

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS AMERICA, INC.
Petitioner,

v.

KANNUU PTY LTD.
Patent Owner.

CASE IPR2026-00072
U.S. Patent No. 11,200,252

PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL

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TABLE OF ABBREVIATIONS

Abbreviation	Term
Kannuu	Patent Owner Kannuu Pty. Ltd.
Samsung	Petitioner Samsung Electronics America, Inc.
POSITA	Person of ordinary skill in the art
The '252 patent	U.S. Pat. No. 11,200,252
The '939 patent	U.S. Pat. No. 11,573,939
The '264 patent	U.S. Patent No. 9,697,264
The '354 patent	U.S. Patent No. 9,436,354
The '393 patent	U.S. Patent No. 8,370,393
The '579 patent	U.S. Patent No. 8,996,579
The '852 patent	U.S. Patent No. 8,676,852
The Initial Patents	The '264, '354, '393, '579, and '852 patents
The Challenged Patents	The '252 and '939 patents
PTAB or the Board	Patent Trial and Appeal Board
IPR	<i>Inter Partes</i> Review

LIST OF EXHIBITS

Exhibit 2001	Samsung's Petition for Inter Partes Reexamination of the '852 Patent
Exhibit 2002	Samsung's Reexamination Request of the '852 Patent
Exhibit 2003	U.S. Patent No. 8,996,579

I. INTRODUCTION

Samsung’s Petition challenging the patentability of the Challenged Patents should be discretionarily denied. *See* Memorandum from Director John A. Squires, Director Institution of AIA Trial Proceedings, Oct. 17, 2025 (“Director Institution Memo”); Memorandum from Acting Director Coke Morgan Stewart, Interim Processes for PTAB Workload Management, March 26, 2025 (“Interim Processes Memo”).

First, all four of Samsung’s asserted prior art references in this IPR were presented to the Office during examination of the ‘252 patent.¹ Ex. 1001 (citing all four references). Additionally, the primary reference that Samsung asserts to invalidate each and every claim of the ‘252 patent was specifically considered by the examiner in the determination of allowance. *See infra* Part II.

There is no indication that the Office materially erred in its examination. Samsung’s contention that the claims are not materially different from those in Kannuu’s Initial Patents—which were canceled in IPR and *ex parte* reexamination proceedings—is meritless. Indeed, based on the prior proceedings, Kannuu

¹ The references asserted in Samsung’s Petition are U.S. Pat. Pub. No. 2002/0113825 A1 (“Perlman”); U.S. Pat. Pub. No. 2004/0021691 (“Dostie”); U.S. Pat. No. 6,144,378 (“Lee”); Int’l Pat. Pub. No. WO2002/091160 (“Badarneh”). Samsung also lists four additional references (U.S. Pat. No. 7,152,213 (“Pu”); U.S. Pat. No. 5,797,098 (“Schroeder”); U.S. Pat. No. 5,223,924 (“Strubbe”); U.S. Pat. No. 3,309,677 (“Montgomery”)), in its petition but does not assert them in its arguments. Exs. 1007, 1010-1012.

meticulously narrowed its claims to definitively overcome all prior art and arguments asserted by Samsung in those proceedings. Moreover, the Office was fully aware of the decisions in the prior IPR proceedings and Samsung's arguments in its *ex parte* reexamination requests when determining the patentability of the Challenged Patents. *See id.*

Second, there is co-pending District Court litigation between the same parties as these proceedings, Kannuu and Samsung America (as well as its parent company). *Kannuu Pty Ltd. v. Samsung Electronics Co., Ltd. et al.*, 1:19-cv-04297-ER (S.D.N.Y.). Notably, Kannuu filed its complaint in the District Court litigation in May 2019. Institution of this petition will further delay proceedings likely by two or more additional years, especially given the contentiousness of the prior USPTO and appeal proceedings on the Initial Patents. *See infra* Part III.

This would mean that *the earliest the District Court litigation would proceed to trial would be **more than 10 years*** from the time Kannuu filed its patent infringement complaint against Samsung. Congress designed IPRs “to provide an effective and efficient alternative to district court litigation,” *General Plastic Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19, at 16-17 (PTAB Sept. 6, 2017) (emphasis added), not proceedings that add more than a decade of delay to district court litigation. *See id.*

**II. ALL OF THE PRIOR ART ASSERTED BY SAMSUNG HAS
ALREADY BEEN CONSIDERED BY THE OFFICE AND THERE
IS NO INDICATION OF MATERIAL ERROR IN ITS DECISION**

Over the course of more than four years of IPR and *ex parte* reexamination proceedings and appeals, the Initial Patents were ultimately canceled. Importantly, based on Samsung's arguments and prior art asserted in these proceedings, Kannuu's highly experienced counsel meticulously redrafted the claims of the Initial Patents to ensure the validity of the Challenged Patents.

In this regard, Kannuu diligently provided all of the prior art and documents in the prior IPR proceedings, as well as Samsung's reexamination requests and the Office's orders granting reexamination, plus submitted additional art, during the examination of the '252 patent. Ex. 1002, 2, 69. The validity of the Challenged Patents' claims was confirmed after the scrupulous examination of the Challenged Patents. As such, there is no indication that the Office materially erred in its decision.

In this instance, the Director should discretionarily deny the petition. *See* 35 U.S.C. § 325(d) (stating that the Board may reject a petition if "the same or substantially the same prior art or arguments previously were presented to the Office"); *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (PTAB Feb. 13, 2020) (precedential) (establishing the two-part § 325(d) framework of previous Office consideration plus lack of material error); *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper

8 (PTAB Dec. 15, 2017) (informative) (identifying the non-exclusive factors (for evaluating whether the same art and arguments were previously considered); *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 4 (PTAB May 19, 2025) (precedential) (holding that claim challenges using the same prior art that was previously presented on an IDS is sufficient to satisfy the first part of the *Advanced Bionics* framework).

A. Samsung Relies on Prior Art Overcome by the Drafting of the ‘252 Claims

In its petition, Samsung relies on four asserted references: Badarneh, Dostie, Perlman, and Lee. Pet. 11-12. As Samsung notes in its petition, three of these same four references (Badarneh, Dostie, and Perlman) were asserted in its IPR petitions and/or *ex parte* reexamination requests of the Initial Patents. *Id.* at 5-6. These IPR and *ex parte* reexamination proceedings and results were cited in the prosecution of the ‘252 patent, calling extra attention to the references that were used to invalidate prior patents in the same patent family. Ex. 1002, 2, 69. Accordingly, the claims of the ‘252 patent were changed substantially from the claims of the Initial Patents to overcome these prior art references. *See, infra* Part II.C. The Examiner was alerted to these references during examination given their extraordinary status as references in prior successful IPR and *ex parte* proceedings. The Examiner was similarly aware that the claims of the ‘252 patent would need to overcome both these references and

the arguments the PTAB and Federal Circuit made using said references to invalidate parent granted patents. Therefore, Badarneh, Dostie, and Perlman should be deemed to have been carefully considered by the Examiner during the examination of the '252 patent.

B. The Examination of the '252 Patent Carefully Considered the Same to that Now Asserted by Samsung

Not only were Badarneh, Dostie, and Perlman all presented to the Office during prosecution of the '252 patent, the Examiner specifically referenced Samsung's final asserted reference (Lee) at length in the prosecution's only office action. Ex. 1002, 465-72. Notably, the Examiner found in this office action that now claim 1 (then claim 27) was "allowed" over this reference. *Id.* at 472.

Samsung is asserting Lee in each and every one of its Grounds of Challenge. *Pet.* at 11-12. For each of these grounds, Lee is asserted in combination with one or more of the other three references to challenge each and every claim of the '252 application. *Id.* But Lee was cited *by the Examiner* in the Examiner's Office Action during prosecution. Ex. 1002, 465-72. Lee should therefore be deemed to have been carefully evaluated by the Examiner in the granting of the '252 patent, particularly because he used it to reject certain cancelled claims of the '252 patent's application.

The other three references (Badarneh, Dostie, and Perlman) were all previously considered during the extensive IPR and *ex parte* litigation of the Initial

Patents, from which the '252 patent derives. Pet. 5-6. These references were especially highlighted to the Examiner, given that they were not only presented as citations in their own right but also as parts of successful IPR and *ex parte* proceedings. Ex. 1002, 2, 69. Therefore, Examiner was on notice that these references, either alone or in combination with themselves or other references, were a distinct challenge that the '252 claims needed to overcome in order to prove their validity.

Given that the Examiner cited Lee, and given that the Examiner was on distinct notice of Badarneh, Dosie, and Perlman, the Examiner would necessarily carefully consider all four of Samsung's asserted references in the prosecution of the '252 patent. Were any of these four references buried in an endless litany of citations, it would be understandable that the Examiner did not carefully consider them, alone or in combination with each other, in the prosecution of the '252 patent. *Ecto World*, at 6-7. However, each of these four references was uniquely flagged for the Examiner's attention, either by their successful use in invalidating a parent patent or by the Examiner himself in an Office Action, and should be deemed to have been considered. *Id.* Therefore, the examination of the claims of the '252 patent has in effect already carefully considered each and every asserted reference by Samsung in its petition.

In these circumstances, each of the four references should be deemed to have been evaluated by the Examiner for purposes of Section 325(d). *See Advanced Bionics*, at 7-8 (“Previously presented art includes art made of record by the Examiner, and art provided to the Office by an applicant, such as on an Information Disclosure Statement (IDS), in the prosecution history of the challenged patent.”); *Ecto World*, at 4 (“Challenging the claims using the same prior art that was previously presented on an IDS is sufficient to satisfy the first part of the *Advanced Bionics* framework.”); *Becton, Dickinson*, at 17-18 (specifying factors for when the same or substantially similar prior art has been examined). Moreover, as explained below, explicit consideration of Badarneh, Dostie, and Perlman would not have changed the Examiner’s decision.

In terms of the specific *Becton-Dickinson* factors, the redundancy is quite clear:

- (a) the similarities and material differences between the asserted art and the prior art involved during examination;
 - *All four references asserted by Samsung were involved during examination.*
- (b) the cumulative nature of the asserted art and the prior art evaluated during examination;
 - *Yes, the art is necessarily cumulative since three pieces of asserted art are the same as those asserted in prior IPRs and were presented post-IPR to the Examiner during examination. The fourth reference is also cumulative as it was already cited by the Examiner during examination and prior to its use as asserted art by Samsung.*

(c) the extent to which the asserted art was evaluated during the examination, including whether the prior art was the basis for rejection;

- One of the four references was specifically evaluated during examination. Notably, the Examiner did not reject any claim of the '252 patent over this reference. The remaining three references were the basis of cited IPR invalidations of the Initial Patents and would have been of distinct notice to the Examiner during examination.

(d) the extent of the overlap between the arguments made during examination and the manner in which Petitioner relies on the prior art or Patent Owner distinguishes the prior art;

- The Patent Owner drafted claims to overcome the bases of rejection by the IPR and ex parte proceedings of the Initial Patent, thereby distinguishing them from the prior art and the arguments made for their usage. Lee was cited by the Examiner as the basis of obviousness rejections for some cancelled claims of the '252 patent, and for none of the granted claims. The granted claims thereby distinguish themselves from Lee.

(e) whether Petitioner has pointed out sufficiently how the Examiner erred in its evaluation of the asserted prior art; and

- As noted below, Samsung failed to identify important differences between Claim 1 of the '252 patent and the Initial Patents, which distinguish Claim 1 over the prior art cited by Samsung.

(f) the extent to which additional evidence and facts presented in the Petition warrant reconsideration of the prior art or arguments.

- No additional evidence or facts have been presented by Samsung that warrant reconsideration of the Examiner's decision. Samsung also notes secondary factors, but the entirety of the IPR documents regarding the Initial Patents, which present the same or substantially similar arguments to those Samsung presents here, was made available to the Examiner.

As such, every one of the *Becton-Dickinson* factors favors denial of Samsung's petition.

C. There was no Material Error by the Office

According to *Advanced Bionics*, “[i]f the ‘same or substantially the same prior art or arguments previously were presented to the Office,’ then the Board’s decisions generally have required a showing that the Office erred in evaluating the art or arguments.” *Advanced Bionics*, at 8 (citing *Becton-Dickinson*). This first part of the *Advanced Bionics* test is met if claims are challenged “using the same prior art that was previously presented on an IDS[.]” *Ecto World*, at 4. *Advanced Bionics* continues, “If the petitioner fails to show that the Office erred, the Director may exercise his discretion not to institute inter partes review.” *Advanced Bionics*, at 8 (citing *Becton-Dickinson*).

Contrary to Samsung's assertion, the claims at issue in the Challenged Patents contain key, material changes that ensure their validity relative to the Initial Patents. Kannuu's counsel meticulously reviewed Samsung's arguments and asserted prior art in so doing precisely to avoid Samsung's ability to make those assertions against the Challenged Patents.

As the claim comparison below illustrates, there were notable changes in the claim language from the canceled claims upon the initial submission of Claim 1 (single underline) ² :Ex. 1002, 622-23.

'252 Patent, Claim 1	'579 Patent, Claim 12
1. A system for selecting items associated with corresponding item identifiers from a plurality of items, the system comprising: <u>a television display;</u> <u>a remote control device comprising a 4-way directional controller;</u> and a computer processor configured to: generate, on the television display, a first display of an on-screen keyboard including one or more parts of an item identifier for selection;	12. An apparatus for selecting items, the apparatus comprising: an output display; an input; and a computer processor configured to execute a method comprising: associating the items with a corresponding item identifiers; generating a first display on the output display, the first display comprises: a part of an item identifier corresponding to a first set of items and a part of an item identifier

² Here, Claim 12 of the '579 patent is used for illustration. Ex. 2003. The changes with respect to other claims of the Initial Patents are the same or substantially similar.

enable the selection of the one or more parts by utilizing the 4-way directional controller; in response to the selection of the one or more parts of item identifiers, generate a display of a further one or more parts of item identifiers for selection, wherein the further one of more parts of item identifiers are arranged on the display relative to one another and corresponding to an up, down, left and right position; enable selection of the further one or more parts of item identifiers in order to add to the selected one or more parts to build a larger part or whole of a particular item identifier; and; <u>select one of the further one or more parts of item identifiers in response to an activation of a corresponding up, down, left, or right key to navigate to the one of the further one or more parts of item identifiers and activation of a central key on the 4-way directional controller to select the one of the further one or more parts of item identifiers;</u> wherein the selected one or more parts of item identifiers and the further one or more parts of item identifiers are shorter than a complete word; and wherein navigation to the further one or more parts of item identifiers	corresponding to a second set of items in a database; enabling selection of one of the two parts of the item identifiers by a user using the input; generating, in response to the selection of the one of the two parts of item identifiers, a further display on the output display, the further display comprises: an additional part of an item identifier corresponding to a subset of the selected set of items and another additional part of an item identifier corresponding to another subset of the selected set of items; enabling selection of one of the two additional parts of the item identifiers by the user using the input; combining the selected one of the two parts of the item identifiers with the selected one of the two additional parts of the item identifiers to create a larger part of the item identifiers; and displaying the larger part of the item identifiers on the output display; wherein
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is enabled by a key press corresponding to the relative arrangement of the further one or more parts of item identifiers on the display.	the additional parts of the item identifiers are shorter than complete item identifiers; and the first set of items and the second set of items are mutually exclusive of one another.
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Specifically, Kannuu narrowed the previous claim 12 of the '579 patent to the context of a television with a specific type of remote control keypad— “a remote control device comprising a 4-way directional controller”—that further “enable[s] the selection” of “one or more parts,” such a letters or numbers in a movie title, “wherein the further one of more parts of item identifiers are arranged on the display relative to one another and corresponding to an up, down, left and right position” on the display of the television, and completing the selection by “activation of a central key on the 4-way directional controller to select the one of the further one or more parts of item identifiers.” Ex. 1001, Claim 1.

The Examiner implicitly recognized these additional limitations as extremely meaningful, because he allowed Claim 1 of the '252 Patent on August 19, 2020, on December 11, 2020, on May 12, 2021, on September 16, 2021, and, again, on November 1, 2021, despite the FWDs issuing in the IPRs on two of the Initial Patents in September 2021 (submitted to the Examiner) and despite Samsung’s complete

reexamination requests and the Office's order granting reexamination (submitted to the Examiner). Ex. 1002, at 15-16, 153-54, 202-03, 384-85, 472.

In particular, the Examiner properly reviewed and discussed at length the primary reference asserted now by Samsung (Lee) as well as multiple other references, finding that with these additional limitations, these references did not anticipate or render obvious Claim 1. *See id.* at 15-16, 153-54, 202-03, 384-85, 472.

As the Examiner's descriptions of the prior art implicitly recognize, there is no indication in Lee, which the Examiner carefully evaluated, of the "select[ion of] one of the further one or more parts of item identifiers in response to an activation of a corresponding up, down, left, or right key to navigate to the one of the further one or more parts of item identifiers and activation of a central key on the 4-way directional controller to select the one of the further one or more parts of item identifiers; and wherein navigation to the further one or more parts of item identifiers is enabled by a key press corresponding to the relative arrangement of the further one or more parts of item identifiers on display." *Id.* Importantly, Samsung's IPR and *ex parte* reexamination requests—which discussed Badarneh, Dostie, and Perlman at length—were presented to the Examiner. Ex. 1002, at 2, 69. Even if the Examiner had included these references in his evaluation of the '252 patent, he still would have granted Claim 1.

As such, there is no indication of material error by the Office. Given that Samsung has cited no new prior art references, they all have either directly or indirectly been considered by the Examiner, and Samsung's arguments regarding Examiner error are without merit, the petition should be discretionarily denied.

III. THE PARALLEL DISTRICT COURT PROCEEDINGS HAVE BEEN PENDING FOR SIX YEARS AND WARRANT DISCRETIONARY DENIAL HERE

35 U.S.C. § 314(a) provides the Director with discretion to deny institution of any IPR proceeding in view of parallel proceedings regarding the same issues and patents. 35 U.S.C. § 314(a); *Harmonic Inc. v. Avid Tech.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“[T]he PTO is permitted, but never compelled, to institute an IPR proceeding.”). The Director has applied that discretion where efficiency considerations stemming from parallel proceedings on the same patent warrant denial of institution. *See NHK Spring Co. v. Intri-Plex, Inc.*, IPR2018-00752, Paper 8 at 11 (PTAB Sept. 12, 2018) (precedential, designated May 7, 2019).

Here, the parallel proceedings in the District Court have been pending since May 2019, including originally filed breach of contract claims stemming from Samsung's misuse of Kannuu's confidential information. When Samsung filed IPRs on the Initial Patents, the District Court stayed the entire cases given the close relationship between the breach of contract and patent causes of action.

After taking nearly a year to review the merits of and grant Kannuu's motion to add the Challenged Patents to the parallel District Court litigation, Samsung now seeks to add at least two more years of delay to those proceedings. In short, if the IPR petitions are instituted, given the additional stays, the District Court action would not proceed to trial for *at least 10 years since filing*. Such lengthy delays would thwart the policy goal of "protect[ing] the integrity of both the USPTO and Federal Courts by assuring that all issues are promptly raised and vetted." *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48759 (Aug. 14, 2012).

This is especially troubling given that Samsung is likely to fail on the merits of its petition. *See* Director Institution Memo at 1. Such inefficiencies and delays in the district court proceedings were not Congress's intent in providing for IPRs in the America Invents Act. As the Director Institution Memo (at 1) underscores, institution decisions should "improve efficiency, consistency, and adherence to statutory requirements." In other words, reaffirm that IPRs should be instituted only when they meaningfully advance the efficient and balanced administration of the Office. This approach aligns with 35 U.S.C. § 316(b), which directs consideration of "the efficient administration of the Office."

IV. CONCLUSION

Samsung has asserted the same prior art that was made available to the Office during examination, and the Examiner did not commit error in granting the '252

patent. Additionally, if this petition is granted, the earliest that the co-pending District Court litigation would go to trial would be *more than 10 years after the complaint was filed*. Accordingly, the petition should be discretionarily denied.

December 29, 2025

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Under 37 C.F.R. § 42.24, I certify that Sections I-IV of this Patent Owner's Request for Discretionary Denial have a total of 3,663 words according to the word count tool in Microsoft Word™ and a hand count of the words in the pictures.

By: /s/ Lewis E. Hudnell, III
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CERTIFICATE OF SERVICE

I certify that the foregoing **PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL** was served on December 29, 2025, on the Petitioner by filing this document through the Patent Trial and Appeal Board P-TACTS System as well as e-mailing a copy to qe-samsung-kannuu@quinnemanuel.com.

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