

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PICTIVA DISPLAYS INTERNATIONAL
LTD.;

Plaintiff,

v.

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

Defendants.

Case No. 2:23-cv-000495

JURY TRIAL DEMANDED



**PLAINTIFF PICTIVA DISPLAYS INTERNATIONAL LTD.'S
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR
LACK OF STANDING PURSUANT TO RULE 12(b)(1), OR, IN THE
ALTERNATIVE, PURSUANT TO RULE 12(b)(6)**

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I. INTRODUCTION

Samsung Electronics Co. Ltd. (“SEC”) and Samsung Electronics America, Inc.’s (“SEA”) (collectively “Samsung”) Motion to Dismiss is without merit and should be denied in its entirety.

As the legal title holder of the Asserted Patents, Plaintiff Pictiva Displays International Ltd. (“Pictiva”) satisfies the bar for establishing Article III standing. The Supreme Court held in *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269 (2008), “courts—both before and after the founding—have always permitted the party *with legal title alone to bring suit*,” *id.* at 285 (emphasis added).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] That should end the debate: Pictiva indisputably holds legal title to the Asserted Patents [REDACTED] asserting that Samsung has injured it.

Samsung’s arguments—[REDACTED]

[REDACTED]—rely on outdated law that the Federal Circuit expressly abrogated after the Supreme Court’s decision in *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). Prior to *Lexmark*, the Federal Circuit treated 35 U.S.C. § 281’s statutory requirements for a cause of action as jurisdictional. In *Lexmark*, the Supreme Court held that a Lanham Act plaintiff had Article III standing based on its “allegations of lost sales and damage to its business reputation”—regardless of whether those injuries implicated interests the Lanham Act protects, and thus regardless whether the plaintiff had a cause of action, *id.* at 126-29. The Federal Circuit recognized that *Lexmark* applies equally to patent cases, *Lone Star Silicon Innovations LLC v. Nanya Tech. Corp.*, 925 F.3d 1225, 1235-36 (Fed. Cir. 2019), and expressly overruled its earlier cases that conflated Article III standing with the cause of action requirements of § 281 (sometimes

misabeled “statutory” or “prudential” standing), over a dissent making the same argument Samsung now makes. *Schwendimann v. Arkwright Advanced Coating, Inc.*, 959 F.3d 1065, 1071 (Fed. Cir. 2020).

Article III standing now works the same in patent cases as in any other cases. The point of Article III standing is simply to ensure that the plaintiff has a personal stake in the kind of dispute amenable to judicial resolution; it is not for sorting out quintessential merits issues like contract interpretation and chains of title. Pictiva alleges that Samsung caused it economic injury that can be redressed through damages, an injunction, and other relief. Article III requires nothing more.

As a fallback to its jurisdictional objection, Samsung seeks dismissal under Rule 12(b)(6) for a lack of what it calls “statutory standing” under § 281. Samsung is wrong—the plain text of the statute confers a cause of action for patent infringement on those that, like Pictiva, hold title to a patent. Regardless, the issue is moot as Pictiva recently moved for leave to amend to add Key Patent to this case, which would cure any purported § 281 problem.

II. BACKGROUND

A. Procedural Background

Pictiva, which is a wholly-owned subsidiary of Key Patent, filed this lawsuit (“*Pictiva P*”) on October 19, 2023 to address Samsung’s infringement of U.S. Patent Nos. 6,949,389 and 8,314,547. Dkt. 1. On March 1, 2024, Pictiva filed an amended complaint, which added U.S. Patent Nos. 5,558,223, 8,723,164, 9,257,492 and 11,828,425. Dkt. 17.

Since March 2024, the parties have exchanged preliminary infringement and invalidity contentions, and have also begun document and written discovery. On June 7, 2024, Samsung served its first set of interrogatories and document requests, which sought information “regarding the ownership or transfer of ownership of the Patents-in-Suit or any rights associated therewith.” Ex. 1 (June 7 Document Letter) at 1, 7; Ex 2 (Samsung’s First Set of Interrogatories) at 13. Pictiva promptly collected these documents in response to Samsung’s discovery request and timely produced them with

its interrogatory response on July 15, 2024, the date the parties agreed Pictiva's responses would be due.

In the meantime, on June 25, 2024, the defendant in *Valtrus Innovations Ltd. v. SAP America Inc. and SAP SE*, No. 2:24-cv-21 (E.D. Texas) moved to dismiss for lack of standing pursuant to Rules 12(b)(1) and 12(b)(6), under the theory that Valtrus Innovations Ltd. ("Valtrus")—[REDACTED]

[REDACTED]—does not have constitutional or "statutory" standing to assert the patents in that case (which are different than the Asserted Patents here).

Upon learning of the alleged standing issues raised by SAP in the *Valtrus* case, Pictiva promptly filed a second complaint in this Court which is identical to the amended complaint in this case except for the addition of Key Patent as a co-plaintiff (*Pictiva II*), notified Samsung of the alleged issue, and proposed that the parties agree to consolidation of *Pictiva I* and *Pictiva II*. Carson Declaration ¶ 3. Samsung rejected Pictiva's proposal and instead filed this Motion to Dismiss, which seeks to throw out the work that the parties and this Court have done on this matter and start over. Dkt. 57.

B. Factual Background Regarding Pictiva's Ownership Of The Asserted Patents And Corporate Structure

Pictiva owns by assignment the entire right and title in and to the Asserted Patents. Ex. 3 (OSRAM Patent Purchase Agreement). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On July 1, 2020,

[REDACTED]

III. ARGUMENT

Pictiva owns the Asserted Patents, is the assignee of the Asserted Patents, and has been injured by Samsung's infringement. This is all that is required to satisfy Article III standing requirements. *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269, 285 (2008) (“courts—both before and after the founding—have always permitted the party *with legal title alone to bring suit*”) (emphasis added).

Lone Star Silicon Innovations LLC v. Nanya Tech. Corp., 925 F.3d 1225, 1235-36 (Fed. Cir. 2019) (holding “[w]e therefore firmly bring ourselves into accord with Lexmark and our sister circuits by concluding that whether a party possesses all substantial rights in a patent does not implicate standing or subject-matter jurisdiction” and finding that plaintiff “should be given an opportunity to join AMD as a necessary party before this case is dismissed”).

A. Pictiva Has Article III Standing

1. Pictiva's Economic Injuries Are A Classic Injury In Fact

The “irreducible constitutional minimum of standing” is “a concrete and particularized ‘injury in fact’ that is fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision.” *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125 (2014) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). These requirements are “an essential and unchanging part of the case-or-controversy requirement of Article III” that apply to all cases and that do not vary based on the type of claim at issue. *Lujan*, 504 U.S. at 560. Once a plaintiff has demonstrated that these minimal requirements are satisfied, it has Article III standing to bring a claim

in federal court, regardless of whether that claim may ultimately fail on the merits because the plaintiff cannot prove all the elements of its cause of action. *See, e.g., Lexmark*, 572 U.S. at 127-28, 131-32.

Applying this established test, Pictiva has Article III standing. Pictiva contends that it owns the Asserted Patents and that by infringing those patents, Samsung deprived it of royalties and trampled on its property rights. Dkt. 17, ¶¶ 3, 9, 33-93. That injury can be remedied with money damages and an injunction, among other relief. *Id.* at pg. 34 (seeking “an award of damages adequate to compensate Pictiva”). Article III requires nothing more. *See, e.g., TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021) (“monetary injury to the plaintiff” is one of the “most obvious” forms of “concrete injury in fact under Article III”); *Samsung Elecs. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1368 (Fed. Cir. 2019) (deprivation of royalties); *see also FDA v. All. for Hippocratic Med.*, 144 S. Ct. 1540, 1556 (2024) (“An injury in fact can be a physical injury, a monetary injury, an injury to one’s property, or an injury to one’s constitutional rights, to take just a few common examples.”); *Schwendimann v. Arkenwright Advanced Coating, Inc.*, 959 F.3d 1065, 1071 (Fed. Cir. 2020) (“Because Ms. Schwendimann’s Complaint contained such *allegations*—that she is the owner by assignment of the ’845 patent and Appellants infringed that patent—there is no ‘standing’ issue to be decided in this appeal.”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. Samsung's Argument Is Based On Outdated Law

Samsung's argument relies on overruled Federal Circuit cases and a reversed district court decision. *See* Dkt. 57 at 7-12; *Vericool World LLC v. TemperPack Techs., Inc.*, No. 1:23-cv-1761, 2024 WL

¹ [REDACTED]

3594709, *3 (E.D. Va. July 2, 2024) (explaining that “as the Federal Circuit has recognized, [*Wiv* and its progeny] are no longer good law”). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Section 281 provides a cause of action for patent infringement: “A patentee shall have remedy by civil action for infringement of his patent.” 35 U.S.C. § 281. Satisfying § 281 “is a statutory prerequisite to the right to relief in a patent infringement action.” *Schwendimann*, 959 F.3d at 1071 (Fed. Cir. 2020). For decades, the Federal Circuit treated the statutory requirements of § 281 as jurisdictional. That old understanding is no longer viable as an Article III requirement, which is why the Federal Circuit has since explicitly held that its “decisions treating the prerequisites of the Patent Act as jurisdictional were wrong.” *Schwendimann*, 959 F.3d at 1071. The Federal Circuit reached that conclusion after the Supreme Court’s decision in *Lexmark*, which “clarified that so-called ‘statutory standing’ defects do not implicate a court’s subject-matter jurisdiction.” *Lone Star Silicon Innovations LLC v. Nanya Tech. Corp.*, 925 F.3d 1225, 1235 (Fed. Cir. 2019). As the Supreme Court put it:

We have on occasion referred to [whether a plaintiff has a cause of action under a certain statute] as “statutory standing” and treated it as effectively jurisdictional. That label is an improvement over the language of “prudential standing,” since it correctly places the focus on the statute. But it, too, is misleading, since the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, *i.e.*, the court’s statutory or constitutional *power* to adjudicate the case.

Lexmark, 572 U.S. at 128 n.4 (cleaned up).

In *Lexmark*, the parties asked the Supreme Court to decide “the appropriate analytical framework for determining a party’s standing to maintain an action for false advertising under the Lanham Act.” 572 U.S. at 125. But the Court rejected that framing, concluding that it presented the

wrong question: Article III standing was not at issue because the plaintiff's "*allegations of* lost sales and damage to its business reputation" sufficed to "give it standing under Article III." *Id.* at 125 (emphasis added). The real question, the Court explained, was whether the plaintiff stated a claim under the Lanham Act, which was a matter of statutory interpretation and not a question of standing under Article III. *Id.* at 127-28.

The Federal Circuit later recognized that *Lexmark* abrogated its cases treating § 281 as jurisdictional. In *Lone Star*, the Federal Circuit expressly disavowed its earlier treatment of § 281 and clarified that statutory requirements to sue "do not implicate a court's subject-matter jurisdiction." 925 F.3d at 1235 (quoting *Lexmark*, 572 U.S. at 128 n.4). [REDACTED]

Id. at 1235-36. In so doing, it explained that it was "firmly bring[ing the Federal Circuit] into accord with *Lexmark* and our sister circuits" by overturning contrary cases. *Id.* ("*Lexmark* is irreconcilable with our earlier authority treating § 281 as a jurisdictional requirement Where intervening Supreme Court precedent makes clear that our earlier decisions mischaracterized the effects of § 281, we are bound to follow that precedent rather than our own prior panel decisions.").

The Federal Circuit drove the point home in *Schwendimann*, holding that where, as here, the plaintiff alleges that it is the legal owner of the asserted patents and that it has been injured by the defendant's infringement, nothing else is required to establish Article III standing. The *Schwendimann* plaintiff *thought* she had been assigned rights to a patent at the time she sued, but in fact she had not. 959 F.3d at 1068-70. After the defendant moved to dismiss for lack of standing, the plaintiff took corrective action to fix the failed assignment by having the patent owner execute a new assignment and recording it with the PTO. *Id.* at 1070. But at the time of filing, the plaintiff had no legal rights—exclusionary or otherwise—to the patent. *See id.* The district court nonetheless retroactively reformed the assignment. *Id.* at 1074.

The Federal Circuit affirmed, explaining that the plaintiff's complete lack of legal rights to the patent at the outset did not pose an Article III problem: "In *Lone Star*, we made clear that whether one qualifies as a patentee under 35 U.S.C. § 281 is a statutory prerequisite to the right to relief in a patent infringement action, but does not implicate the District Court's subject matter jurisdiction." *Schwendimann*, 959 F.3d at 1071. Because the plaintiff *alleged* that she was the owner by assignment of the patent and that the defendants infringed that patent, there was "no 'standing' issue to be decided in th[e] appeal." *Id.*; *see also Barkan Wireless IP Holdings v. T-Mobile US, Inc.*, 2021 WL 8441748, at *1-2 (E.D. Tex. Dec. 22, 2021) (Gilstrap, J.) (recognizing that *Schwendimann* "suggests that a plaintiff has standing to pursue its claims if it properly alleges ownership of the asserted patent in the complaint").

The plaintiff in *Schwendimann* may have failed to meet § 281's statutory requirements at the outset, but she met the three irreducible requirements of Article III: injury, causation, and redressability. In other words, regardless of the merits of her allegation that she was the patentee at the time of filing, the plaintiff presented the type of case that Article III courts are empowered to adjudicate. *See also, e.g., Kenall Mfg. Co. v. Cooper Lighting, LLC*, 2020 WL 4015324, at *2-3 (N.D. Ill. July 16, 2020) ("Article III standing exists so long as the complaint alleges that the defendant injured the plaintiff in some concrete way and seeks a valid form of judicial relief to remedy the injury. . . . [Patentee] Kenall alleges that it was injured by Cooper and seeks money damages to redress the injury. Article III requires no more."); *Applied Biokinetics LLC v. KT Health, LLC*, 2023 WL 5651843, at *4-5 (D. Del. Aug. 31, 2023) (recommending that the defendant's motion to dismiss for lack of subject matter jurisdiction be denied despite an ongoing dispute over the rights in the asserted patents because the plaintiff alleged that it owned the patents (citing *Schwendimann*, 959 F.3d at 1071)), *adopted*, 2023 WL 6387679, at *1 (D. Del. Sept. 29, 2023) (agreeing that the plaintiff's allegation that it was the assignee of the asserted patents sufficed to establish standing, and rejecting the defendant's factual arguments as an "attack on statutory standing, which is a different thing"); *Focus Prods. Grp. Int'l v. Katri*

Sales Co., 2021 WL 1946756, at *2 (S.D.N.Y. May 14, 2021) (defendants’ argument that the plaintiff was not assigned rights in the patents until three years after the suit was filed did not implicate Article III under *Lexmark*, *Lone Star*, and *Schwendimann*).

Eliminating any potential doubt, the *Schwendimann* majority explicitly rejected the dissent’s argument—effectively the same argument that Samsung now makes—that Article III still requires an analysis or counting of “exclusionary rights” as was done in the pre-*Lexmark* cases:

The dissent disagrees and asserts that the Patent Act’s prerequisites must be treated as jurisdictional because the right to exclude has constitutional underpinnings. There are two problems with that contention. First, *Lone Star* states the opposite in a precedential decision. The dissent, like all subsequent panels, is bound by *Lone Star*. Second, not only has the Supreme Court made clear that virtually all statutory filing prerequisites are non-jurisdictional, but it has held that the registration requirement in the Copyright Act is non-jurisdictional. The Copyright Act is no less tied to the Intellectual Property Clause in the Constitution than is the Patent Act.

Schwendimann, 959 F.3d at 1071 n.6 (citations omitted); *see also id.* at 1077 (Reyna, J., dissenting) (arguing that the plaintiff must hold “some exclusionary rights in the patent”); *Vericool*, 2024 WL 3594709, at *4 (noting that “Schwendimann broke the final tether between the Patent Act’s statutory requirements and the Article III inquiry” and holding that “if the statutory requirements of § 281 exists separate from Article III, then a plaintiff’s injury in fact cannot be circumscribed by the rights that a litigant may possess under the Patent Act,” and that “a party can suffer financial harm from a patent infringer even if that party holds no exclusionary rights in the patent itself”).

Samsung has no answer to *Lexmark* or *Schwendimann*. In fact, Samsung ignores these cases altogether, focusing instead on cases *Schwendimann* held “were wrong,” 959 F.3d at 1071, and the reversed district court decision in *Intellectual Tech LLC v. Zebra Technologies Corp.*, 2022 WL 3088572 (W.D. Tex. Aug. 3, 2022), *rev’d*, 101 F.4th 807 (Fed. Cir. 2024). In sum, satisfying § 281 “is a statutory prerequisite to the right to relief in a patent infringement action,” *Schwendimann*, 959 F.3d at 1071, but that is all it is—“simply a statutory requirement,” not an element of Article III standing. *Univ. of S. Fla. Rsch. Found., Inc. v. Fujifilm Med. Sys. U.S.A., Inc.*, 19 F.4th 1315, 1319 n.1 (Fed. Cir. 2021).

While some courts have continued to look at whether there are “exclusionary rights” in the context of determining whether a licensee has Article III standing, under *Sprint*, *Lexmark*, *Schwendimann* and their respective progeny, the Federal Circuit has made clear that this test cannot simply be applied in the same way to a legal patent owner alleging a redressable injury. *See Sprint*, 554 U.S. at 285 (“legal title alone” is sufficient for Article III standing); *Intell. Tech*, 101 F.4th at 816 (“The licensee-versus-patentee distinction . . . is critical.”). Indeed, Pictiva is aware of no post-*Schwendimann* appellate decision, and Samsung points to none, holding that a court lacks Article III jurisdiction over a legal patent owner’s infringement claim.

For example, the Federal Circuit recently reaffirmed in *Intellectual Tech* that the “only question” when considering Article III standing in the context of a legal owner of the patent is “the irreducible constitutional minimum of an injury in fact,” and that a patent owner (as opposed to a licensee) having “an exclusionary right” simply means that “infringement would amount to an invasion of [that the patent owner’s] legally protected interest.” *Intell. Tech*, 101 F.4th at 813. The Federal Circuit thus reversed the district court’s dismissal for lack of constitutional standing, emphasizing that “a patent owner has exclusionary rights as a baseline matter” and that even where it has “grant[ed] another party the ability to license,” it still “has exclusionary rights sufficient to meet the injury-in-fact requirement.” *Id.* at 815-16; *see also Uniloc USA, Inc. v. Motorola Mobility LLC*, 52 F.4th 1340, 1345 (Fed. Cir. 2022) (noting that “[p]atent owners and licensees do not have identical patent rights, and patent owners arguably do not lack standing simply because they granted a license that gave another party the right to sublicense the patent to an alleged infringer”).

The Eastern District of Virginia also recently addressed this issue and rejected the interpretation of the caselaw that Samsung advances here. In *Vericool*, the defendant moved to dismiss for alleged lack of standing on the grounds that plaintiff “Vericool’s right to bar others from practicing the Asserted patents stands subject to Storopack’s control” due to a contract that Vericool and

Storopack had executed giving Storopack a security interest in the asserted patents. *Vericool*, 2024 WL 3594709, at *3. Just like Samsung, the defendant in *Vericool* “invoke[d] a line of Federal Circuit caselaw holding that a plaintiff without exclusionary rights does not suffer an injury in fact from infringement.” *Id.* The *Vericool* court was “unpersuaded,” noting that “WiAV and its progeny” are “no longer good law” and explaining that “the Federal Circuit made clear [in *Schwendimann*] that a plaintiff’s rights under the Patent Act are divorced from the existence of an Article III injury.” *Id.* The *Vericool* court further noted that “[a]t the heart of the exclusionary rights doctrine is the claim that a litigant has not suffered a judicially cognizable injury from infringement if that party cannot exclude others from the patent, which is to say, a party must have rights under the Patent Act to suffer an injury in fact” and that “[o]n the heels of *Lexmark*, *Lone Star* and *Schwendimann*, the Court sees no basis to subscribe to an interpretation of constitutional standing that requires a litigant to hold rights under its statutory cause of action.” *Id.* at 5. In other words, “a party can suffer financial harm from a patent infringer even if that party holds no exclusionary rights in the patent itself” and therefore one need not have exclusionary rights to establish Article III standing *Id.*

Here, Pictiva has met the “injury in fact” bar necessary to establish constitutional standing. As noted above, there is no dispute that Pictiva holds legal title to the Asserted Patents and that it has alleged that Samsung used the Asserted Patents without permission. Dkt. 17, ¶¶ 3, 9, 33-93. Under the Patent Act, such allegations give rise to monetary damages. 35 U.S.C. § 271 (“whoever without authority makes, uses, offers to sell, or sells any patented invention . . . infringes the patent”); § 284 (upon a finding of infringement “the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer”). Because Samsung’s “infringement . . . amount[s] to an invasion of [Pictiva’s] legally protected interest,” that can be redressed with money damages in the form of a reasonable royalty, it has met the requirements for Article III standing. *Intell. Tech*, 101 F.4th at 813.

[REDACTED]

Further, the Federal Circuit has explained that “the exclusive right to make, use, and sell, as well as the nature and scope of the patentee’s retained right to sue accused infringers are the most important considerations” in determining “whether a patentee has transferred away sufficient rights to render another party the owner of a patent.” *Univ. of S. Fla.*, 19 F.4th at 1320. [REDACTED]

[REDACTED]

[REDACTED] When Samsung engages in infringing conduct without permission, that invades Pictiva’s legally protected interest in this right, thus causing injury to Pictiva by devaluing its patent asset, as well as making entry into the marketplace more difficult and/or depressing prices in the event Pictiva decides to exercise its right to make, use or sell. *Intell. Tech.* 101 F.4th at 813 (“invasion of legally protected interest” constitutes “injury in fact”); *Vericool*, 2024 WL 3594709, *6 (“The quintessential injury in fact involves harm to a party’s pecuniary interest.”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Contrary to Samsung's arguments, [REDACTED]

[REDACTED] The only cases Samsung cites for its contrary view are the *Textile*, *Morrow* and *Propat* cases, which predate *Lexmark* and which are no longer good law. *Lone Star*, 925 F.3d at 1235-36 (“Where intervening Supreme Court precedent makes clear that our earlier decisions mischaracterized the effects of § 281, we are bound to follow that precedent rather than our own prior panel decisions.”); *Schwendimann*, 959 F.3d at 1071 (“[In *Lone Star*], we recognized that intervening Supreme Court precedent made clear that our earlier decisions treating the prerequisites of the Patent Act as jurisdictional were wrong.”). In fact, the Federal Circuit recently rejected Samsung's argument outright, reversing a district court's decision that dismissed a patent owner's suit for lack of standing on the grounds that the patent owner had granted another party the right to license the patent-in-suit. *Intellectual Tech.*, 101 F.4th at 815 (Fed. Cir. 2024) (“A patent owner has exclusionary rights sufficient to meet the injury-in-fact requirement even where, without more, it grants another party the ability to license.”); see also *Uniloc USA, Inc. v. Motorola Mobility LLC*, 52 F.4th 1340, 1351 (Fed. Cir. 2022) (Lourie, J., additional views) (“The grant of a non-exclusive license with the right to sublicense, as here, gives the licensee the right to sublicense others. But the patentee still retains the right to sue unlicensed infringers.”).

B. Samsung's Request For Dismissal Under § 281 Is Both Moot And Meritless

Samsung's alternative request for dismissal for alleged lack of "statutory standing" under § 281 fares no better. First, binding precedent requires the Court to permit joinder as an alternative to dismissal. *Lone Star*, 925 F.3d at 1236-39 (reversing the district court's dismissal under § 281 where it failed to provide opportunity to join the patent owner). Here, Pictiva has already sought to join Key Patent in response to Samsung's motion (Dkt. 61), and granting that motion would indisputably moot Samsung's § 281 objection in the event that the Court believes that Key Patent is a necessary party. To be clear, Pictiva is requesting to join Key Patent not because Samsung is right, but because Key Patent has no objection to participating in the case and this simple solution avoids unnecessary litigation over Samsung's meritless position.

Samsung' motion should be rejected from the outset, as it makes no attempt to satisfy the Rule 12(b)(6) standard; its objection is based not on the complaint's allegations, but on facts outside the complaint. But even under the summary judgment standard, Samsung's argument has no merit. Section 281 provides that "[a] patentee shall have remedy by civil action for infringement of his patent." 35 U.S.C. § 281. Congress defined "patentee" to include the original patentee's "successors in title." *Id.* § 100(d); *accord Lone Star*, 925 F.3d at 1229 ("The term patentee includes the original patentee (whether the inventor or original assignee) and 'successors in title.'" (quoting 35 U.S.C. § 100(d)). There is no dispute that Pictiva holds title to the Asserted Patents. Nor is there any dispute that it received all right, title, and interest in the patents from OSRAM.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See, e.g., Lone Star*, 925 F.3d at 1231 (concluding that agreement did not transfer “all substantial rights” to Lone Star where transferor retained ability to enforce patents in certain circumstances); *Intell. Prop. Dev, Inc. v. TCI Cablevision of Cal., Inc.*, 248 F. 3d 1333, 1338 (Fed. Cir. 2001) (concluding that agreement did not transfer “all

substantial rights” where transferor retained control over enforcement activities and right to assign patents); *Propat Int’l*, 473 F.3d at 1191 (holding that agreement did not transfer “all substantial rights” where transferor retained power to veto licensing and litigation decisions). [REDACTED]

[REDACTED] *Lone Star Silicon Innovations LLC v. Nanya Tech. Corp.*, 925 F.3d 1225, 1231 (Fed. Cir. 2019) (“The relevant question here is whether AMD’s rights, however retained or reacquired, include any substantial rights.”); *Asymmetrx, Inc. v. Biocare Medical*, 582 F.3d 1314, 1320 (Fed. Cir. 2009) (noting that “[a]lthough the AsymmetRx License effected a broad conveyance of rights to AsymmetRx, Harvard retained substantial interests” including “the right to make and use the p63 antibodies for its own academic research purposes” and “the right to sue for infringement” and therefore Harvard was still the “patentee”).

[REDACTED] *Alfred E. Mann Foundation v. Cochlear*, 604 F.3d 1354, 1360 (Fed. Cir. 2010); *Diamond Coating Technologies, LLC v. Hyundai Motor America*, 823 F.3d 615, 619-20 (Fed. Cir. 2016) (holding that agreement did not transfer all substantial rights based in part on fact that patent owner “retain[ed] a right and license to make, use, and sell products covered by the patents-in-suit”); *Fieldturf v. S.W. Recreational Industries*, 357 F.3d 1266, 1269 (Fed. Cir. 2004) (“The licensor’s retention of a limited right to develop and market the patented invention indicates that the licensee failed to acquire all substantial rights.”); *Propat Intern. v. Rpost*, 473 F.3d 1187, 1193 (Fed. Cir. 2007) (holding that “Authentix has not conveyed all substantial rights in the patent to Propat” where “there was no conveyance of an exclusive

license to make, use, and sell the invention”).

IV. CONCLUSION

For the foregoing reasons, Pictiva respectfully requests that the Court deny Samsung’s motion. In the alternative, the Court should cure any alleged jurisdictional or § 281 defect by ordering joinder of Key Patent and consolidation with *Pictiva II*.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served to counsel of record via E-mail.

/s/ Rebecca Carson

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I hereby certify that the foregoing document and exhibits attached hereto are authorized to be filed under seal pursuant to the Protective Order entered in this Case.

/s/ Rebecca Carson