IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SAMSUNG ELECTRONICS CO., LTD. & SAMSUNG ELECTRONICS AMERICA, INC., Plaintiffs, v. KONINKLIJKE KPN N.V., Defendant.	Civil Action No. 24-cv-1433-CFC [redacted]

KPN'S OPENING BRIEF IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT

Dated: April 7, 2025

Brian E. Farnan (Bar No. 4089)
Michael J. Farnan (Bar No. 5165)
FARNAN LLP
919 North Market Street, 12th Floor
Wilmington, DE 19801
Telephone: (302) 777-0300
bfarnan@farnanlaw.com
mfarnan@farnanlaw.com

Lexie White (admitted *pro hac vice*)
Hunter Vance (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
1000 Louisiana, Suite 5100
Houston, TX 77002-5096
Telephone: (713) 651-9355
lwhite@susmangodfrey.com
hvance@susmangodfrey.com

Andres Healy (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
401 Union Street, Suite 3000
Seattle, WA 98101
Telephone: (206) 516-3880
ahealy@susmangodfrey.com

Tamar Lusztig (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
One Manhattan West
New York, NY 10001-8602
Telephone: (212) 336-8330
tlusztig@susmangodfrey.com

Eliza Finley (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
efinley@susmangodfrey.com

Attorneys for Defendant KPN

EX. 2111
Samsung v KPN
IPR2025-00512

TABLE OF CONTENTS

Page(s)

NATURE AND STAGE OF THE PROCEEDINGS 1

SUMMARY OF ARGUMENT 3

STATEMENT OF FACTS 4

ARGUMENT 6

I. SAMSUNG'S COMPLAINT MUST BE DISMISSED FOR LACK OF PERSONAL JURISDICTION 6

A. Delaware's Long-Arm Statute Does Not Confer Personal Jurisdiction. 7

B. KPN's Contacts Do Not Satisfy Constitutional Due Process. 9

i. The Court Lacks Specific Jurisdiction Over KPN. 10

ii. Additional Fairness Factors Further Militate Against Personal Jurisdiction. 11

C. Rule 4(k)(2) is Inapplicable to KPN. 11

II. THIS COURT LACKS SUBJECT MATTER JURISDICTION 12

A. Samsung Has Not Alleged an Actual Controversy 13

i. KPN Did Not Accuse Samsung of Patent Infringement or Seek Patent Infringement Damages at the Prior Trial. 13

ii. KPN's Emails and Statements at Trial Did Not Threaten an Infringement Suit or Specifically Identify the Patents-in-Suit. 14

iii. KPN's Prior Lawsuits Fail to Support Declaratory Judgment. 17

iv. KPN's Breach-of-Contract Damages Are Irrelevant. 18

v. The Expiration of the Covenant Not to Sue Does Not Establish an Imminent Threat of an Infringement Lawsuit. 20

III. THIS COURT SHOULD DECLINE TO EXERCISE JURISDICTION 20

IV. THIS COURT SHOULD DISMISS SAMSUNG'S CLAIMS WITH PREJUDICE 21

CONCLUSION 21

WORD COUNT CERTIFICATION 24

TABLE OF AUTHORITIES

Page(s)

Cases

AIDS Healthcare Found., Inc. v. Gilead Scis., Inc.,
890 F.3d 986 (Fed. Cir. 2018) 20

Albecker v. Countour Prods., Inc.,
2013 WL 5423843 (N.D. Ill. Sept. 27, 2013).....17

Avocent Huntsville Corp. v. Aten Int'l Co.,
552 F.3d 1324 (Fed. Cir. 2008) 6, 9

Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985).....9

Cepheid v. Roche Molecular Sys., Inc.,
2013 WL 184125 (N.D. Cal. Jan. 17, 2013).....17, 18

Funai Elec. Co., Ltd. v. Personalized Media Comms., LLC,
2016 WL 370708 (D. Del. Jan. 29, 2016) 3, 6, 7, 8

Glove Cotyarn Pvt. Ltd. v. AAVN, Inc.,
2023 WL 2665596 (M.D.N.C. Mar. 28, 2023).....18

Goodyear Tire & Rubber Co. v. Releasomers, Inc.,
824 F.2d 953 (Fed. Cir. 1987) 12

Grupo Dataflux v. Atlas Global Group, L.P.,
541 U.S. 567 (2004).....15

In re Qualcomm Litigation,
2017 WL 5985598 (S.D. Cal. Nov. 8, 2017).....16

Innovative Therapies, Inc. v. Kinetic Concepts, Inc.,
599 F.3d 1377 (Fed. Cir. 2010) 15

Int'l Shoe Co. v. Washington,
326 U.S. 310 (1945).....4, 9

Intel Corp. v. Silicon Storage Tech., Inc.,
20 F. Supp. 2d 690 (D. Del. 1998).....6

Koken v. GPC Intern., Inc.,
443 F.Supp.2d 631 (D. Del. 2006).....21

Koninklijke KPN N.V. v. Samsung Elecs. Co.,
2024 WL 2019726 (E.D. Tex. Apr. 24, 2024).....1

Koninklijke KPN N.V. v. Samsung Elecs. Co.,
2024 WL 2019739 (E.D. Tex. Apr. 4, 2024).....1, 13, 14

Liqui-Box Corp. v. Scholle Corp.,
2013 WL 3070872 (D. Del. June 17, 2013) 9

MedImmune, Inc. v. Genentech, Inc.,
549 U.S. 118 (2007).....12, 19

MG Freesites Ltd. v. DISH Techs., L.L.C.,
712 F. Supp. 3d 1318 (N.D. Cal. 2024).....8, 10

Microsoft Corp. v. SynKloud Techs., LLC,
484 F. Supp. 3d 171 (D. Del. 2020).....12, 14

Power Integrations, Inc. v. BCD Semiconductor Corp.,
547 F. Supp. 2d 365 (D. Del. 2008).....6

Prasco, LLC v. Medicis Pharm. Corp.,
537 F.3d 1329 (Fed. Cir. 2008) 4, 12, 18

Radio Sys. Corp. v. Accession, Inc.,
638 F.3d 785 (Fed. Cir. 2011) 10

Samsung Elec. Co. et al. v. Koninklijke KPN N.V.,
No. 1:25-cv-00001-CFC (D. Del.).....2

Touchcom, Inc. v. Bereskin & Parr,
574 F.3d 1403 (Fed. Cir. 2009) 11

Vasudevan Software, Inc. v. Microstrategy, Inc.,
2013 WL 12174179 (N.D. Cal. Mar. 11, 2013) 2, 4, 21

Wilton v. Seven Falls Co.,
515 U.S. 277 (1995).....4, 20

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980).....11

Statutes

10 Del. C. § 3104(c).....7

10 Del. C. § 3104(j).....7

Rules

Fed. R. Civ. P. 4(k).....5, 11

Fed. R. Civ. P. 12(b)(1).....1

Fed. R. Civ. P. 12(b)(2).....1, 6

Koninklijke KPN N.V. ("KPN")—a Dutch company with no presence in Delaware—respectfully files this second motion to dismiss this retaliatory lawsuit seeking declaratory judgment of non-infringement for nine different patents for lack of personal and subject matter jurisdiction under Rules 12(b)(1) and 12(b)(2).

NATURE AND STAGE OF THE PROCEEDINGS

In February 2024, a jury found Samsung Electronics Co. Ltd. ("SEC") in breach of a 2016 settlement agreement with KPN and awarded KPN $287 million in contract damages. Since then, SEC has done everything to try to nullify that verdict—or persuade KPN to abandon it.

First, SEC tried to remove the case—post-verdict—to federal court, claiming (as it does again here) that KPN actually was accusing it of patent infringement. That failed. As the federal court ruled, SEC had "no credible" basis for its argument that "the breach of contract claim" in any way raised "a patent law issue"—much less infringement claims. *See Koninklijke KPN N.V. v. Samsung Elecs. Co.*, 2024 WL 2019739, at *3 (E.D. Tex. Apr. 4, 2024), *report and recommendation adopted*, 2024 WL 2019726 (Apr. 24, 2024).

Back in state court, SEC next tried to persuade the state trial court that the verdict should be overturned, including because—per SEC—"KPN is attempting to recover royalties for infringement." *See* Mot. for JNOV, at 38, *Koninklijke KPN N.V. v. Samsung Elecs. Co.*, No. 22-0762 (71st Dist. Ct. Harrison Cty. Tex., June 3,

2024). That court likewise rejected SEC's patent infringement argument and left undisturbed its judgment awarding KPN more than $342 million plus accruing interest. Final Judgment, *Koninklijke KPN N.V. v. Samsung Elecs. Co.*, No. 22-0762 (71st Dist. Ct. Harrison Cty. Tex., May 2, 2024).

Having twice swung and missed, SEC and its wholly-owned subsidiary, Samsung Electronics America Inc. ("SEA") (together, "Samsung"), now try their newest tact: filing this lawsuit, an additional vexatious lawsuit,[1] and six *inter partes* review petitions—***eight proceedings over the span of a few weeks***—to try to make it so difficult and expensive for KPN to enforce its judgment that Samsung hopes KPN will stop trying.[2] Indeed, Samsung's counsel ***in this matter*** has been chastised for doing exactly that: filing wave after wave of patent challenges as part of a plan "to make the litigation as painful as possible" to try to force the other party to abandon its claims—an approach a court described as a "sharp practice that ***falls far short of model professional conduct***[.]" *Vasudevan Software, Inc. v.*

[1] Samsung filed another action in the District of Delaware seeking declaratory judgment of non-infringement of additional KPN patents. *Samsung Elec. Co. et al. v. Koninklijke KPN N.V.*, No. 25-cv-01-CFC (D. Del.). KPN is moving for the same relief in both actions.

[2] Samsung's *inter partes* review petitions are a clear breach of the 2016 agreement, which bars Samsung from "fil[ing] any additional reexamination requests against the KPN Patents covered under this Agreement during the Term of the Agreement," which has not expired. First Amended Complaint ("FAC"), Ex. 1, Art. 4.1. Samsung's improper actions thus are now the subject of a second breach of contract action in Texas state court. Petition, *Koninklijke KPN N.V. v. Samsung Elecs. Co.*, No. 25-0237 (71st Dist. Ct. Harrison Cty. Tex., Mar. 3, 2025).

Microstrategy, Inc., 2013 WL 12174179, at *3 (N.D. Cal. Mar. 11, 2013) (noting that counsel had gone so far as to attack patents of unrelated clients of the patentholder's attorney) (emphasis added).[3]

Fortunately, this Court does not need to tolerate such "sharp practice." Rather, it can—and should—dismiss Samsung's retaliatory lawsuit for the same straightforward reasons that KPN raised in its first motion to dismiss: (1) it lacks personal jurisdiction over KPN, a foreign company based in the Netherlands without any connection to Delaware; and (2) Samsung fails to show an actual case or controversy regarding its infringement.

SUMMARY OF ARGUMENT

1. This Court lacks personal jurisdiction over KPN under Delaware's long-arm statute, including because Samsung's claims do not arise out of KPN's prior litigation in Delaware. *See Funai Elec. Co., Ltd. v. Personalized Media Comms., LLC*, 2016 WL 370708, at *2–5 (D. Del. Jan. 29, 2016) (dismissing case for lack of personal jurisdiction where, like here, the defendant's prior lawsuits in Delaware concerned different patents). Moreover, KPN lacks sufficient "minimum

[3] Similarly, to maximize the pain from its lawsuits, Samsung originally asserted its claims against both KPN and KPN's business partner, Nederlandse Organisatie Voor Toegepast Natuurwetenschappelijk Onderzoek TNO ("TNO"), a Dutch Company with no presence in Delaware and no involvement in the circumstances that Samsung alleged give rise to an actual controversy regarding Samsung's infringement. *See* Original Complaint, D.I.. 1. In response to KPN's first motion to dismiss, Samsung amended to drop TNO as a defendant but otherwise elected not to amend its claims and allegations. *Compare* D.I. 1, *with* D.I. 23.

contacts" with Delaware such that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945).

2. Subject matter jurisdiction does not exist because there is no case or controversy regarding Samsung's infringement of the Patents-in-Suit. Samsung relies on KPN's broad comments about Samsung using telecommunications standards that a panoply of KPN's patents have been declared essential to; but KPN never threatened to assert any of the Patents-in-Suit against Samsung. *Prasco, LLC v. Medicis Pharm. Corp.*, 537 F.3d 1329, 1340 (Fed. Cir. 2008) (finding jurisdiction lacking where patent holder had "taken no affirmative actions at all related to [the declaratory judgment plaintiff's] current product").

3. Given Samsung's "sharp practice" of filing of this action to try to gain leverage by "making the litigation as painful as possible," *Vasudevan Software*, 2013 WL 12174179, at *3, this Court should exercise its discretion under the Declaratory Judgment Act and dismiss the case, *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995).

STATEMENT OF FACTS

Samsung's FAC seeks declaratory judgment that it does not infringe nine patents which are owned in whole or part by KPN: U.S. Patent Nos. 9,667,669 ("'669"), 8,549,151 ("'151"), 9,654,330 ("'330"), 9,462,544 ("'544"), 8,881,235

("'235"), 8,660,560 ("'560"), RE48,089 ("'089"), 11,259,338 ("'338"), and 9,210,590 ("'590") (collectively, "Patents-in-Suit"). FAC ¶¶47–101.[4]

KPN is a foreign company with its principal place of business in the Netherlands. *Id.* ¶4. It has no presence in Delaware. *See id.* ¶¶8–9. Samsung nevertheless claims that personal jurisdiction over KPN is proper under Rule 4(k)(1)(A) because KPN previously filed "18 lawsuits in the District of Delaware against over 20 telecommunications companies, alleging infringement of KPN patents[.]" *Id.* ¶25. But Samsung alleges that only ***one*** of those cases involved only ***one*** of the nine Patents-in-Suit: the '669 Patent.[5] *Id.* ¶26. None of these long-done cases involved Samsung or its products. *Id.*

Samsung's allegations with respect to a case or controversy are similarly deficient. Samsung identifies six categories of purportedly supporting conduct: (1) KPN's prior lawsuits against Samsung regarding entirely different patents; (2) the expiration of KPN's covenant-not-to-sue Samsung for infringement of KPN's entire patent portfolio; (3) KPN's emails to Samsung between 2019 and 2022, which included lists of over 550 KPN patents and applications that KPN merely noted were "relevant to [Samsung's] business"; (4) KPN's broad statements in the breach-of-contract trial about Samsung's use of standards that KPN's patents have

[4] KPN assumes the truth of Samsung's allegations for the purposes of this motion only.
[5] The FAC omits that KPN also asserted the '330 Patent in that case.

been declared essential to; (5) "KPN's attempt to recoup [contractual] royalties from Samsung for the time period of 2010 through 2024" in that trial; and (6) KPN's previous patent enforcement actions against unrelated third parties. *Id.* ¶¶11–14, 19, 48, 55, 61, 67, 72, 78, 84, 90, 96, and Exs. 2, 3.

ARGUMENT

I. SAMSUNG'S COMPLAINT MUST BE DISMISSED FOR LACK OF PERSONAL JURISDICTION

Rule 12(b)(2) requires the Court to dismiss a case where it lacks personal jurisdiction over a defendant. First, the Court applies the Delaware long-arm statute, "defer[ring] to the interpretations of the Delaware state courts." *Intel Corp. v. Silicon Storage Tech., Inc.*, 20 F. Supp. 2d 690, 694 (D. Del. 1998). Next, the Court determines whether exercising jurisdiction would violate Constitutional due process, *id.*, applying Federal Circuit law, *Avocent Huntsville Corp. v. Aten Int'l Co.*, 552 F.3d 1324, 1328 (Fed. Cir. 2008). "[T]he jurisdictional analysis must not be collapsed into a single constitutional inquiry." *Power Integrations, Inc. v. BCD Semiconductor Corp.,* 547 F. Supp. 2d 365, 370 n.3 (D. Del. 2008).

To satisfy its "burden of alleging facts sufficient to make a prima facie showing of personal jurisdiction over the defendant ... the plaintiff must offer facts which establish with reasonable particularity that jurisdiction exists." *Funai*, 2016 WL 370708, at *2 (quotation omitted).

A. Delaware's Long-Arm Statute Does Not Confer Personal Jurisdiction.

Delaware's long-arm statute allows the Court to exercise personal jurisdiction over nonresidents that "[t]ransact[] … business or perform[] … character of work or service in the State." *See* 10 Del. C. § 3104(c). To establish KPN business within Delaware, Samsung relies exclusively on KPN's prior patent enforcement actions. *See* FAC ¶8. Because Delaware law requires the claims to arise out of the alleged Delaware business to support personal jurisdiction, "[t]he crux of the issue is whether [Samsung's] claims" have their "origin in the same facts giving rise to [KPN's] earlier patent enforcement activities." *Funai*, 2016 WL 370708, at *3; *see* 10 Del. C. § 3104(j).

Here, Samsung's claims do not have their origin in the same facts giving rise to KPN's earlier patent enforcement activities. KPN's prior Delaware actions, with one minor exception, involved entirely *different* patents—and accordingly different facts and claims.

Funai is on point. There, the plaintiff brought suit in Delaware against a Texas defendant seeking declaratory judgment of non-infringement, invalidity, and unenforceability. 2016 WL 370708, at *1. The plaintiff argued for personal jurisdiction because the defendant had previously filed actions in Delaware asserting *other* patents against different parties. *Id.* at *3. Applying Delaware law and looking to the Federal Circuit for guidance, the *Funai* court found that the

claims did not "arise out of" those previous lawsuits. *See id.* at *4–5 ("[O]nly activities that relate to the enforcement of the patents-in-suit are relevant to the 'arises out of' analysis." (citing *Avocent*, 552 F.3d at 1332–33)).

That KPN previously asserted *two* out of the nine Patents-in-Suit in Delaware makes no difference. *Cf. MG Freesites Ltd. v. DISH Techs., L.L.C.*, 712 F. Supp. 3d 1318, 1328–31 (N.D. Cal. 2024) (finding no personal jurisdiction where only one patent overlapped between the eight patents-in-suit in the declaratory judgment action and the five patents in defendant's previous enforcement). In *Funai*, the court examined related Delaware law "declin[ing] to find that a second action 'arose from' an earlier action, despite the fact that the earlier action involved the same contracts, same provisions, and same parties" because the "underlying facts of each action were sufficiently different from and independent of the other" and lacked a "logical relationship." 2016 WL 370708, at *4–5 (citing *Sprint Nextel Corp. v. iPCS, Inc.*, 2008 WL 2737409, at *9–10 (Del. Ch. July 14, 2008)). Here, Samsung does not allege any connection between KPN's assertion of the '669 and '330 Patents against TCL in 2018, *see* FAC ¶26, and the claims now. Nor could it. Samsung's alleged non-infringement of the nine Patents-in-Suit does not arise out of a lawsuit KPN filed against unrelated third-party TCL seven years ago, involving different products and only two Patents-in-

Suit. Rather, Samsung's claims arise out of the breach-of-contract judgment, which has nothing to do with Delaware. *See* FAC ¶¶15–24.

B. KPN's Contacts Do Not Satisfy Constitutional Due Process.

Because Delaware's long-arm statute does not confer personal jurisdiction, the Court need not continue with the inquiry. *See Liqui-Box Corp. v. Scholle Corp.*, 2013 WL 3070872, at *5 (D. Del. June 17, 2013). Even so, exercising personal jurisdiction over KPN would not be consistent with the Constitutional requirements of due process.

Constitutional due process only allows the exercise of personal jurisdiction when the defendant has sufficient "minimum contacts" with the forum state such that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe*, 326 U.S. at 316. This requires the defendant to have "purposefully established 'minimum contacts' with the forum State" such that it "should reasonably anticipate being haled into court there." *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 474 (1985) (citation omitted). If purposeful minimum contacts are established, a court considers those contacts "in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" *Avocent*, 552 F.3d at 1331 (quoting *Burger King*, 471 U.S. at 476).

i. The Court Lacks Specific Jurisdiction Over KPN.

Samsung does not claim general jurisdiction in Delaware over KPN (nor could it) and fails to plead specific jurisdiction. In an action for declaratory judgment which "arises out of or relates to the activities of the defendant patentee in enforcing the patent or patents in suit ... only those activities of the patentee that relate to the enforcement or defense of the patent can give rise to specific jurisdiction for such an action." *Radio Sys. Corp. v. Accession, Inc.*, 638 F.3d 785, 789 (Fed. Cir. 2011) (quotations omitted). The only Delaware contacts alleged by Samsung are KPN's prior lawsuits in Delaware, only one of which involved two Patents-in-Suit. *See* FAC ¶¶8, 26.

KPN's single prior lawsuit involving the '669 and '330 Patents is insufficient for minimum contacts because there must be a *complete* overlap between the patents in the first case and the second. The same issue arose in *MG Freesites*, and, applying Federal Circuit law, that court explained that when there is "only partial overlap in the patents at issue in the two actions ... the relatedness between the [previous] litigation and the present action is limited, and this counsels against a finding of sufficient minimum contacts[.]" 712 F. Supp. 3d at 1328–31 (citing *Avocent*, 552 F.3d at 1332–33, 1338–39; *Viam Corp. v. Iowa Export-Import Trading Co.*, 84 F.3d 424, 430 (Fed. Cir. 1996); *Autogenomics, Inc. v. Oxford Gene Tech. Ltd.*, 566 F.3d 1012, 1020 (Fed. Cir. 2009)). The same is true here.

KPN's prior enforcement of the '669 and '330 Patents against TCL lacks a sufficient relationship to Samsung's request for declaratory judgment regarding other Patents-in-Suit and cannot give rise to personal jurisdiction.

ii. Additional Fairness Factors Further Militate Against Personal Jurisdiction.

The additional due process factors also counsel against exercising personal jurisdiction. Delaware has no "interest in adjudicating" a dispute that does not involve a single Delaware entity or resident. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). Further, Samsung's "interest in obtaining convenient and effective relief" is minimal because it can seek relief in the Eastern District of Texas, which *can* exercise personal jurisdiction over KPN. *Id.*; *see infra* 11–12. For these same reasons, adjudicating this case in Delaware does not serve the "interstate judicial system's interest in obtaining the most efficient resolution of controversies" or "the shared interest of the several States in furthering fundamental substantive social policies." *Id.*

C. Rule 4(k)(2) is Inapplicable to KPN.

"[F]or a court to exercise personal jurisdiction over a defendant under [Rule 4(k)(2)] ... the defendant must not be subject to jurisdiction in any state's courts of general jurisdiction[.]" *Touchcom, Inc. v. Bereskin & Parr*, 574 F.3d 1403, 1412 (Fed. Cir. 2009). Rule 4(k)(2) does not apply to KPN because, according to Samsung's allegations, it is subject to jurisdiction in the Marshall Division of the

United States Court for the Eastern District of Texas, where it allegedly availed itself of the Texas courts by suing Samsung for breach and making the statements at trial that Samsung alleges give rise to a controversy over its infringement. *See* FAC ¶¶20–23, 48, 55, 61, 67, 72, 78, 84, 90, 96.

II. THIS COURT LACKS SUBJECT MATTER JURISDICTION

"[T]he Declaratory Judgment Act requires the existence of an actual case or controversy between the parties before a federal court can constitutionally assume jurisdiction." *Goodyear Tire & Rubber Co. v. Releasomers, Inc.*, 824 F.2d 953, 955 (Fed. Cir. 1987) (citation omitted). "[T]he question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (quotation omitted). The dispute "must be based on a *real* and *immediate* injury or threat of further injury" rather than "a purely subjective or speculative fear of future harm." *Prasco*, 537 F.3d at 1339. Samsung bears the burden of showing that subject matter jurisdiction exists. *See Microsoft Corp. v. SynKloud Techs., LLC*, 484 F. Supp. 3d 171, 176 (D. Del. 2020).

A. Samsung Has Not Alleged an Actual Controversy.

Samsung's allegations fall far short of establishing a controversy regarding its infringement of the Patents-in-Suit. The only disputes between the parties are (1) KPN's already-adjudicated state breach-of-contract claim for Samsung's failure to pay the contractual settlement fees owed, and (2) KPN's newly-filed state breach-of-contract claim regarding Samsung's post-verdict actions.

i. KPN Did Not Accuse Samsung of Patent Infringement or Seek Patent Infringement Damages at the Prior Trial.

To support the fiction that KPN accused Samsung of patent infringement, the FAC cherry-picks statements from KPN's breach-of-contract trial and mischaracterizes KPN's damages model. *See* FAC ¶¶21–24. But Samsung already litigated and lost the issue of whether KPN's claims and damages model were premised on Samsung's infringement.

Specifically, the first business day after the jury rendered its verdict in KPN's favor finding that Samsung had breached its contractual obligation to pay KPN what it had agreed to pay in the parties' 2016 settlement agreement, Samsung removed the case to federal court. In support, Samsung claimed that KPN's breach-of-contract and unjust enrichment claims "inappropriately raised patent claims that must be heard by a federal court." *Koninklijke KPN*, 2024 WL 2019739, at *1.

The United States District Court for the Eastern District of Texas squarely disagreed. Id. at *3. After a hearing, it issued an order holding that (1) Samsung had "no credible argument that the breach of contract claim necessarily raises a patent law issue" and (2) that Samsung also had failed "to establish that KPN's unjust enrichment claim can only be proven by showing patent infringement." *Id.* In short, it held that KPN had not asserted patent infringement claims against Samsung—a decision that has since gone final and is not appealable.[6] Thus, as a factual matter, this Court should reject Samsung's efforts to point to those very same proceedings as support for its position here.

ii. KPN's Emails and Statements at Trial Did Not Threaten an Infringement Suit or Specifically Identify the Patents-in-Suit.

It is well-established that "[a] communication from a patent owner to another party, merely identifying its patent and the other party's product line, without more, cannot establish adverse legal interests between parties, let alone the existence of a 'definite and concrete' dispute." *Microsoft Corp.*, 484 F. Supp. 3d at 182 (quoting *Hewlett-Packard Co. v. Acceleron LLC*, 587 F.3d 1358, 1362 (Fed.

[6] Back in state court, Samsung reraised the issue in the guise of an argument that KPN had asked for "royalties for infringement." *See* Mot. for JNOV, at 38, *Koninklijke KPN N.V. v. Samsung Elecs. Co.*, No. 22-0762 (71st Dist. Ct. Harrison Cty. Tex., June 3, 2024) (accusing KPN of "attempting to recover royalties for infringement under cover of unjust enrichment"). Again, that argument was rejected. *See* Order Denying Mot. for JNOV, *Koninklijke KPN N.V. v. Samsung Elecs. Co.*, No. 22-0762 (71st Dist. Ct. Harrison Cty. Tex., July 15, 2024).

Cir. 2009)).

Samsung alleges that KPN sent SEC "periodic" emails starting in 2019, listing KPN patents that are "relevant for [Samsung's] business." FAC ¶19. Samsung fails to demonstrate a case or controversy. KPN's emails consisted of lists of over 550 patents and applications, and none threatened patent litigation or conducted infringement analysis of *any* KPN patent, much less the specific Patents-in-Suit. *See* FAC Exs. 2, 3. Indeed, *KPN did the opposite* of threatening an infringement lawsuit and acknowledged that it was bound by the parties' contractual non-assert and was merely "notify[ing] [Samsung] of an updated list of KPN's patents, relevant for [Samsung's] business." *Id.*[7]

---

[7] Recognizing the insufficiency of its allegations, [redacted] Such actions show just how baseless its actions are. Further, they are futile in any event as "[i]t has long been the case that the jurisdiction of the court depends upon the state of things at the time of the action brought." *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 570–571 (2004) (quotations omitted). Thus, "acts after the filing of [Samsung's] original complaint [cannot] establish that an actual controversy existed at that earlier time." *Innovative Therapies, Inc. v. Kinetic Concepts, Inc.*, 599 F.3d 1377, 1383 (Fed. Cir. 2010) (dismissing declaratory action despite amended complaint "show[ing] that an actual controversy existed as of [a] later date").

Samsung's allegations that the Patents-in-Suit have been declared essential to cellular communication standards do not move the needle. The same issue arose in *In re Qualcomm Litigation*, 2017 WL 5985598 (S.D. Cal. Nov. 8, 2017). There, Qualcomm sent Apple "a chart consisting of 1,975 pages of patent numbers" and identified "specifications for which particular patents were disclosed to relevant standard setting organizations[.]" *Id.* at *13. In finding it lacked subject matter jurisdiction, the court noted that Qualcomm never "stated that the [] Patents-in-Suit are 'actually essential' to a standard practiced by Apple," *id.* at *15, and that "Qualcomm's lack of specificity in identifying precise infringing patents weigh[ed] severely against finding declaratory judgment jurisdiction for the [] Patents-in-Suit," *id.* at *18. Moreover, Apple's position would have given the court "declaratory judgment [power] over ... thousands of patents listed as 'potentially essential,'" which was a "reach ... too broad[.]" *Id.*

Samsung's allegations concerning KPN's statements during the breach-of-contract trial suffer from the same fatal flaws. KPN strongly disagrees with Samsung's misleading portrayal of the trial record. But even accepting Samsung's allegations at face value, Samsung does not identify a single statement that KPN made during trial identifying a *specific* Patent-in-Suit it believed Samsung had used or an assertion that any Patent-in-Suit is essential to a *specific* standard actually practiced by Samsung. *See* FAC ¶¶20–23. At most, KPN made broad

statements that Samsung's 3G and 4G products use standards that *hundreds* of KPN patents have been declared essential to, including many more than those that Samsung cherry-picked to feature in this lawsuit. *See id.* & Exs. 2, 3. Such generalized statements are insufficient to create an actual case or controversy.

Moreover, Samsung's conduct confirms that it never found KPN's statements threatening. Samsung does not allege that it did anything different in the face of KPN's letters since 2019; rather, it continued business as usual—filing the instant suit only after KPN secured its state court judgment. *See Albecker v. Countour Prods., Inc.*, 2013 WL 5423843, at *8–11 (N.D. Ill. Sept. 27, 2013) (rejecting declaratory judgment jurisdiction where plaintiff did "not allege that [defendant] placed [plaintiff] in a position where he could only choose between infringing [defendant's] patent or abandoning what he believed were legal rights"); *Cepheid v. Roche Molecular Sys., Inc.*, 2013 WL 184125, at *11–13 (N.D. Cal. Jan. 17, 2013) (dismissing declaratory judgment claims because the "[p]laintiff ha[d] not refrained from manufacturing or selling any of its products on reliance on threats from [d]efendants").

iii. KPN's Prior Lawsuits Fail to Support Declaratory Judgment.

KPN's prior lawsuits against Samsung and unrelated companies are also insufficient to show an actual case or controversy. *See* FAC ¶¶11, 25–28. It is well established that prior suits "premised on other patents" are "entitled to only

minimal weight in analyzing whether such a controversy has been created." *Prasco*, 537 F.3d at 1340; *see also Cepheid*, 2013 WL 184125, at *11–13 (dismissing declaratory judgment claims where "[t]he parties had not previously engaged in litigation over the [patent-in-suit], and [d]efendants were not engaged in a larger pattern of litigation on the patent").

Here, there are no allegations that KPN has engaged in *any* pattern of litigating the Patents-in-Suit, much less one that threatens to imminently sweep in Samsung. The cases Samsung relies on were filed between three and eleven years ago and, with few exceptions, did not involve any Patent-in-Suit. *See* FAC ¶¶11, 25–28. It is not reasonable to assume that KPN will sue Samsung for infringing the Patents-in-Suit based on KPN's assertions of different patents against different companies with different products, years ago. *Id.* ¶¶26, 28. "Any reasonable apprehension by [Samsung] which may have been caused by [KPN's] previous conduct has undoubtedly diminished with time." *Glove Cotyarn Pvt. Ltd. v. AAVN, Inc.*, 2023 WL 2665596, at *4–5 (M.D.N.C. Mar. 28, 2023) (quotation omitted) (dismissing declaratory judgment action which relied on alleged "aggressive enforcement activity" from five years before suit).

iv. KPN's Breach-of-Contract Damages Are Irrelevant.

Samsung claims that "KPN's attempt to recoup royalties from Samsung for the time period of 2010 through 2024" in the prior breach-of-contract suit supports

a case or controversy regarding infringement. *See, e.g.*, FAC ¶48. Not so.

Samsung apparently attempts to align this case with authority finding a controversy based on demands for royalty payments for infringement of a specific patent. *See, e.g.*, *Medimmune*, 549 U.S. at 121, 128 (holding an actual controversy existed where the plaintiff's obligation to pay "royalties under the licensing agreement" hinged on the validity and enforceability of the licensed patent). But Samsung points to no such demand by KPN,[8] nor does its agreement with KPN require the enforceability of KPN's patents. *See* FAC, Ex. 1 at Art. 2.3.1 (2016 KPN-Samsung Agreement).

Instead, in the prior state court case, KPN sought breach-of-contract damages for Samsung's failure to pay, as promised, a portion of its settlement payment, which the parties had agreed was to be calculated per the terms of applicable patent pool royalty agreements. *See* FAC, Ex. 4 at 465:18–466:3[9] (testimony of KPN's damages expert). Those damages plainly were not infringement royalties; they were contractual damages based on the contractual provisions set forth in the parties' 2016 settlement agreement, which provided Samsung with the right to use the bulk to KPN's patent portfolio through December 31, 2024. *Id.* at 457:17–458:9; FAC Ex. 1 at Art. 2.3 (2016 KPN-

[8] Samsung's desperate attempts [redacted] only confirms its lack of support.

[9] Citations to the trial transcript use the pagination in blue font at the top of the page.

Samsung Agreement). Indeed, Samsung itself alleges that it could not be sued by KPN for patent infringement prior to December 31, 2024. FAC ¶¶12–14.

v. The Expiration of the Covenant Not to Sue Does Not Establish an Imminent Threat of an Infringement Lawsuit.

Contrary to what Samsung contends, *see* FAC ¶¶12, 14, 48, the expiration of KPN's contractual covenant not to sue Samsung cannot give rise to subject matter jurisdiction. The Federal Circuit has specifically held that "the absence of a covenant not to sue ... [does] not create a justiciable case or controversy" absent an "affirmative act by the patentee to assert patent rights against [the plaintiff] for any present or planned activity." *AIDS Healthcare Found., Inc. v. Gilead Scis., Inc.*, 890 F.3d 986, 994–95 (Fed. Cir. 2018).

III. THIS COURT SHOULD DECLINE TO EXERCISE JURISDICTION

Even if this Court were to find that it has personal and subject matter jurisdiction, it should exercise its discretion to dismiss Samsung's claims. *See Wilton*, 515 U.S. at 282 ("[D]istrict courts possess discretion in determining whether and when to entertain an action under the Declaratory Judgment Act[.]"). Samsung did not file this case because it genuinely believes KPN will sue Samsung for patent infringement. This lawsuit was part of a plan "to mak[e] the litigation as painful as possible" to try to force KPN to abandon its judgment in lieu of defending the eight different proceedings Samsung filed in the span of a few weeks—an approach another court described as a "sharp practice that ***falls far***

short of model professional conduct." *Vasudevan Software*, 2013 WL 12174179, at *3 (emphasis added). The Court can and should decline to waste valuable judicial resources in furtherance of Samsung's ulterior motives.

IV. THIS COURT SHOULD DISMISS SAMSUNG'S CLAIMS WITH PREJUDICE

In response to KPN's first motion to dismiss, Samsung could have amended its complaint to address KPN's well-founded arguments or re-filed this action in the Eastern District of Texas, where personal jurisdiction is proper. Samsung did neither, electing instead only to drop TNO as a defendant. This decision reveals the absence of any additional facts that would show the existence of either personal jurisdiction or subject matter jurisdiction. As such, the Court should decline to give Samsung yet another chance to amend its complaint. *See Koken v. GPC Intern., Inc.*, 443 F.Supp.2d 631, 633 (D. Del. 2006) ("[A] district court has discretion to deny a request to amend if it is apparent from the record that [] the moving party has demonstrated undue delay, bad faith or dilatory motives [or] the amendment would be futile[.]"). Samsung's claims should be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, KPN respectfully requests that the Court dismiss this action.

Dated: April 7, 2025

Respectfully submitted,

FARNAN LLP

/s/ Brian E. Farnan
Brian E. Farnan (Bar No. 4089)
Michael J. Farnan (Bar No. 5165)
919 North Market Street, 12th Floor
Wilmington, DE 19801
Telephone: (302) 777-0300
bfarnan@farnanlaw.com
mfarnan@farnanlaw.com

Lexie White (admitted *pro hac vice*)
Hunter Vance (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
1000 Louisiana, Suite 5100
Houston, TX 77002-5096
Telephone: (713) 651-9355
lwhite@susmangodfrey.com
hvance@susmangodfrey.com

Andres Healy (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
401 Union Street, Suite 3000
Seattle, WA 98101
Telephone: (206) 516-3880
Fax: (206) 516-3883
ahealy@susmangodfrey.com

Tamar Lusztig (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
One Manhattan West
New York, NY 10001-8602
Telephone: (212) 336-8330
Fax: (212) 336-8340
tlusztig@susmangodfrey.com

Eliza Finley (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.

1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
Fax: (310) 789-3150
efinley@susmangodfrey.com

Attorneys for Defendant KPN

WORD COUNT CERTIFICATION

Under this Court's November 10, 2022 Standing Order Regarding Briefing in All Cases, counsel for KPN certifies as follows:

The text of this brief is 14-point in size and Times New Roman typeface.

There are 4,997 words appearing in this brief from the Introduction to the Conclusion, as reported by the word count tool in Microsoft Word. Words in the caption, table of contents, table of authorities, the signature, and this certification were not included in the count.

Dated: April 7, 2025

/s/ *Brian E. Farnan*
Brian E. Farnan (Bar No. 4089)