. STEPHENS: Yes. This is -- this is Nicholaus Stephens on the phone for -- from Fish & Richardson on behalf of Petitioner Samsung. I'm joined by my colleagues Jeremy Monaldo, Won Yoon, and Rishi Gupta.

THE COURT: Is Mr. Gupta authorized here? Is he --

MR. STEPHENS: Yes, he is.

THE COURT: You're breaking up.

You said that Mr. Gupta is one of the attorneys for Petitioner; is that correct?

MR. STEPHENS: Rishi Gupta is an attorney for Samsung.

THE COURT: Okay. And then, Mr. Stephens, you'll be running the call -- or we'll be directing all

questions to you, then?

MR. STEPHENS: Thank you. I will be addressing the issues related to IPRs 2024-00327 and 00372. And then my colleague, Jeremy Monaldo, would be addressing the third case.

THE COURT: Okay. Thank you for that.

Do you have a court reporter on the line?

MR. STEPHENS: We do.

THE COURT: Thank you.

MR. GUPTA: This is Rishi Gupta. I was gonna ask -- I was gonna ask -- the court reporter had asked for the spelling of the judges' names, and I was going to try to get that for her.

But I don't have it in my file, so I was going to see if we could put that on the record, at least for the court reporter.

THE COURT: Sure.

MR. GUPTA: Thank you.

JUDGE REPKO: Yes.

Judge Gerstenblith's name is G-E-R-S-T-E-N-B-L-I-T-H; Judge Engels is E-N-G-E-L-S; and then I'm Judge Repko, R-E-P-K-O.

All right. And just a -- how soon can you file the transcript after the call?

COURT REPORTER: Your Honor, this is

Tamara Houston -- oh, go ahead, Counsel.

MR. STEPHENS: Thank you. I'm sure you could fill in a lot better than I. I was going to -- we would, of course, file it as soon as the final transcript is available.

COURT REPORTER: Your Honor, this is --

MR. STEPHENS: Ms. Houston, I believe, maybe, we ordered for a one-day turnaround on the final transcript.

THE COURT: Okay. Thank you.

Who do we have on the call for Patent Owner?

MR. LAMBRIANAKOS: Good afternoon, Your Honor.

This is Peter Lambrianakos on behalf of the patent owner.

THE COURT: Okay. Thank you. All right.

Well, the purpose of this call is to discuss Petitioner's request to submit a reply to Patent Owner's preliminary response in the three IPRs.

From the email, it looks like Patent Owner's request in each case seems to be different, and each case seems to have its own set of issues. So I'd like to take each case one at a time and give each party a chance to respond to the other party's case before we move on to the next one. We'll pause the call momentarily to discuss your arguments with the other

1 judges on the panel.
2 In your email, you noted the number of pages,
3 three, proposed to reply, and we would also like to
4 know, you know, what you think the date should be, as
5 well, if we would decide to grant the request.
6 So we'll proceed in numerical order, and we'll
7 start with the 327 case. So I'll ask that --
8 Petitioner's Counsel, please explain why there is good
9 cause to file a reply here, keeping in mind we don't
10 need to get into the merits of the parties' arguments,
11 and our focus should be on that good-cause standing.
12 With that, Petitioner's Counsel, Mr. Stephens,
13 proceed.
14 MR. STEPHENS: Thank you, Your Honor.
15 In the preliminary response, Patent Owner
16 argues that the Petition should be denied because the
17 prior art allegedly fails to disclose reconstructing
18 video image coding data from the basic video image
19 coding data in the supplementary video image coding
20 data, and this was a limitation that's recited in both
21 Claims 1 and 2 challenged in the Petition.
22 The preliminary response criticizes the
23 Petition for not addressing a construction of the
24 reconstructing limitation that the parties agreed to in
25 co-pending litigation in the Eastern District of Texas.

Our request is five pages to reply to Patent Owner's arguments in this regard, and in the reply, we would plan to address how the analysis in the Petition and the cited prior art satisfies the parties' agreed-upon construction from the litigation and, relatedly, reasons that Patent Owners' application of that construction in relation to basic and supplementary video image coding data are inconsistent with certain teachings in the '303 patent itself.

We respectfully submit that good cause exists for a reply here because the construction referenced in the POPR only arose after the Petition was filed. I'm not personally a member of Samsung's litigation team, but we have consulted with the litigation team to better understand the history of this construction that was agreed to in the ED Texas proceeding.

And, from my understanding, I do believe that the timeline of events related to claim construction in the litigation showed that Samsung could not have reasonably addressed that construction at the time the Petition was filed. But with -- I guess I could briefly walk through the timeline of events in the litigation.

On January 5th, earlier this year, Samsung filed its Petition for inter partes review of the '303 patent in this proceeding. Shortly thereafter, on

1 January 9th, the parties exchanged terms for
2 construction. And notably, Samsung, like Patent Owner,
3 indicated that there were no terms that required
4 construction for the 3- -- '303 patent.
5 About a month later, on February 6th, the
6 parties exchanged preliminary constructions, at which
7 time Samsung indicated, along with the patent owner,
8 that plain meaning should apply to the reconstructing
9 limitation.
10 It wasn't until March 5th, which is when the
11 parties filed a joint claim construction statement with
12 the Court, which is a statement that Patent Owner has
13 cited -- I believe it's Exhibit 273 in the IPR where we
14 see the agreed-to construction of the reconstructing
15 limitation, which, again, is referenced in the
16 preliminary response.
17 But I can't speak to specifics as to why the
18 parties agreed to this construction. I would note that
19 there was another defendant involved in the litigation
20 who had proposed constructions for the '303 patent. But
21 we believe the circumstances here are similar to those
22 in IPR 2024-00062 involving another patent in the same
23 litigation between the parties where the Board, last
24 month, authorized pre-institution briefing to address
25 another construction that arose in the litigation after

the Petition was filed, and we respectfully would request similar relief here.

I'm sure if the Board authorized, Petitioner would not oppose a sur-reply correspondingly to the reply from the patent owner.

THE COURT: Just to kind of clarify, so the Petition offered no constructions, only plain and ordinary meaning.

So are you going to discuss the plain and ordinary meaning in your reply? Is that your proposal?

MR. STEPHENS: Our proposal would be to address how the prior art satisfies the construction the parties agreed to in the litigation.

THE COURT: Okay. The construction, as the parties agreed to -- is that consistent with the construction with which you said in the Petition, or is this sort of a new theory?

MR. STEPHENS: We would not be advancing any new theories. It's the -- the preliminary response indicated that reconstructing requires a rearranging, for example, and we would like to show that that's consistent with the arguments in the mappings, the theories that were advanced in the Petition.

THE COURT: Okay. So let me give Patent Owner an opportunity to respond if you don't have anything

1 further on that.
2 Are you -- is there something you wanted to
3 add to that, Petitioner? Mr. Stephens?
4 MR. STEPHENS: Nothing further from us. Of
5 course, we're happy to take any questions from Your
6 Honors.
7 THE COURT: So the construction -- I guess, if
8 panel members want to kind of clarify, are these
9 constructions the plain and ordinary meaning that you're
10 proposing to put in your reply?
11 MR. STEPHENS: I believe we are -- we are
12 addressing the construction that was referenced in the
13 preliminary response. I believe that construction is
14 consistent with the plain and ordinary meaning. I don't
15 know that it was characterized that way in the
16 litigation. It may or may not have been. I just -- I'm
17 not aware.
18 But, regardless, the theories that we would be
19 advancing are the same as those in the Petition, and
20 we're not attempting to, you know, advance something
21 materially different from what was in the Petition.
22 THE COURT: Okay. Thank you.
23 So with that, Counsel for Patent Owner, I'd
24 like to hear your response to that.
25 MR. LAMBRIANAKOS: Thank you, Your Honor.

1 Our view here is that what Samsung seems to do
2 is to present a new argument based on the agreed
3 construction as to how the prior art meets the -- the
4 reconstructing limitation.
5 The reconstructing limitation that -- that was
6 addressed by the agreed construction is one which has a
7 construction based on the disclosure in the
8 specification. In other words, the construction is not
9 a plain and ordinary meaning construction, but it is one
10 which relies, under Phillips, on the multiple areas of
11 disclosure that the reconstruction, which is claimed, is
12 one which involves rearranging the video image coding
13 data rather than changing or adding the data, which is
14 what the prior art discloses.
15 And so the only way for Samsung to address the
16 construction, which was agreed by the parties in
17 litigation, is to present a new argument as to how the
18 references show not just a reconstruction as they
19 interpreted it in the Petition, but what shows a
20 rearrangement as disclosed in the portions of the
21 specifications that were ultimately relied upon in the
22 agreed constructions.
23 So we don't -- we don't view this as an
24 attempt by Samsung simply to address plain and ordinary
25 meaning to maintain the same position that it took in

1 its Petition, but to pivot on its argument with respect
2 to this limitation to take into account the agreed
3 construction.
4 Now, they argue that they didn't propose this
5 term for construction on January 5th, which was four
6 days before they filed -- I'm sorry -- on January 9th,
7 which was four days after they filed the Petition, but
8 their co-defendant with whom, from all we can tell,
9 they've been cooperating with throughout the case until
10 LG settled, you know, did propose it. And, you know,
11 based on the fact that, you know, that other defense
12 counsel proposed that term, and based on what they
13 should have understood from the intrinsic record as
14 potentially being limited in some way by the
15 specification, it was incumbent upon them to take that
16 into account in formulating the arguments in their
17 Petition and to present an argument either in lieu of or
18 as a backup argument to what they proposed in the
19 Petition.
20 Instead, they just went with the plain and
21 ordinary meaning, and they went with a -- with an
22 understanding of the claim term that is inconsistent
23 with the intrinsic record.
24 And, so, you know, our view is that this is an
25 attempt to pivot, to change arguments, to -- to respond

to a plain construction position, which they should have anticipated in exercise of normal diligence in reviewing the intrinsic record. And that's why we oppose.

THE COURT: Okay. I don't have any further questions. I'm just going to check with my colleagues to make sure that they don't.

I'm going to give Petitioner an opportunity to respond to that.

MR. STEPHENS: Thank you, Your Honor. Just a few quick --

THE COURT: Just a second. I'm going to give you a chance to respond to that, but I'd like to confer with my colleagues for a moment just to make sure they don't have any further questions.

Thank you.

MR. STEPHENS: Thank you.

(Pause on the record.)

THE COURT: No further questions for Patent Owner at this time.

Petitioner, I'll give you a chance to respond here.

Go ahead.

MR. STEPHENS: Thank you. I'd just like to quickly revisit the timeline from the litigation.

There was, I think, a suggestion from Patent

1 Owner's Counsel that there may have been -- that we
2 should have been aware -- Samsung should have been aware
3 of a construction that another defendant in the
4 litigation might raise.
5 Again, we filed the Petition on January 5th.
6 Four days later, on January 9th, we identified no terms
7 for construction. And then a month later, on
8 February 6th, Samsung continued to advance, expressly,
9 plain meaning in the litigation.
10 So, you know, at the time the Petition was
11 filed and thereafter, we continue to believe that plain
12 meaning was the proper understanding of this term in the
13 litigation and in the IPR.
14 And, secondly, I would say there's no attempt
15 to pivot here. We do want to address this construction
16 that was referenced. It's the basis of Patent Owner's
17 arguments in the preliminary response since we could not
18 have foreseen it or addressed it in the Petition at the
19 time it was filed. You know, part of the reason that we
20 do want to address the construction is because of some,
21 you know, misstatements or mischaracterizations, in our
22 view, of the '303 patent that informs Patent Owner's
23 application of that construction. And so we'd like to
24 point those out to the Board so that we can show how the
25 prior art satisfied under either plain meaning or the

construction that was referenced in the POPR.

THE COURT: Well, just -- specifically, are you proposing that the Board adopt the constructions that you're prepared to discuss in your reply?

MR. STEPHENS: We don't think it's necessary. Again, we cited in the Petition, the Wellman case, which stands for the -- as I'm sure Your Honors kno-w, the proposition that trends only needs to be construed to the extent there's a controversy, but we don't believe that construction is necessary. It's the Patent Owner who raised it in the preliminary response, and we'd just like an opportunity to address that.

THE COURT: You adopted that construction in district court; the one you're prepared to discuss in your reply?

MR. STEPHENS: The parties agreed to that construction in the district court, that's correct.

THE COURT: Okay. And It's your position that here we don't need to construe that term because it's not going to be at-issue with respect to the art?

MR. STEPHENS: That's correct, Your Honor.

THE COURT: Okay. I'm going to confer with my colleagues quickly to see if they have any further questions for you before I move on to Patent Owner.

(Pause on the record.)

THE COURT: Can you just elaborate a little bit more on why you believe that it's not an issue here? That -- you know, the construction. Because if I understood you correctly, you said that, you know, we don't need to construe it. You want to discuss it in your reply, but we don't need to construe it because it's not an issue.

But can you kind of elaborate on that a little bit more for me, specifically, why you don't think it's an issue?

MR. STEPHENS: Well, yes, Your Honor.

The -- in the POPR, the Board -- the Patent Owner references the construction that the parties agreed to in the litigation, and on that basis, they argued -- they attempt to distinguish the prior art.

In applying that construction, they make certain assertions about what it means, for example, to rearrange basic and supplementary video image cutting data, "rearranging" being the term in the construction, and they make certain assertions about what constitutes basic and supplementary video image coding data that's referenced to the to the '303 specification.

We believe there are embodiments that are described in the '303 patent that are inconsistent with the patent owner's application of that construction, and

so we would like to ensure that the construction is, you know -- to the extent it's applied, properly applied. In that respect, we would show how the prior art, the same embodiment, the same mappings that we had in the Petition would meet that construction both under plain meaning and, I guess, you know, more importantly, under the construction that was agreed to in the litigation under a proper understanding of reconstructing and rearranging.

THE COURT: I want to drill down a little bit more. You're asking for briefing on this, and it does sound like it is at-issue. It's -- you know, you're asking for briefing that was discussed in the Patent Owner response. It kind of suggests that you are -- you do believe that it is at-issue, right? I think I just -- I heard you say that we don't need to construe it at all.

So I guess I just want to know what kind of struggles there --

MR. STEPHENS: I'll clarify. It is at-issue insofar as whether the plain -- plain meaning is adopted or the argument in the preliminary or the construction of the preliminary response is adopted.

Then Patent Owner's arguments, we believe, are inconsistent with the specification of the '303 patent.

1 So I think it -- what I intended to say was it not being
2 at issue was that prior art satisfies either plain
3 meaning understanding or the construction advanced in
4 the preliminary response, and yet we would like to
5 address what we see as mischaracterizations of the '303
6 patent and the construction in the reply to the POPR.
7 You know, I can give specific examples if that
8 would be helpful.
9 THE COURT: Mm-hmm. I guess you're -- you
10 agree with the district court construction, or are you
11 saying that it's incorrect?
12 And if you don't agree with it, then why?
13 MR. STEPHENS: We do not agree with Patent
14 Owner's characterization or application of that
15 construction. And so I think that's where the dispute
16 is.
17 We, of course, agree to that construction --
18 THE COURT: I just want to ask -- so the -- I
19 didn't ask whether you agreed with the Patent Owner's
20 characterization; I wanted to know if you agree with the
21 district court -- the construction of the district court
22 and whether this construction should apply here
23 specifically.
24 MR. STEPHENS: We do. Yes, Your Honor. We
25 would have no problem with the Board applying that

construction here. We would just, you know, like it to be applied how we -- how we believe it's proper. We don't disagree with that.

THE COURT: You do not disagree with it. Okay.

Just a moment.

(Pause on the record.)

THE COURT: Okay. Patent Owner, I'm going to give you a chance to respond to that before we kind of wrap things up, so go ahead.

MR. LAMBRIANAKOS: Well, I note our -- our -- I note the fact that, you know -- that Samsung agrees with the construction that Samsung agreed to in the district court is a positive thing. But I note that that construction was foreseeable at the time that this was filed, based on the intrinsic record, and that the only purpose for a reply, at this point, since the Petition does not discuss rearrangement -- it only discusses a reconstruction by combination of data -- that, in order for Samsung to address this agreed construction, it will have to present new arguments. It won't be able to rely on the arguments that were in the Petition since they don't discuss rearrangement.

And so, you know, we don't believe that there's good cause to basically have a do-over of a

portion of the Petition based on a foreseeable construction.

THE COURT: Thank you.

Well, how -- how was the construction foreseeable, in your view?

MR. LAMBRIANAKOS: It's foreseeable because, you know, in conducting claim construction, and particularly in preparing an IPR petition, since it's the burden of the Petitioner to state how this claim should be construed, one would assume that that would include scouring the intrinsic record, determining what the support is for the claim limitation. And if the support indicates that the term "reconstructing" was meant by the inventor to be a rearrangement or rearranging, then, you know -- with the knowledge that a petition is supposed to be -- contain all of the arguments associated with the validity challenge and include all claim construction arguments, that Samsung would have said, "Well, you know, looks like this may" -- "may be narrower than a broad claim of meaning situation, and so let's propose that, in the alternative, if rearranging is required, here's how the prior art references disclosed rearranging."

You're talking about attorneys who are in the same law firm as the attorneys who are representing

Samsung in the litigation. Presumably, those lawyers were looking over this -- you know, the record for some time before proposing plain and ordinary meaning in the district court. You know, many times, that's proposed early on with the knowledge that, ultimately, that position is going to be different, and, you know...

So there should -- there should have been sufficient knowledge on behalf of Samsung across its teams that the -- that the patent -- the '303 patent very likely would require a narrower-than-plain-and-ordinary interpretation or construction of the reconstructing term.

So we think it's foreseeable when, you know -- when you have a claim construction or a claim term that has significant specification evidence that bears on how it ought to be understood by a person of ordinary skill.

THE COURT: Thank you.

I'm going to confer with my colleagues. Just a moment.

(Pause on the record.)

THE COURT: Okay. So the panel has no further questions at this time about the 327 case. So we'll take the matter under advisement and issue an order in due course.

And so let's move on to the 372 case.

1 Mr. Stephens, if you can explain why there's
2 good cause to file a reply in the 372 case.
3 MR. STEPHENS: Thank you, Your Honor.
4 We are requesting leave to file a two-page
5 reply to the preliminary response in this proceeding to
6 respond to certain statements that patent owner made in
7 its preliminary response regarding the prior art in its
8 arguments for Claim Elements 2.4, 2.5.22, and 2.6.
9 We believe good cause exists because Patent
10 Owner's statement are inconsistent with portions of the
11 references that were cited in the Petition but,
12 nonetheless, not addressed in the POPR, and it was
13 unforeseeable that Patent Owner would overlook these
14 teachings or advanced positions contrary to those
15 teachings without addressing them in their arguments.
16 Our goal with this request is simply to
17 clarify the record and bring pertinent facts from the
18 Petition in the prior art to the Board's attention,
19 which we hope would be helpful in Your Honors'
20 deliberations on institution. We believe the record
21 would benefit from limited briefing on these issues.
22 And, again, we're not opposed to a sur-reply
23 of the same length from Patent Owner.
24 THE COURT: So is there any new developments
25 in this case that happened after the Petition that

1 necessitates a reply? Something that went on in
2 District Court or a new case issued or something?
3 MR. STEPHENS: I don't think the issues here
4 turn on any constructions or developments in the
5 litigation. I think the -- what we believe was
6 unforeseeable was that the arguments in the preliminary
7 response didn't address some pertinent teachings in the
8 prior art, and we'd like to identify those for
9 Your Honors.
10 THE COURT: Okay. Is -- you basically
11 disagree with their arguments, essentially; is that a
12 fair characterization?
13 MR. STEPHENS: It's not so much that we
14 would -- we do disagree with the arguments, but I think
15 the nature of it is not a disagreement over the
16 characterization of the teachings, but rather that the
17 arguments advanced in the preliminary response were
18 incomplete. And so while we wouldn't disagree with the
19 portions cited in the preliminary response, we think
20 there are other relevant factors to consider.
21 THE COURT: Okay. I'm going to pause to
22 discuss with my colleagues just momentarily, see if they
23 have any further questions, and I'll give Patent Owners
24 a chance to respond to that.
25 Thanks.

(Pause on the record.)

THE COURT: We have no further questions, Mr. Stephens, at this time.

Patent Owner, I just want to give you a chance to respond with regard...

MR. LAMBRIANAKOS: Thank you, Your Honor.

We view this request as -- as a desire to put in a garden-variety reply looking to shore up arguments and -- to address the weaknesses in the arguments that we pointed out in our POPR. You know, we contend that they misapplied the references. We pointed that out.

And, you know, they basically are telling us that they didn't foresee what we would say, which, to us, means simply that they didn't foresee that there were certain weaknesses in their own arguments. That is not the kind of unforeseeability that gives rise to good cause.

So, you know, our belief is that if -- if a reply is appropriate in this case, then it's appropriate in virtually every case where, you know, the POPR points to weaknesses in the application of references to the -- to the claim.

So we don't believe that good cause is approached here by this request, and we think it should be denied.

THE COURT: Thank you.

Give Petitioner a chance to respond to that.

Mr. Stephens?

MR. STEPHENS: Thank you, Your Honors.

We -- our view is that the POPR did not point to weaknesses in the Petition. The POPR, instead, advanced arguments that were inconsistent with certain teachings in the references, and we believe that was unforeseeable. And, for that reason, we think a short reply is warranted here.

THE COURT: Okay. I'm just -- in terms of timing, too, I didn't hear your timing for the first one in the 327 case and for this one.

For each of those, I mean, what's a -- how quickly should we be turning these around in terms of once the orders issue or we rule on this? How many days do you need to prepare the reply?

MR. STEPHENS: Petitioner would be prepared to file replies within a week of the Board's authorization.

THE COURT: Okay. Thank you. I don't have any further questions from the panel on that.

Patent Owner, is a week good for you, as well? For the -- give a week for each party for each -- the 327 and the 372.

Do you have anything further to add?

MR. LAMBRIANAKOS: Nothing further to add. I think one week for each would be sufficient for Patent Owner.

THE COURT: Okay. Just give me a moment.

(Pause on the record.)

THE COURT: All right. Let's move on to the last IPR here, this 374 case.

Mr. Maldonado, you can speak for Petitioner and explain why you believe a -- good cause for a reply in this case.

MR. MONALDO: Thank you, Your Honor.

And I'll also start by clarifying that we're seeking a seven-page brief that we could file within one week, and that brief would address three issues under our proposal.

The first issue relates to the construction of the term "border motion vector data." Similar to the reconstructing limitation in the '303 patent, the construction of this term arose in the litigation after the Petition was filed. We'd like briefing to explain why the analysis in the Petition and the cited prior art satisfies the construction of this term that was advanced in the preliminary response.

THE COURT: Before you go on, is this -- I'd just like to make sure we hit the same issues you did in

the other one, including that are kind of relevant to the panel. We'd like to know if you agree with that construction and whether we should apply here.

So go ahead. Proceed.

MR. MONALDO: Thank you, Your Honor.

I think our position is exactly the same as what Mr. Stephens mentioned. We don't believe a connect construction is actually necessary because we don't think that the prior art's disclosure turns on construction. We think it's sufficiently narrowed to address both the plain and ordinary meaning of the term, as well as the construction that was agreed to in the litigation, and we specifically just want a brief to explain why.

We do agree with the construction. It was advanced in the litigation, but we also think the prior art renders that construction obvious, and, therefore, Your Honors would not necessarily need to resolve the construction to resolve the dispute.

In terms of --

THE COURT: Thank you.

MR. MONALDO: So, essentially, I think -- you know, I don't want to repeat the positions that Mr. Stephens raised. I think the good cause here is, you know, largely the same as the good cause in the '303

construction.

I would add one point as to foreseeability. I'll note that in Patent Owner's initial proposal in the litigation, both for the reconstructing limitation in the '303 patent and then this limitation in the '025 patent, the Patent Owner proposed plain and ordinary meaning. So, at that time, the construction was not foreseeable or necessary to Patent Owner, and the construction only developed after a complex negotiation amongst three parties of the litigation that didn't resolve until months after the Petition was filed.

So just to reiterate, we don't think the construction was foreseeable, and, as a consequence, we think there's good cause to address it in a reply.

Unless Your Honor has any more questions on that issue, I could turn to the second issue in our -- our request.

THE COURT: Are the district court constructions as basically to the plain and ordinary meaning? Is that -- in this -- for the border motion vector data?

MR. MONALDO: No. There was an agreed-to construction in the district court for that term. I don't have it at my fingertips, but it is not the plain and ordinary meaning, Your Honor.

THE COURT: Okay. Thank you.

MR. MONALDO: All right. Great.

So our second request relates to the construction of the term "satisfies Poisson's Equation." That's not in the claims of the '025 patent. In the preliminary response, Patent Owner construes this term to mean "without mathematically solving Poisson's Equation with a huge amount of calculation."

We view this construction as being inconsistent with constructions advanced in the litigation and also inconsistent with the '025 patent, which discloses an embodiment that calculates a solution to Poisson's Equation. We'd like briefing to address this construction and point the Board to the relevant disclosure in the '025 patent that confirms that Patent Owner's construction is incorrect. We don't believe this construction was foreseeable. It wasn't raised at all in the litigation.

And the reason we don't think it was foreseeable is because there's examples in the patent that specifically contradict it, and, therefore, we did not perceive this as being something that was foreseeable and, as such, good cause would be available to address this construction in a reply.

If Your Honors have any questions on that

1 issue, I'm happy to take them, but otherwise would turn
2 to the third aspect of our request.
3 THE COURT: All right. I don't have any
4 further questions.
5 MR. MONALDO: So our third request relates to
6 Patent Owner's 325(d) argument.
7 In the preliminary response, you'll see that
8 Patent Owner argues that the Saito reference that's used
9 in the Petition is substantially similar to the Yamatani
10 reference cited in an IDF during prosecution. We'd like
11 briefing to address these arguments and to explain why
12 the prosecution history does not indicate that the
13 examiner considered the disclosure in the Yamatani
14 reference in the same way the Saito reference is being
15 used in the Petition.
16 Specifically, the Saito reference is being
17 used in combination with Walla and Shirani, two
18 references that were not considered at all during
19 prosecution. Also, if you take a look at the
20 prosecution history, the '025 patent was allowed with an
21 examiner's amendment in the first action allowance, and
22 the amended claim language did not reference Poisson's
23 Equation. Although, the examiner listed the Poisson's
24 Equation limitation and the reasons for allowance, the
25 examiner listed almost the entire claim, and there is no

indication in the record that the examiner actually considered disclosure from Yamatani relative to Poisson's Equation and found Yamatani's disclosure deficient.

It's these types of points we'd like to address in the requested briefing, and we believe good cause exists to address them because we could not anticipate or foresee the discretionary denial arguments raised by Patent Owner.

THE COURT: Essentially, though, do your arguments depend on new case that came after the Petition, or are you basically going to argue it still under the same framework you did when you filed the Petition?

MR. MONALDO: I'm not aware of any new case that came after the Petition, Your Honor. It would be the same framework -- or same legal framework. The arguments that Patent Owner advanced and how they're comparing the Yamatani reference to the Saito reference, these are two different papers. We don't believe that was foreseeable, and that we should have an opportunity to address that argument given it implicates discretionary considerations.

THE COURT: Which you did address discretionary denial in the Petition, though, right? I

1 think there was, like, two or three pages on that.
2 MR. MONALDO: We did, Your Honor. Yes.
3 THE COURT: Okay. I'm going to just confer
4 with my colleagues briefly before I give Patent Owner a
5 chance to respond.
6 (Pause on the record.)
7 THE COURT: There's no further questions from
8 the panel on that.
9 Patent Owner, would you like to respond to
10 Petitioner?
11 MR. LAMBRIANAKOS: Yes, Your Honor, I would.
12 Thank you.
13 With respect to the first issue, which is the
14 border motion vector data construction, the timeline
15 here is -- is really important.
16 So this Petition was filed on the 8th of
17 January, and on the 9th of January, Samsung proposed
18 that "border motion vector data" should be construed,
19 did not propose that plain and ordinary meaning should
20 apply.
21 So at the time that this Petition was
22 submitted, Samsung knew that plain and ordinary meaning
23 was not appropriate for this claim term, and yet that is
24 the petition [sic] that they took in the Petition --
25 that is the position they took in the Petition.

They proposed the construction ultimately. There was an agreement. The agreement was actually to the construction that Patent Owner and Plaintiff proposed in the litigation.

And so the idea that -- that the agreed construction was not foreseeable on January 8th when Samsung knew that it was not going to propose plain and ordinary meaning in the litigation on January 9th does not hold water, in our view.

The Poisson's Equation issue -- both parties proposed that the "satisfies Poisson's Equation" term should be construed. Again, Samsung proposed that claim term the day after it -- the day after this Petition was submitted. There -- that claim term remained in dispute. It was argued in court last week in the district court on that issue. And so whatever -- whatever the result of that argument is, it won't be plain and ordinary meaning. It won't be consistent with -- consistent with the plain and ordinary meaning. In fact, at some point, Samsung argued that the term was indefinite in the district court.

So, certainly, the constructions that we set out or constructions like them should have been anticipated. It should have been considered. Samsung should at least have set out its own positions on what

1 these terms mean since they knew plain and ordinary
2 meaning should not apply, but yet they submitted a
3 Petition presumably thinking that if anything were to
4 change, they could simply come back to the Board and ask
5 for a reply. But that's not unforeseeable. In fact, it
6 seems more like strategy than unforeseeability.
7 So for those two matters, Your Honor, we don't
8 believe there's good cause for additional argument.
9 With respect to the discretionary denial
10 issue, you know, our position is that the reference that
11 is relied on, the Saito reference, is one which simply
12 cites to the same Saito reference, which is in the
13 specification which was considered already by the patent
14 office. It cites to a portion of the Saito reference,
15 which is in the -- in the specification for, you know --
16 it cites for a portion which is expressly relied on in
17 the specification.
18 And so this is an attempt, you know, to -- to,
19 you know, address an issue which should have been
20 addressed up front. They knew that they were relying on
21 Saito. They knew that Saito, that they were relying on,
22 referenced that -- that which was in the specification.
23 And so any arguments that they had for why 325(d)
24 shouldn't apply should have been addressed in the
25 Petition. There's -- nothing has arisen since that time

which gives rise to good cause for another paper.

So for those reasons, Your Honor, we oppose a reply with respect to Petition '374.

THE COURT: Thank you. I'm going to consult with my other panel members to see if they have any questions, and I'll move on to see if Petitioner has a response.

(Pause on the record.)

THE COURT: We have no further questions for Patent Owner.

Petitioner, would you like to respond to that in particular? I think the panel is interested in the timing of it all, as Patent Owner's Counsel points out, and just kind of see in terms of -- you know, the Petition says "plain and ordinary meaning" and the district court construction is not plain and ordinary meaning, can you kind of address that, as well?

MR. MONALDO: Yeah. Thank you, Your Honor.

I'll start by just saying, in terms of the timing, we did list this term as one that could be construed to preserve our rights in the litigation. That did occur shortly after the Petition was filed.

But I'll also note that the parties, over about a month -- about a month after the Petition was filed, exchanged constructions. I don't think anybody

1 proposed the construction that was ultimately agreed to
2 at that time. And, in fact, Patent Owner proposed plain
3 and ordinary meaning itself at that instant in time.
4 That response, the way I understand it -- I wasn't
5 involved in negotiations, but I understand it was a
6 response in negotiation of what these terms should mean:
7 A proposal by Samsung, a proposal by GE, a modified
8 proposal by Patent Owner, and, ultimately, this
9 construction was resolved and agreed to by the parties
10 in a manner that was not plain and ordinary meaning.
11 We don't think that was foreseeable at all
12 because it was, you know, not foreseeable until -- it
13 wasn't foreseeable in February a month after the
14 Petition was filed. Given all of the disputes amongst
15 the parties, it wasn't resolved until later on into
16 March after there had been, I think, several rounds of
17 discussion and negotiation.
18 So we don't think that was foreseeable, and we
19 don't think the timing is something that we could have
20 been able to address in our Petition given -- given the
21 bar date and the need to get the Petition on file.
22 As to the construction that satisfies
23 Poisson's Equation, I'll simply reiterate that Patent
24 Owner mentions that there are multiple constructions,
25 but none of those construction litigation was the one

that was advanced in the preliminary response, so we'd like briefing to explain how that's inconsistent and how it's inconsistent with the examples in the specification.

As Counsel mentioned, there was a claim construction hearing last week, and the preliminary construction of the term "Poisson's Equation" was simply that for -- for Poisson's Equation be true, which is essentially the plain and ordinary meaning of the term. And we think that is the correct construction, and we'd like to advance why in our briefing.

And then --

THE COURT: On that point -- just before you move on with the equations -- I mean, let's say we could, you know, figure out whether that's inconsistent and figure out whether it's a mischaracterization ourselves.

Is there any specific reason that we should grant briefing on the -- other reason that makes you think that it satisfies -- we should construe satisfies Poisson's Equation? I mean, if it's just inconsistencies and mischaracterizations, that could be something that the Board could resolve itself and doesn't need briefing on.

MR. MONALDO: I think we'd like briefing

because Patent Owner has had the opportunity to provide briefing and identify portions of the '025 patent that it believes supports the construction advanced in its preliminary response.

We didn't have an opportunity to reply to that, and so we believe there's other portions of disclosure that are inconsistent and would -- would appreciate the Board -- the opportunity to point those portions of specification out to Your Honors to make your life easier in identifying why the construction is inappropriate.

THE COURT: Okay.

And on the border motion vector data, I mean, are you going to say in the briefing something to the effect of what is the plain and ordinary meaning and if there is a plain and ordinary meaning, in your view?

MR. MONALDO: Yes, Your Honor. Our plan is to stick with what's in the Petition. We're not going to turn to different embodiments, not to make new arguments or anything like that. Just offer explanation about what was set forth in the Petition and why that satisfies both the plain and ordinary meaning and the construction that was agreed to in the litigation.

THE COURT: Okay. Thank you. I don't have further questions on that.

1 Go on to the last issue.
2 MR. MONALDO: The last issue I'll say while we
3 did address 325(d) in our Petition, we addressed in a
4 way that simply noted that none of the references that
5 were included in our Petition were actually cited or
6 considered during prosecution. The Saito reference was
7 not one of the references that was considered during
8 prosecution. It wasn't listed on the face of the
9 patent. Patent Owner has, in its preliminary response,
10 tried to equate that reference to the Yamatani
11 reference, and so we specifically --
12 THE COURT: You don't need to get into the
13 merits of that. Yeah. I mean, regardless of what the
14 merits of the arguments are, these are arguments that
15 you advanced in the Petition, correct? Like, you've
16 kind of explained what was going on with respect to
17 325(d). You went through the two-factor analysis.
18 I mean, is there anything further that you're
19 going to add to that, without getting into the merits of
20 those arguments, in this briefing?
21 MR. MONALDO: Yes, Your Honor. And it's the
22 specific pointing to this Yamatani reference in its
23 consideration and the prosecution.
24 We did not perceive the argument that that
25 reference is substantially similar to the one that we

use in the Petition, and, as a consequence, we are going to talk about that reference in particular in a way that we didn't do in the Petition.

THE COURT: Okay. I'm going to pause here to see if my colleagues have any further questions, and I'll see if Patent Owner wants to respond to that.

(Pause on the record.)

THE COURT: Okay. Thank you. The panel has no further questions for Petitioner's Counsel at this time.

We're going give Patent Owner a chance to respond to what they just heard, and then we're going to wrap up.

So Patent Owner, feel free. If you have anything further, go ahead.

MR. LAMBRIANAKOS: Thank you, Your Honor.

I just want to point out here that the focus on whether it was foreseeable that these two terms, "border motion vector data" and "satisfying Poisson's Equation," would be construed, according to the plain and ordinary meaning or not, focuses on the Petitioner.

The Petitioner has stated its position as of the 8th of January in this -- in this tribunal that those terms should be entitled to the plain and ordinary meaning, and that's how validity should be assessed in

this case.

But, clearly, that position was one which they were not wedded to because in the district court at virtually the same time, they said the opposite. They said that those terms should be construed.

And so, you know, obviously the policy is against having differing constructions for the same terms for the same patents in different proceedings; a broader one for invalidity purposes, and a narrower one for infringement purposes.

Samsung knew the risk of taking two different positions. They didn't -- they didn't hedge that position at all. They didn't allow for any additional argument or provide additional argument, should their litigation position ultimately be adopted by the Court or agreed to by the parties in the litigation.

They made that choice. That was a calculation that was made at the time. No question. And now we're here being told that somehow -- based on the Plaintiff's position of plain and ordinary meaning, or -- or in the case of Poisson's Equation, that it might be construed differently -- somehow bears on the question of whether Samsung should have -- should have foreseen that a different, narrower construction would have been -- would have been adopted.

1 You know, even if they didn't know exactly
2 what the district court was going to do, certainly they
3 were going to be a major driver in whatever that
4 construction was going to be, and they could have
5 addressed it, even if it weren't exactly the
6 construction that were adopted, something that is
7 similar and that takes into account the same intrinsic
8 record that's considered in the district court.
9 And so our position is that, you know, this --
10 rather than being unforeseeable, this is exactly what
11 one would have foreseen in Samsung's position, given the
12 timing of the events around the time of the filing of
13 this Petition.
14 We don't think that that is good cause. We
15 don't think that good cause means very much if it means
16 that, you know, you get a back-up position later on
17 should things not work out in the way that you had
18 hoped.
19 So, in our view, good cause is not met with
20 respect to the first two items.
21 I don't have any further argument with respect
22 to the 325(d) issue.
23 THE COURT: Thank you. I'm going to confer
24 with my colleagues, and then I'll get back to you to see
25 if we have any further questions.

(Pause on the record.)

THE COURT: All right. So with respect to both '372 and '374, we're going to take the matter under advisement and issue an order in due course. So unless there are any questions from the parties, we're going to wrap up this call.

I have just one last question about the '374 case for Petitioner's Counsel, Mr. Maldonado.

How many weeks or how many -- is a week fine for this, as well, in terms of the response period after we issue the order? If we do grant a reply, is a week sufficient?

MR. MANALDO: Yes, Your Honor. A week should be sufficient.

THE COURT: Patent Owner, is that acceptable, too? Do you object to that if we were to grant briefing on it?

MR. LAMBRIANAKOS: We would agree to a week sur-reply.

THE COURT: Thank you.

With that, this call is concluded. Thank you.

(Whereupon the proceedings concluded at 12:02 p.m.)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT TRIAL AND APPEAL BOARD

IN RE PATENT OF:	U.S. PATENT NO. 9,986,303 PROCEEDING NO. IPR-2024-00327
	U.S. PATENT NO. 10,218,995 PROCEEDING NO. IPR-2024-00372
	U.S. PATENT NO. 8,090,025 PROCEEDING NO. IPR-2024-00374
SAMSUNG ELECTRONICS CO., LTD., PETITIONER, V. ADVANCED CODING TECHNOLOGIES, LLC Patent Owner.	HON. REPKO HON. ENGELS HON. GERSTENBLITH

I, Tamara Houston, CSR No. 7244, RPR, CCRR 140, do hereby certify that I did correctly report the proceedings contained herein and that the foregoing pages 1 through 45 inclusive, comprise a full, true, and correct transcript of the proceedings taken in the matter of the above entitled cause on Tuesday, May 21, 2024.

Tamara L. Houston

TAMARA HOUSTON, CSR NO. 7244
CCRR, RPR

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