

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

**PICTIVA DISPLAYS
INTERNATIONAL LTD.,
KEY PATENT INNOVATIONS
LIMITED,**

Plaintiffs,

v.

**SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC.**

Defendants.

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) Civil Action No.
) 2:23-cv-00495-JRG
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JURY TRIAL DEMANDED

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

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I. JMOL #1: NON-INFRINGEMENT AND INVALIDITY OF THE '425 PATENT

A. Non-Infringement Of The '425 Patent

Pictiva's claim that substantial evidence supports infringement (Opp. at 1-6) fails because no credible evidence—let alone substantial evidence—shows the accused products include an “electron transport layer [(‘ETL’)] that is n-doped.”

Dr. Schanze relied solely on evidence that merely showed [REDACTED] exists in the accused mixed ETLs. Tr. 323:2-324:5. But Pictiva concedes “the presence of [REDACTED] alone does not establish that the [REDACTED] ETL layer is n-doped or that [REDACTED] serves as an n-dopant.” Opp. at 2. Dr. Schanze's conclusory testimony that the accused ETL is n-doped or that [REDACTED] acts as the n-dopant in it cannot defeat JMOL. *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) (JMOL of non-infringement 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) (same).

Pictiva points to Dr. Schanze's testimony on redirect about n-doping by increasing the number of electrons and, through attorney argument, interprets his testimony as meaning that [REDACTED] in the accused products acts as an n-dopant. Opp. at 3-4. Even if Dr. Schanze had so testified, he still failed to point to any evidence to support his speculation that [REDACTED] acts as an n-dopant to increase the electrons in the accused ETL, much less that the accused ETL is n-doped. The only “evidence” Dr. Schanze pointed to was a paper from [REDACTED]. Opp. at 4-5. But as Pictiva concedes, [REDACTED] does not disclose the same materials in the ETL used in the accused products (Opp. 4-5), and [REDACTED] does not disclose [REDACTED] as an n-dopant, Tr. 324:6-15, 988:11-16. Pictiva's argument that the materials in [REDACTED] and in the accused products are [REDACTED] is irrelevant, as Dr. Schanze testified n-doping must be shown by looking at the specific materials—not just the broad class of [REDACTED]

materials. *Id.*; Tr. 474:6-19. Reliance on the [REDACTED] paper is speculation and attorney argument—neither of which can support a finding of infringement. *Intellectual Ventures I LLC v. Motorola Mobility LLC*, 870 F.3d 1320, 1331 (Fed. Cir. 2017) (“mere speculation or attorney argument” “do not provide substantial evidence supporting” jury’s verdict).

Pictiva dismisses Samsung’s substantial non-infringement evidence by mischaracterizing it as “based solely on an alternative n-doping mechanism.” Opp. at 5-6. Not so. Dr. Seo testified, unrefuted, that the increased electron mobility in the accused ETL results from other material, not [REDACTED]. Tr. 867:21-869:12, 952:20-953:5. Dr. Seo and Mr. Jo testified the accused products’ ETLs do not use n-dopants and their testimony was not limited to any “alternative n-doping mechanism.” *Id.* 867:21-868:9, 827:24-828:6. Pictiva’s assertion “n-doping” need not require a predetermined mixture ratio (Opp. at 6) is inapposite—Mr. Jo’s testimony addressed how SDC’s documents identify dopants, not claim construction. The unrefuted evidence establishes the accused products’ ETL is not n-doped and [REDACTED] in the accused products does not function as an n-dopant.

Because Pictiva failed to show [REDACTED], as used with the specific ETL organic material in the accused products, functions as an n-dopant, Samsung is entitled to judgment as a matter of law.

B. Invalidity Of The ’425 Patent

Pictiva effectively concedes it failed to rebut Dr. Katona’s testimony that claim 2 is invalid under 35 U.S.C. §§ 102 and 103. Relying solely on attorney argument rather than evidence, Pictiva cannot overcome the only reasonable conclusion from the trial record: claim 2 is invalid by clear and convincing evidence. *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).

1. Invalid As Anticipated Or Rendered Obvious By Kondakova

Pictiva identifies no evidence disputing Dr. Katona’s testimony or Kondakova’s

[REDACTED]

disclosures, and instead relies on attorney arguments that misrepresent the record. Pictiva incorrectly asserts that Dr. Katona failed to “identify evidence that the ‘doping’ discussed in Kondakova is n-doping.” Opp. at 7. But Dr. Katona explicitly testified that “Kondakova discloses both an electron transporting layer that’s N-doped,” and he demonstrated that Kondakova discloses an n-doped ETL. Tr. 921:14-922:2; DX-32, ¶ 355. Pictiva incorrectly asserts that Dr. Katona mixed disclosures from different embodiments and failed to identify a motivation to combine. Opp. at 7. The claim only requires an n-doped ETL that comprises [REDACTED] and Kondakova explicitly discloses one embodiment where the “electron transporting layer of the organic EL devices of this invention are [REDACTED], including . . . [REDACTED] [REDACTED]” with [REDACTED], (DX-32, ¶¶ 332-336), and this ETL “may *further* be doped with an [REDACTED]” such as [REDACTED], *id.*, ¶ 355; Tr. 921:14-922:2. Also, there is no requirement for a single “embodiment in which all elements are arranged as in the claim.” Opp. at 7. An anticipating reference “may anticipate the claimed invention expressly or implicitly,” and “prior art references should be considered for all that they teach, rather than being limited to a particular embodiment.” *Hayward Indus., Inc. v. Pentair Water Pool & Spa, Inc.*, 814 F. App’x 592, 595–96 (Fed. Cir. 2020). Finally, Dr. Katona did show obviousness: he testified it was well-known to use an n-doped ETL that comprises [REDACTED]. Tr. 920:21-922:6; *MobileMedia Ideas LLC v. Apple Inc.*, 780 F.3d 1159, 1172–73 (Fed. Cir. 2015) (reversing denial of JMOL of invalidity as expert showed missing limitation was within the common knowledge of POSITA).

2. Invalid As Obvious Under Clix2 In View Of Wei

Pictiva identifies no evidence disputing Dr. Katona’s testimony or the disclosures of Clix2 and Wei. Instead, Pictiva alleges only that he failed to show a POSITA would be motivated to combine Wei with Clix2. Opp. at 8. Pictiva is wrong. Dr. Katona clearly testified that a POSITA would be motivated to combine Wei’s n-doped ETL with Clix2. Tr. 914:21-920:16. This

unrebutted testimony was legally sufficient to establish obviousness. *Pregis Corp. v. Kappos*, 700 F.3d 1348, 1354–56 (Fed. Cir. 2012) (expert not required to testify combination is “obvious” for JMOL on invalidity); *Fresenius USA, Inc. v. Baxter Int’l, Inc.*, 582 F.3d 1288, 1301–02 (Fed. Cir. 2009) (expert need not explicitly state motivation to combine as “jury could reasonably conclude, based on [expert]’s testimony, that an ordinarily skilled artisan would have known how to make that combination”). Pictiva relies on *Virtek Vision Int’l ULC v. Assembly Guidance Systems, Inc.*, (Opp. at 8), but in that IPR appeal, neither the IPR petition nor the expert declaration relied upon in the petition articulated any motivation to combine. Moreover, the expert there stated multiple times that he had no “reason to combine the references in his expert declaration.” *Virtek*, 97 F.4th 882, 886-888 (Fed. Cir. 2024). Here, by contrast, Dr. Katona testified at trial to motivation to combine Wei with Clix2, and Wei itself provides explicit disclosures on why a POSITA would use an n-doped ETL. Tr. 914:21-920:16; DX-7; DX-8; DX-9, DX-10; DX-12; JX-48.

3. Invalid For Improper Inventorship

Pictiva identifies no evidence rebutting Dr. Katona’s testimony that the ’425 patent is invalid for improper inventorship. Instead, Pictiva alleges only that Samsung failed to present inventor testimony. Opp. at 9. But inventor testimony is not required to prove improper inventorship. Indeed, the caselaw places the corroboration burden on parties *claiming* joint inventorship, not those challenging it. “This is because oral testimony of the alleged co-inventor on its own will generally not suffice as ‘clear and convincing’ evidence of joint inventorship.” *Wagner v. Ashline*, 2021 WL 5353889, *4 (Fed. Cir. Nov. 17, 2021). Dr. Katona testified about OSRAM evidence documenting each named inventor’s contributions. That evidence showed the KISKA inventors’ contributions are not claimed in the ’425 patent. Tr. 910:4-913:9. Pictiva’s argument that Dr. Katona provided no evidence regarding claims 9-12 is inapposite—Pictiva never raised this argument at trial, and no evidence shows the KISKA inventors contributed to those

claims. Given Samsung 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 the asserted claim not invalid. *See, e.g., Imperium IP*, 757 F. App'x at 979–80.

II. JMOL #2: NON-INFRINGEMENT AND INVALIDITY OF THE '547 PATENT

A. Non-Infringement Of The '547 Patent

1. 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”

First, Pictiva incorrectly asserts Samsung's non-infringement argument is “premised on an improper and belated claim construction.” Opp. at 11. It is Pictiva that ignored the Court's construction and the claim language. The claim clearly requires that “the second regions each include a filter *layer*,” (JX-2 cl. 1 (emphasis added)) and that the filter layer is “*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 (emphases added). Pictiva does not dispute that accused layers are [REDACTED], and openly admits that its infringement theory carves out the portion of the filter layer that prove non-infringement, *i.e.*, where the blue filter layer is [REDACTED] the QD layer directly. Opp. at 11. By simply ignoring the [REDACTED] that the Court's construction prohibits, Pictiva improperly renders the Court's construction meaningless. *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 843 F.3d 1315, 1344–45 (Fed. Cir. 2016) (reversing jury verdict of infringement because theory rendered limitation meaningless). Thus, JMOL of non-infringement is proper. *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.”); *Lab. Corp. of Am. Holdings v. Qiagen Scis., LLC*, 148 F.4th 1350, 1361–63 (Fed. Cir. 2025).

Second, Pictiva incorrectly asserts that the “beam path” is limited to the portion of the QD layer that does not have a filter layer [REDACTED] it. Opp. at 12-13. Not so. The “beam path”

[REDACTED]

in the Court’s construction provides a point of reference for positioning the layers, distinguishing between stacking them in the direction of the beam path (*i.e.*, vertical in the accused products) from one that is not in that direction (*e.g.*, horizontal in the accused products). Tr. 926:1-927:20. Additionally, even if the Court’s construction required the physical beam path, the claims require the filter layer be in the beam path—not that the beam path be emitted from the device. The filter layers in the accused products are undisputedly in the beam path, because the light emitted by the organic sequence enters every filter layer, even though it may not exit the topmost filter layer. *Id.* Pictiva incorrectly asserts that Dr. Katona did not dispute this point. Opp. at 13. Dr. Katona testified that the beam path encompasses the entire QD layer and that the filter layers were [REDACTED] within that beam path. Tr. 926:1-927:13.

Third, Pictiva mischaracterizes the ’547 patent specification to argue it permits discontinuous layers. Opp. at 13-14. Pictiva relies on Figure 3, but that figure depicts “different exemplary embodiments” (JX-2 at 11:54) and “where the patent describes multiple embodiments, every claim does not need to cover every embodiment,” *Pacing Techs., LLC v. Garmin Int’l, Inc.*, 778 F.3d 1021, 1026 (Fed. Cir. 2015). Moreover, even in Figure 3, none of the filter layers are [REDACTED]—making Pictiva’s reliance on discontinuous regions irrelevant.

2. No Evidence Of Infringement Of “Organic Layer Sequence Which Emits An Electromagnetic Radiation Having A First Wavelength Spectrum”

Pictiva identifies no substantial evidence that the accused products meet the limitation requiring 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.” Instead, Pictiva alleges Samsung relies on an improperly narrow construction requiring “the organic layer sequence include all organic layer sequences between the cathode and the anode.” Opp. at 14-18. Pictiva is wrong. The evidence

shows that there is only one “organic layer *sequence*” in the accused products, and that sequence is made up of several layers including blue layers.

First, the specification does not support Pictiva’s interpretation that there could be multiple organic layer sequences within the OLED. The ’547 patent at 10:5-12 states that the “organic layer sequence” “can have functional layers or layer sequences.” The term “layer sequences” refers to multiple layer sequences *within* the organic layer sequence—not multiple organic layer sequences within the OLED. Moreover, the specification states that “[t]he optoelectronic device has *an* organic layer sequence”—singular. *Id.* at 10:5-6. This is consistent with both Dr. Schanze’s testimony that the “organic layer sequence is an OLED” emitting light to the QD region (Tr. 374:25-375:9) and Dr. Katona’s testimony, *id.* at 927:21-930:18.

Second, Pictiva incorrectly alleges there is a “blue OLED” in the accused products. Opp. at 15-16. The evidence clearly shows that the accused products contain an organic layer sequence comprising [REDACTED] that emits a [REDACTED] wavelength—not a blue OLED. Tr. 381:18-382:5, 927:21-930:18; JX-17; JX-18. The record also establishes that the blue layers do not independently emit a blue wavelength spectrum; the emission layers emit light only in combination, producing a [REDACTED]—not blue—spectrum. Tr. 927:21-930:18. Pictiva incorrectly asserts that Dr. Schanze equated the blue layers to a blue OLED. Opp. at 15 (citing Tr. 380:12-16). Dr. Schanze’s “blue OLED” testimony did not refer to the accused [REDACTED] products—he was describing a generic QD-OLED schematic containing only a blue OLED. Tr. 380:2-382:5.

Third, Pictiva improperly disregards the [REDACTED] and [REDACTED] by arguing that “comprising” permits its infringement theory. Opp. at 17-18. “[T]he word ‘comprising’ is not a weasel word with which to abrogate claim limitations.” *See, e.g., Wis. Alumni Rsch. Found. v.*

Apple Inc., 905 F.3d 1341, 1348 n.8 (Fed. Cir. 2018) (“WARF then contends that infringement still exists because the preamble of the claims uses the word ‘comprising,’ which allows for additional, unrecited elements . . . But ‘[c]omprising’ is not a weasel word with which to abrogate claim limitations,’ . . . and WARF’s application of that term here would frustrate the plain meaning of ‘particular’ as used in this patent.”) (quoting *Spectrum Int’l, Inc. v. Sterilite Corp.*, 164 F.3d 1372, 1380 (Fed. Cir. 1998)). Both experts agree the organic layer sequence is the OLED and the accused products’ OLED emits a [REDACTED] wavelength spectrum. Pictiva cannot rely on “comprising” in the claim to negate this requirement. Because the color filter is transparent only to the blue wavelength range—not the [REDACTED] range emitted by the organic layer sequence—the accused products do not infringe. Tr. 395:9-396:4; 927:21-928:21.

No substantial evidence supports a finding the accused products meet this limitation, and no reasonable jury could find infringement of claim 2.

B. Invalidity Of The ’547 Patent

Pictiva does not dispute it failed to rebut Dr. Katona’s testimony that the asserted claims are invalid under 35 U.S.C. §§ 102 and 103. Dr. Katona testified the claims are anticipated or rendered obvious by Igarashi alone, or in combination with Kido. JX-49; JX-59; Tr. 930:19-932:18. Pictiva’s opposition relies solely on attorney argument. The jury could draw only one reasonable conclusion: the asserted claims are invalid by clear and convincing evidence.

First, Pictiva’s assertion that it was not required to rebut Samsung’s evidence of invalidity at trial is wrong. *See, e.g., Imperium*, 757 F. App’x. at 979–80. *McGinley* is inapposite. There, the plaintiff presented rebuttal evidence through its expert and multiple fact witnesses, including the prosecuting attorney, on why the claims were not invalid. 262 F.3d 1339, 1352-53 (Fed. Cir. 2001). Here, by contrast, Pictiva presented **no** rebuttal evidence on validity.

Second, Pictiva’s “mere speculation or attorney argument” that Igarashi discloses an

example of emitting light in a wavelength spectrum broader than blue is not evidence and “do[es] not provide substantial evidence supporting [the] jury’s verdict.” *Motorola*, 870 F.3d at 1331; *see also Bombardier Recreational Prods. Inc. v. Arctic Cat Inc.*, 785 F. App’x 858, 868 (Fed. Cir. 2019) (“beyond our role to reweigh the evidence or consider what the record *might* have supported” as “review is limited to whether implied fact findings made by the jury are supported by substantial evidence in the record, and if so, whether those fact findings support the legal conclusion”).

Third, Pictiva’s reliance on the PTAB’s denial of IPR institution is irrelevant. Opp. at 19-20. The evidence, testimony, or argument from the IPR was not in evidence (and excluded by Court Mil No. 6), and thus cannot support the jury’s verdict. *Arctic Cat*, 785 F. App’x at 868.

Fourth, Pictiva incorrectly asserts that Dr. Katona failed to show motivation to combine Kido with Igarashi. Opp. at 20-21. Dr. Katona’s un rebutted testimony explained precisely why these references render the asserted claims obvious. Tr. 932:6-18; JX-49; *MobileMedia*, 780 F.3d at 1172–73 (reversing denial of a JMOL of invalidity for obviousness as expert testimony showed missing limitation was within the common knowledge of POSITA).

III. JMOL #3: NO WILLFULNESS

Pictiva’s argument that post-suit conduct rose to the level of “intentional infringement,” rests on one fact: Samsung sold the accused products after being sued. But a party exercising care “may continue to manufacture . . . without risk of being found on that basis alone a willful infringer,” (*Gustafson*, 897 F.2d at 511), law Pictiva does not distinguish. Pictiva’s argument that Samsung’s “failed noninfringement and invalidity” defenses cannot overcome the jury’s finding of willfulness, (Opp. at 27), misses the mark. Continued manufacture coupled with good-faith defenses—even if unsuccessful—does not establish willfulness. *Gustafson*, 897 F.2d at 511

First, Pictiva’s references to pre-suit conduct (Opp. at 23) are irrelevant because the Court granted summary judgment on pre-suit willfulness. **Second**, the indemnification agreement cannot

support willfulness under the caselaw Pictiva cites because wrongdoing is inferred only “when the primary purpose is to overcome the deterrent effects that the patent laws would have on would-be infringers,” (*C&C Jewelry*, 2011 WL 2433817, *1), and Pictiva presented no such evidence. Pictiva’s other cases are inapposite. *See* Opp. at 25 (citing *Jurgens* (concerning advice of counsel); *Mass Engineered* (D. Or.) (denying summary judgment pretrial); *Tinnus* (enhancing damages based on deliberate copying not indemnification); *I-Flow* and *WesternGeco* (mere admissibility rulings)). **Third**, the jury never heard evidence that NIAs were “easy” to implement. Opp. at 24. Instead, Dr. Katona testified about the low value of the patents (0.1-0.2%). **Finally**, Pictiva presented no evidence of copying or specific intent that would satisfy *Gustafson*’s “knowingly acted in disregard” standard. Pictiva’s assertion that Samsung’s diagrams are identical to the ’547 patent, (Opp. at 27), is unsupported attorney argument and is at most “evidence of infringement” which is legally insufficient to establish willfulness. *Bayer Healthcare*, 989 F.3d at 988.

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

A. Pictiva’s Failure To Present Adequate Apportionment Evidence At Trial Is A JMOL Issue, Not Just A *Daubert* Issue

Pictiva’s attempt to dismiss Samsung’s arguments as mere repetitions of Samsung’s *Daubert* attacks is a strawman and baseless. Opp. at 30. Unlike the cases on which Pictiva relies, Samsung’s Motion does not seek JMOL on grounds that Dr. Schanze’s and Mr. Kennedy’s opinions should have been excluded.¹ *Id.* at 30-31 (citing *Versata Software, Inc. v. SAP Am., Inc.*; *Rembrandt Wireless Techs., LP v. Samsung Elecs. Co., Ltd., et al.*; *Optis Wireless Tech., LLC v. Apple Inc.*; *Netlist v. Samsung*; and *KAIST IP US LLC v. Samsung Elecs. Co.*). Rather, Samsung properly seeks JMOL on damages because the evidence Pictiva presented through Dr. Schanze

¹ Samsung maintains for purposes of appeal that opinions of Pictiva’s experts should have been excluded as stated in its *Daubert* motions and objections. Objections to Magistrate Judge’s Report and Recommendations, Dkts. 565 (Kennedy), 589 (Schanze), 590 (Humphrey), 591 (Marais).

and Mr. Kennedy at trial failed to provide the jury with a legally sufficient basis to determine an appropriate royalty, in particular a sufficient basis for apportioning damages to the footprints of the '547 and '425 patents. *See Rex Med., L.P. v. Intuitive Surgical, Inc.*, 156 F.4th 1289, 1300-01 (Fed. Cir. 2025) (granting JMOL of no damages where no “record evidence that would allow reasonable apportionment” of damages); *Enplas Display Device Corp. v. Seoul Semiconductor Co.*, 909 F.3d 398, 411 & n.2 (Fed. Cir. 2018) (granting JMOL, finding jury award not supported by substantial evidence because damages expert testimony calculated damages on non-infringing sales, and distinguishing *Versata*, which addressed the admissibility of expert testimony).

B. Pictiva Failed To Present Sufficient Technical Benefit Evidence To Support Mr. Kennedy's Damages

Pictiva's opposition (Opp. at 31-38) ignores Samsung's arguments and the record regarding Dr. Schanze's testimony on the technical benefits of the '547 and '425 patents.

First, with respect to the '547 patent, Dr. Schanze's method of using non-infringing alternatives to determine technical benefits did not absolve him of the duty to isolate only “the incremental value that the ['547 patent] *adds*” to the accused QD-OLED displays. *See Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1226 (Fed. Cir. 2014) (identifying this as the “essential requirement” of apportionment). Dr. Schanze failed to do so here. Dr. Schanze attempted to determine the alleged technical benefits of the '547 patent by analyzing the difference in color gamut between WOLED and the accused QD-OLED displays. Mot. at 33-35; Opp. at 31-32. Even assuming the '547 patent improves color gamut,² however, Pictiva does not dispute that Samsung's accused QD-OLED displays contain other technologies—not found in WOLED displays or covered by the '547 patent—that improve their color gamut that Dr. Schanze never accounted for

² As explained in Samsung's Motion, the '547 patent does not even mention color gamut, let alone that its claimed invention was intended to improve color gamut. Mot. at 34-35.

in his technical benefit analysis, such as Samsung's [REDACTED] and use of Quantum Dots. Mot. at 33-35.³ That Dr. Schanze testified "WOLEDs do not use color conversion" and that the '547 patent is necessary to use QD-OLED technology (Opp. at 31-34) misses the crux of Samsung's arguments and is not a replacement for apportionment. *See LaserDynamics, Inc. v. Quanta Computer, Inc.*, 694 F.3d 51, 68 (Fed. Cir. 2012) (noting testimony a product "would be commercially unviable" absent the patented technology does not remove need to apportion). As there is no evidence in the record the jury could have used to apportion Dr. Schanze's technical benefit figure for the '547 patent, or damages based thereon, JMOL is appropriate. *See Rex Med.*, 156 F.4th at 1300-01.

Pictiva's arguments with respect to the '425 patent fare no better. Opp. at 34-38. Contrary to Pictiva's assertion (Opp. at 35), Dr. Schanze explicitly said, as an introduction to his use of the [REDACTED], that the NIA he was evaluating was "[n]ot to use [REDACTED] in the electron transport layer." Tr. 333:23-334:21. And Pictiva does not dispute that both of the compounds tested in [REDACTED] contained [REDACTED]. Mot. at 4-14, 35-38. Although Pictiva now claims that the presence of [REDACTED] in both compounds tested was not an issue because [REDACTED] was not acting as an n-dopant in the second, "blended" compound (Opp. at 34-35), there is no basis for this interpretation of [REDACTED] in the record as Dr. Schanze only relied on [REDACTED] to quantify the alleged negative impact of removing [REDACTED]. Tr. 333:15-334:15. Additionally, Pictiva presented no evidence that the [REDACTED] or [REDACTED] compounds from [REDACTED] are taught by the '425 patent so there is no evidence to support a claim that the benefits in the [REDACTED] paper are attributable to the '425 patent. Further, Pictiva's claim

³ That Samsung purportedly did not object to or cross-examine Dr. Schanze regarding his technical benefit opinions (Opp. at 33) is of no consequence. It was Pictiva's burden to provide sufficient apportionment evidence for damages. And, in any event, Samsung identified the critical deficiencies in Dr. Schanze's testimony through its own experts. Mot. at 33-41.

that Dr. Schanze's testimony regarding ■ was "unrebutted" (Opp. at 34-35), is not true. Samsung identified extensive evidence and testimony explaining why ■ was fundamentally incapable of supporting the technical benefit opinion offered by Dr. Schanze. Mot. at 4-14, 35-40.

Pictiva's claim that Mr. Kennedy had no need to consider SDC's innovations because the technical benefit figure from Dr. Schanze was fully apportioned (Opp. at 42-44) is unavailing for the same reasons. As Mr. Kennedy failed to consider these differences between QD-OLED and WOLED in determining a royalty, or between using ■ and not using ■, neither of which comparison isolates the inventions' footprint, there is no basis to find his damages figures properly apportioned to the footprint of the '547 or '425 patents, and JMOL is appropriate. Mot. at 44.

C. Mr. Kennedy's Use Of Dr. Marais' Survey Results Did Not Yield Apportioned Damages Numbers

Pictiva's opposition also fails to show that Mr. Kennedy's use of and testimony regarding Dr. Marais' surveys and Dr. Schanze's opinions provided a legally sufficient basis to determine properly apportioned damages for the '547 and '425 patents. Although Pictiva contends that Dr. Marais' surveys used numbers "within the range of apportioned possibilities provided by Dr. Schanze," Pictiva ultimately concedes that Dr. Marais' survey results did not reflect technically apportioned values.⁴ Opp. at 38, 40-41. Pictiva thus also concedes that whether Mr. Kennedy's damages numbers are properly apportioned comes down to whether there is adequate evidence supporting the apportionment steps he applied to match Dr. Marais' survey results to Dr. Schanze's technical benefit opinions. *Id.* at 39 ("**Mr. Kennedy** (not Dr. Marais) conducted the apportionment steps using the technical inputs from Dr. Schanze and the results of the survey.>").

None of Pictiva's arguments in its opposition show that there was sufficient evidence in

⁴ Pictiva presents new 3.6-5.8% and 7.2-11.6% numbers to create the purported "range" of apportioned values, but these numbers are notably absent from the record. Opp. at 40-41.

the record to find Mr. Kennedy's damages figures properly apportioned. Pictiva contends that Mr. Kennedy's extrapolations and interpolations to match survey results to Dr. Schanze's opinions was proper because he explained his assumption of a linear relationship and "the use of linearity is well-known in the field." Opp. at 41-42. However, Pictiva fails to cite a single place in the record where Mr. Kennedy explained his assumption of a linear relationship or why using linear extrapolation and interpolation was appropriate in the circumstances of this case. *See id.* To the contrary, the only evidence presented to the jury regarding Mr. Kennedy's extrapolations and interpolations was that they were improper and yielded absurd results, specifically because Mr. Kennedy's assumptions underlying his extrapolations and interpolations inherently indicated that 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. Thus, Mr. Kennedy's testimony not only failed to bridge the apportionment gap between Dr. Schanze's technical benefits and Dr. Marais' survey results, it also exacerbated it with unexplained and unsupported assumptions, extrapolations, and interpolations.

The cases Pictiva cites do not support its position that Mr. Kennedy gave the jury a legally sufficient basis to award properly apportioned damages. *Scott Fetzer Co. v. House of Vacuums Inc.*, 381 F.3d 477, 488 (5th Cir. 2004), *Multimedia Techs. Pte. Ltd. v. LG Elecs. Inc.*, 2025 WL 436926, *4 (E.D. Tex. Feb. 7, 2025), and *IPA Techs. Inc. v. Microsoft Corp.*, 2024 WL 1797394, *21-22 (D. Del. Apr. 25, 2024), are inapposite, as those cases dealt with the admissibility of surveys. Samsung's JMOL does not rise and fall with the reliability of Dr. Marais' survey results.⁵ Samsung seeks JMOL on the grounds that Pictiva failed to present sufficient evidence, through

⁵ However, as outlined in its *Daubert* motions and objections, Samsung maintains for purposes of appeal that the opinions of Pictiva's experts should have been excluded. Objections to Magistrate Judge's R&R, Dkts. 565 (Kennedy), 589 (Schanze), 590 (Humphrey), 591 (Marais).

Mr. Kennedy or otherwise, that would support a finding that Mr. Kennedy's damages figures based on those survey results were properly apportioned. *See supra*; Mot. at 42-44. Pictiva's reliance on *Papst Licensing GmbH & Co., KG v. Samsung Elecs. Co., Ltd.*, 403 F. Supp. 3d 571, 606 (E.D. Tex. 2019), is also misplaced. In *Papst*, the question of "extrapolation" related only to whether survey results for one product could be used to determine damages for a different product, and the inferences and assumptions underlying the expert's decision to do so were supported by another expert's testimony. 403 F. Supp. 3d at 606. That is nothing like the use of extrapolation here, where Mr. Kennedy mathematically extrapolated to project different *technical benefit results* from Dr. Marais' surveys. Further, Pictiva presented no evidence or expert testimony supporting the assumptions and inferences underlying Mr. Kennedy's methodology.

D. Samsung Is Entitled To JMOL Of No Damages Or Remittitur

Pictiva contends that Dr. Perryman's \$1.7 million figure is not the "highest amount the jury could have awarded" because there was other evidence in the record that supported a higher amount. Opp. at 44. Specifically, Pictiva contends that "OSRAM's valuation of the asserted patents," "Pictiva's projections of revenue from licensing the patents," and "Dr. Perryman's testimony regarding the LG Display license" would have supported higher damages. *Id.* at 44-45.

Each of these assertions is baseless. Pictiva repeatedly attacked OSRAM's valuations and Pictiva's projections as a basis for determining damages, even going so far as to demand and receive an instruction that the jury "should not consider them when determining the issue of damages." Tr. 251:7-24; 431:14-432:1. And the LG Display license was what Dr. Perryman used to determine his figure of \$1.7 million; Pictiva has not, and indeed could not, find any other testimony from Dr. Perryman that would support a different outcome based on the LG Display license. Further, even if the jury could have considered such evidence in awarding damages, all of this evidence related to transactions involving over 1,400 patents, and Pictiva has identified

nothing in the record that would have allowed the jury to apportion the relevant figures to isolate the value of the '547 and '425 patents. Opp. at 44-45. The only evidence in the record doing so was Dr. Perryman's analysis of the LG Display license, which yielded a lump sum royalty of \$1.7 million. See Tr. 1160:13-1167:9. Thus, that is the only viable alternative for remittitur should the Court not grant JMOL as Samsung has requested.

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

Pictiva fails to identify sufficient evidence on which any jury could have reasonably found Pictiva met its burden under § 287. See Opp. at 45-51. And its assumption the jury found it was "not subject" to marking, (*id.* at 45), is unsupported by the verdict form, which contained no such finding, and the complexity of the statute. A judgment of no pre-suit damages should be granted.

A. Pictiva Bore The Burden Of Proof

Pictiva's claim Samsung did not meet its initial burden under *Arctic Cat* (Opp. at 46-47) fails because, as Pictiva admits, it contravenes the Court's summary judgment order that Samsung *did* meet its burden, and that, as a result, "***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 (emphasis added); Dkt. 553 (Order).

Pictiva also misconstrues the judicial estoppel standard and Samsung's positions in asserting, baselessly, that Samsung should be precluded from JMOL because its Motion is "inconsistent" with its "trial stance." Opp. at 46. Pictiva relies on *Minn. Mining & Mfg. Co. v. Chemque, Inc.*, which states "[t]he purpose of the doctrine is to protect the integrity of the judicial process, by preventing parties from playing fast and loose with the courts to suit the exigencies of self interest." Opp. at 46 (*citing id.*, 303 F.3d 1294, 1303 (Fed. Cir. 2002)). Samsung has not done so. To the contrary, Samsung has always asserted to the Court that Pictiva's claims for damages are limited by § 287, including because it cannot prove LGD did not practice the patents-in-suit.

See Dkt. 12 (Answer) at 11; Dkt. 289 (MSJ); Tr. 1244-46 (JMOL); Dkt. 617 (Mot.) at 45-58.

In fact, Pictiva is the party trying to benefit from flip-flopping positions. Pictiva sought to prove willful infringement at trial by asserting both LGD and Samsung practiced its patents, but only Samsung was the bad actor: “the contrast and behavior between Samsung and LG Display is striking. Both were presented with claim charts; both were given an explanation of the importance of the technology at issue in this case. One chose to comply with the law and another chose not to.” Tr. 167:21-168:8. Pictiva made this argument *three times* during opening. See *id.* 165:3-6, 167:8-15. It was Samsung’s right to respond in opening that Pictiva would not present such evidence, knowing Pictiva could not carry its burden on pre-suit damages if it did. And at closing, Samsung stated only that there was no evidence OSRAM used the patents-in-suit, (*id.* at 1362:22-1363:5), and pointed out Pictiva’s inconsistency in “talking about LG and OSRAM as if these five patents were used by them” when “they have to prove that LG and OSRAM do not practice these five patents” or “[o]therwise, they couldn’t seek past damages,” *id.* at 1362:11-21.

Pictiva admits its corporate representative testified that LGD’s OLED displays *do* practice Pictiva’s patents. Opp. at 47. Presumably, Pictiva decided to pursue its willful infringement theme, even if it risked pre-suit damages. Whatever the reason, Pictiva cannot undo the evidentiary record it made, and judicial estoppel does not protect Pictiva from the consequences of its strategy.

B. Pictiva Failed To Meet Its Burden Of Showing LGD’s Products Do Not Practice The ’547 And ’425 Patents

Pictiva does not dispute it was required to present “an infringement opinion regarding the [LGD unmarked product]” including “what claim limitations were purportedly missing from the [LGD] product[s].” *Packet Intel. LLC v. NetScout Sys., Inc.*, 965 F.3d 1299, 1312-14 (Fed. Cir. 2020); Mot. at 49; Opp. at 47. It failed to do so. Opp. at 47-48. Pictiva’s assertion “Dr. Schanze testified that none of LG’s products practice the ’547,” (Opp. at 47), is a fabrication. *Dr. Schanze*

did not testify to that opinion (which was not in his report), and none of Pictiva's citations contain this opinion. *Id.* Nor do Pictiva's citations show he testified "what claim limitations were purportedly missing from the [LGD] products." *See id.* at 47-48. Pictiva's cobbled-together testimony—"LG displays use WOLED technology" and "WOLEDs do not use color conversion," (Opp. at 47-48)—are not "an infringement opinion," and anyway are not sufficient evidence to permit a jury to conclude claim 1 is not met. The term "color conversion" is not a claim element in claim 1 and is not used anywhere in the '547 patent. JX-2 ('547 patent) cl. 1. Instead, claim 1 includes a "wavelength conversion layer" and Dr. Schanze never testified that this limitation, or any other limitation in claim 1, was not met by the LG products. *Id.*

On the '425 patent, Pictiva did not carry its burden because it concedes it presented *no* expert testimony that the LGD products do not infringe the asserted claims. *See* Opp. at 48; *Packet Intel.*, 965 F.3d at 1314. And a jury could not reasonably conclude, as Pictiva asserts, that LGD products did not practice the asserted claim just because Pictiva did not present a claim chart to LGD for the '425 patent, which had not issued yet. Opp. at 48. Anyway, this question is irrelevant because no such testimony exists—Pictiva's cited testimony states Pictiva did not send a '425 claim chart to *Samsung*. Tr. 230:23-234:1 ("Let's dig into the negotiation with Samsung.").

C. Pictiva Did Not Show It Provided Notice

Pictiva concedes there was no constructive notice because LGD's products were not marked with the patent numbers. *See* Mot. at 50; Opp. at 48-50.

Pictiva also fails to show its proved actual notice. Pictiva admits that prior to filing, it never charged Samsung with infringing either the '425 or '547 patent. Opp. at 48-50. Pictiva's assertion it "easily satisfies" this standard by sending letters to Samsung accusing it of infringing *unrelated* patents, Opp. at 49 (*citing Lubby*, 11 F.4th at 1360-61), lacks any support. It is impossible to make a "specific charge of infringement" without identifying the patent. *See SRI*

Int'l, Inc. v. Advanced Tech. Lab'ys, Inc., 127 F.3d 1462, 1470 (Fed. Cir. 1997) (“[T]he actual notice requirement of § 287(a) is satisfied when the recipient is informed of the identity of the patent and the activity that is believed to be an infringement”); *see also Realtime Data LLC v. EchoStar Corp.*, 2018 WL 11364376, *2 (E.D. Tex. Oct. 16, 2018) (“Actual notice requires a communication alleging a specific charge of infringement of specific patents”).

Pictiva also contends its letter to Samsung asserting infringement of the parent of the '425 patent constitutes a “specific charge of infringement,” but the caselaw it relies on is inapposite. *See Opp.* at 50. In *Arthrex, Inc. v. Smith & Nephew, Inc.*, the court denied summary judgment finding a triable issue of fact. The court stated “the scope of a patentee’s actual notice *may* expand based on *subsequent events—at least when the parties are entangled in an ongoing and complex patent dispute.*” 2016 WL 11750176, *2 (E.D. Tex. Nov. 29, 2016) (emphases added). Unlike in *Arthrex*, the issue here is what the trial record *is*, and there is no evidence of “subsequent events” or an “ongoing and complex patent dispute” sufficient to show notice. In *Arthrex*, the plaintiff contended a “Standstill Agreement could have put Defendants on notice of future infringement of the [continuation patent-in-suit] *because the Agreement grants the parties rights and obligations with respect to later-arising continuation patents.*” *Id.* at *2 (emphasis added). The Court agreed, finding such rights came into being when the patent-in-suit issued, and therefore a juror could conclude “the scope of notice provided by the Standstill Agreement expanded to include notice of infringement of the [patent-in-suit] after [it] issued.” *Id.* at *3. Here, there is no agreement with “rights and obligations” that could “expand[] to include notice of infringement” of the '425. The evidence Pictiva relies on, PX-6, is a notice letter regarding other patents. PX-1, an email, does not mention the '425 or its parent patent. Nor did Pictiva identify any “ongoing” communications with Samsung that expanded notice to the '425 patent—it is undisputed Pictiva’s only

communication with Samsung prior to filing was PX-6. Tr. 236:6-17. *Netlist, Inc. v. Micron Tech., Inc.* is also inapposite because there the letter “provide[d] notice regarding continuation patents.” 2024 WL 402182, *4 (E.D. Tex. Jan. 11, 2024). The statement in PX-6 that Pictiva “owns and controls over 1400 patents and applications” did not *identify* the ’425 continuation patent in any way and therefore did not provide notice. *See SRI*, 127 F.3d at 1470 (actual notice requires recipient is informed of “identity of the patent”).

Finally, the Court’s denial of summary judgment did not rule on the trial record and therefore does not determine the proper finding on JMOL as Pictiva claims. *See Opp.* at 50-51.

D. Samsung Is Entitled To A Reduction In Damages

Pictiva’s assertion that if JMOL is granted, “the jury’s award could still be supported by anticipated future infringement,” (*Opp.* at 51), fails because Pictiva identifies *no* evidence of “anticipated future infringement” and there is none. Pictiva identified no evidence Samsung will use the same manufacturing methods after trial or any estimate of future infringing sales. Moreover, it is undisputed the awards for the ’547 and ’425 patents are identical to the amounts Pictiva sought, which were *only* for sales through the start of trial. *Mot.* at 54-57.

Additionally, Samsung’s argument is not, as Pictiva misstates it, “that this Court must award whatever damages Samsung requests.” *Opp.* at 51-52. Samsung’s argument is that damages should be reduced to Dr. Perryman’s \$1.7 million amount because that is the only amount in the record the jury could have reasonably concluded excluded pre-suit sales. *Mot.* at 57-58. Pictiva admits remittitur is “to a maximum amount that can be sustained by the existing record” (*Opp.* at 52) and conceded during arguments at trial that if a marking defense applied, Dr. Perryman’s testimony was the only evidence in the record the jury could rely on for that, *Mot.* at 58. Pictiva’s assertion, now, that remittitur can be made to an award that it admits includes “4 months of pre-suit damages” (*Opp.* at 52) contravenes the plain language of § 287, *see Lubby*, 11 F.4th at 1359.

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Respectfully submitted,

/s/ Lance Yang

Melissa R. Smith
Texas State Bar No. 24001351
melissa@gillamsmithlaw.com
GILLAM & SMITH, LLP
303 South Washington Avenue
Marshall, Texas 75670
Phone: (903) 934-8450
Fax: (903) 934-9257

D. James Pak (admitted *pro hac vice*)
Lance Yang (admitted in E.D. Tex.)
Patrick Schmidt (admitted *pro hac vice*)
djamespak@quinnemanuel.com
lanceyang@quinnemanuel.com
patrickschmidt@quinnemanuel.com
**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
Tel: 213-443-3000
Fax: 213-443-3100

Sean S. Pak (admitted *pro hac vice*)
Melissa J. Baily (admitted in E.D. Tex.)
seanpak@quinnemanuel.com
melissabaily@quinnemanuel.com
**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**
50 California Street, 22nd Floor
San Francisco, California 94111
Tel: 415-875-6600
Fax: 415-875-6700

John Bash
Texas State Bar No. 24067504
johnbash@quinnemanuel.com
**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**
300 West 6th Street, Suite 2010
Austin, Texas 78701-3901
Phone: (737) 667-6100
Fax: (737) 667-6110

***Attorneys for Defendants Samsung Electronics
Co., Ltd. and Samsung Electronics America, Inc.***

[REDACTED]

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that, on January 21, 2026, 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: January 21, 2026

/s/ Melissa R. Smith
Melissa R. Smith

[REDACTED]

[REDACTED]

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