Paper 43
Date: August 7, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

CM HK LIMITED,
Patent Owner

IPR2025-01071
Patent 11,698,687

PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY

I. INTRODUCTION

Petitioner argued that its filing of the Joint Claim Construction Statement ("JCCS", Ex. 2007) waived indefiniteness, excusing its representation that it “never alleged” indefiniteness. Yet when pressed, Petitioner’s counsel denies making any representations about Petitioner’s subjective belief in that waiver and refused to confirm whether Samsung currently believes indefiniteness has been waived. This puts Petitioner's subjective belief squarely at issue and subject to discovery.

Patent Owner therefore requests an order compelling Petitioner to either: (1) produce communications and documents from March 14, 2025 (service of invalidity contentions) to November 21, 2025 (Paper 14 filing) concerning whether Petitioner authorized waiving indefiniteness and/or whether Petitioner or its counsel actually believed that filing the JCCS waived indefiniteness or (2) stipulate that Petitioner never believed that filing the JCCS waived its indefiniteness defense.

II. PETITIONER PLACED ITS SUBJECTIVE BELIEF AT ISSUE

A party's duty of candor under 37 C.F.R. § 42.11 turns on its knowledge, belief, and good faith. Patent Owner charges that Petitioner’s representation in Paper 14 that it “never alleged” indefiniteness was intentional. Petitioner admits that it “did reserve rights as to indefiniteness,” but argues that the JCCS “made crystal clear that [Petitioner] was not arguing indefiniteness,” and if it “intended to argue indefiniteness, it would have done so” in the JCCS, and that any “preliminary

reservation as to indefiniteness was superseded" by the JCCS. (Paper 37, "Opp." at 3-6.) Yet when pressed at the parties meet-and-confer, Petitioner's counsel denied making any representations about subjective belief and refused to confirm whether Petitioner *currently believes* indefiniteness has been waived. Whether that belief ever existed will prove whether Petitioner made a mistake[1] or an intentional misrepresentation.

A party waives the attorney-client privilege when it injects into a proceeding an issue that in fairness requires examination of otherwise protected communications. *See, e.g., Cox v. Adm'r U.S. Steel & Carnegie*, 17 F.3d 1386, 1418-19 (11th Cir. 1994); *In re EchoStar Commc'ns Corp.*, 448 F.3d 1294, 1301 (Fed. Cir. 2006). "The protection of privilege extends only to communications and not to facts." *Upjohn Co. v. United States*, 449 U.S. 383, 395-96 (1981). Petitioner cannot use the JCCS waiver as a sword to defeat sanctions while shielding the communications that prove or disprove that Petitioner believed the indefinite defense waived.

III. GARMIN FACTORS SUPPORT THE REQUESTED DISCOVERY

Additional discovery is available where "in the interests of justice," 37 C.F.R. § 42.51(b)(2), as measured by the factors set out in *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 26 at 6-7 (PTAB Mar. 5, 2013) (precedential).

[1] Mistakes should be admitted, explained, and mitigated. Instead, Petitioner has denied, escalated, and attacked Patent Owner and its counsel.

Each supports additional discovery here.

First, Samsung's opposition affirmatively relies on the alleged JCCS waiver. If the JCCS defense is genuine rather than post-hoc rationalization, contemporaneous documents confirming that belief must exist. Their absence would be equally dispositive.

Second, Patent Owner does not seek Samsung's undisclosed litigation positions or theories; it seeks contemporaneous documents showing that Samsung and its counsel believed filing the JCCS waived indefiniteness.

Third, the information is uniquely within Samsung's possession and cannot be obtained by other means.

Fourth, the request is specific and easily understood.

Fifth, responding is not burdensome; the request is one narrow topic covering an eight-month period.

IV. CONCLUSION

Petitioner cannot rely on the JCCS's waiver to excuse its representation while shielding whether it believed that waiver occurred. Patent Owner respectfully requests that the Board order Petitioner to produce the documents and communications identified above or stipulate that Petitioner and its counsel never believed that filing the JCCS waived Petitioner's indefiniteness defense.

Respectfully Submitted,

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CERTIFICATE OF SERVICE 37 C.F.R. § 42.6(e)

The undersigned hereby certifies that the above document was served August 7, 2026 by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) as well as delivering a copy via electronic mail to the following practitioners of record for Petitioners:

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