

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

PICTIVA DISPLAYS	)	
INTERNATIONAL LTD.,	)	
KEY PATENT INNOVATIONS	)	
LIMITED,	)	Civil Action No.
	)	2:23-cv-00495-JRG
<i>Plaintiffs,</i>	)	
	)	
v.	)	JURY TRIAL DEMANDED
	)	
SAMSUNG ELECTRONICS CO., LTD.,	)	ORAL ARGUMENT REQUESTED
SAMSUNG ELECTRONICS AMERICA,	)	
INC.	)	
	)	
<i>Defendants.</i>	)	

**SAMSUNG'S MOTIONS FOR JUDGMENT AS A MATTER OF LAW
UNDER RULE 50(B)**

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I. INTRODUCTION

Because Pictiva and its experts failed to carry its burden at trial, no reasonable jury could have found the asserted '425 and '547 patents infringed or valid, or that Pictiva was entitled to any damages even if it did.

Regarding infringement, Pictiva's trial presentation was replete with issues that foreclose any infringement finding of any asserted claim. For every asserted claim, it is impossible for Pictiva's infringement theory to meet every required claim limitation because the Accused Products are missing required elements of the asserted claims. For the '425 patent, Pictiva and its expert failed to present any credible evidence, much less substantial evidence, that the Accused Products include an "electron transport layer that is n-doped" as required by the asserted claim. This is not surprising as the evidence shows that the Accused Products [REDACTED]. Similarly, for the '547 patent, Pictiva and its expert failed to present any credible evidence, much less substantial evidence, that the Accused Products include the claim limitations for a filter layer that is transparent to the first wavelength spectrum emitted by the organic layer sequence and the first and second regions that are arranged laterally. Put simply, as a matter of law, Samsung cannot infringe any asserted claim. Moreover, Pictiva failed as a matter of law to prove any "deliberate or intentional" infringement by Samsung, because there was none. Regarding invalidity, Samsung and its expert presented unrebutted evidence that the asserted claims are invalid. Pictiva never rebutted this evidence at trial and its expert never testified about invalidity. As a matter of law, the asserted claims are thus invalid.

Pictiva also failed to carry its burden regarding damages for the '425 and '547 patents. *First*, Pictiva failed to apportion its damages to the footprint of the claimed inventions. The foundation of the damages Pictiva presented, and the jury adopted, is the technical benefits opinions of Dr. Schanze for the '547 and '425 patents. Dr. Marais, Pictiva's survey expert who

did not testify at trial, was then meant to take the quantified technical benefits opinions of Dr. Schanze and assign them a monetary value through his surveys. Mr. Kennedy, Pictiva's damages expert, then used Dr. Marais' survey results to calculate a royalty rate he multiplied by the number of accused units sold during the damages period to get a damages amount. At trial, Dr. Schanze failed to show his technical benefits opinion were tied to the actual benefits of the '425 and '547 patents. Additionally, cross-examination of Mr. Kennedy revealed that Dr. Marais' surveys did not even use Dr. Schanze's technical benefits values. Following these admissions, Mr. Kennedy's damages calculations collapsed, completely unsupported, because of these two failures of proof, just as they did for the '389 patent, on which the Court granted JMOL of no damages after the technical benefit opinions for the '389 patent were excluded. Tr. 1259:19-1260:25 (Gilstrap, J.) (finding the record "does not provide even a modicum of guidance to the jury as to how to set a damages number on the '389 patent."). Indeed, Mr. Kennedy's damages methodology was so disconnected from the asserted patents' actual benefits that it would award Pictiva approximately \$184 million even if the patents provided zero benefit. The same result is warranted for the '425 and '547 patents as for the '389 patent—given Dr. Schanze's failure at trial to tie his technical benefits opinions to the footprints of the asserted patents, Pictiva failed to carry its burden of proving damages for those patents.

Second, and separately, for those deficient damages opinions, Pictiva additionally failed to carry its burden to show it is entitled to pre-suit damages. Samsung satisfied its burden to identify unmarked products that practice the asserted patents, at which point the burden shifted to Pictiva to prove compliance with the marking statute—which Pictiva failed to do.

The Court should enter judgment as a matter of law of no infringement, invalidity, and no damages under Federal Rule of Civil Procedure 50(b).¹

II. FACTUAL BACKGROUND

Pictiva filed this lawsuit on October 19, 2023. Dkt. 1. The operative pleadings allege infringement of U.S. Patent No. 6,949,389 (the “’389 patent”), U.S. Patent No. 8,314,547 (the “’547 patent”), U.S. Patent No. 8,558,223 (the “’223 patent”), U.S. Patent No. 8,723,164 (the “’164 patent”), U.S. Patent No. 11,828,425 (the “’425 patent”), and a sixth patent Pictiva later dropped. Dkt. 124. Pictiva ultimately asserted claims 34 and 35 of the ’389 patent, claims 1, 5, 6, and 9 of the ’164 patent, claims 1, 2, and 9 of the ’223 patent, claim 2 of the ’425 patent, and claims 1 and 8 of the ’547 patent (collectively, the “asserted claims”). Dkt. 530.

Shortly before trial, the Court struck certain opinions of Pictiva’s technical expert Kurt Humphrey as to technical benefits of the ’389 patent. Dkt. 527. The Court also struck opinions of Pictiva’s survey expert Laurentius Marias and damages expert David Kennedy that relied upon Mr. Humphrey’s excluded technical benefits opinions. Dkt. 532 at 3-4; Dkt. 533 at 3-4. Following Mr. Kennedy’s direct testimony, the Court instructed the jury it could not award money damages for the ’389 patent. Tr. 660:11-18 (Gilstrap, J.).² The Court later granted judgment as a matter of law as to damages on the ’389 patent, finding the record “does not provide even a modicum of guidance to the jury as to how to set a damages number on the ’389 patent.” *Id.* at 1259:19-12:60:25.

After a weeklong trial, the jury found that Samsung did not infringe any asserted claim of the ’389, ’223, or ’164 patents, but did infringe claims 1 and 8 of the ’547 patent and claim 2 of

¹ Samsung reserves the right to appeal its objections to all prior Court orders.

² All citations to “Tr.” are to the trial transcript for this proceeding filed at Docket Numbers 580, 582, 584, and 586.

the '425 patent. Dkt. 577 at 4. The jury also found that Samsung had not shown that the asserted claims of the '547 and '425 patents were invalid by clear and convincing evidence. *Id.* at 6. The jury awarded Plaintiffs a total lump sum royalty of \$191,400,000—\$98,800,000 for the '547 patent and \$92,600,000 for the '425 patent. *Id.* at 8–10. While the jury found that Samsung's infringement was willful, *id.* at 7, the Court subsequently determined “that no enhancement of damages is warranted via the Jury's willfulness finding,” Dkt. 604 at 2.

III. LEGAL STANDARD

“When a case is tried to a jury, a motion for judgment as a matter of law is a challenge to the legal sufficiency of the evidence supporting the jury's verdict.” *Cowart v. Erwin*, 837 F.3d 444, 450 (5th Cir. 2016) (internal quotation omitted). Under Rule 50(b), judgment as a matter of law should be granted “if, viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury reasonably could find for the nonmovant.” *Finesse Wireless LLC v. AT&T Mobility LLC*, 2023 WL 5613172, *1 (E.D. Tex. Aug. 30, 2023) (citing *Tercero v. Tex. Southmost College Dist.*, 989 F.3d 291, 299 (5th Cir. 2021)). In responding to a Rule 50(b) motion, the non-movant must identify “substantial evidence” to support the jury's verdict. *TGIP, Inc. v. AT&T Corp.*, 527 F. Supp. 2d 561, 569 (E.D. Tex. 2007). “Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Eli Lilly & Co. v. Aradigm Corp.*, 376 F.3d 1352, 1363 (Fed. Cir. 2004) (citing *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)).

IV. JMOL #1: NONINFRINGEMENT AND INVALIDITY OF THE '425 PATENT

A. NON-INFRINGEMENT OF THE '425 PATENT

Pictiva failed to show infringement of claim 2 of the '425 patent because it failed to present any credible evidence, much less substantial evidence, that the Accused Products include the

[REDACTED]

requisite “electron transport layer that is n-doped.” Although Pictiva’s expert Dr. Schanze testified that the Accused Products include an electron transport layer (“ETL”) containing a material called LiQ that purportedly acts as an n-dopant, Tr. 323:2-324:5 (Schanze, K.), this testimony was entirely conclusory and therefore does not constitute substantial evidence. *Dominion Energy, Inc. v. Alstom Grid LLC*, 725 F. App’x 980, 986 (Fed. Cir. 2018) (“[J]ust saying that something is so does not make it true, especially when there is no record support”); *Yoon Ja Kim v. ConAgra Foods, Inc.*, 465 F.3d 1312, 1320 (Fed. Cir. 2006) (affirming JMOL of noninfringement where “conclusory [expert] testimony” was the basis for infringement); *Finesse Wireless LLC v. AT&T Mobility LLC*, 156 F.4th 1221, 1223-1230 (Fed. Cir. 2025) (reversing denial of JMOL of noninfringement where plaintiff’s expert failed to show where in defendant’s technical documentation showed the claim limitation). By contrast, un rebutted evidence confirmed that Samsung [REDACTED]

[REDACTED].

Dr. Schanze offered a number of theories as to how he could show that the Accused Products include an n-doped ETL as required by the asserted claim. Not one holds up.

First, Dr. Schanze purported to rely on “an experimental testing method that’s called TOF-SIMS” to allege that the ETL included an ETL n-doped with LiQ. Tr. 324:16-326:13 (Schanze, K.). But that test could not show that result. As Dr. Schanze conceded, this TOF-SIMS testing only showed [REDACTED]—not that LiQ was a dopant in the Accused Products or that the ETL of the Accused Products was n-doped as required by the asserted claim:

Q. And so what were the *results of your testing*?

A. [REDACTED]

[REDACTED]

Id. at 325:21-326:1 (emphases added). The [REDACTED] of the Accused Products does not prove this ETL is n-doped, as Dr. Schanze admitted:

Q. [REDACTED] ?

A. *No*, Ms. Carson. It depends on the material that it's added to.

Q. And why does that matter?

A. It depends specifically on the interaction between the two materials, and we'll learn more about that as we go along.

Q. [REDACTED]

A. [REDACTED]

Id. 324:6-324:15 (emphases added). Thus, the TOF-SIMS testing cannot constitute substantial evidence of infringement; it simply does not test for the actual limitation.

Second, Dr. Schanze relied on the deposition testimony of Dr. Seo to allege that [REDACTED] acted as an n-dopant by increasing the number of electrons in the ETL:

Q. [REDACTED]

A. [REDACTED]

Tr. 327:6-327:15 (Schanze, K.). Again, Dr. Schanze was pointing to evidence that could not support his conclusion, because he offered the jury no reason to believe that increasing the amount of electrons entering into the ETL from the electrode, by itself, renders the [REDACTED] material an n-dopant as claimed. Even when he attempted to suggest that "N-doping, just broadly speaking, is the act of increasing the number of electrons in a material," Dr. Schanze contradicted himself by testifying that just increasing the number of electrons in a layer is not the same thing as, or necessarily proof of, n-doping: "There are other mechanisms can involve pathways by which the number of electrons can be increased in a material, and that can be done by ways other than just

the mechanism of adding electrons from a—from the dopant itself. The electrode can be a source of electrons to increase a concentration in the electron transport layer.” *Id.* at 473:2-9. The unrefuted testimony from Dr. Seo is that [REDACTED]

[REDACTED]. *Id.* at 867:21-869:12. This was confirmed by Samsung’s expert, Dr. Katona. *Id.* at 952:20-953:5 (Katona, T.). Because Dr. Schanze provided the jury no basis to conclude that [REDACTED]’s alleged effect of increasing electrons indicated that it was functioning as an n-dopant, this second reason also fails to constitute substantial evidence of infringement.

Third, Dr. Schanze purported to rely on a technical research paper (“the [REDACTED] paper”) to allege that the ETL of the Accused Products is n-doped. Tr. 327:16-329:9 (Schanze, K.). There is no evidence in the record, however, that the devices discussed in this [REDACTED] paper have any relation to the specific Accused Products in this case. The [REDACTED] paper is an experimental paper from more than a decade ago that describes non-accused devices that involve the use of [REDACTED] with a completely different organic material than that used in the Accused Products. *See id.* at 324:6-15 (Dr. Schanze testifying that whether [REDACTED] is used as an n-dopant depends on the material it is added to); *id.* at 988:11-16 (Miller, S.) (testifying [REDACTED] paper is a “theoretical paper”). Thus, the [REDACTED] paper says nothing about the functionality of the Accused Products, and Dr. Schanze’s reliance on this paper left the jury to speculate as to whether or how the devices in the [REDACTED] paper relate to the Accused Products. *Intellectual Ventures I LLC v. Motorola Mobility LLC*, 870 F.3d 1320, 1331 (Fed. Cir. 2017) (holding that judgment as a matter of law on non-infringement “should have been granted” because “mere speculation or attorney argument” “do not provide substantial

evidence supporting jury's verdict"). That speculation does not constitute substantial evidence to support a finding that the ETL in the Accused Products is n-doped.

In fact, under Dr. Schanze's own theory of what n-doping requires, Dr. Schanze's testimony would establish that the ETL in the Accused Products is *not* n-doped. For example, Dr. Schanze confirmed that one indicator of a material functioning as an n-dopant is having a highest occupied molecular orbital ("HOMO") value and lowest unoccupied molecular orbital ("LUMO") value that results in electron donation to its host material:

Q. So when we think about some of the interactions that you described, such as *N-doping* or coordinate bonds, one of the things you could *look at are HOMO and LUMO values of two molecules or two atoms in the context of seeing whether an electron is being donated from one source to another destination*. Fair?

A. That's fair, *yes*.

* * *

Q. In your expert report you cited a figure from a paper in which next to the word 'N-doping' it shows *that an electron is being donated from a material with a HOMO that is higher than the LUMO of the molecule that's receiving the electron*. Correct?

A. Yes, sir. That is one figure that's present.

Q. You cited that figure in your expert report as *a description of N-doping*. Correct?

A. It's one mechanism. *I'll agree with that*.

* * *

Q. Doctor, you would agree that *a person of ordinary skill in the art would, therefore, expect that electron donation from a donor to an acceptor would occur when the HOMO or ionization energy of the donor is higher than the LUMO energy level of the acceptor*. Correct?

A. That is the way it's written. *Yes, correct*.

Q. And you *agree with that*. Correct?

[REDACTED]

A. *Yes*, I do.

Tr. 410:25-411:6, 428:9-17, 434:17-24 (Schanze, K.) (emphases added). As Dr. Schanze conceded, however, the un rebutted evidence for the Accused Products shows that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]:

Q. Okay. And now if I plug in the stated value from the Samsung document of [REDACTED] compared to [REDACTED], you would agree with me that [REDACTED] [REDACTED]. *Correct?*

A. I'll *agree that it's lower, yes*, sir.

Id. at 449:3-449:8 (emphases added); *see also id.* at 867:15-870:12 (Seo, J.) (SDC's corporate fact witness Dr. Seo, a principal engineer at SDC who leads the Materials Development Group responsible for the ETL in the Accused Products, testifying that the HOMO and LUMO values of the materials in the ETLs in the Accused Products confirm that they are not n-doped).

The lack of evidence supporting infringement is further confirmed by Dr. Schanze's testimony that the prior art SDC product Clix 2 did not have an n-doped ETL. Samsung provided un rebutted fact and expert testimony that SDC's prior art product [REDACTED]

[REDACTED]. Tr. 827:11-22 (Jo, Y.); 1039:17-22 (Kymissis, I). Dr. Schanze admitted that he relied on SDC's fact witnesses' testimony in opining that the ETL in the Clix 2 was not n-doped to distinguish Clix 2 from the asserted claim of the '425 patent. *Id.* at 458:11-13 ("Q. Well, you cited to Mr. Jo's testimony about the Clix2, you're not disputing his testimony. Correct? A. No, I'm not disputing it.") (Schanze, K.); *id.* at 475:14-17 ("Q. And what did the Samsung's engineers say about whether Clix2 was N-doped, the transport layer? A. I believe that the testimony from Mr. Jo

[REDACTED]

stated that the [REDACTED].”). Dr. Schanze’s testimony that the Clix 2 does not include an n-doped ETL while the Accused Products do include an n-doped ETL is contradictory and cannot support a finding of infringement. As the Federal Circuit explained, “[t]his sort of confusing change of course is not sufficient to support the jury verdict [of infringement].” *Finesse Wireless*, 156 F.4th at 1227. “When the party with the burden of proof . . . rests its case on an expert’s self-contradictory testimony, we may conclude the evidence is insufficient to satisfy that standard.” *Id.*

Because Pictiva and Dr. Schanze failed to provide any evidence from which the jury could find that the n-dopant limitation was met, the jury was left only with Samsung’s evidence that irrefutably shows that the ETL in the Accused Products is not n-doped and [REDACTED] is not an n-dopant in the ETLs in the Accused Products. First, Dr. Seo testified that [REDACTED] [REDACTED]. Tr. 867:15-870:7 (Seo, J.). Specifically, Dr. Seo testified the [REDACTED] [REDACTED]:

Q. [REDACTED]?

A. No.

Id. at 867:21-22. Dr. Seo also testified that [REDACTED]

[REDACTED]:

Q. Why doesn’t Samsung Display [REDACTED]?

A. [REDACTED]
[REDACTED]
[REDACTED]

Q. [REDACTED]
[REDACTED]

A. No, that wouldn't be.

[REDACTED]

Id. at 867:25-868:9. Dr. Seo also testified that the properties of materials as specifically used in the ETLs of the Accused Products—the same properties that Dr. Schanze had confirmed can determine whether n-doping occurs, *id.* at 410:25-411:6, 428:9-17, 434:17-24 (Schanze, K.)—confirm that [REDACTED]:

Q. Okay. [REDACTED]?

A. So you see the reference of [REDACTED]. That's the organic material. That's the ETL organic material.

Q. Okay. Now, what does this document tell us about whether or not the [REDACTED] is an N-dopant?

A. [REDACTED]
[REDACTED]
[REDACTED]

Id. at 868:15-25 (Seo, J.) (emphases added); *see also* JX-14.23. Dr. Seo further testified that, given the specific ETL material used and the composition of the ETL in the Accused Products,

[REDACTED]

[REDACTED]:

Q. [REDACTED]
[REDACTED]?

A. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Id. at 869:1-12 (emphases added).

Additionally, SDC's corporate fact witness Mr. Jo, a principal engineer responsible for the manufacturing process for the Accused Products, also testified that [REDACTED]

[REDACTED]. Tr. 827:5-828:14, 855:15-856:7, 856:25-857:11 (Jo, Y.).

[REDACTED]

Specifically, Mr. Jo testified that [REDACTED]

[REDACTED]:

Q. [REDACTED]

A. It is not.

Q. [REDACTED]
[REDACTED]

A. No, it doesn't.

Id. at 827:18-22. Mr. Jo testified that SDC's internal recipe documents (like JX-16) indicate whether a material is a dopant in the Accused Products by including doping concentrations and that this document [REDACTED]:

Q. Looking at this document as a whole, are you able to tell what materials on this document are dopants?

A. I am.

Q. How?

A. As for these dopants, the doping concentration is important; therefore, there needs to be the percentage indication in parentheses after product code name.

Id. at 827:24-828:6.

[REDACTED]

JX-16.2 ([REDACTED])

[REDACTED]).³ Therefore, the unrefuted evidence shows that the [REDACTED]

[REDACTED].

Pictiva simply failed to show any evidence that the way [REDACTED] is used together with the specific ETL organic material in the Accused Products would result in the [REDACTED] being an ETL n-dopant. In fact, the evidence at trial confirmed the opposite: [REDACTED] [REDACTED]. Dr. Schanze's conclusory testimony that this limitation is met is insufficient to find infringement. Because Pictiva failed to adduce substantial

³ All citations to "JX-", "DX-", or "PX-" are to exhibits admitted into evidence in this proceeding as reflected in the Parties' Final Trial Exhibit Lists at Docket Numbers 599, 600, and 601.

evidence showing that the ETL in the Accused Products is n-doped, Samsung is entitled to judgment as a matter of law that the '425 patent is not infringed.

B. INVALIDITY OF THE '425 PATENT

At trial, Samsung's expert Dr. Katona presented complete, and un rebutted, testimony that claim 2 of the '425 patent is invalid under 35 U.S.C. §§ 102 & 103 because it is anticipated or rendered obvious by Kondakova (DX-32; Tr. 920:21-922:6 (Katona, T.)), under 35 U.S.C. § 103 based on Clix 2 (DX-7; DX-8; DX-9, DX-10; DX-12) in view of Wei (JX-48; Tr. 914:21-920:16), and under 35 U.S.C. § 102 due to improper inventorship (Tr. 910:4-913:9). Dr. Katona's testimony was sufficient to overcome the presumption of validity. Given that Pictiva failed to present any rebuttal evidence or expert testimony on invalidity and did not even cross-examine Dr. Katona on these opinions, his invalidity opinions are wholly un rebutted. The jury could draw only one reasonable conclusion from this record: Claim 2 is invalid by clear and convincing evidence.

1. Invalid As Anticipated Or Rendered Obvious By Kondakova

The un rebutted evidence proves the '425 patent is invalid as anticipated or rendered obvious by Kondakova. DX-32; Tr. 920:21-922:6 (Katona, T.). Pictiva previously only disputed that Kondakova did not disclose the limitation that the ETL was n-doped. Tr. 920:21-922:6. However, Dr. Katona presented evidence that Kondakova discloses this limitation to anticipate claim 2 of the '425 patent or render it obvious, as Kondakova discloses an n-doped ETL and also discloses using LiQ in an ETL:

Q. Okay. Now, let's turn to the N-doped ETL comprising Liq limitation that was supposed to be the novel aspect of the '425 Patent. Does Kondakova disclose this?

A. Yes. *Kondakova discloses both an electron transporting layer that's N-doped. So specifically it talks about in paragraph 355 of DX 32 doping the ETL with an alkaline metal, and it gives one example of lithium.* That's not Lithium Q, but just lithium, the alkaline metal. It also talks of Cesium as another alkaline metal. And then ... *for example, lithium doped into ALQ in the section where they specifically*

talk about electron transport layers. And they say that any metal chelated oxynoid can be used, of which *Liq is an example*.

Id. at 921:14-922:2 (emphases added); DX-32, ¶ 355. Pictiva never cross-examined Dr. Katona on this opinion and failed to present any contrary testimony or evidence. Given that Samsung more than met its burden for all asserted claims of the '425 patent, and Pictiva failed to challenge or contradict Samsung's positions with a rebuttal witness, no reasonable jury could have found any asserted claim not invalid. *See, e.g., Imperium IP Holdings (Cayman), Ltd. v. Samsung Elecs. Co.*, 757 F. App'x. 974, 979–80 (Fed. Cir. 2019) (reversing denial of accused infringer's JMOL on invalidity as expert's "testimony was not contradicted" and his testimony was unrebutted).

2. Invalid As Obvious Under Clix 2 In View Of Wei

The unrebutted evidence further proves the '425 patent is likewise invalid as obvious over Clix 2 in view of Wei. DX-7; DX-8; DX-9, DX-10; DX-12; JX-48; Tr. 914:21-920:16 (Katona, T.). The only limitation that Pictiva previously disputed for Clix 2 was whether it disclosed "wherein the organic layer sequence comprises an electron transport layer that is n-doped." *Id.* at 914:21-920:16. However, the unrebutted evidence from Dr. Katona proved that this limitation was rendered obvious by the combination of Clix 2 with Wei, which teaches using LiQ as an n-dopant. *Id.*

Given that Samsung more than met its burden for all asserted claims of the '425 patent, and Pictiva failed to challenge or contradict Samsung's positions with a rebuttal witness, no reasonable jury could have found any asserted claim not invalid. *See, e.g., Imperium IP*, 757 F. App'x. at 979–80.

3. Invalid For Improper Inventorship

The unrefuted evidence also proves the '425 patent is invalid for improper inventorship as it includes named inventors who are not inventors of the subject matter of the claims. Tr. 910:4-

913:9 (Katona, T.). At trial, Samsung’s expert Dr. Katona presented un rebutted evidence that the ’425 patent was filed by Pictiva on January 18, 2023 as a continuation to an earlier patent that was filed by OSRAM and included the same named inventors as the earlier patent with only two inventors from OSRAM and the rest all from a product design company called KISKA:

The Original Inventors of '425 Patent from Both KISKA & OSRAM

'425 PATENT

Inventors: **Ulrich Kastner-Jung**, Munich (DE); **Markus Klein**, Tegernheim (DE); **Stan Maes**, Dilsen-Stokkem (BE); **Romana Sigl**, Salzburg (AT); **Annette Haid**, Salzburg (AT); **Stephan Lintner**, Salzburg (AT); **Julian Herget**, Marktschellenberg (DE); **Gregor Matjan**, Bergheim (AT)

'425 Patent (JX-05)

OSRAM

KISKA

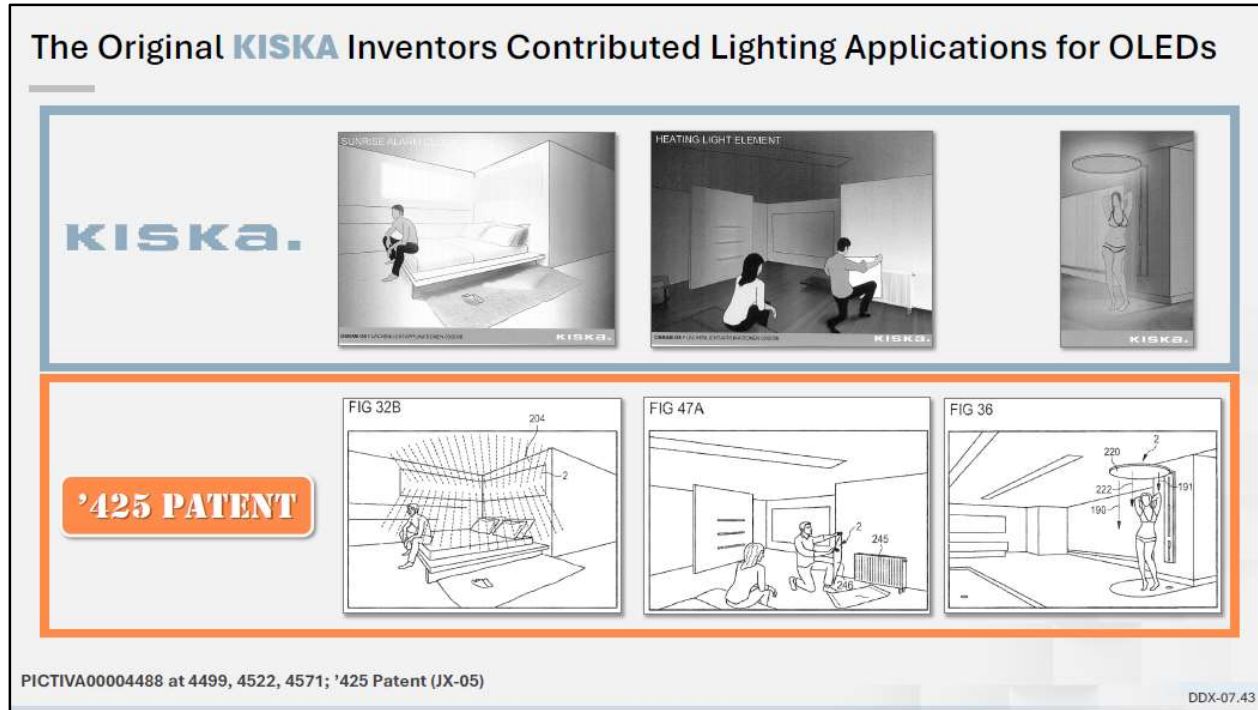
OSRAM & KISKA Joint Development

OSRAM OS	KISKA
Markus Klein	Marcus Waldmann Partner
Head of Strategic Marketing & Planning	Gregor Matjan Business Development Specialist
Ulrich Kastner-Jung	Stan Maes Senior Product Designer
Director Product Development OLED Lighting	Jan-Hendrik Haehnel Product Designer
	Anette Haid Product Designer
	Julian Herget Strategy Manager
	Romy Sigl Marketing Strategist
	Verena Raffler Intern

PICTIVA00004488 at 4494 DDX-07.42

Id.; Ex. A (T. Katona Demonstrative, DDX-7.42)⁴. Dr. Katona additionally presented unrefuted evidence that the KISKA named inventors were responsible for inventing the lighting applications that were claimed in the earlier patent and not claimed in the ’425 patent:

⁴ All exhibits are to the Declaration of Lance Yang, filed concurrently.



Id.; Ex. A (T. Katona Demonstrative, DDX-7.43). Because at least the KISKA named inventors of the '425 patent did not invent the claimed subject matter of the '425 patent, the '425 patent is invalid for improper inventorship. *Trovan, Ltd. v. Sokymat SA, Irori*, 299 F.3d 1292, 1301 (Fed. Cir. 2002) (“[a] patent is invalid if more or less than the true inventors are named”). Pictiva never cross-examined Dr. Katona on this opinion and failed to present any testimony or evidence regarding the misnamed inventors to support a finding of validity. Given that Samsung more than met its burden for all asserted claims of the '425 patent, and Pictiva failed to challenge or contradict Samsung's positions with a rebuttal witness, no reasonable jury could have found any asserted claim not invalid. *See, e.g., Imperium IP*, 757 F. App'x. at 979–80.

V. JMOL #2: NONINFRINGEMENT AND INVALIDITY OF THE '547 PATENT

A. NON-INFRINGEMENT OF THE '547 PATENT

For the '547 patent, Pictiva and its expert Dr. Schanze alleged that the QD-OLED Accused Products infringed the asserted claims. Tr. 376:8-11, 380:12-16, 381:6-382:20 (Schanze, K.).

However, all of the evidence at trial shows that the QD-OLED Accused Products do not meet the following two limitations: (1) “organic layer sequence which emits an electromagnetic radiation having a first wavelength spectrum during operation” where “filter layer is transparent to the electromagnetic radiation having the first wavelength spectrum” and (2) “the first and second regions of the structured layer are arranged laterally in a beam path of the optoelectronic device.” No reasonable jury could find infringement of the asserted claims of the ’547 patent based on the inadequate evidence Pictiva provided at trial.

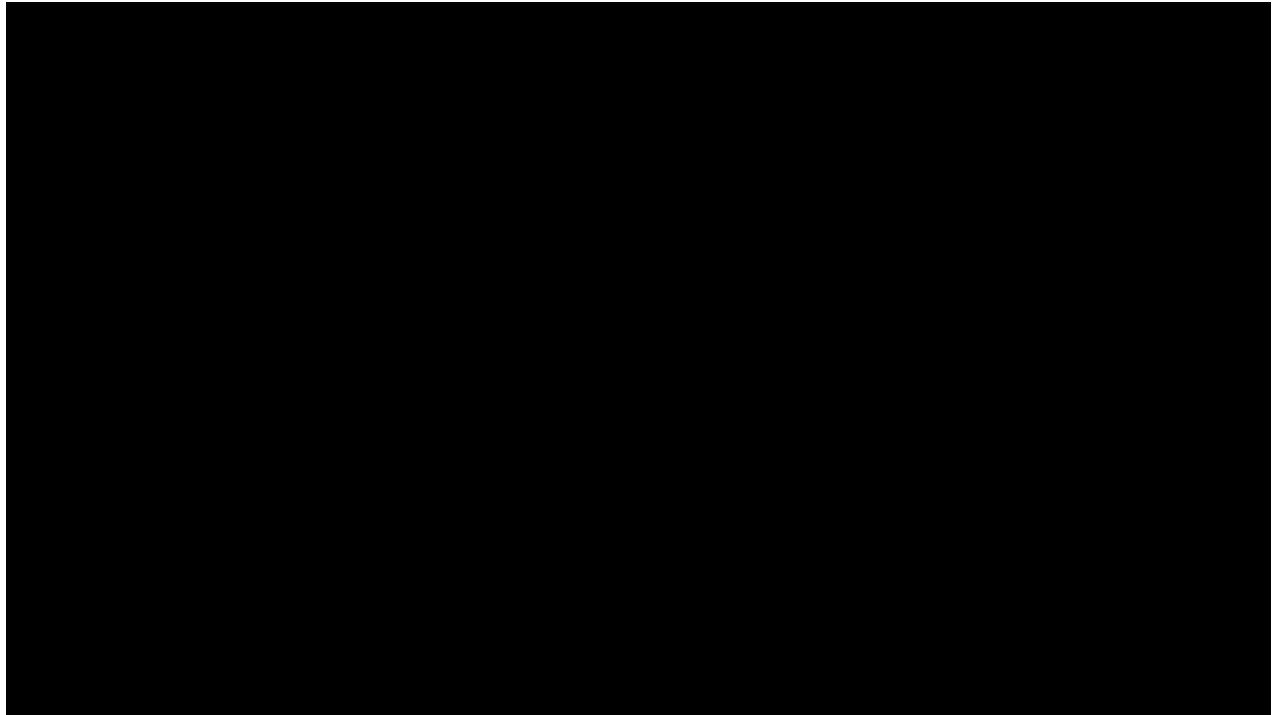
1. No Evidence Of Infringement Of “Filter Layer Is Transparent To The Electromagnetic Radiation Having The First Wavelength Spectrum”

The ’547 patent requires an “organic layer sequence which emits an electromagnetic radiation having a first wavelength spectrum during operation” where the “filter layer is transparent to the electromagnetic radiation having the first wavelength spectrum.” JX-2 (’547 patent) cl. 1. As the plain claim language states, to infringe, the QD-OLED Accused Products must include (1) an organic layer sequence that emits a first wavelength spectrum and (2) a color filter layer that is transparent to the first wavelength spectrum emitted by the organic layer sequence. The evidence clearly shows that the QD-OLED Accused Products do not meet this limitation because they have an organic layer sequence that emits a [REDACTED] wavelength spectrum and a color filter that is [REDACTED] of that [REDACTED] wavelength range.

It is undisputed that the organic layer sequence in the QD-OLED Accused Products includes a [REDACTED] that results in emission of [REDACTED] color radiation having a [REDACTED] wavelength spectrum. Tr. 381:18-382:5 (Schanze, K.); JX-17 (SDC internal document showing layer structure); JX-18 (same); Tr. 927:21-930:18 (Katona, T.). Dr. Schanze

used the below demonstrative slide from admitted exhibit JX-17, which shows the [REDACTED]

[REDACTED]:



Ex. B (K. Schanze Demonstrative, PD4.187); Tr. 381:6-383:13 (Schanze, K.). As the evidence shows, the QD-OLED Accused Products include an organic layer sequence comprised of [REDACTED]

[REDACTED] to emit a [REDACTED] wavelength. Tr. at 381:18-382:5; JX-17 (SDC internal document showing layer structure); JX-18 (same); Tr. 927:21-930:18 (Katona, T.). The evidence further shows that the [REDACTED]. Tr. 395:9-396:4 (Schanze, K.); 927:21-928:21 (Katona, T.). Taken together, this mismatch between the first wavelength spectrum that is emitted and the transparency of the color filter layer means this claim limitation is not met and the asserted claims cannot be infringed.

At trial, Pictiva and its expert Dr. Schanze attempted to circumvent this fatal disconnect by opining that each of the individual blue layers *within* the OLED stack could somehow separately

[REDACTED]

constitute the claimed “organic layer sequence.” Tr. 381:18-382:5 (Schanze, K.). Under this theory, these individual layers would each separately emit a blue wavelength spectrum to which the blue color filter would be transparent. But this infringement theory lacks any supporting evidence and, moreover, is contradicted by Dr. Schanze’s later testimony.

First, there is no evidence that the blue layers within the OLED could emit a blue wavelength spectrum on their own. Instead, the record establishes that [REDACTED] [REDACTED], and therefore the only possible wavelength spectrum that can be emitted through the color filter is [REDACTED]. Tr. 927:21-930:18 (Katona, T.). Therefore, the claimed “first wavelength spectrum” is [REDACTED] in the QD-OLED Accused Products, [REDACTED], and the filter layer in those products is not transparent to the first wavelength spectrum.

Second, Dr. Schanze testified that the “organic layer sequence is an OLED” that emits the light to the quantum dot structured region. Tr. 374:25-375:9 (Schanze, K.). Dr. Schanze’s allegation that just certain of the layers within the OLED could be taken in isolation to generate a wavelength spectrum is contradicted by his testimony that the entire organic layer *sequence* is the OLED. Indeed, an OLED is the entire organic light-emitting diode—not just some emission layers within an OLED. *Id.*; *id.* at 927:21-930:18 (Katona, T.). Because Dr. Schanze’s testimony is internally contradictory, his attempt to isolate the organic layer sequence to a [REDACTED] [REDACTED] of the accused OLED device must fail. *Finesse Wireless*, 156 F.4th at 1227 (“When the party with the burden of proof . . . rests its case on an expert’s self-contradictory testimony, we may conclude the evidence is insufficient to satisfy that standard.”).

[REDACTED]

Thus, there is no substantial evidence to support the Accused Products meeting this claim limitation, and thus no reasonable jury could find infringement of the asserted claim of the '547 patent.

2. No Evidence Of Infringement Of “The First And Second Regions Of The Structured Layer Are Arranged Laterally In A Beam Path Of The Optoelectronic Device”

The '547 patent also requires that “the first and second regions of the structured layer are arranged laterally in a beam path of the optoelectronic device.” JX-2 ('547 patent) cl. 1. The Court’s construction requires “the first and second regions of the structured layer *are not arranged* in a manner in which *the first and second regions are stacked one above another* in a beam path of the optoelectronic device.” Tr. 946:4-11 (Katona, T.) (emphases added). Yet the unrefuted evidence shows that the first and second regions in the QD-OLED Accused Products are [REDACTED] and, therefore, cannot meet this limitation according to the Court’s construction.

Pictiva and Dr. Schanze alleged that the [REDACTED]

[REDACTED]

[REDACTED]. Tr. 374:25-376:3 (Schanze, K.). This is also shown in Dr. Schanze’s demonstratives used during his examination, which showed the first regions (labeled in orange) and the second region containing a [REDACTED] (labeled in turquoise):

[REDACTED]

Ex. B (K. Schanze Demonstrative, PD4.214); Tr. 374:25-376:3 (Schanze, K.). However, Dr. Schanze chose to include only a small section of the [REDACTED] in the “second region” and ignored the rest of the [REDACTED], which must be part of the second region according to the claim (“the second regions each include a filter *layer*”). Additionally, Dr. Schanze included only portions of the [REDACTED] in the “first regions.” When the entire [REDACTED] [REDACTED] are properly considered for the first and second regions, respectively, it is undisputed that there are portions of the [REDACTED] (“second region”) that are [REDACTED] of both the [REDACTED] (“first region”), meaning that the Court’s claim construction cannot possibly be satisfied.

In an effort to justify his narrow consideration of the first and second regions such that they do not encompass the full [REDACTED], Dr. Schanze contradicted the Court’s construction and opined that the portions where the [REDACTED]

[REDACTED]

[REDACTED] are not the beam path because they are opaque to the light:

Q. Does Samsung argue that this claim element isn't met?

A. Yes, ma'am, they do.

Q. And could you explain their argument?

A. [REDACTED].

Q. Is Samsung Correct?

A. No, they're not.

Q. Can you explain why?

A. Yes, ma'am. Because *the claim language reads "arranged laterally in a beam path of the optoelectronic device," and remember the beam path is -- are these broad arrows.* So that, for example, is the beam path of the blue light, that's the beam path of the green light, and that's the beam path of the red light. [REDACTED]

[REDACTED]

[REDACTED]

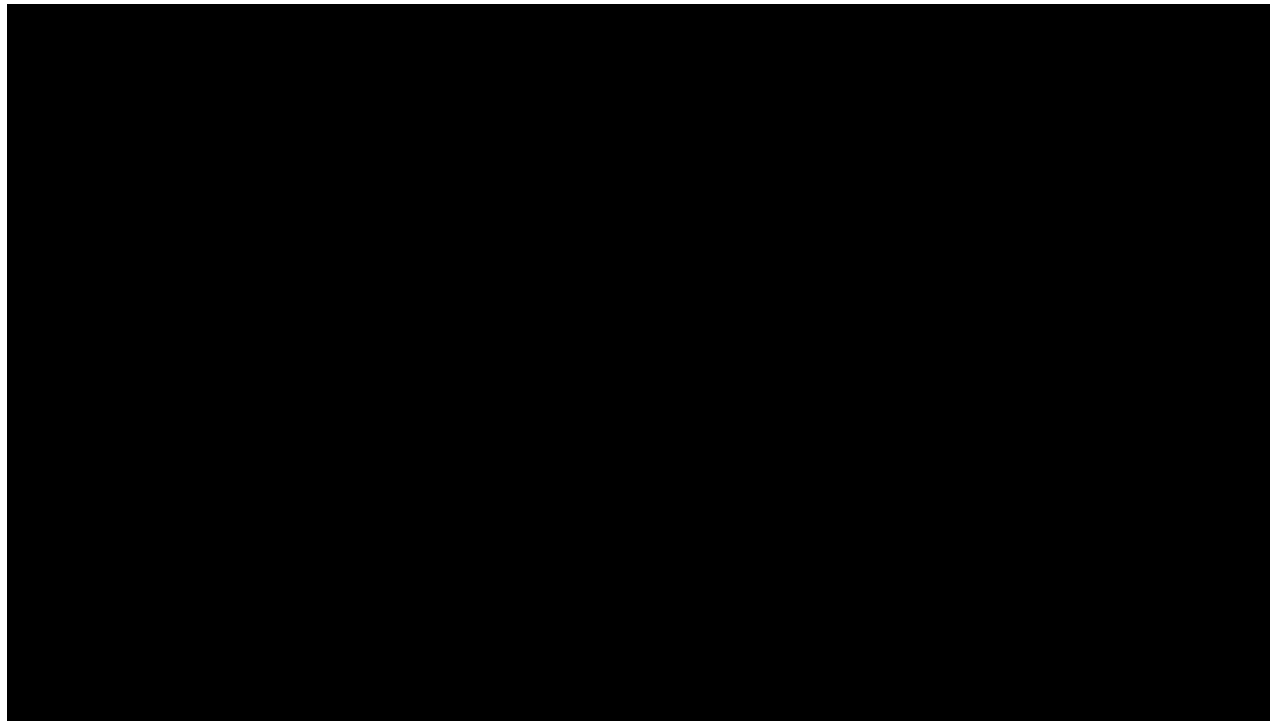
[REDACTED]

Tr. 393:24-394:18 (Schanze, K.) (emphases added). Dr. Schanze contradicts the Court's construction by ignoring areas where the two regions are indisputably [REDACTED] and then attempting to justify that approach on the ground that no light passes through these areas because of the [REDACTED] (*i.e.*, there is no "beam path" in this area). *Id.* at 393:24-394:18. In other words, Dr. Schanze points to the very condition that the claim limitation seeks to avoid (*i.e.*, the stacking of the first and second regions), and to which the Court's construction seeks to give meaning, to justify his artificial mapping and thereby renders the claim term and the construction a nullity. This is improper and cannot support a finding of infringement. *Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1321 (Fed. Cir. 2009) ("No party may contradict the court's construction to a jury."); *Laboratory Corporation of America Holdings v. Qiagen Sciences, LLC*, 148 F.4th 1350,

[REDACTED]

1361–63 (Fed. Cir. 2025) (reversing the denial of a JMOL motion for no infringement finding there was insufficient evidence of infringement where the claim construction of the disputed limitation did “not allow or suggest, let alone require” the infringement theory asserted by plaintiff).

Instead, as Dr. Schanze conceded, the evidence undisputedly shows that the claimed second region is [REDACTED] the claimed first region that includes [REDACTED]. Tr. 393:24-394:18 (conceding the [REDACTED] is [REDACTED] the quantum dot layer and only disputing whether it is in the beam path) (Schanze, K.). Samsung’s expert Dr. Katona confirmed the same in his testimony. *Id.* at 926:1-927:20 (Katona, T.). Dr. Katona also showed the below demonstrative of the layer structure of the QD-OLED Accused Products that confirmed the first and second regions are [REDACTED] each other:



Ex. A (T. Katona Demonstrative, DDX-7.80); Tr. 926:1-927:20. As the evidence clearly shows that the first and second regions are [REDACTED] each other, there can be no infringement.

Importantly, during trial, Pictiva's counsel ignored the Court's construction requiring that the first and second regions not be [REDACTED] when cross-examining Samsung's expert Dr. Katona. Tr. 947:3-16 (Katona, T.). Instead of using the Court's construction, Pictiva's counsel repeatedly stated that "laterally arranged" meant "in same plane" and a "plane is a line." *Id.* at 947:3-16. As was clear from Pictiva's counsel's questioning, Pictiva relied on an improper interpretation of this term that contradicted the Court's construction to assert the QD-OLED Accused Products infringed. This is improper and cannot support a finding of infringement.

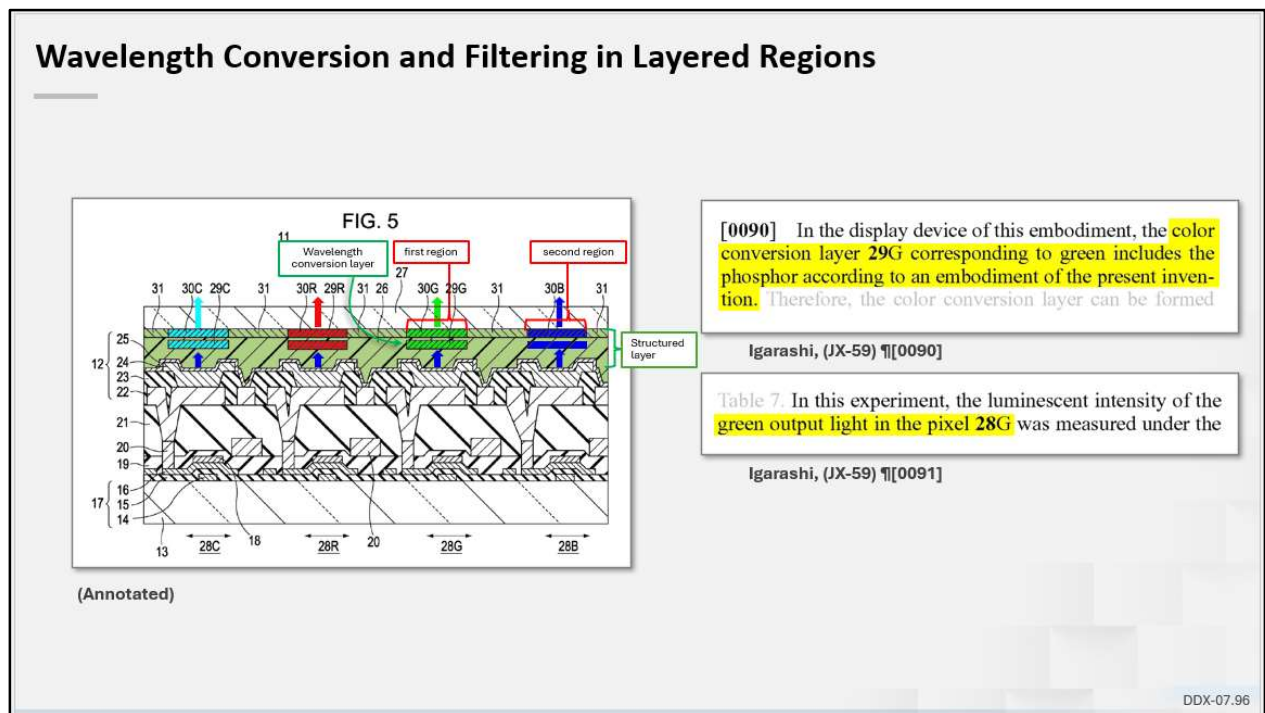
As the evidence all clearly shows that the first and second regions are [REDACTED], the jury's finding of infringement was based on an improper construction of this term and not the evidence. Any finding of infringement would contradict the Court's construction and is thus not legally proper. This limitation of the '547 patent is not met and substantial evidence cannot support the jury's finding of infringement.

B. INVALIDITY OF THE '547 PATENT

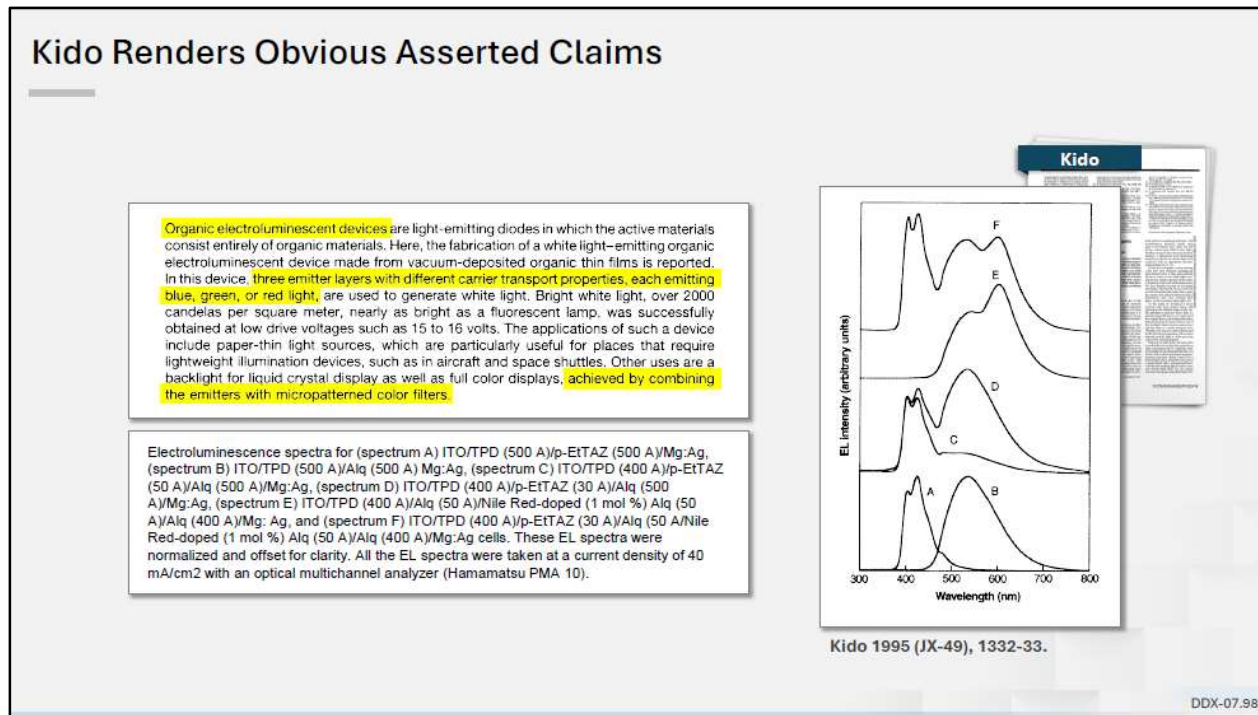
At trial, Samsung's expert Dr. Katona presented complete, and un rebutted, testimony that the asserted claims of the '547 patent are invalid under 35 U.S.C. §§ 102 & 103 because they are anticipated or rendered obvious by Igarashi alone (JX-59; Tr. 930:19-932:18 (Katona, T.)) or in combination with Kido (JX-49; JX-59; Tr. 930:19-932:18). Given that Pictiva did not even present a rebuttal witness regarding validity and did not cross-examine Dr. Katona on these opinions, Dr. Katona's opinions are un rebutted and no reasonable jury could have found any asserted claim not invalid.

The unrefuted evidence proves the '547 patent is invalid as anticipated or rendered obvious by Igarashi alone (JX-59; Tr. 930:19-932:18 (T. Katona)) or in combination with Kido (JX-49; JX-59; Tr. 930:19-932:18). The only limitation that Pictiva previously disputed for Igarashi was whether it disclosed an "organic layer sequence which emits an electromagnetic radiation having

a first wavelength spectrum during operation” where “filter layer is transparent to the electromagnetic radiation having the first wavelength spectrum.” Tr. 930:19-932:18. However, it is unrefuted that Igarashi alone meets this limitation, *id.*, and to the extent it does not, the unrebutted evidence proved that this limitation was rendered obvious by the combination of Igarashi and Kido. JX-49; JX-59; Tr. 930:19-932:18. Dr. Katona explained that Igarashi disclosed all of the limitations of the asserted claims as shown in the below demonstrative and corresponding testimony:



Ex. A (T. Katona Demonstrative, DDX-7.96); Tr. 930:19-932:13; JX-59. Dr. Katona also explained that Pictiva’s only dispute was whether Igarashi explicitly disclosed the filter layer being transparent to the first wavelength spectrum and, to the extent the jury found this limitation was not disclosed in Igarashi, it was rendered obvious by Kido as shown in the below demonstrative and corresponding testimony:



Ex. A (T. Katona Demonstrative, DDX-7.98); Tr. 932:6-18; JX-49. Given that Samsung more than met its burden for all asserted claims of the '547 patent, and Pictiva failed to challenge Samsung's positions with a rebuttal witness, no reasonable jury could have found any asserted claim not invalid. *See, e.g., Imperium IP*, 757 F. App'x. at 979–80.

VI. JMOL #3: NO WILLFULNESS

This Court correctly granted summary judgment of no pre-suit willful infringement of the '425 and '547 patents, based on the Court's finding that Samsung did not have pre-suit notice of the patents. Dkts. 506; 553. At trial, Pictiva also failed to show that Samsung's post-suit conduct rose to the level of deliberate and intentional conduct that would establish post-suit willfulness. Therefore, Samsung respectfully asks that the Court enter judgment as a matter of law that Samsung's alleged infringement of the '425 and '547 patents was not willful.

A. Legal Standard For Willful Infringement

To willfully infringe a patent, “one must have knowledge of it.” *State Industries, Inc. v. A.O. Smith Corp.*, 751 F.2d 1226, 1236 (Fed. Cir. 1985). However, knowledge of the existence of the asserted patents alone is not sufficient to establish willfulness. *Fractus, S.A. v. TCL Corp.*, 2021 WL 2483155, *4 (E.D. Tex. June 2, 2021) (Gilstrap, J.). Rather, willfulness requires deliberate or intentional infringement. *Bayer Healthcare LLC v. Baxalta Inc.*, 989 F.3d 964, 989 (Fed. Cir. 2021). The patentee must show “the accused infringer had a specific intent to infringe at the time of the challenged conduct.” *Id.* (citing *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 105 (2016)). Willfulness is “determined from the totality of the circumstances,” *Mallinckrodt, Inc. v. Masimo Corp.*, 147 F. App’x. 158, 170 (Fed. Cir. 2005), and must be proven by clear and convincing evidence, *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1440 (Fed. Cir. 1988). As the Supreme Court stated in *Halo*, “[t]he sort of conduct warranting enhanced damages has been variously described in our cases as willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or indeed characteristic of a pirate.” 579 U.S. at 103-04.

B. Continued Sales After Filing Of Suit Do Not Establish Willfulness

The Court should enter a judgment of no willful infringement for the ’425 and ’547 patents because, as a matter of law, the evidence at trial was not sufficient to carry Pictiva’s burden on this topic. A patent plaintiff cannot carry its burden on willfulness simply by pointing to the defendant’s continued manufacture of the accused products. If willfulness could be established based solely on the evidence presented at trial here—namely, knowledge of the patents through the filing of a complaint and an accusation of infringement—it would be found in virtually every patent case unless the defendant immediately ceases production of the accused products or implements non-infringing alternatives upon receiving notice of suit. The Federal Circuit has

[REDACTED]

expressly rejected such an approach, stating that there is no “universal rule that to avoid willfulness one must cease manufacture of a product immediately upon learning of a patent, or upon receipt of a patentee’s charge of infringement, or upon the filing of suit.” *Gustafson, Inc. v. Intersystems Indus. Prods., Inc.*, 897 F.2d 508, 511 (Fed. Cir. 1990). To the contrary, a party that exercises due care “may continue to manufacture and may present what in good faith it believes to be a legitimate defense without risk of being found on that basis alone a willful infringer.” *Id.* “That such a defense proves unsuccessful does not establish that infringement was willful.” *Id.* Accordingly, knowledge of a patent through the filing of a lawsuit, without more, cannot establish the deliberate or bad-faith conduct required for willfulness.

C. Samsung Exercised Due Care And Maintained Good Faith Non-Infringement And Invalidity Defenses That Prevailed As To Most Asserted Patents

At trial, Samsung presented evidence showing it took due care in continuing to manufacture the accused products by reasonably relying on SDC, its supplier of the accused OLED displays, to investigate the charges of infringement and negotiate appropriately with Pictiva. Because it is SDC, not Samsung, that is knowledgeable about the products at issue, Samsung [REDACTED], Samsung ensures that it is not infringing third-party patents.” Tr. 610:11-15 (Kim, S.); *id.* at 1158:1-7 (Perryman, R.); DX-34. This type of attention to intellectual property and use of a more-knowledgeable supplier to investigate and [REDACTED] is far afield from the kind of culpable conduct that properly gives rise to a finding of willful infringement.

As shown throughout trial, SDC investigated Pictiva’s infringement allegations, and for each patent Pictiva selected to be discussed, took the position that SDC (and by extension Samsung) did not infringe and that the patents were invalid. DX-33; Tr. 278:23-279:4 (Quinlan,

[REDACTED]

A.). These positions were consistent throughout trial and were supported by substantial evidence and expert testimony; indeed, as discussed above, the only conclusion a reasonable jury could have reached was that Samsung did not infringe the '425 or '547 patents, both of which are invalid. *See* JMOL #1, JMOL #2, above.

For the '425 patent, Samsung presented un rebutted evidence that the [REDACTED]
[REDACTED]. SDC's corporate fact witness Dr. Seo, a principal engineer who leads the Materials Development Group responsible for the ETL in the Accused Products, testified that [REDACTED]
[REDACTED]. Tr. 867:15-870:7 (Seo, J.). SDC's corporate fact witness Mr. Jo, a principal engineer responsible for the manufacturing process, similarly testified that [REDACTED]. *Id.* at 827:5-828:14, 855:15-856:7, 856:25-857:11 (Jo, Y.). Samsung's expert Dr. Katona also presented complete, un rebutted testimony that the asserted claim of the '425 patent is invalid as anticipated or rendered obvious by Kondakova, obvious in view of Clix 2 and Wei, and invalid for improper inventorship. *Id.* at 910:4-922:6 (Katona, T.). Pictiva never cross-examined Dr. Katona on these invalidity opinions and failed to present any rebuttal evidence.

For the '547 patent, Samsung presented evidence through Dr. Katona that the QD-OLED Accused Products do not meet the claim limitations, including that the filter layer is not transparent to the first wavelength spectrum emitted by the organic layer sequence and that the first and second regions are [REDACTED] in violation of the Court's claim construction. Tr. 926:1-933:10 (Katona, T.). Dr. Katona also presented un rebutted testimony that the asserted claims are invalid as anticipated or rendered obvious by Igarashi alone or in combination with Kido. *Id.* at

930:19-932:18. Again, Pictiva declined to cross-examine Dr. Katona on these opinions or present any rebuttal evidence.

The fact that Samsung's non-infringement and invalidity defenses were brought in good faith and with substantial merit is further established by the fact that the jury accepted those defenses for three of the five asserted patents. Dkt. 577. Such vindication confirms the reasonableness of Samsung's belief in its defenses and further supports a finding of no willfulness. *See Gustafson*, 897 F.2d at 511 ("Because nothing of record indicates that [the defendant] knowingly acted in disregard of [plaintiff's] patent rights, the finding of willful infringement cannot stand.").

D. Pictiva Failed to Present Evidence Of Deliberate Or Bad-Faith Conduct

The Federal Circuit has emphasized that "[k]nowledge of the asserted patent and evidence of infringement is necessary, but not sufficient, for a finding of willfulness." *Bayer Healthcare*, 989 F.3d at 988. In *Bayer Healthcare*, the Federal Circuit affirmed the district court's grant of JMOL of no willful infringement even where the patentee presented evidence of the defendant's awareness of the patent application, evidence that the defendant knew of the patentee's work underpinning the patent, and evidence that the defendant switched to using the same technology as the patentee. *Id.* at 987-88. The court held that this evidence "merely demonstrates [defendant's] knowledge of the [patent] and [defendant's] direct infringement of the asserted claims," which "is necessary, but not sufficient, for a finding of willfulness." *Id.* at 988.

The type of evidence that can support a finding of post-suit willfulness is simply not present here. Pictiva presented no evidence that Samsung or SDC's internal documents bear any similarities to the Asserted Patents or Pictiva's internal documents. There is no evidence of any prior disputes or license negotiations between Pictiva and Samsung regarding the '547 or '425 patents specifically. There is no evidence of any statement by Samsung or SDC that it planned to

copy the technology in the Asserted Patents, nor any evidence that could support an inference of copying, intentional misappropriation, or the like. And there is no evidence of prior business dealings between Samsung and Pictiva that would support an inference that Samsung believed it required a license. The absence of any such evidence, or indeed any evidence potentially relevant to willfulness other than the mere fact that Samsung continued to manufacture the accused products after the complaint was filed, is fatal to Pictiva's willfulness claim.

Based on these facts, no reasonable jury could have found that Samsung deliberately and intentionally infringed the '425 and '547 patents. The Court should enter judgment as a matter of law of no willful infringement.

VII. JMOL #4: NO DAMAGES FOR FAILURE TO APPORTION

Samsung is entitled to judgment as a matter of law on damages because Pictiva failed to provide evidence from which the jury could reasonably apportion damages to the footprint of the claimed inventions.

Damages should not be awarded for patent infringement under 35 U.S.C. § 284 “if none are proven that adequately tie a dollar amount to the infringing acts.” *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1291 (Fed. Cir. 2020). Indeed, where the record lacks “evidence from which a jury could reasonably determine damages for infringement of the [infringed patents] without speculation, JMOL of no damages” is appropriate. *Rex Med., L.P. v. Intuitive Surgical, Inc.*, 156 F.4th 1289, 1301 (Fed. Cir. 2025). The Federal Circuit has “repeatedly held” that “[a]pportionment” is “the essential requirement” for damages under 35 U.S.C. § 284. *CSIRO v. Cisco Sys., Inc.*, 809 F.3d 1295, 1301 (Fed. Cir. 2015). To apportion, the patentee must “in every case” separate its damages between the patented feature and the unpatented features based on reliable and tangible evidence. *LaserDynamics, Inc. v. Quanta Comput., Inc.*, 694 F.3d 51, 67 (Fed. Cir. 2012). Proof of damages must be “carefully tie[d] ... to the claimed invention's footprint

in the market place.” *See Virnetx, Inc. v. Cisco Sys., Inc.*, 767 F.3d 1308, 1327 (Fed. Cir. 2014) (citation omitted). And “only [damages] theories comports with settled principles of apportionment” may be set before the jury. *Id.* at 1328.

On this record, the jury’s award of \$98.8 million and \$92.6 million for infringement of the ’547 and ’425 patents, respectively, is infirm because the damages theory and evidence Pictiva presented to the jury did not comport with the well-established principles of apportionment. *See Rex Med.*, 156 F.4th at 1298 (granting JMOL of no damages when plaintiff failed to provide sufficient evidence from which the jury could apportion a lump sum license to the patent in suit).

First, Pictiva failed to provide adequate evidence that the technical benefits opinions on which Pictiva’s damages expert, Mr. Kennedy, based his damages opinions are tied to the footprint of the patented inventions. Indeed, the evidence in the record confirms that they are not. **Second**, Pictiva failed to provide adequate evidence that the surveys on which Mr. Kennedy relied were reliable and tied to the footprint of the patented inventions. **Third**, Pictiva failed to provide any evidence or testimony to apportion Mr. Kennedy’s damages figures for the value of SDC’s own innovations in the accused displays. Because the jury relied on Mr. Kennedy’s damages figures for the ’425 and ’547 patents, any one of these apportionment failures renders the jury’s damages award unsupported as a matter of law.

A. The Technical Benefit Opinions Underlying Mr. Kennedy’s Damages Figures, Which The Jury Adopted, Are Not Tied To The Footprint Of The Claimed Inventions

At trial, Mr. Kennedy explained that his quantification of the technical benefits of the ’425 and ’547 patents was based exclusively on Dr. Schanze’s opinions. Tr. 636:20-637:2 (Kennedy, D.). Using the percentage values Dr. Schanze offered with respect to certain performance characteristics of the Accused Products if the patented technologies were replaced by non-infringing alternatives, Mr. Kennedy testified that replacing the ’547 patent’s invention would

[REDACTED]

decrease color gamut in the accused products by 15.5%, while replacing the '425 patent's invention would decrease battery life by 1.8-2.9%. *Id.* at 333:15-335:25, 398:19-400:22 (Schanze, K.); *id.* at 637:3-7, 637:17-638:11 (Kennedy, D.). According to Mr. Kennedy, by beginning with Dr. Schanze's values, his damages figures were already "technically apportioned down to just the value that comes from the patent." *Id.* at 655:9-14 (Kennedy, D.). However, Pictiva did not provide evidence at trial from which a jury could reasonably conclude that the 15.5% and 1.8-2.9% figures from Dr. Schanze were technically apportioned. *See Apple Inc. v. Wi-LAN, Inc.*, 2019 WL 4248899, *3 (S.D. Cal. Jan. 3, 2019) (granting motion for conditional remittitur or new trial when technical benefit opinion on which survey and damages experts' testimony were based was not apportioned to the patented technology), *aff'd*, *Apple Inc. v. Wi-LAN Inc.*, 25 F.4th 960, 976 (Fed. Cir. 2022) (affirming grant of a new damages trial).

For the '547 patent, the only evidence offered at trial to support Dr. Schanze's 15.5% value was his testimony regarding hearsay in an email from a third-party to a Samsung employee that purportedly showed [REDACTED]. Tr. 400:9-22 (Schanze, K.). However, Pictiva offered zero evidence to support the conclusion that this difference in color gamut between the WOLED and QD-OLED displays purportedly tested was solely attributable to the invention claimed by the '547 patent. Dr. Schanze offered no analysis or explanation regarding the technical differences between WOLED and QD-OLED technologies, let alone that such differences are taught by the '547 patent.

The only evidence on that subject showed the exact opposite: that the differences between WOLED and the accused QD-OLED displays are attributable to multiple technologies that have nothing to do with the '547 patent. As Dr. Katona, one of Samsung's technical experts, explained, the '547 patent's own specification identifies the problem its inventors sought to solve as the

“yellowish color” that is visible “when the organic layer sequence does not emit light,” as removing that color would help a display be more similar in appearance whether off or on. Tr. 922:19-924:24 (Katona, T.). The patent says nothing about color gamut, let alone improving color gamut. *See generally* JX-2. Moreover, Dr. Katona testified that the enhanced performance of Samsung’s accused QD-OLED displays with respect to color gamut is the result of multiple technologies that have nothing to do with the ’547 patent, most notably a [REDACTED] and Samsung’s use and method of using quantum dots (the “QD” of the QD-OLED displays). *Id.* at 932:20-933:10 (“[T]hose combinations provide far more benefit than anything that’s in the ’547 Patent.”), 966:9-17 (“Quantum dots are never mentioned in the ’547 Patent.”). Notably, Pictiva offered no rebuttal to Dr. Katona’s testimony. Additionally, Dr. Schanze’s infringement allegations for the ’547 patent alleged that the [REDACTED] —infringed the claims. *Id.* at 381:18-382:5 (Schanze, K.). Therefore, any benefit to using the [REDACTED] are not tied to the ’547 patent. Having provided no evidence apportioning for differences between WOLED and QD-OLED that have nothing to do with ’547 patent, Pictiva’s technical benefit opinions, and the damages opinions based thereon, offered at trial vastly “overstated the footprint of the invention.” *See Apple*, 2019 WL 4248899, *4.

The only technical benefits evidence offered with respect to the ’425 patent is likewise untethered from the footprint of the invention it claims. Dr. Schanze testified that the benefit attributable to the ’425 patent could be determined by measuring the impact of removing LiQ from the ETL of the OLED display. Tr. 333:15-334:15 (Schanze, K.). Relying on test results in a paper from [REDACTED], Dr. Schanze testified that removing LiQ from the ETL of the accused OLED displays would result in a 9.6% increase in power consumption. *Id.* at 334:8-335:13. After

accounting for a display's percentage of power consumption in a device, Mr. Kennedy concluded that removing LiQ from the accused products would decrease battery life by 1.8-2.9%. *Id.* at 637:17-638:11 (Kennedy, D.).

Pictiva's and Dr. Schanze's reliance on the [REDACTED] paper, however, could not show a technical benefit for the specific technology claimed by the '425 patent, because that is not what the paper studied removing, even in Pictiva's telling. Dr. Schanze admitted that the presence of LiQ alone was not enough to establish infringement of the '425 patent, as the dispositive question was whether the LiQ is acting as an n-dopant. Tr. 437:2-5 (Schanze, K.). So even if the [REDACTED] paper studied removing LiQ (as discussed below, it did not), this would not provide evidence of the value of the claimed technology. Additionally, the [REDACTED] paper does not address the materials used in the Accused Products and so any comparison in the [REDACTED] paper between the two devices is inapposite to the Accused Products and the '425 patent.

In addition, Dr. Schanze's testimony about what conclusions could be drawn from the [REDACTED] paper was flatly and undeniably incorrect. As Dr. Schanze's demonstrative itself showed, the two ETLs the [REDACTED] paper tested contained two different compounds, both of which contained LiQ:



Ex. B (K. Schanze Demonstrative, PD4.83 (paper compared TRZ-*m*-Phen (Liq, 1:1) with Phen-NaDPO: Liq blend)); *see also* Tr. 1004:21-1005:11 (“[I]n [REDACTED]’s paper the two devices that were compared both had lithium quinoline mixed with the organic material. The only difference between the two devices was with the use of TRZ-*m*-Phen in one case versus Phen and NaDPO in the other case. But both cases mixed with lithium quinoline and in the same amount in both cases.”) (Aziz, H.). Pictiva presented no evidence that the TRZ-*m*-Phen or Phen-NaDPO compounds from [REDACTED] are taught by the ’425 patent (they are not), and Dr. Schanze did nothing to account for the technical differences between these compounds in his technical apportionment testimony. Even more critically, as both of these compounds included LiQ, there was no support in the record for Dr. Schanze’s claim that [REDACTED] reveals the impact of **removing** LiQ from the ETL. Indeed, one of the authors of another study regarding LiQ which Dr. Schanze used along with [REDACTED] to determine technical benefits for another patent testified that [REDACTED] “does not really allow us to learn anything or make any conclusions about the effect of having lithium quinoline in the device because it’s

present in both [organic materials tested].” *Id.* at 1004:15-1005:11; *see also id.* at 1045:3-9 (“[I]n order to claim that Liq improves the device, we have to have one device that uses Liq and then a device which does not use Liq that doesn’t infringe the patent. And instead of doing that comparison, [REDACTED] compares] two devices that both use the claimed benefit.”) (Kymissis, I.).

Pictiva also offered no rebuttal to other witnesses’ testimony that the [REDACTED] paper shows that the use of LiQ in the compound that Dr. Schanze alleges shows a performance benefit actually could worsen an OLED display’s power consumption. Tr. 1043:24-1044:20 (Kymissis, I.). Thus, again, Pictiva again failed to tie any of its technical benefit evidence to the footprint of the ’425 patent’s claimed invention.

The situation here is very similar to what happened in *Apple v. Wi-Lan*. *See* 2019 WL 4248899. There, to quantify the patents’ technical benefits, Wi-LAN’s technical expert relied on a third-party test that compared voice over LTE (VOLTE) calls to non-VOLTE Skype calls on phones. *Id.* at *3-*4. However, Wi-LAN’s patents did not invent VOLTE, and the test “did not mention the [asserted patent] or equate its benefits with the voice call quality of VOLTE.” *Id.* at *4. The expert simply relied on the “unproven connection” between the test and claimed invention and extrapolated a value for the asserted patent. *Id.* The court concluded that the technical expert’s trial testimony lacked “a sufficient factual basis” and “should not have been presented to the jury.” *Id.* at *5. And because the unsupported trial testimony of the technical expert was the basis for Wi-Lan’s survey and damages experts, the court likewise concluded that the survey and damages experts’ testimony was unsupported and unreliable, necessitating either a remittitur or a new trial on damages. *Id.* The Federal Circuit affirmed the district court’s grant of a new damages trial. *Apple v. Wi-LAN*, 25 F.4th at 976 (affirming grant of a new damages trial after the first trial).

The Federal Circuit also held in *Sound View Innovations, LLC v. Hulu, LLC*, 33 F.4th 1326 (Fed. Cir. 2022), that what Pictiva did at trial—rely on technical benefit findings from studies that are not sufficiently tied to the footprint of the invention—cannot serve as a basis for a damages award. There, the Federal Circuit affirmed the exclusion of Sound View’s damages expert’s royalty opinions when he relied on technical benefit findings from two studies that were not sufficiently tied to the “invention as claimed.” *Id.* at 1337-38. The Federal Circuit concluded that the expert’s “wholesale adoption of the figures in the Yao study did not pass muster under the standards for admission of expert testimony” because he failed to account for the “substantial differences between the circumstances studied by Yao and the circumstances of Hulu’s accused streaming services.” *Id.* at 1337-38. And because the expert had failed to analyze the second study and its methodology before adopting its findings, he “did not have an adequate basis for treating the results of the ... study as sufficiently tied to the invention as claimed.” *Id.* at 1338. The Federal Circuit explained that tying study results to a patent “require[s] at least determining how much of the improvement ... could still be achieved, and at what if any increased cost, without practicing” each limitation of the claims at issue. *Id.* Because the damages expert had not adequately considered “that conceptually central issue,” he had failed to apportion to “exclude value reflected in the study (and derivatively in Hulu’s services) not attributable to the claimed invention.” *Id.*

The trial record cannot reasonably support a competing conclusion that damages were properly apportioned. As was the case in *Apple* and *Sound View*, Mr. Kennedy’s damages testimony with respect to the ’547 and ’425 patents was based solely on technical benefit evidence that was not technically apportioned to the inventions of the ’547 and ’425 patents. For the ’547 patent, Pictiva failed to provide any evidence that any color gamut performance differences between WOLED and QD-OLED displays are attributable solely to the invention taught by

the '547 patent. Nor did they provide any evidence from which the jury could have apportioned between the various technological differences between WOLED and QD-OLED displays, which Pictiva did not dispute exist and are indisputably not covered by the '547 patent. And for the '425 patent, Pictiva produced no evidence from which a jury could reasonably conclude that the [REDACTED] paper reveals the impact on power consumption of removing LiQ from a display's ETL—let alone not using LiQ as an n-dopant as required by the '425 patent. The record evidence confirms that both compounds tested by [REDACTED] **contained** LiQ. The record evidence also confirmed that comparing power consumption differences between two different compounds—which are not taught by the '425 patent and which **both contain LiQ**—cannot possibly prove the difference in power consumption of the accused products with and without LiQ.

Dr. Schanze's technical benefit opinions for the '547 and '425 patents thus lacked a sufficient factual basis and improperly overstated the footprint of the claimed inventions, and Mr. Kennedy's damages opinions based thereon were likewise unreliable and failed to satisfy the principles of apportionment. *See Apple*, 2019 WL 4248899, *3-5; *see also SPEX Techs., Inc. v. W. Digital Corp.*, 2025 WL 1748190, *10 (C.D. Cal. June 16, 2025) (granting JMOL on the issue of damages in the form of nominal damages of \$1 because, among other things, Plaintiff failed to apportion and did not present sufficient evidence to support jury's award). Accordingly, the jury's damages award for the '547 and '425 patents, which adopted the damages amounts presented by Mr. Kennedy for those patents, was unsupported as a matter of law.

B. Pictiva Failed to Show That The Survey Underlying Mr. Kennedy's Damages Figures Was Reliable And Tied To The Footprint Of The Alleged Inventions

Mr. Kennedy's damages analysis also relied on a survey conducted by another expert, Dr. Laurentius Marais. Tr. 638:12-639:19, 640:7-13 (Kennedy, D.). The survey attempted to determine how much of a rebate customers would have required if the Samsung product they had

purchased performed a certain percent worse with respect to characteristics, such as battery life or color gamut, Dr. Schanze claimed were attributable to the '547 and '425 patents as discussed above. *Id.* Mr. Kennedy then used the survey results to attempt to determine the monetary value attributable to Samsung's alleged use of the '547 and '425 patents. *Id.* at 640:14-642:8.

Mr. Kennedy's use of Dr. Marais's survey was unreliable and failed to comport with principles of apportionment. **First**, Pictiva failed to present adequate evidence establishing that Dr. Marais's surveys were reliably designed to achieve apportionment. And **second**, in any event, Dr. Marais's surveys did not use the technical benefit values identified by Pictiva's technical experts and, thus, even if the technical benefits opinions of Pictiva's technical experts were apportioned (and they were not as described above) the survey results were still not apportioned to any technical benefits of the '425 or '547 patents.

1. Pictiva Failed To Provide Sufficient Evidence That Dr. Marais' Surveys Were Reliably Designed To Achieve Apportionment

Mr. Kennedy did not conduct the surveys on which his damages calculations are based. Tr. 693:3-8 (Kennedy, D.). Dr. Marais did. *Id.* at 692:25-693:1. However, Dr. Marais did not testify at trial, and the evidence presented by Pictiva in his absence was insufficient for the jury to reasonably rely on his survey's purported findings.

Mr. Kennedy testified that he "used Dr. Marais' survey ...to put a dollar figure" on the technical value identified by Pictiva's technical experts. Tr. 655:9-18 (Kennedy, D.). Although Mr. Kennedy testified "I believe it [Dr. Marais' survey] was designed in a reliable manner," *id.* 693:9-14, Mr. Kennedy had no basis for that belief. At deposition, he testified "I don't know if I'm offering an opinion" as to whether or not Dr. Marais surveys were designed and fielded in a reliable manner. *Id.* at 693:22-694:10. Mr. Kennedy has never been proffered as a survey expert in court. *Id.* at 693:3-18. And Mr. Kennedy conceded that he never spoke to Dr. Marais before

Dr. Marais conducted his survey. *Id.* at 694:15-17. Mr. Kennedy thus had no basis to testify that Dr. Marais' survey was designed and conducted in a way that its results would reflect the apportioned value of the '547 and '425 patents. And Pictiva presented no other evidence regarding Dr. Marais' surveys or their design.

2. Dr. Marais' Surveys Did Not Use Apportioned Technical Benefit Values, And Mr. Kennedy's Attempts To Achieve Apportionment Through Extrapolation Were Unsupported And Unreliable

Even if Pictiva adduced sufficient indicia of reliability for Dr. Marais' surveys, Mr. Kennedy's reliance on and use of the surveys failed to satisfy apportionment principles. Mr. Kennedy's apportionment methodology was entirely premised on his belief that (1) Dr. Schanze's technical benefit opinions reflected the incremental (apportioned) value provided by the '547 and '425 patents, and (2) that he could use Dr. Marais' survey results to put a dollar value on the technical benefit values Dr. Schanze provided. Tr. 655:9-18 (Kennedy, D.). As discussed above, the first of these beliefs is not supported by the record evidence. *See supra* Section VII.A. But even if Dr. Schanze's opinions regarding the technical benefits of the '547 and '425 patents were supported (they were not), the evidentiary record does not support Mr. Kennedy's claim that Dr. Marais' surveys allowed him to put a dollar value on the apportioned benefit of those patents.

Fractus, S.A. v. Samsung, 2011 WL 7563820 (E.D. Tex. Apr. 29, 2011) is instructive. There, the court excluded expert opinions that were based on surveys that were "not tied to the alleged advantageous technical characteristics of the patents-in-suit." *Id.* at *1. The experts there used surveys in an attempt to quantify the value consumers place on internal cell phone antennas. *Id.* Although the plaintiff claimed its patents were "'fundamental' to internal antennas," there was no dispute that it did not invent internal antennas generally, just certain designs. *Id.* Because the experts had failed to show that their surveys measured how consumers value the advantages specifically attributable to the designs of the asserted patents, the court concluded their opinions

“must be excluded,” as “[a]llowing the jury to hear such evidence not tied to the claimed invention risks ‘compensation for infringement [that] punishes beyond the reach of the statute.’” *Id.* (citation omitted).

That is exactly what happened here. Pictiva produced no evidence at trial that Dr. Marais’ survey results measured how actual customers valued the specific incremental benefits provided by the ’547 and ’425 patents. Nor could Pictiva have done so, even crediting Dr. Schanze’s opinions about such benefits, as it was undisputed that Dr. Marais did not use the (flawed, unsupportable) technical benefit values Dr. Schanze provided for the ’547 and ’425 patents (for color gamut 15.5% and for battery life 1.8-2.9%) in his surveys. Tr. 695:4-696:3 (Kennedy, D.). For the ’425 patent, rather than use the 1.8 to 2.9 percent decrease in battery life supposedly resulting from not using the ’425 patent, Dr. Marais told his survey participants to assume battery life in Samsung phones was 5 or 15 percent shorter—up to 13.2 percentage points higher than the values that came from Dr. Schanze. *Id.* at 695:4-696:3. For the ’547 patent, rather than use the 15.5 percent number from Dr. Schanze, Dr. Marais used 15 percent. *Id.* at 637:3-7, 640:4-6.

Realizing this mismatch, and in an attempt to bring Dr. Marais’ survey results in line with Dr. Schanze’s purportedly apportioned technical benefits, Mr. Kennedy modified Dr. Marais’ results through linear interpolation and extrapolation. Tr. 698:5-14 (Kennedy, D.). However, Pictiva offered no explanation or evidence at trial as to why it was proper for Mr. Kennedy to assume linearity between and extrapolate Dr. Marais’ survey results to values that were not included in the surveys. This alone renders Mr. Kennedy’s damages calculations unsupported and unreliable. *See Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (district court properly excluded expert opinion that extrapolated from existing data based only the expert’s *ipse dixit* as there was “too great an analytical gap between the data and the opinion proffered.”); *accord Burleson v.*

Texas Dep't of Crim. Just., 393 F.3d 577, 587 (5th Cir. 2004) (*quoting id.*). The lack of evidentiary support for and unreliability of Mr. Kennedy's linearity assumptions and extrapolations becomes even more stark when their full implications are considered. As Dr. Perryman, Samsung's damages expert, showed, Mr. Kennedy's damages figures were based on a flawed methodology that assumed Pictiva would be entitled to approximately \$184 million (nearly the amount the jury awarded) *even if the patents in suit provided no incremental benefits to the accused products at all*. Tr. 1169:8-1171:12 (Perryman, R.). Rather than fixing Pictiva's apportionment issues, Mr. Kennedy's linear assumptions and extrapolations only worsened them by putting a thumb on the scale that unfairly skewed damages beyond any supportable apportionment.

C. Mr. Kennedy's Damages Figures Failed To Account For SDC's Innovations In The Accused Products

Finally, Mr. Kennedy's damages figures also failed to comport with apportionment principles because he never accounted for the benefits SDC's own innovations provided to the accused products. Tr. 692:16-19, 709:6-710:9 (Kennedy, D.). Mr. Kennedy agreed that all "technological innovations in the OLED displays that are not taught by the[] five Pictiva patents have to be excluded from damages," as is required by law. *Id.* at 692:16-19. As discussed above, however, neither Dr. Schanze nor Mr. Kennedy undertook any effort to identify and apportion out the value of SDC's own innovations, such as quantum dots. *See supra* Section VII.A. The technical values Dr. Schanze provided, and Mr. Kennedy subsequently relied on, were thus not properly apportioned and overstated the footprint of the claimed inventions. *Id.*

D. Samsung Should Be Granted Judgment Of No Damages, Or In The Alternative, Damages Should Be Reduced to \$1.7 Million

It was Pictiva's burden to apportion damages correctly and having failed to carry that burden, judgment as a matter of law of no damages is properly granted. *Rex Med.*, 156 F.4th at 1298 (affirming JMOL grant of no damages where jury "received insufficient evidence from which

it could apportion” or “or otherwise reasonably infer a reasonable royalty award”). “The patent damages statute, 35 U.S.C. § 284, does not require an award of damages if none are proven that adequately tie a dollar amount to the infringing acts.” *Id.* at 1299. As in *Rex Medical*, Rex did not “put forth other evidence from which a jury could reasonably determine damages for infringement of the [’425 and ’547 patents] without speculation.” *Id.* at 1301. Accordingly, as there, a judgment of no damages as a matter of law is proper.

However, if the Court finds remittitur is proper under the “maximum recovery rule,” and that damages testified to Samsung’s expert are proper, then damages should be reduced to a maximum of \$1.7 million. *See, e.g., KAIST IP US LLC v. Samsung Elecs. Co.*, 439 F. Supp. 3d 860, 886 (E.D. Tex. 2020) (Under the maximum recovery rule in deciding remittitur, “the court should award the highest amount the jury could have awarded.”) (cleaned up). This is the highest and only damages amount testified to during trial that properly apportioned. *See* Tr. 1160:13-1167:9 (Dr. Perryman’s testimony regarding how he calculated damages of \$1.7 million using a comparable license as the starting point, and then apportioning down).

VIII. JMOL #5: NO PRE-SUIT DAMAGES UNDER THE MARKING STATUTE

Samsung is not subject to pre-suit damages for the ’547 and ’425 patents because the evidence at trial showed Pictiva’s licensee failed to mark its patent-practicing products and Pictiva provided no actual notice of infringement of these patents to Samsung prior to filing its complaints. Because Pictiva failed to show that the OLED displays of its licensee, LG Display Co., Ltd. (“LG Display” or “LGD”) did not practice these patents, failed to show that those LGD displays were marked in accordance with 35 U.S.C. § 287(a), and failed to show that it ever provided actual pre-suit notice of infringement of the ’547 and ’425 patents, no pre-suit damages could have been awarded, and the jury’s award of such amounts must be reduced.

A. Pictiva Bore The Burden To Show Its Licensee's Products Do Not Practice The '547 Or '425 Patents Or That It Provided Samsung With Pre-Suit Notice

35 U.S.C. § 287(a) provides that a patent owner that makes, offers for sale, or sells within the United States any patented article, or imports any patented article into the United States, may recover damages for patent infringement *only after* providing (1) constructive notice to the public through marking the patented article or its package with the applicable patent number(s) or (2) actual notice to the accused infringer. *See Amer. Med. Sys., Inc. v. Med. Eng'g Corp.*, 6 F.3d 1523, 1537 (Fed. Cir. 1993). This requirement “serves three related purposes: (1) helping to avoid innocent infringement; (2) encouraging patentees to give public notice that the article is patented; and (3) aiding the public to identify whether an article is patented.” *Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.*, 876 F.3d 1350, 1366 (Fed. Cir. 2017) (citing *Nike, Inc. v. Wal-Mart Stores, Inc.*, 138 F.3d 1437, 1443 (Fed. Cir. 1998)). A patent owner who licenses its patents is subject to the same requirements under § 287(a). *Amsted Indus. Inc. v. Buckeye Steel Castings Co.*, 24 F.3d 178, 185 (Fed. Cir. 1994) (licensee who makes or sells patented article “limit[s] the patentee’s damage recovery when the patented article is not marked”); *Packet Intel. LLC v. NetScout Sys., Inc.*, 965 F.3d 1299, 1312-14 (Fed. Cir. 2020) (no pre-suit damages under U.S.C. § 287(a) because plaintiff’s licensee’s patent-practicing product was unmarked).

Because the marking law is aimed at the patentee’s actions, “the burden of proving compliance with marking is and at all times remains on the patentee.” *Arctic Cat*, 876 F.3d at 1367. That burden applies after “an alleged infringer who challenges the patentee’s compliance with § 287 ... articulate[s] the products it believes are unmarked ‘patented articles’ subject to § 287.” *Arctic Cat*, 876 F.3d at 1368. This “is a low bar,” which “need only put the patentee on notice that he or his authorized licensees sold specific unmarked products which the alleged infringer believes practice the patent.” *Id.*

This Court has already found Samsung carried its initial burden of identifying products that it believes practice the asserted patents. Dkt. 505 (R&R) at 8; Dkt. 553 (Order adopting R&R). The identified products include licensed OLED displays made by Pictiva's licensee LGD (the licensed products are defined as "Exhibit A Products and Exhibit B Products" in the license). Dkt. 505 at 6-8. The Court concluded that because "Plaintiffs is on sufficient notice as to the products implicated by Defendants' *Arctic Cat* letter . . . the burden has shifted to Plaintiff to rebut by showing either that the implicated products do not actually practice the asserted claims, or that it provided Defendants with proper notice." Dkt. 505 (R&R) at 8.

B. Pictiva Failed To Carry Its Burden At Trial

Pictiva failed to carry its burden in any of the three ways available to it. **First**, Pictiva did not prove the LGD products Samsung identified do not practice the '547 and '425 patents. **Second**, Pictiva did not prove it provided constructive notice of infringement of the '547 and '425 patents by marking the LGD products. **Third**, Pictiva did not prove it provided Samsung actual notice of infringement of the '547 and '425 patents before filing suit.

1. Pictiva Failed To Meet Its Burden Of Showing Its Licensee's Products Do Not Practice The '547 And '425 Patents

It was not Samsung's burden to prove the LGD products practice the asserted patents; it was Pictiva's burden to prove that they do not, or else lose pre-suit damages to the extent they were unmarked. Pictiva entirely failed to carry that burden based on its own trial strategy.

Pictiva's position at trial was that LGD's OLED displays **do** practice Pictiva's OLED patents. Tr. 224:3-226:21 (Quinlan, A.). Pictiva's corporate representative Dr. Quinlan testified that Pictiva's position was based on "very detailed scientific analysis" and "stud[ying] the patents in detail." *Id.* at 224:3-10; *see also id.* at 227:3-8. Pictiva concluded from this analysis that "there were a whole bunch of patents being infringed in the industry" and that LGD was one of the

companies infringing Pictiva's patents. *Id.* at 224:11-19. Pictiva testified that in response, it sent claim charts to LGD asserting that each element of the claims was present in products containing LGD's OLED displays, such as TVs and smartphones. *Id.* at 224:20-225:7; *see also id.* at 682:6-9 ("Q. Prior to executing the license, Pictiva accused smartphones and TVs that used LG Display's of infringing its patents, didn't it? A. I believe so, yes.") (Kennedy, D.). After Pictiva presented its claim charts and held discussions with LGD, LGD took a voluntary license in 2023. *Id.* at 226:22-227:2 (Quinlan, A.); DX-1. The agreement Pictiva and LGD executed provided LGD with a license to Pictiva's "whole patent portfolio," including to the '425 and '547 patents. DX-1; Tr. 210:20-23, 266:16-267:2. Pictiva presented this evidence so it could argue that LGD "compl[ie]d with the law by taking a license," Tr. 1348:19-23 (Pictiva Closing), and draw a contrast with Samsung's alleged silence that Pictiva told the jury "speaks volumes" about Samsung's liability, *id.* at 1348:24-1350:7. Having taken this path, Pictiva was required to prove LGD's patent-practicing products were marked or that Pictiva provided actual notice to Samsung at the time of infringement. As addressed below, Pictiva failed to do so.

The trial record does not permit a jury to reasonably conclude that contrary to Pictiva's position, testified to by its corporate witness, and amplified by Pictiva's lead counsel, LGD's products did not practice the '547 and '425 patents. No witness provided contrary testimony that LGD products do **not** practice the '425 and '547 patents. No witness from LGD testified at all. Pictiva's technical experts did not testify that the LGD products do not practice either of the '425 or '547 patents. Pictiva's technical experts did not even testify that they did **any** analysis of LGD products or LGD technical information. And there are no documents in evidence containing technical information about LGD products that would permit such an analysis.

Accordingly, under controlling Federal Circuit law, there is no reasonable basis for a jury to conclude that Pictiva met its burden of showing LGD's products do not practice the '425 or '547 patents. In *Packet Intelligence*, the Federal Circuit held the defendant was entitled to judgment as a matter of law that it was not liable for pre-suit damages because the plaintiff failed to carry its burden of proving its licensee's products did not practice the patent-in-suit. 965 F.3d at 1314. The Federal Circuit found that the evidence plaintiff presented was insufficient because it “***did not provide an infringement opinion regarding the [licensee's unmarked product]***” but instead “testified to the ultimate question of noninfringement about a *different* [licensee] product.” *Id.* (emphasis added). The Federal Circuit further found that “[e]ven if [the named inventor] had testified about the correct product . . . ***his conclusory testimony failed to address what claim limitations were purportedly missing from the product*** and would have been insufficient to carry [plaintiff's] burden of proving that [the licensee's product] did not practice the [patent-in-suit].” *Id.* (emphasis added)

Here, Pictiva did not provide a non-infringement opinion for the '547 and '425 patents regarding LGD's products nor did it present any evidence regarding what claim limitations in the '425 and '547 patents were purportedly missing from the LGD products. The extent of testimony by Pictiva's technical experts regarding LGD products was that “LG Display uses WOLED technology.” Tr. 399:18-20 (Schanze, K.). Such conclusory testimony is insufficient to carry Pictiva's burden of proving that, contrary to its own positions at trial, the LGD Products do not practice the '547 or '425 patents as Pictiva “failed to address what claim limitations were purportedly missing from the product.” *Packet Intel.*, 965 F.3d at 1314. This failure of proof is dispositive.

2. Pictiva Never Provided Constructive Notice By Marking

Having failed to show that LGD's products do not practice the '547 or '425 patents, Pictiva also failed to show that those products were marked for those patents. Pictiva thus could not establish constructive notice.

A patentee fails to comply with the marking provision of § 287(a)—and thus has not given the public constructive notice of the patent—unless it has properly marked “substantially all” of its patented products. *Amer. Med.*, 6 F.3d at 1538. “A licensee who makes or sells a patented article does so ‘for or under’ the patentee, thereby limiting the patentee’s damage recovery when the patented article is not marked.” *Amsted Indus.*, 24 F.3d at 185. In other words, a *licensee’s* failure to mark patented products prior to suit limits the *patentee’s* recovery of damages. *Id.* (“Since there is no dispute that the patented articles sold by Amsted’s customers were never marked, Amsted is precluded from recovering damages prior to the date that Buckeye, the accused infringer, ‘was notified of the infringement.’”).

There is no evidence in this case that LGD's products were marked in any form with the '547 or '425 patent numbers (or any other Pictiva patent number). No witness testified regarding marking on LGD's products and no physical exhibit of an LGD product or picture of an LGD product showing marking was introduced. Pictiva thus failed to carry the burden of this second way of keeping pre-suit damages in the case as well.

3. Pictiva Never Provided Actual Notice

Finally, there was no evidence from which a reasonable jury could conclude that Pictiva carried its burden of proving that it had provided Samsung with actual notice of infringement of the '547 or '425 patent by specified Samsung products before filing suit.

As to actual notice, § 287(a) states in pertinent part:

In the event of failure to [] mark, no damages shall be recovered by

the patentee in any action for infringement, except on proof that the infringer was **notified of the infringement** and continued to infringe thereafter, in which event damages may be recovered only for infringement occurring after such notice.

35 U.S.C. § 287(a) (emphasis added). “The requirement of actual notice is designed to assure that the accused infringer knew of the adverse patent and the alleged infringement during the period in which its liability accrues.” *Gart v. Logitech, Inc.*, 254 F.3d 1334, 1345 (Fed. Cir. 2001). Mere “notice of the patent’s existence or ownership” is insufficient to constitute actual notice. *Id.*

To comply with the statute, the patentee must inform the recipient of the identity of the patent and the activity that is believed to be an infringement. *Lans v. Digital Equip. Corp.*, 252 F.3d 1320, 1327 (Fed. Cir. 2001). The notice requirement is “met when the recipient is notified, with sufficient specificity, that the patent holder believes that the recipient of the notice may be an infringer.” *Id.* (citations omitted). For the past 30 years, the Federal Circuit has made clear that “[a]ctual notice requires the affirmative communication of a **specific charge of infringement** by a **specific accused product**.” *Arctic Cat Inc. v. Bombardier Recreational Products Inc.*, 950 F.3d 860, 864 (Fed. Cir. 2020) (quoting *Amsted Indus.*, 24 F.3d at 187) (emphases added).

Pictiva failed to carry this burden. At trial, Pictiva sought damages for the ’547 patent starting in March 2022, the date of first accused infringement, and for the ’425 patent starting on November 28, 2023, the date the patent issued. *See* Tr. 627:8-628:2 (Kennedy, D.); JX-5.1. Pictiva, however, did not carry its burden that it provided Samsung actual notice for these patents prior to, respectively, October 19, 2023 when it filed a complaint alleging infringement of the ’547 patent, and March 1, 2024, when it filed an amended complaint alleging infringement of the ’425 patent. *See* Dkt. 1; Dkt. 17.

Pictiva only ever made a single notification of infringement to Samsung (as opposed to non-party SDC), an August 17, 2021 letter asserting a “List of Pictiva’s Patents infringed by SEC”

in OLED displays “found in: Samsung Galaxy S8, S9, S20 smartphones and Galaxy Book Pro laptops.” PX-6. This letter did not charge Samsung with infringing either the ’547 or ’425 patents. *Id.* It did not even mention either of those patents at all. *Id.* Indeed, on the date the letter was sent, the ’425 patent had not even issued, and by Pictiva’s own accusation, Samsung had not yet ever infringed the ’547 patent (something that Pictiva does not allege occurred until March 2022). *Id.*; Tr. 627:8-628:2 (Kennedy, D.); JX-5.1. And this letter’s accusations of infringement as to other patents was limited to smart phones and laptops; it did not accuse any SEC TVs or monitors—the only products Plaintiffs sought damages on for the ’547 patent, Tr. 656:11-17—of infringing *any* patents.

In a similar letter Pictiva sent to non-party SDC, Pictiva also did not charge SDC with infringing either the ’547 or ’425 patents nor did it accuse any OLED displays in TVs or monitors of infringing any patents at all. Tr. 262:8-263:18 (Quinlan, A.); PX-5. And Pictiva’s other pre-suit discussions with SDC likewise *never mentioned the ’547 or ’425 patents*. See PX-1, PX-3, DX-33, PX-2 (emails between Pictiva and SDC, dated December 16, 2020 through September 2, 2021, discussing or attaching claim charts for patents, none of which are for the ’547 or ’425 patents); *see also* PX-7, PX-4 (Intellectual Property Business Discussions presentations from Pictiva to SDC, dated June 25, 2021 and November 30, 2021, identifying patents in Pictiva’s portfolio, none of which are the ’547 or ’425 patents).

None of these pre-suit communications satisfies the requirements for actual notice under section 287(a) which “requires the *affirmative communication* of a *specific charge of infringement* by a *specific accused product*.” *Arctic Cat*, 950 F.3d at 864 (quoting *Amsted Indus.*, 24 F.3d at 187) (emphases added). *First*, it is impossible for Pictiva to have provided Samsung with “an affirmative communication of a specific charge of infringement by a specific accused

product,” *id.*, before the date Samsung infringed the ’547 or ’425 patents. The timing of Pictiva’s communications, which were all before the date of first infringement by Samsung of the ’547 or ’425 patents, alone requires a finding that Pictiva did not provide actual notice. ***Second***, Pictiva’s pre-suit statements that Samsung infringes other identified patents, or that Pictiva “owns and controls” other unidentified patents and applications, do not provide actual notice for the ’547 and ’425 patents because they are not a specific charge that specific Samsung products were infringing the ’547 and ’425 patents. *Id.*

As the Federal Circuit has found, “[f]or purposes of section 287(a), notice must be of ‘the infringement,’ ***not merely notice of the patent’s existence or ownership.***” *Lubby Holdings LLC v. Chung*, 11 F.4th 1355, 1360 (Fed. Cir. 2021) (quoting *Amsted Indus. Inc.*, 24 F.3d at 187) (emphasis added). In *Lubby*, the Federal Circuit found a district court erred in not entering a judgment as a matter of law that defendant was not liable for pre-suit damages where the plaintiff failed to show it provided defendant “an affirmative communication of a *specific* charge of infringement by a *specific* accused product or device” regarding the patent-in-suit. *Lubby Holdings LLC*, 11 F.4th at 1360-61 (quoting *Arctic Cat*, 950 F.3d at 864 and *Amsted*, 24 F.3d at 187) (emphasis in original). The Federal Circuit found that the defendant’s “admission that he had notice that the [patent-in-suit] issued does not equate to actual notice under § 287” because “notice must be of ‘the infringement,’ not merely notice of the patent’s existence or ownership.” *Lubby*, 11 F.4th at 1360 (quoting *Amsted*, 23 F.3d at 187). The Court further found that defendant being on notice of his own infringing activity before the filing of the lawsuit also was insufficient because “it is irrelevant under § 287 whether the defendant knew of the patent or knew of his own infringement. The correct approach to determining notice under § 287 must focus on the action of the patentee, not the knowledge or understanding of the infringer.” *Lubby*, 11 F.4th at 1360

(quoting *Amsted*, 23 F.3d at 187). Finally, the Federal Circuit found that neither defendant's signature of a non-disclosure agreement pertaining to the underlying technology in a patent application for the patent-in-suit nor plaintiff's owner telling defendant he could not use the technology in the patent-in-suit satisfied the requirements of actual notice under § 287 because the evidence did not show plaintiff provided defendant "an affirmative communication of a *specific* charge of infringement by a *specific* accused product or device." *Lubby Holdings LLC*, 11 F.4th at 1360-61. Similarly here, Pictiva failed to carry its burden as to actual notice because it did not provide Samsung with an affirmative communication that Samsung was infringing the '547 or '425 patents in a specific accused product.

Because no reasonable jury could find that Pictiva carried its burden of showing it provided constructive or actual notice of infringement of the '547 or '425 patents to Samsung prior to filing suit, Federal Circuit precedent is clear that judgment as a matter of law must be granted. *See Packet Intel. LLC*, 965 F.3d at 1313-14 (reversing district court and granting JMOL that defendant was not liable for pre-suit damages because plaintiff failed to prove licensees' unmarked products did not practice the patent); *Lubby*, 11 F.4th at 1359-61 (reversing district court and granting JMOL that defendant was not liable for pre-suit damages because plaintiff failed to prove actual notice).

C. The Remedy For Pictiva's Failure To Provide Notice Of Infringement Is A Reduction In The Damages Award To Exclude Pre-Suit Damages

The trial record makes clear that the jury's award includes pre-suit damages. Tr. 1247:20–1248:2 (Gilstrap, J.) (Pictiva's damages expert "testified to the entirety of the damages model as if there were no marking defense."). Where a Rule 50(b) motion is granted for pre-suit damages, the remedy is to exclude damages for infringing units sold prior to the filing of the complaint. *Lubby Holdings*, 11 F.4th at 1361. The Federal Circuit has found that this must be done using "evidence presented at trial." *Id.*

[REDACTED]

The amount of the jury's damages award for the '547 patent is identical to the amount Pictiva sought. *Compare* Dkt. 577 (Verdict Form) at 8 (damages for '547 patent is "\$98.8 million") *with* Tr. 620:12-25 ("for the '547 Patent, there are [REDACTED] at \$98.8 million in damages") (Kennedy, D.). Pictiva calculated damages for the '547 patent by multiplying accused units of TVs and monitors by separate royalty rates using the following numbers:

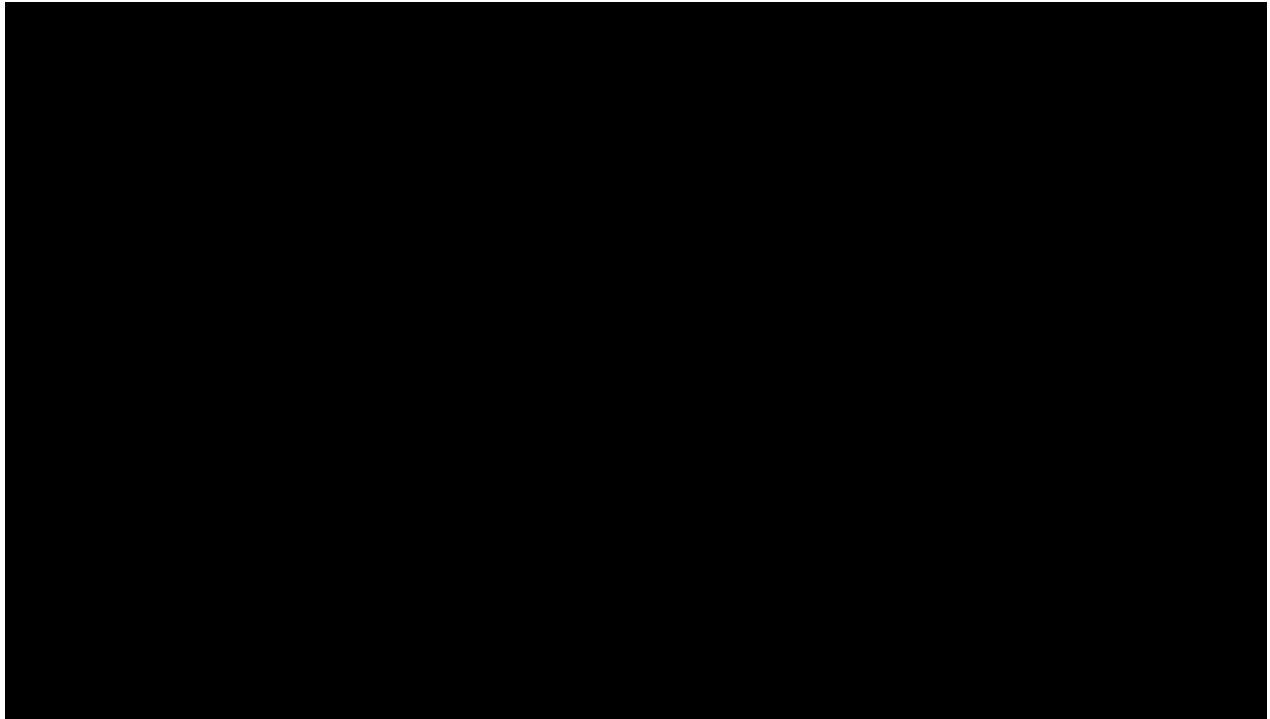
[REDACTED]

[REDACTED]

Ex. C (D. Kennedy Demonstrative, PD6.48 & PD6.53); Tr. 656:11-14 (“Q. So what did you conclude as a reasonable royalty for the ’547 Patent? A. So for TVs, it’s \$85.5 million; for monitors, it’s \$13.3 million, for a total of \$98.8 million.”) (Kennedy, D.). The [REDACTED] that Pictiva advanced, and which the jury accepted, was calculated for the period of March 2022 to October 27, 2025. *Id.* at 627:18-25 (damages start accruing for ’547 patent “in March of 2022 when Samsung released the first products that infringed the ’547 Patent.”); *id.* at 659:12-19 (royalty for ’547 patent calculated “through trial”). If Samsung’s JMOL is granted, pre-suit infringing units—units sold prior to October 27, 2023 (*see* Dkt. 1)—must be removed from the damages award.

The amount of the jury’s damages award for the ’425 patent is also identical to the amount Pictiva sought. *Compare* Dkt. 577 (Verdict Form) at 9 (damages for ’425 patent is “\$92.6 million”) *with* Tr. 620:12-25 (“for the ’425 Patent, [REDACTED], and the total

damages \$92.6 million”) (Kennedy, D.). Pictiva calculated this amount by multiplying unit sales of accused phones, PCs, and tablets by a royalty rate of [REDACTED] per unit:



Ex. C (D. Kennedy Demonstrative, PD6.58); Tr. 620:12-25 (“for the ‘425 Patent, [REDACTED] [REDACTED], and the total damages \$92.6 million”) (Kennedy, D.). The number of units Pictiva advanced, and which the jury accepted, was calculated for the period of November 28, 2023 to October 27, 2025. Tr. 628:1-2 (“for the ‘425 Patent, that patent issued on November 28, 2023, and so damages began then”); *id.* at 659:12-19 (royalty for ‘425 patent calculated “through trial”). Again, if Samsung’s JMOL is granted, pre-suit infringing units—units sold prior to March 1, 2024 (*see* Dkt. 17)—must be removed from the damages award.

Accordingly, under Federal Circuit precedent, *Lubby Holdings*, 11 F.4th at 1361, damages are properly reduced to \$1.7 million, the damages amount Samsung’s expert Dr. Perryman testified to. Tr. 1160:13-1167:9 (Perryman, R.). That is because this is the only damages award at trial that the jury could reasonably conclude excludes damages for the units sold prior to the complaint.

During JMOL argument at trial, when the Court asked counsel, “[i]f there is a marking defense that applies here . . . what evidence is there in the record that the jury can rely on, other than what Dr. Perryman testified to?”, Pictiva’s counsel could not identify any. *Id.* 1248:7–1250:23.

In the alternative, to the extent the Court concludes that damages should be limited to exclude pre-complaint units using Mr. Kennedy’s royalty rate and information about post-complaint units contained in Mr. Kennedy’s report, damages for the ’547 and ’425 patents should be reduced as follows:

	Number of Infringing Units (Nov. 29, 2023-Oct. 27, 2025)	Royalty Rate	Damages
’547 patent			
TVs			\$55,087,400
Monitors			\$11,498,400
			\$66,585,800

	Number of Infringing Units (Mar. 1, 2024-Oct. 27, 2025)	Royalty Rate	Damages
’425 patent			
Phones, Tablets, PCs			\$69.42 million

See Ex. D (Ex. 22 to 2025/10/21 Kennedy Report) (the [REDACTED] excluded for the ’425 patent were calculated using Mr. Kennedy’s cited sources of sales data).

IX. CONCLUSION

For the foregoing reasons, Samsung’s Motions should be granted.

Dated: December 10, 2025

Respectfully submitted,

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[REDACTED]

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that, on December 10, 2025, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system.

Dated: December 10, 2025

/s/ Melissa R. Smith
Melissa R. Smith

[REDACTED]

[REDACTED]

[REDACTED]

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