

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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

Petitioners,

v.

MAXELL, LTD.,
Patent Owner

Case: IPR2024-00828

U.S. Patent No. 8,982,086

**PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW OF THE
FINAL WRITTEN DECISION**

Mail Stop **Patent Board**
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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PATENT OWNER’S EXHIBIT LIST

Description	Exhibit #
1st Amended Docket Control Order from District Court Litigation	2001
Original Docket Control Order from District Court Litigation	2002
Maxell’s Supplementary Preliminary Election of Asserted Claims	2003
Defendants’ Preliminary Election of Prior Art	2004
Declaration of Jacob O. Wobbrock, Ph.D.	2005
Handbook of Fingerprint Recognition (2nd ed.)	2006
Claim Construction Order	2007
Valdes-Perez, F.E. and Pallas-Areny, R. (2009) <i>Microcontrollers: Fundamentals and Applications with PIC</i> . Boca Raton, FL: CRC Press	2008
Deposition Transcript of Seth James Nielson, Ph.D. (January 15, 2025)	2009
Excerpts from Human-Computer Interaction, 3rd Ed., Dix et al. (2004)	2010
Definition of “mode” from PCMag (https://www.pcmag.com/encyclopedia/term/mode)	2011
McGraw-Hill Dictionary of Scientific and Technical Terms, 6th ed. (2003)	2012
Excerpts from the Deposition Transcript of Seth James Nielson, Ph.D. (December 20, 2024)	2013
Patent Owner’s Hearing Demonstratives	2014
June 13, 2025 Email from Board Denying Authorization to File Motion for Supplemental Information	2015
August 12, 2025 Email from Board Denying Pre-hearing Conference Request	2016
May 23, 2025 Public Trial Transcript from <i>Maxell, Ltd. v. Samsung Electronics et al.</i>	2017
August 25, 2025 Authorization for Offer of Proof	2018
Parties’ Meet and Confer Communication regarding supplemental information	2019
Parties’ Meet and Confer Communication regarding pre-hearing	2020

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File history for RE49,669	2022

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Cases

<i>Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH,</i> IPR2019-01469, Paper 6 (PTAB Feb. 13, 2020).....	4
<i>American Airlines Inc. v. Intellectual Ventures I LLC,</i> IPR2025-01055, Paper 11 (PTAB Nov. 21, 2025).....	13, 14
<i>Fintiv, Inc. v. Apple Inc.,</i> IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (id. at 14–19)	3
<i>Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.,</i> 821 F.3d 1359 (Fed. Cir. 2016)	3
<i>Interactive Communications International, Inc. v. Blackhawk Networks, Inc.,</i> IPR2024-00465, Paper 40 (Director, Oct. 9, 2025).....	2, 13, 15
<i>Revvo Technologies, Inc. v. Cerebrum Sensor Technologies, Inc.,</i> IPR2025-00632, Paper 20 (Director Nov. 2, 2025).....	12, 13

Statutes

35 USC §§314 and 325(d)	1, 3, 4
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Other Authorities

37 C.F.R. § 42.11	13
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I. INTRODUCTION

Patent Owner Maxell Ltd. respectfully requests that the Director grant review, vacate the Final Written Decision (“FWD”) (Paper 52) finding all challenged claims of U.S. Patent 8,982,086 (“the ’086 Patent”) unpatentable, and terminate the proceeding. 37 C.F.R. §42.75.

The ’086 Patent and its related parent have been repeatedly examined by the Office, through original prosecution, reexamination, and multiple reissues, many of which considered the precise references upon which the Petition is based. The ’086 Patent was also tried to a jury six months before the FWD.¹ Having previously refused to deny institution based on many of these factors, the Board has now adopted an erroneous claim construction, leading to error in finding all of the challenged claims unpatentable. This IPR represents a textbook example of a petition that never should have been instituted under 35 USC §§314 and 325(d) and is a clear example of the issues recognized in the recent NPRM, namely that “even extremely strong patents become unreliable when subject to serial or parallel validity challenges.” *Revision to Rules of Practice before the Patent Trial and Appeal Board*, 90 Fed. Reg. 48335, at 3 (“if [a] patent is subjected to repeated *de novo* patentability review each time it is enforced, it will no longer be reliable”) (“NPRM”). Further,

¹ The ’086 Petition was improperly instituted over *Fintiv*. Paper 7, 14-20.

the FWD erred in relying on the inconsistent testimony of Samsung’s expert and inconsistent development of records by Samsung as it relates to arguing for “two algorithms” for non-infringement in the district court but not pointing to the presence of “two algorithms” in the prior art when seeking invalidity at the PTAB. *See Interactive Comm’s Int’l, Inc. v. Blackhawk Networks, Inc.*, IPR2024-00465, Paper 40, at 3 (Director, Oct. 9, 2025).

Director review is necessary because the Board legally erred in its claim construction of first and second “registering mode.” This improper construction, which is inconsistent with the intrinsic record, infected the Board’s entire analysis of the prior art when it erroneously found the art rendered obvious the two “registering modes.” In so doing, the FWD made erroneous findings of fact regarding the prior art, and incorrectly found the challenged claims unpatentable based partly on Samsung’s expert’s inconsistent testimony, all while reviewing a patent that has survived countless reviews by the Office.

The Board also erred by failing to satisfy the requirement of the September 16, 2025 Memorandum entitled *PTAB consideration of prior findings of fact and conclusions of law* (“9/16/25 Memo”) because the FWD did not address why a different outcome was warranted when the Office has previously found the same claims valid during reexamination and found similar claims in a related matter patentable over the **same and substantially the same art**. The Board was required

to provide such explanation and rationale in view of recent guidance, yet the FWD skirts such obligations. Thus, for this additional reason, the FWD should be reversed and the IPR terminated.

II. LEGAL STANDARD

Director review of a FWD is “limited to decisions presenting (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.” USPTO, Director Review Process, Sec. 2.B., <https://www.uspto.gov/patents/ptab/decisions/director-review-process>. “An abuse of discretion is found if [a] decision: (1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact finding; or (4) involves a record that contains no evidence on which the Board could rationally base its decision.” *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016) (internal citation omitted).

III. SUMMARY OF THE TRIAL RECORD

On April 26, 2024, Samsung filed a Petition challenging claim 1, 2, 4-7, and 9-14 of the '086 Patent. Paper 3. On August 12, 2024, Patent Owner filed its Preliminary Response explaining why denial was appropriate under §325(d) due to the Office’s prior consideration of the Petition art during the original prosecution, reexamination and parent reissue proceedings. Paper 7, at 3-14. Patent Owner also explained why denial was appropriate under *Fintiv. Id.* at 14-19. Despite these

showings, the PTAB instituted review. Paper 9. Patent Owner sought Director review and explained why the Decision ignored the standard set forth in the precedential *Advanced Bionics* decision and rendered §325(d) and prior reexamination proceedings meaningless. Paper 11. That request was summarily denied. Paper 13.

In its Response, Patent Owner explained that first and second “registering mode” limitations required construction because the parties disputed its plain and ordinary meaning and why, under the proper construction, Samsung failed to demonstrate that the prior art rendered obvious the two claimed registering modes. Paper 16, 10-21, 31-47. On October 30, 2025, the Board found all challenged claims unpatentable based principally on its finding that the “first registering mode” and the “second registering mode” are “different input methods,” crediting Samsung’s expert notwithstanding the expert’s inconsistent testimony in the district court case. Paper 52, at 57; Paper 39. This was legally erroneous and an abuse of discretion.

IV. ARGUMENT

A. The FWD Fails to Explain Why a Different Conclusion is Warranted in View of the Office’s Multiple Prior Confirmations of Patentability

The ’086 Patent not only was thoroughly examined by the Office during the original prosecution, but it also went through extensive reexamination proceedings. *See generally* EX1004. Specifically, the ’086 Patent was thoroughly reexamined by the Office as Reexamination Request No. 90/014,638, which resulted in a

Reexamination Certificate issued on September 28, 2021. EX1004, 3-4. All original claims were confirmed and claims 5-15 were added during reexamination. Additionally, the '086 Patent's parent—U.S. Patent No. 8,654,093—went through extensive reissue proceedings. EX1005; EX2022. As admitted by Samsung (Paper 3 at 80), Rogers and Rosenberg were previously presented to and considered by the Office during reexamination. EX1004, 30-33; 77-79; 85-98; 158-162; 176-271. The Examiner also expressly stated in considering a similar proposed combination that “The Examiner agree[s] that the combination **did not have 2 registration modes**, one for the finger tip and one for the finger pad, **as Bayram has one registration mode for the signature.**” EX1004, 8 (emphases added).

Rogers and Rosenberg were also considered during the parent reissue proceedings for RE48,830. EX1005, 83; 573. Similarly, RE49,669 addresses substantially similar claims as the claims being challenged here and the Examiner considered Rogers, Rosenberg, and Miyazawa. EX2022, 62, 67, 143, 179, 188.

Patent Owner explained, in detail, how the Office already considered substantially the same art and arguments presented in the Petition. Paper 7, at 3-14. Patent Owner also explained in detail how the Board erred in its analysis of this evidence and abused its discretion. Paper 11.

The 9/16/25 Memo states that “if the Board reaches . . . [a] final decision on a finding of fact or conclusion of law that is different than the prior finding or

conclusion of the Office, . . . the Board shall explain in the . . . final written decision why a different outcome is warranted. A more detailed explanation is required from the Board when the same or substantially the same evidence and/or arguments that were previously presented to the Office . . . are being relied upon in the subsequent AIA trial proceeding.”

https://www.uspto.gov/sites/default/files/documents/Memo_re_prior_findings_of_fact_and_conclusions_of_law_9_16_25.pdf. **The FWD, however, fails to explain why an outcome different than the finding by the Office that neither Bayram nor Rosenberg nor the two in combination disclose the claimed two registering modes is supported by the evidence.** The Board’s consideration of the reexamination proceedings is cursory, at best.

First, the Board’s discussion of limitation [1f] fails to even mention the reexamination. FWD, 54-59. Second, it fails to make any specific findings at all, merely repeating the Petition arguments and noting “[w]e find the combination of Rogers and Rosenberg teaches this limitation.” FWD, 59. As discussed below, this was erroneous. Third, the limited mention of the reexamination fails to accurately summarize Patent Owner’s position and, moreover, fails to explain why a different outcome is warranted. For example, the FWD states “Patent Owner fails to identify any argument made by the patent holder that supports its argument that the ‘first registering mode’ and ‘the second registering mode’ as recited are different

‘operating states’ or distinct ‘operating modes.’” (FWD, 32). This is factually incorrect because Patent Owner explained how it presented testimony from Dr. Wobbrock explaining that “A POSITA would understand that the concept of a mode is a setting S such that the same action A has different results or effects based on the current value of S. . . .” and the Examiner agreed that the art did “not describe separate registering modes.” Paper 16, 14-15 (citing EX1004, 29, 75). Next, the FWD states that “Patent Owner acknowledged that the cited references disclosed only a single ‘operating state’ or ‘operating mode.’ FWD, 32 (citing EX1004, 76–79). But, this is entirely consistent with Patent Owner’s argument that the claim requires, and thus the art must show, two different operating modes. In the cited passages (EX1004, 76-79) Patent Owner explained that “Rosenberg has nothing to do with registration of any kind” and “there is no motivation to apply the real-time finger pad detection methodology in Rosenberg to create an entirely distinct registering mode in Bayram.” EX1004, 77-78. Patent Owner goes further, and explains that “Rosenberg says nothing about distinguishing a fingertip from a finger pad for purposes of user registration” and “Bayram has no need for separate registering modes based on the part of the finger used.” *Id.* at 78. Finally, Patent Owner explains that, in contrast, “claim 1 of the '086 Patent explicitly recites a ‘registering mode’ that includes two sub-modes with specific characteristics” *Id.* at 79. Thus, the FWD fails to accurately interpret the reexamination and Patent

Owner's consistent position, and fails to explain why a different outcome was warranted here. *Compare* POR (Paper 16)/Sur-reply (Paper 25) *with* EX1004, 8, 29, 75-79; *and* EX2022, 62, 67, 179, 188.

This serial challenge to the '086 Patent should have never proceeded. And, having been erroneously instituted, it was incumbent on the Board in the FWD to provide a more detailed explanation where the same or substantially the same evidence and/or arguments were previously presented to the Office. The FWD fails in this regard. As detailed in the recent NPRM, the Board's actions in this proceeding "jeopardize the reliability of patent rights and incentives to invest in new technology." NPRM at 48335.

B. The Board's Construction of "Registering Modes" is Erroneous

The FWD turns entirely on an improper interpretation of the claimed registering modes. The FWD states that it "accords these terms their plain and ordinary meaning" (FWD 13) and later specifies that "[t]he plain and ordinary meaning of limitation 1f is that the 'first registering mode' and the 'second registering mode' are different input methods." FWD at 57. In doing so, the FWD reads out "registering" from "registering mode" and reads out "operating" from "operating mode." Director review is necessary to correct this erroneous interpretation because it reads out claim language and is inconsistent with the specification and file history and leads to an incorrect reading of the prior art.

The claim language recites: “two **operating modes**: at least an identification mode and a **registering mode** . . . **in said registering mode**, there are provided a **first registering mode** for inputting input information by a pad of the finger, and a **second registering mode** for inputting input information by an end of the finger” EX1001, claim 1 (emphasis added). The claim language is clear that the “registering mode” is an “operating mode” and the “registering mode” has two sub registering modes. Thus, both the “first registering mode” and the “second registering mode” are sub-operating modes of the “said registering mode.” Samsung and the Board failed to apply this interpretation. The FWD ignores the “operating mode” claim language and entirely reads out the “registering” language to only require the first and second registering modes to be different input methods. That is, the FWD essentially rewrites the claim to recite first and second input modes.

The specification is also clear that registration is still required as part of the first and second *registering* modes and this includes calibration. The FWD incorrectly asserts that Patent Owner does not explain how or why calibration relates to inputting information for registering a password. FWD, 23. But, the FWD acknowledges that Fig. 9 depicts a flow chart for password registration. FWD, 23 (quoting EX1001, 2:33). The first step states “**Start** Password Registration.” EX1001, Fig. 9. Then Step S2011 is “Password Registration **Ends**.” *Id.* Everything in between, *including* calibration, is part of the claimed registration process. *Id.*

Indeed, the description of Fig. 9 clearly includes the steps of calibration shown in Figs. 10A/10B and Patent Owner explained this. EX1001, 6:28-36; Paper 16, 11-13.

The file history is also consistent with Patent Owner's interpretation, where the Examiner noted that "Bayram at best describes real-time input and signature recognition but does not describe **separate registration modes**." EX1004, 75. And, contrary to Samsung's argument, Patent Owner proffered this interpretation of "modes" during reexamination. EX1004, 29. During the hearing, Patent Owner explained that its interpretation was raised during reexamination pointing the Board to EX1004, at 75-80 and 29-32. Paper 40, 31:16-25. The FWD fails to consider this.

Patent Owner's expert, Dr. Wobbrock also consistently applied this interpretation throughout this proceeding and reexamination. During reexamination, Dr. Wobbrock explained his interpretation of "mode" and how the art fails to disclose functionality for differentiating types of contacts for separate registering modes:

68. This difference is not trivial. A POSITA would understand that the concept of a mode is a setting S such that the same action A has different results or effects based on the current value of S . Put differently, when S equals mode M_1 , then action A leads to result B_1 . But when S equals mode M_2 , the same action A leads to result B_2 . For example, with caps lock “off”, the action of hitting the “W” key is to produce a lower-case “w”. But with caps lock “on”, the same action of hitting the “W” key is to produce an upper-case “W”. The same action A produces different results (B_1, B_2) because of the current mode setting S .

69. In the '086 Patent, touching the screen, the action A , registers values for a fingertip (Figure 10A) in one registering mode M_1 . The same action A , touching the screen, registers values for a finger pad (Figure 10B) in another registering mode M_2 . So, in Figures 10A and 10B, the two registering modes have the same action resulting in different outcomes, namely the values registered for finger tips and pads, respectively.

EX1004, 29. Consistent with the intrinsic record, this is the position he takes in this proceeding. See EX2005, ¶88. The Board gave short shrift to this evidence from the intrinsic record and rejected “Patent Owner’s contention that the file history of the ’086 patent supports its proposed construction.” FWD, 31.

In contrast, Samsung has taken inconsistent positions on its interpretation of this limitation in different forums without providing any explanation for its alternative positions. In this IPR, Samsung takes the position that the first and second “registering modes” are input modes and only requires the prior art to disclose a single registration process. Paper 23, at 6 (citing Dr. Nielson EX2009, 49:8-53:8). However, in district court “Dr. Seth Nielson explained that the enroll diagram would have shown ‘branching’ of two algorithm paths if there were multiple modes, but that instead, the diagram was sequential, even with the loop” when discussing infringement, and the District Court relied on this interpretation when granting

JMOL of non-infringement. EX1026, at 9.² Patent Owner also explained, in detail, how Dr. Nielson testified in district court that element [1f] is not met because the accused product allegedly had “one mode, one algorithm, one result.” Paper 39, at 6 (EX2017 at 896:18-24). “[W]hen a petitioner takes alternative positions before the Board and a district court, that petitioner should at a minimum, explain why alternative positions are warranted.” *Revvo Techs., Inc. v. Cerebrum Sensor techs., Inc.*, IPR2025-00632, Paper 20, at 4 (Director Nov. 2, 2025) (precedential). Samsung has not done so here. “The Board’s claim construction rules are designed to ensure that the Board correctly construes claim terms and to minimize inconsistency in claim construction between forums.” *Id.* (citing Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340, 51,349 (Oct. 11, 2018)). **Samsung sought a broader interpretation here to support invalidity and a narrower interpretation in litigation to avoid infringement, exactly what these rules were meant to discourage.** *Id.* at 51,350. Now, the FWD finding the challenged claims unpatentable is inconsistent with the JMOL finding no infringement. *Compare* FWD *with* EX1026. “Allowing petitioners to continue this practice does not further the office’s goal of ‘providing greater predictability and certainty in the patent system.’”

² The FWD entirely ignores this statement and position taken by Dr. Nielson, despite using EX1026 to summarily conclude that Dr. Wobbrock should be afforded little weight. FWD, at 9n.13. As discussed below, that was an abuse of discretion.

Id. at 51,342-43. Because Samsung and its expert took inconsistent positions and the Board relied on it, the FWD should be vacated and this proceeding terminated. *Interactive Comm’s Int’l, Inc. v. Blackhawk Networks, Inc.*, IPR2024-00465, Paper 40, at 3 (Director, Oct. 9, 2025).

Moreover, Samsung had a duty of candor to inform the office of its inconsistent positions under 37 C.F.R. 42.11. “Patent Owner should not have been the first party to inform the Board as to Petitioner’s different claim construction positions in the two forums” as it did so here in its motion for supplemental information. *See Am. Airlines Inc. v. Intellectual Ventures I LLC*, IPR2025-01055, Paper 11, at 13, (PTAB Nov. 21, 2025) (denying institution); Paper 39, 4 (also raising Samsung’s duty of candor). It was error for the Board to deny Patent Owner’s motion, which Patent Owner first raised in June. Paper 39, 2; Paper 50.

C. The Board Erroneously Found The Prior Art Renders Obvious the “first registering mode” and “second registering mode”

Relying on its erroneous claim construction, the FWD makes erroneous findings regarding the prior art. Namely, the FWD acknowledges that Rogers discloses a single registration process depicted in Fig. 4. FWD, 45. Rogers discloses the entry and storage of a single graphical passcode template. EX1006, 8:42-67; Paper 25, 15; Paper 16, 37. Importantly, Rogers is agnostic as to how the passcode is entered—it can be entered by the tip of the finger or the pad and as long as both are within the parameters of the template, access will be granted in the identification

mode. EX1006, 9:60-64; Paper 16, 37. Thus, the FWD then leaps to Rosenberg for its disclosures related to Figs. 8A and 8B. FWD, 55-56. **But it fails to find, in either reference, the disclosure of two registering modes.** The FWD incorrectly asserts that “Patent Owner acknowledges that . . . Rosenberg teaches two modes.” FWD, 59. Rosenberg teaches two **targeting** modes. Neither the FWD nor Samsung explain how two different targeting modes are two different password registrations modes—they are not. Paper 16, at 45-47.

Moreover, the FWD incorrectly found the testimony of Dr. Nielson credible and persuasive, but Dr. Nielson’s testimony contains repeated contradictions with his district court testimony that the Board declined to enter into the record. FWD, 9 n.13. Based entirely on EX1026, and contrary to Dr. Wobbrock’s consistent testimony throughout the intrinsic record, the FWD gives Dr. Wobbrock little to no weight. *Id.* This was done despite evidence Patent Owner provided of Dr. Nielson taking inconsistent positions on the construction of “mode” that the Board failed to even consider. Paper 39; Paper 50. The FWD should be reversed because the Board abused its discretion in denying Patent Owner’s motion to submit supplemental information, refusing to consider Dr. Nielson’s district court testimony, and thus crediting Dr. Nielson’s contradictory PTAB testimony.

Dr. Nielson’s testimony is inconsistent and should be given no weight. Paper 39, at 5-10. Namely, Dr. Nielson gave testimony in the district court that the two

registering modes require showing two different algorithms but here only required the prior art to disclose one process with one result without needing to identify any algorithms. Paper 39, at 5-10; EX1026, at 9; EX1003, ¶¶103, 115-125; EX2009, 49:1-7. Failing to recognize this inconsistency, the Board improperly denied the motion and fully credited Dr. Nielson's testimony. Paper 50. Thus, because the Board rested its findings of Rogers disclosing the first and second registering modes on Dr. Nielson's contradictory testimony, the FWD's findings of unpatentability on all Grounds should be vacated. *Interactive Comm's Int'l, Inc. v. Blackhawk Networks, Inc.*, IPR2024-00465, Paper 40, at 3 (Director, Oct. 9, 2025) (vacating FWD where the Board rested its finding of a reason to combine on expert's contradictory testimony and that testimony was central to Petitioner's analysis that a POSITA would have had a reason to combine the art).

V. CONCLUSION

By instituting review of a reexamined patent and adopting a construction of "mode" that is inconsistent with the evidence, the Board erred. Patent Owner respectfully requests the Director grant review, vacate the ID and FWD, and terminate.

Dated: December 1, 2025

Respectfully submitted,

/Robert G. Pluta /

Robert G. Pluta (Reg. No. 50,970)

Amanda S. Bonner (Reg. No. 65,224)

MAYER BROWN LLP

71 S. Wacker Drive

Chicago, IL 60606

Telephone: (312) 701-8641

rpluta@mayerbrown.com

asbonner@mayerbrown.com

Saqib J. Siddiqui (Reg. No. 68,626)

MAYER BROWN LLP

1999 K Street NW

Washington, D.C., 20006

ssiddiqui@mayerbrown.com

Counsel for Maxell, Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December, 2025, a copy of the attached PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW was served by electronic mail to the attorneys of record, at the following addresses:

James Heintz

Jim.Heintz@us.dlapiper.com

Gianni Minutoli

Gianni.Minutoli@us.dlapiper.com

With a courtesy copy by electronic mail to:

dla-samsung-maxell@us.dlapiper.com

Respectfully submitted,

Date: December 1, 2025

By: /Robert G Pluta Reg No 50970/
Robert G. Pluta (Reg. No. 50,970)

Counsel for Maxell, Ltd.