UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.
and

SAMSUNG ELECTRONICS AMERICA, INC.,

Petitioners,

v.

SECURE WI-FI LLC,

Patent Owner.

Case IPR2024-01369
U.S. Patent No. 9,961,552

PATENT OWNER'S PRELIMINARY SUR-REPLY

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I. Petitioners' Reply confirms that the Petition should be denied on the merits because the "authenticated" limitation is not taught by *Vardi* or any other reference.

Petitioners requested additional briefing to purportedly address "Patent Owner's unforeseeable and incorrect implicit construction of the term "'authenticated' access point." EX1016, 1. In Reply, however, Petitioners never disputed Patent Owner's "implicit construction," never identified anything incorrect with it, and never offered any competing construction. Petitioners do not address, and implicitly concede, what Patent Owner established in the POPR—the term "authenticated" has a well understood plain and ordinary meaning. POPR, 21-23.

The Petition failed to address this term under its plain meaning and failed to establish how *Vardi* teaches this limitation under the plain and ordinary meaning. *Id.*, 28-29. As the POPR established, under the well understood plain meaning of the term, *Vardi* does not render obvious this element. *Id.*, 17-28. In Reply, ***Petitioners do not dispute any of this***. Despite seeking a Reply on this issue, Petitioners do not address the plain meaning of the limitation, do not address how *Vardi* (or any other reference) satisfies the plain meaning of the limitation, and do not point to any explanation in the Petition demonstrating the plain meaning limitation is satisfied by the cited reference. Petitioners effectively concede all arguments by Patent Owner concerning this limitation in Reply which applies to all grounds of the Petition.

Rather than addressing the merits and clear failure of the Petition, Petitioners ask the Board to ignore the undisputed plain meaning of the claim and consider a "much different[]" "interpret[ation]." Reply, 1-2. Even if it were proper to disregard an undisputed plain meaning of a term, Petitioners are incorrect that *Vardi* renders obvious the same functionality of Petitioners' products. As made clear in the contentions—and unaddressed by Petitioners—an Accused Product determines whether "***the Accused Product*** was connected previously" to an access point. Reply, 2. As demonstrated in the POPR, the whole purpose of *Vardi* is to identify and connect to previously unconnected access points based on information from ***other***, unknown and unverified users using other devices. POPR, 9-12, 17-29. There is no inconsistency between the POPR and Patent Owner's infringement contentions.

Regardless, Patent Owner agreed in the district court case that this term has a well understood plain meaning, just as it did in the POPR. EX1017, 8. Patent Owner contends that the Accused Products, unlike *Vardi*, satisfy the "authenticated" limitation under its plain and ordinary meaning. It is this plain meaning that Patent Owner must show in the district court to prove infringement, and it is this plain meaning that Petitioners cannot show here in challenging validity.

Affording the claim terms their undisputed and well-understood meaning, the Petition fails on the merits, a point the Reply does not dispute.[1]

II. There is no justification for two petitions.

To obtain a Reply, Petitioners represented to the Board that Patent Owner "mischaracterized" that the Petitioners "did not provide metrics to rank the Petitions." The Reply confirms there was no mischaracterization by Patent Owner. Indeed, Petitioners did not submit a ranking or describe the differences between the two Petitions, as required by the Consolidated Trial Practice Guide. Petitioners' representation to obtain additional briefing and subsequent assertion that such disclosure was "implicit" only calls into question the veracity of all of Petitioners' arguments.

Nevertheless, Petitioners cannot demonstrate any of the "rare" circumstances for which multiple petitions are necessary. Practice Guide, 59. There is not "a large number of claims in litigation" and there is no "dispute about priority date." *Id.* That not all claims are asserted in the district court is not a "rare" circumstance. If that were a reason for multiple petitions, then there would be multiple IPR petitions for the majority of the challenged patents, greatly increasing the "substantial and unnecessary burden on the Board and patent owner." *Id.* Finally, Petitioners' conclusory assertions that the claims

[1] As demonstrated in the POPR, the Petition further fails on the merits for multiple additional and distinct reasons.

are directed to different "perspectives" is belied by the facts: not only did the claims issue without a restriction requirement, but Petitioners rely on the same references for each Petition.[2]

III. The Petition should be denied under *Fintiv*.

In Reply, Petitioners do not even dispute that four of the six *Fintiv* factors favor discretionary denial. This alone demonstrates that the factors, on balance, favor denial. The two remaining factors, factors 1 and 3, likewise weigh against institution, as Petitioners' Reply arguments are incorrect.

Factor 1: As Samsung is well aware, the Board weighs this factor against institution when the district court denies a motion to stay, even if the motion may be renewed. *See, e.g.*, *Samsung Elecs. Co. Ltd. v. Clear Imaging Research*, IPR2020-01401, Paper 12 at 11 (P.T.A.B. Feb. 17, 2021) (denying institution, finding factor 1 favors denial following Judge Gilstrap's denial of Samsung's motion to stay). Although this case was cited in the POPR, Petitioners do not address this fact.

Petitioners also do not offer any rebuttal that, regardless of whether Samsung were to renew its motion to stay, it is unlikely to be granted. *Compare* POPR, 45-46 *with* Reply, 5-6. Trial is scheduled to occur almost ***five months before*** the projected FWD deadline. In these circumstances, it is unlikely that the court will stay. EX2002;

[2] For IPR2024-01369, Petitioners included one additional secondary reference as a "backup" for disclosing "hardware elements."

Samsung Elecs., IPR2020-01401, Paper 12 at 10-11 (denying institution following Judge Gilstrap's denial of stay motion, and given stage of IPR versus parallel litigation, stay unlikely).

Factor 3: Petitioners cannot rebut that significant work has been and will be completed, as discussed in the POPR. Instead, Petitioners attempt to change the focus to "necessary supplemental infringement contentions" and "Final Infringement and Invalidity Contentions." Petitioners' arguments here only further demonstrate that this factor favors denial. There is no such thing as "necessary" supplemental infringement contentions, and the Parties have served "Final" contentions. Patent Local Rule 3-6[3] ("Each party's 'Infringement Contentions' and 'Invalidity Contentions' shall be deemed to be that party's final contentions."); EX2002 (Infringement and Invalidity Contentions deadlines have long passed). Thus, under Petitioners' own argument, this factor weighs against institution.

Dated: February 5, 2025

Respectfully submitted,

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[3] *Available at* https://www.txed.uscourts.gov/?q=patent-rules

CERTIFICATE OF SERVICE

Petitioners have consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. §42.6, the undersigned certifies that on February 5, 2025, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

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