

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

WHIRLPOOL CORPORATION,

Plaintiff,

v.

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

Defendants.

Civil Action No. 2:25-cv-01042-JRG-RSP

JURY TRIAL DEMANDED

**PLAINTIFF'S POST-HEARING BRIEF IN SUPPORT OF
MOTION FOR A PRELIMINARY INJUNCTION**

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INTRODUCTION

This is the sort of case that warrants the remedy of a preliminary injunction. Whirlpool released a category-redefining dishwasher feature—its premium third rack—that Samsung realized was dominating its own dishwashers in key consumer metrics. So, to keep up, Samsung simply copied Whirlpool’s patented technology and released its own competing dishwasher product. Whirlpool’s three presumptively-valid patents easily read on Samsung’s accused products. Absent an injunction at this stage, Samsung will be able to impose competitive harm for the next year or more while Whirlpool awaits trial. Accordingly, Whirlpool respectfully requests that this Court protect its competitive position now and impose preliminary injunctive relief.

LEGAL STANDARD

“A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

DISCUSSION

I. Samsung’s Infringement Will Irreparably Harm Whirlpool Absent a Preliminary Injunction.

The element of irreparable harm is satisfied if Whirlpool shows (1) “that absent an injunction, it will suffer irreparable harm,” and (2) “that a sufficiently strong causal nexus relates the alleged harm to the alleged infringement.” *Apple Inc. v. Samsung Elecs. Co.*, 695 F.3d 1370, 1374 (Fed. Cir. 2012) (“*Apple II*”). Where, as here, “two companies are in competition against one another, the patentee suffers the harm—often irreparable—of being forced to compete against products that incorporate and infringe its own patented inventions.” *Douglas Dynamics, LLC v. Buyers Products Co.*, 717 F.3d 1336, 1345 (Fed. Cir. 2013). As to causal nexus, Whirlpool need

not show that Samsung’s “infringing features were *the* reason why consumers purchased the accused products.” *Apple v. Samsung*, 809 F.3d 633, 644 (Fed. Cir. 2015) (“*Apple IV*”). “[I]t is enough” that “these features were related to infringement and were important to customers when they were examining their [] choices.” *Id.*

A. Whirlpool Will Suffer Numerous Categories of Irreparable Harm.

Whirlpool has established that it will suffer irreparable harm absent an injunction, including loss of brand equity and product leadership, diminished consumer demand, suppressed market share, and price erosion. Each of these are the sort of “hard-to-measure harms . . . that can justify injunctions to prevent them before they occur.” *Tex. Advanced Optoelectronic Sols., Inc. v. Renesas Elecs. Am., Inc.*, 895 F.3d 1304, 1331 (Fed. Cir. 2018).

1. Brand Equity and Product Leadership

Whirlpool has already begun to suffer harm to its brand equity and product leadership due to Samsung’s infringement. “[E]rosion in reputation and brand distinction” constitute types of irreparable injury. *Douglas*, 717 F.3d at 1344; *i4i Ltd. P’ship v. Microsoft Corp.*, 598 F.3d 831, 861 (Fed. Cir. 2010), *aff’d*, 564 U.S. 91 (2011) (harm to “brand recognition” relevant to irreparable harm inquiry).

The premium third rack is and has been Whirlpool’s “hero” feature. Before its introduction in February 2020, most third racks on the market were shallow, could accommodate only utensils to be placed horizontally, and/or lacked dedicated sprayers. The significant innovation behind Whirlpool’s premium third rack changed that. The premium third rack is deep and accommodates full-sized glasses in addition to utensils. Tr. 45:17–21. The rack also has its own dedicated wash tubes to ensure that the cups and glasses being loaded in it are thoroughly cleaned. Tr. 45:24–46:2. Whirlpool also increased the capacity of the overall dishwasher (a technique not claimed in the patents), so that the addition of the third rack would not come at the expense of the loading capacity

of the bottom two racks. Tr. 62:14-21; *see also* Dkt. 4-7.

The importance of this premium third rack to Whirlpool cannot be overstated. Whirlpool owns multiple dishwasher brands, including an eponymous brand, KitchenAid, Maytag, Amana, and JennAir. Tr. 42:17–19. Rather than introducing this rack across all its brands, Whirlpool strategically reserved it for KitchenAid.¹ As Michelle Villarroel, Whirlpool’s dishwasher unit head from 2024 through 2025, testified: “We wanted to build the equity of KitchenAid as the best dishwasher in the market all around this rack as its hero feature. We wanted this third rack to be a unique and differentiating feature for KitchenAid that is not in any of our other brands.” Tr. 46:11–15. Whirlpool’s internal documents from the time of the launch confirm this strategy. The premium third rack was central to KitchenAid’s “brand story,” “reason to believe,” “hero message,” and “launch goal.” Ex. 4 at -2113; Dkt. 59-2 at 4. The documents memorialize Whirlpool’s ambition of using the third rack, internally referenced as part of the DW03G architecture, to establish product leadership: “DW03G is a strategy; a superior architecture delivering product leadership for years to come.” Ex. 3 at -1960; Dkt. 59-2 at 11; Tr. 51:2–52:17.

Given Whirlpool’s significant investment in developing the premium third rack, it spotlighted the feature in its marketing for several years after the launch. This practice is not unusual in the kitchen-appliances market. Unlike other consumer goods, dishwashers are purchased “every 10, 15 years,” when an existing “dishwasher is about to die or occasionally when you purchase a new house.” Tr. 47:24–48:3. With this longer product lifecycle and because new innovations may not catch the eye of consumers until they are in the relatively rare buying cycle for a dishwasher, Whirlpool markets significant innovations for longer periods of time. Tr. 48:4–

¹ Specifically, Whirlpool included the third rack in its 4, 6, 7 and 8 dishwasher series, which include SKU names whose numbers begin with 4, 6, 7, or 8. *See* Ex. 5 (Interrogatory Responses).

10, 51:25–52:5.

After the premium third rack’s February 2020 launch, consumers and the industry gradually started to take notice. Consumer studies confirmed that preference for KitchenAid’s premium third rack outpaced that of its nearest competitor by four times. Ex. 3 at –1960; Dkt. 59-2 at 11. By 2025, KitchenAid started topping best-of lists, like that of Reviewed.com, which specifically called out its dishwasher’s “well-designed top rack.” Ex. 2 at –824; Dkt. 59-2 at 6–7. Of course, such “industry praise” and “commercial success enjoyed by devices practicing the patented invention” also serve as objective indicia of non-obviousness. *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 839 F.3d 1034, 1052 (Fed. Cir. 2016) (“*Apple V*”).

It was around this critical moment that Samsung released its copycat, the DW90F with an “upgraded 3rd rack washing system.”² Samsung showcases the copied third rack as a highlight of its new dishwasher line. The DW90F’s product display page calls attention to the copied third rack’s “dedicated area for drinkware and cutlery” and “dedicated wash jets for drinkware.” Dkt. 59-2 at 8. Samsung’s release of infringing products into the marketplace kneecaps Whirlpool’s ability to build its “equity and product leadership [] around having the industry’s only dynamic wash third rack.” Tr. 52:14–17. With Samsung’s copy on the market, Whirlpool’s premium third rack is no longer unique. Tr. 53:8–16. And this harm to KitchenAid’s brand is difficult to quantify. “Equity is something that we can’t measure in monetary value, because one, this is consumer perception; and second, this carries over time.” Tr. 53:21–23. Indeed, consumer perception of KitchenAid as an innovator and as the sole brand that offers the premium third rack does not readily translate to dollars and cents. It is accrued over time, especially in the dishwasher industry with a lengthy product lifecycle. Once lost, “it’s also very hard to build it back up.” Tr. 53:25. This

² Whirlpool referenced the accused product at the hearing as the “DW90.” Samsung referred to it as the “90F.” To avoid confusion, this brief uses the combined term, “DW90F.”

type of reputational injury constitutes irreparable harm. *Celsis In Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 931 (Fed. Cir. 2012) (“During the growth stage of a product, it is particularly crucial to be able to distinguish oneself from competitors. This includes building the brand, expanding the customer base, and establishing one’s reputation and leadership in the market.”).

2. Erosion of Consumer Demand

Whirlpool will also suffer from the erosion of consumer demand for the premium third rack feature more broadly. To ensure that the third rack did not detract from the overall capacity and cleaning of the dishwasher, Whirlpool also created “more than two and half inches of space within the dishwasher to be able to accommodate that rack.” Tr. 62:14–21; Dkt. 59-2 at 23; Ex. 1 at -2254. Samsung’s copying of the premium third rack without implementing the accompanying changes to the overall dishwasher will likely result in negative consumer experience with the third rack of the DW90F, which in turn harms Whirlpool because the premium third rack is its “primary strategy around building our KitchenAid brand equity.” Tr. 62:5–10. Put differently, a consumer who views DW90F’s third rack negatively may wrongly attribute that sentiment with other third racks that accommodate drinkware, including that of KitchenAid. The DW90F also deteriorates consumer sentiment for the hero feature for the KitchenAid brand. Courts have found irreparable harm based on this type of “damage to reputation” and “loss of goodwill.” *Celsis In Vitro*, 664 F.3d at 930; *see also Sanofi-Synthelabo v. Apotex, Inc.*, 470 F.3d 1368, 1383 (Fed. Cir. 2006).

At the hearing, Whirlpool presented negative customer reviews of the DW90F that focused on its “[p]oor [r]ack [m]anagement,” “[t]errible [d]esign and [c]apacity,” and “[p]oor [i]nterior [d]esign.” *See* Dkt. 59-2 at 24–26; Ex. 35 at -2508, 2514, 2522. Samsung dismissed these comments as cherry-picked “negative reviews.” Tr. 111:9–12. Samsung misses the point, which is not the mere existence of negative reviews, but rather that the reviews tend to focus on Samsung’s botched integration of the premium third rack feature into the overall dishwasher.

3. Long-Term Market Share

Without an injunction, Whirlpool will suffer irreparable harm through share loss or suppressed share growth. Such harm to market share is a well-established ground on which courts have granted preliminary injunctions. *See, e.g., Abbott Lab'ys v. Sandoz, Inc.*, 544 F.3d 1341, 1362 (Fed. Cir. 2008) (affirming grant of PI based on “market share and revenue loss”). Indeed, “[c]ompetitors change the marketplace. Years after infringement has begun, it may be impossible to restore a patentee’s [] exclusive position by an award of damages and a permanent injunction.” *Polymer Techs., Inc. v. Bridwell*, 103 F.3d 970, 975–76 (Fed. Cir. 1996).

Whirlpool’s corporate representative, Ms. Villarroel, confirmed the difficulty in isolating the impact of Samsung’s DW90F on KitchenAid’s market share when other contemporaneous events also impacted share. Around the same time that Samsung introduced the DW90F, for example, KitchenAid relaunched all of its appliances with a new aesthetic. Tr. 55:21–56:18; Dkt. 59-2 at 15. Whirlpool “had really high expectations for sales and share growth.” Tr. 56:8–9. While it “did see some of that depending on the data that you pulled,” the projected growth was offset by Samsung’s DW90F launch. Tr. 56:8–11, 83:1–12. Put differently, but for the launch of the DW90F, KitchenAid would have enjoyed even greater share growth.

Given the inherent difficulty in isolating the market effects of various contemporaneous variables that are normal realities of the market, a movant is not required to show a decline in market share to win a preliminary injunction. *Douglas*, 717 F.3d 1336, is instructive. There, the Federal Circuit instructed a district court to enter an injunction even where the movant’s market share “*increased*” about 1% a year after [defendant] introduced its infringing snowplows.” *Id.* at 1344-46 (emphasis added). In so holding, the *Douglas* court acknowledged that the increase was “immaterial” given that infringement-caused share loss would be offset by the “significant amounts of time and money” that the movant “dedicates . . . towards marketing and sales,

engineering, and research and development.” *Id.* at 1344. “[M]ore relevant is the rise in [defendant’s] market share from zero to about 5% in three years while infringing [movant’s] patents. This record evidence underscores the profitability of infringement and suggests that mere damages will not compensate for a competitor’s increasing [market share].” *Id.* at 1345.

So too here. Samsung’s own data show that its market [REDACTED] [REDACTED]. In 2025 alone, [REDACTED] [REDACTED].³ Ex. 37; Whirlpool Opening Slides (Dkt. 54), at 31; Samsung Opening Slides (Dkt. 56), at 3. Just as in *Douglas*, this is the relevant factor in the irreparable-harm inquiry. “Simply because a patentee manages to maintain a profit in the face of infringing competition does not automatically rebut a case for irreparable injury.” *Id.* at 1344.

At the hearing, Samsung contended it has not taken market share or flooring⁴ from KitchenAid since the release of the DW90F. *See* Tr. 66:10–14. But this argument is inapposite; the fact that Whirlpool has not yet been able to quantify lost market share or flooring does not mean it hasn’t or won’t happen, particularly in a market that moves as slowly as the appliance market. It is not disputed that dishwashers have a multi-year product lifecycle, that the DW90F has been on the market for only a year, and that not every prospective consumer is shopping for a new dishwasher every year. Without an injunction, Samsung will continue to market its DW90F to consumers shopping for dishwashers in future purchase cycles and try to increase flooring. Whirlpool’s corporate representative, Ms. Villarroel, testified that retailers reset their floors once or twice a year and that every flooring turnover provides an opportunity for brands to battle for

³ At the hearing, Samsung’s corporate representative testified that Samsung’s market share fell [REDACTED]. Tr. 116:1–5 (testifying that “[REDACTED]”). Samsung produced no data showing this loss. In any event, even accounting for Mr. Stumacher’s testimony, [REDACTED]

⁴ Flooring is relevant to market share because a significant portion of dishwasher sales happen in stores, and floored models allow consumers to physically see the product before purchasing.

floor space. Tr. 54:15–55:3. Because retailers make flooring decisions in their own best interest and not those of the brands, they do not allocate certain slots to certain brands. Tr. 55:4–11. If a SKU is unproductive, a retailer will cut it and floor a more productive SKU in its place, regardless of the brand. *Id.* This flooring practice is critical because [REDACTED]

[REDACTED]. KitchenAid would have had the opportunity to secure these spots absent Samsung’s release of the copycat DW90F.

4. Price Erosion

Whirlpool has suffered and will continue to suffer from price erosion. Whirlpool must price the KitchenAid dishwasher to recoup the research and development costs it expended to develop the premium third rack; Samsung does not need to do that. Tr. 59:15–19. Samsung can thus undercut Whirlpool on price for products that superficially appear to have the same feature. Tr. 59:20–60:4.⁵ Samsung has taken full advantage of this ill-gotten advantage: Based on Whirlpool’s pricing analyses, the DW90F is routinely priced lower than comparable KitchenAid models. *Id.*; Ex. 5 at pp.13–14 & App’x 1; Dkt. 59-2 at 20. While KitchenAid is priced lower than Samsung at times, Ms. Villarroel testified that KitchenAid was essentially compelled to drop prices to match Samsung’s aggressive pricing. Samsung forces Whirlpool into a Catch-22: price aggressively to win share or maintain prices but lose share. Tr. 60:15–21; *see Purdue Pharma L.P. v. Boehringer Ingelheim GMBH*, 237 F.3d 1359, 1368 (Fed. Cir. 2001) (affirming PI based on showing of “price erosion and loss of market position.”); *see also Sanofi-Synthelabo*, 470 F.3d at 1382 (recognizing

⁵ Samsung’s suggestion at the hearing that Whirlpool was comparing apples to oranges is meritless. The features of KitchenAid’s top-priced dishwasher line, the “7 series,” most comparatively lines up with those of the DW90F. *See* Whirlpool Ex. 5 at App’x 1 (comparing features of the KitchenAid 7 series with those of the DW90F). As one concrete example, KitchenAid’s lower-priced dishwasher lines do not feature interior LED lighting, which is common to both the 7 series and the DW90F. *Id.*

“price erosion” as valid ground for irreparable harm); *Celsis In Vitro*, 664 F.3d at 930 (crediting testimony that movant “had a general no-discount policy to maintain its premium product pricing that it was forced to break in order to compete with [infringer]”).

B. Evidence of Samsung’s Copying Supports a Finding of Irreparable Harm (in Addition to Showing a Likelihood of Success of the Merits).

Whirlpool’s case for irreparable harm, and for establishing the causal nexus between Samsung’s infringement and Whirlpool’s harm, is bolstered by evidence from [REDACTED].
[REDACTED].
See Apple IV, 809 F.3d at 643 (“Apple’s evidence of copying [by Samsung] established a further link between Apple’s and Samsung’s subjective beliefs and consumers’ perceptions, thereby strengthening a causal nexus and irreparable harm to Apple.”).

After KitchenAid’s rollout of its premium third rack dishwashers, Samsung recognized that [REDACTED]
[REDACTED]. Ex. 27 at -2024–2026; Ex. 32 at -4228–29. Samsung also recognized that [REDACTED]. Ex. 25 at -4917 [REDACTED]
[REDACTED]
[REDACTED].

At least [REDACTED]
[REDACTED]. *Id.* at -4951, 4964; Ex. 27 at -2034. Samsung ultimately landed [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

Samsung’s brazen copying supports not only a finding of irreparable harm but also a finding that Whirlpool’s patents are likely valid. *See Windsurfing Intern. Inc. v. AMF, Inc.*, 782 F.2d 995, 1000 (Fed. Cir. 1986) (“copying the claimed invention, rather than one within the public domain, is indicative of non-obviousness.”); *see infra* Sec. II.B.

C. Whirlpool’s Motion Is Timely.

Whirlpool filed its motion for a preliminary injunction on October 10, 2025—the same day that it filed its Complaint. Samsung’s contention that Whirlpool improperly delayed in seeking a preliminary injunction is meritless for five reasons.

First, Whirlpool could not have sought relief on the ’922 Patent any earlier. Whirlpool amended its Complaint to add the ’922 Patent on February 10, 2026, the same day that the patent issued. *See* Dkt. 38. Of course, Whirlpool could not “maintain any suit for infringing the [patent] before the patent is issued.” *Hendrie v. Sayles*, 98 U.S. 546, 551 (1878).

⁶ This identical photo is found in <https://whirlpoolpro.com/new-kitchenaid-dishwashers-to-provide-more-room-flexibility/> (attached as Ex. A).

Second, as to the '385 and '681 Patents, Whirlpool took the necessary time after discovering Samsung's infringing product in April 2025 to purchase, inspect, and thoroughly analyze that product before filing suit. Samsung essentially seeks to punish Whirlpool for conducting due diligence before initiating a major legal filing between two industry leaders. The six-month period between Whirlpool's discovery of infringement and its initiation of legal action is also reasonable considering the lengthy product lifecycles of the kitchen-appliance industry.

Third, Samsung's arguments are contradictory. It argues both that Whirlpool filed too early before it experienced a measurable decrease in market share and that Whirlpool filed too late because it took six months to do so after discovering the infringement. Both arguments cannot be true. In fact, Whirlpool filed at precisely the appropriate juncture—after it conducted a responsible investigation but before it suffered yet more harm from Samsung's infringement.⁷

Fourth, Samsung's argument that Whirlpool's filing was untimely since it came after the DW90F was substantially flooded misses the point. Flooding is only one (small) piece of the irreparable-harm puzzle. But even if flooding were the sole appropriate criterion by which to measure the appropriate timing of filing, Samsung still could not show that Whirlpool filed too late since Samsung has yet to conclude its in-store rollout of the DW90F. As of December 2025,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. As Mr. Stumacher

observed, "[i]t would always be nice to have more floors." Tr. 164:11.

⁷ Whirlpool learned its lesson the hard way, from its experience with the low-profile microwave-hood combination product, that waiting to enforce its patents until it sees measurable decline in market share results in irreversible injury. *See* Tr. 56:18-58:18; Ex. 5.

Fifth, caselaw supports Whirlpool's timing. Any purported delay in bringing its motion does not preclude injunctive relief in and of itself. *See Hybritech Inc. v. Abbott Labs.*, 849 F.2d 1446, 1457 (Fed. Cir. 1988) (“[A] showing of delay does not preclude, as a matter of law, a determination of irreparable harm.”). Moreover, a six-month “delay” is not per se unreasonable. *See Natera, Inc. v. NeoGenomics Labs., Inc.*, 106 F.4th 1369, 1380 (Fed. Cir. 2024) (affirming preliminary injunction notwithstanding seven-month delay).

The cases cited in Samsung's opposition do not hold otherwise. Opp. (Dkt. 23) at 5. Three are not even patent cases that require the same extensive technical analysis before a preliminary injunction. *See Boire v. Pilot Freight Carriers, Inc.*, 515 F.2d 1185, 1193 (5th Cir. 1975) (labor law case about deference owed to NLRB); *Gonannies, Inc. v. Goupair.Com, Inc.*, 464 F. Supp. 2d 603, 608 (N.D. Tex. 2006) (trademark case where defendants' use of mark predated plaintiff's use); *H.D. Vest, Inc. v. H.D. Vest Mgmt. and Servs., LLC*, 2009 WL 1766095, at *4 (N.D. Tex. June 23, 2009) (trademark case where plaintiff presented “no evidence” of irreparable harm). The sole patent case that Samsung cites is easily distinguished. In *Pruvit Ventures, Inc. v. Forevergreen Int'l LLC*, the defendants, not the plaintiff, sought a preliminary injunction two months after the plaintiff filed the complaint. 2015 WL 9876952, at *8 (E.D. Tex. Dec. 23, 2015), *R&R adopted*, 2016 WL 231160 (E.D. Tex. Jan. 19, 2016). The court found “a lack of urgency” where the defendants did not even “initiate[] the present action” and, even after being sued, waited “two months after” the filing of its complaint. *Id.* Here, by contrast, Whirlpool initiated the action, moved for a preliminary injunction simultaneously with its complaint, and later amended immediately upon issuance of the '922 Patent.

II. Whirlpool Is Likely to Succeed on the Merits of its Patent Infringement Case.

Satisfaction of the “likelihood of success” element requires a movant to show that it will “likely prove infringement of one or more claims of the patents-in-suit, and that at least one of

those same allegedly infringed claims will also likely withstand the validity challenges presented by the accused infringer.” *Pozen Inc. v. Par Pharm., Inc.*, No. 6:08 CV 437, 2011 WL 13196332, at *3 (E.D. Tex. Apr. 14, 2011) (granting injunction); *see also Tinnus Enterprises, LLC v. Telebrands Corp.*, No. 6:16-CV-0033 RWS-JDL, 2016 WL 7587339, at *3 (E.D. Tex. July 12, 2016) (recommending same), *report and recommendation adopted*, No. 6:16-CV-33-RWS-JDL, 2016 WL 9045962 (E.D. Tex. Sept. 29, 2016), *aff’d*, 708 Fed. Appx. 1019 (Fed. Cir. 2018). The threshold for satisfying this element is relatively low: a movant must only demonstrate a likelihood of success on one claim of one patent and is not required to show success on all patents or on all asserted claims within each patent. *See Pozen*, 2011 WL 13196332, at *3. And only presentation of a *prima facie* case is required; a movant need not prove an entitlement to summary judgment. *See Daniels Health Scis., LLC v. Vascular Health Scis., LLC*, 710 F.3d 579, 582, 584–85 (5th Cir. 2013). Once this low factual threshold is crossed, only “substantial questions” about either infringement or validity of all claims of all Asserted Patents will prevent issuance of a preliminary injunction. *Pozen*, 2011 WL 13196332, at *3.

As set forth below, Whirlpool satisfies this standard for injunctive relief. In the interest of space, Whirlpool will confine its arguments in this brief to those merits issues raised by the parties at the pretrial hearing. To the extent Samsung raises additional issues in its post-hearing briefing, Whirlpool refers this Court to the attached expert declarations of Dr. Emad Tanbour.⁸

⁸ In Dr. Tanbour’s first declaration, dated October 10, 2025, he outlined Samsung’s infringement of the ’681 and ’385 Patents. (Tanbour Initial Decl. ¶¶ 42–79). In his second declaration, dated January 16, 2026, Dr. Tanbour rebutted Dr. Kimberly Cameron’s noninfringement and invalidity arguments as to the ’681 and ’385 Patents. (Tanbour Rebuttal Decl. ¶¶ 58–99). In his third declaration, dated February 17, 2026, Dr. Tanbour outlined Samsung’s infringement of the ’922 Patent. (Tanbour 922 Initial Decl. ¶¶ 42–126). Finally, in his March 10, 2026 declaration, Dr. Tanbour addressed Dr. Cameron’s noninfringement and invalidity arguments as to the ’922 Patent. (Tanbour 922 Rebuttal Decl. ¶¶ 57–89). Whirlpool incorporates by reference the arguments in these declarations and has attached a chart indicating the location of the relevant infringement and validity arguments for each Asserted Claim of each Asserted Patent in Dr. Tanbour’s declarations for the Court’s convenience. *See App’x*.

A. Samsung Infringes At Least One Asserted Claim in One Asserted Patent

As outlined in Dr. Tanbour's declarations, there is prima facie evidence showing that Samsung infringes Claims 1-4 and 7-25 of the '922 Patent, Claims 14-15 of the '681 Patent, and Claims 17-21 of the '385 Patent. Samsung does not contest most of this infringement analysis; instead it disputes infringement of only independent Claim 1 of the '922 Patent, independent Claim 14 of the '681 Patent, and independent Claim 17 of the '385 Patent.⁹ Thus, Whirlpool can only fail at satisfying the substantial likelihood element if Samsung raises a substantial question as to infringement on all three of these claims. *See Pozen*, 2011 WL 13196332, at *3. It does not.

1. Claim 1 of the '922 Patent

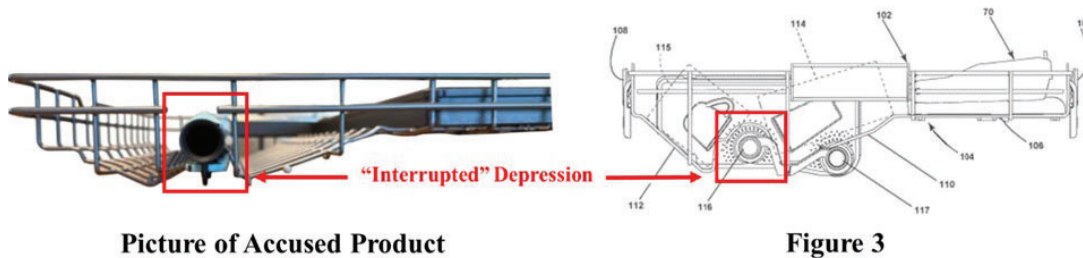
Samsung argues that the DW90F does not infringe Claim 1 for two reasons: (1) the "depression" in the Accused Product is interrupted by a planar portion, creating two depressions, not one,¹⁰ and (2) the Accused Product's utensil holders are not "included" in the planar portion. Tr. 210:2–3. Neither argument raises a substantial question as to Samsung's infringement.

First, there is no doubt that DW90F includes the claimed depression. Claim 1 requires a "depression [that] includes a first angled wall and a second angled wall that each extend at an acute angle relative to the planar portion." Samsung argues that the Accused Product does not meet this limitation because instead of having a single depression, it has two different depressions separated by a "planar portion." But this argument, which is premised on the fact that there is a raised "bump" that serves as the sprayer mount within the depression, must be rejected. Here, both the Accused Product and the embodiment depicted in Figure 3 of the '922 Patent contain a depression that is "interrupted" by the spray tube mounting structure. Samsung's erroneous interpretation of Claim

⁹ While Samsung also challenges dependent Claim 13's requirement for a "diffuser," that claim was not discussed at the hearing. *But see* Tanbour 922 Rebuttal Decl. ¶¶ 84–89 (rebutting Samsung's position).

¹⁰ Whirlpool anticipatorily argued this issue at the hearing, but Samsung itself did not raise it.

1 would improperly exclude Figure 3. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996) (holding that a claim construction that excludes a preferred embodiment “is rarely, if ever, correct and would require highly persuasive evidentiary support”). Samsung has no evidence that the presence of a mounting structure—***shown in the patent itself as an embodiment of Claim 1***—alters the nature of the depression. Tanbour 922 Rebuttal Decl. ¶¶78-80.



Second, contrary to Samsung’s assertion, it is clear that in DW90F “the planar portion *includes* a plurality of utensil holders” as required by Claim 1. Samsung’s contrary argument attempts to read into the word “includes” a claim limitation that does not exist—namely that the utensil holders must be integrated into the wire frame structure of the planar portion such they “form part of the bottom wall,” Tr. 209:18–210:3. But Claim 1 uses the broad phrase “includes,” not narrower phrases such as “integrally formed within.” *See, e.g., SuperGuide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) (recognizing that “it is important not to import into a claim limitations that are not a part of the claim”). Courts in this jurisdiction have routinely rejected “unduly narrow interpretation[s]” of claim language in concluding that a likelihood of success on the merits exists for the purpose of supporting a preliminary injunction. *Tinnus Enterprises, LLC*, 2016 WL 7587339, at *7 (rejecting defendant’s narrow interpretation of a claim and concluding plaintiffs “have made a prima facie showing” of infringement).

It is also well-settled that the term “includes” as contained within patent claim language requires only the specified element listed without mandating anything else. *See Lucent Techs., Inc.*

v. Gateway, Inc., 525 F.3d 1200, 1214 (Fed. Cir. 2008); *Johnson Worldwide Assocs., Inc. v. Zebco Corp.*, 175 F.3d 985, 989 (Fed. Cir. 1999) (“[A] court must presume that the terms in the claim mean what they say.”). And figures within the issued patent are devoid of any support for Samsung’s “includes-means-integrated-within” requirement. *See* Tanbour 922 Rebuttal Decl. ¶ 66. Worse yet, the patent’s dependent claims are incompatible with Samsung’s interpretation as they teach a basket that is operably and removably coupled with a bottom wall of the planar portion. *See* Tanbour 922 Rebuttal Decl. ¶ 67.

Samsung’s attempt to salvage its strained reading of Claim 1 with out-of-context specification language likewise fails. The specification states that “[a]lternatively, at least a portion of the utensil caddy 70 *can be* integrally formed with the planar portion 106 and hence the dish rack 102.” ’922 Patent, 6:8–10 (Ex. 1 to 922 Initial Tanbour Decl.) (emphasis added). Samsung ignores the word “[a]lternatively” and the phrase “*can be* integrally formed.” Considering these words reveals that the specification does not limit every embodiment of Claim 1 but rather provides an explanation of one example. Courts routinely find a likelihood of success after rejecting similar arguments. *E.g., Tinnus Enters.*, 2016 WL 7587339, at *7 (likelihood of success where “[t]here is nothing in the prosecution history, the specification, or the claims” supporting defendant’s “narrow” interpretation). Indeed, this language demonstrates that the patentees knew how to describe “integrally formed” structures, yet chose not to employ that terminology in Claim 1.

Samsung’s mischaracterization of the prosecution history fares no better. *Id.* Samsung argues that the Examiner’s change of “a plurality of utensil holders disposed in the planar portion” to “wherein the planar portion includes a plurality of utensil holders” reveals that utensils holders must be integrally formed in the bottom wall. Tr. 211:4–212:5. But that change gets Samsung no closer to its construction of the word “includes.” The previous language—“disposed in”—is closer

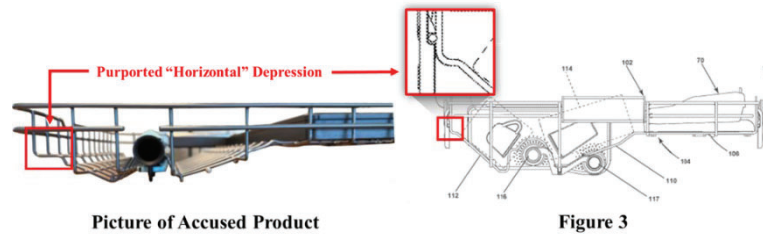
(but still not there) to an argument that the utensil holder must be “contained in” the planar portion than the eventual term “includes.” *See Cannon Rubber v. The First Years*, 163 Fed. Appx. 870, 875 (Fed. Cir. 2005) (“As an initial matter, we note that the term ‘in’ is a simple, non-technical term, and that under its ordinary meaning, a ‘diaphragm disposed in the body’ includes both diaphragms contained entirely and partially in the body.”). Samsung presses that the Examiner’s reference to U.S. Patent Appl. No. 2015/0245762 (“Tuller”) further supports its argument. It does not. While the Examiner referenced Tuller, the Examiner in no way suggested that to evade Tuller, Claim 1 would need to include a limitation that the utensil holders must be “integrated” into the wire frame of the planar portion and structurally form part of the bottom wall. *See Inverness Med. Switzerland GmbH v. Warner Lambert Co.*, 309 F.3d 1373, 1382 (Fed. Cir. 2002) (holding that prosecution history only limits scope of claim if applicant disavowed coverage).¹¹

2. Claim 14 of the ’681 Patent

Samsung has just one noninfringement argument as to Claim 14 of the ’681 Patent. It presses that the second portion in the Accused product does not extend to the “second end” of the dish rack because a small “horizontal” section intervenes.¹² But that argument is doomed for at least two reasons. First, Samsung’s narrow reading of Claim 14 is incompatible with Figure 3 of the ’681 Patent, which contains the same configuration as the Accused Product:

¹¹ Samsung also argues that claim 14 of the ’681 patent uses the language “supporting” utensil holders—implying supporting a removable utensil caddy—whereas claim 1 of the ’922 employs the term “includes.” But it does not follow from this that Claim 1 therefore claims the “integrally formed” embodiment and Claim 14 claims the removable utensil caddy embodiment. To the contrary, “includes” is a far broader term, suggesting that Claim 1 was written to cover all embodiments, whereas Claim 14 might be claiming more narrowly.

¹² Whirlpool notes that Claim 14 does not include the “terminating at” language that is included in the Claim 17 of the ’385 Patent. Tr. 208:24–25.



Just as the second portion appears to be flat near the side wall in the Accused Product, the same is true in Figure 3 of the '681 Patent. Thus, reading “second end” in the way Samsung suggests to preclude infringement would have the effect of excluding from the claims the preferred embodiment, a result that is rarely correct. *See Vitronics*, 90 F.3d at 1583.

Second, even if Samsung’s understanding of Claim 14 is correct (it isn’t), the Accused Product still infringes. There is no requirement in Claim 14 that the angle of the second portion be uniform, and the part of the Accused Product that Samsung claims is horizontal is actually angled at three degrees relative to the planar portion. Dr. Tanbour measured this angle using three different measurement methods. *See Tanbour 922 Initial Decl.* ¶¶ 57–60. Dr. Tanbour’s declarations outline and depict each of his three measurement methods which included: (1) using a protractor application and bubble level, (2) using a digital protractor and a parallel clamp, and (3) using a dial gauge, calipers, and trigonometry. *Id.*

In lieu of providing its own measurements of its product, Samsung relies on CAD files to argue that the purported “horizontal portion” is not angled. But Samsung’s CAD files are not dispositive. CAD files can differ from the final, manufactured and sold version of a product. *See Tanbour 922 Rebuttal Decl.* ¶81. And in any event, it is Samsung’s actual products, not its CAD files, which infringe Whirlpool’s patents. Whirlpool has established that in the Accused Product, the purported “horizontal portion” is angled at three degrees.

3. Claim 17 of the '385 Patent

Samsung advanced two arguments at the hearing as to why the Accused Product does not infringe this claim: (1) the upwardly angled portion allegedly does not “terminat[e]” at the side wall due to the purported “horizontal portion,” and (2) the Accused Product lacks a “spray tube with nozzles emitting spray along the angled portion.” None of the arguments defeat Whirlpool’s prima facie showing of infringement.

As to the first argument, the purported “horizontal portion” is a part of the “upwardly angled portion” which terminates at the side wall. Tanbour Rebuttal Decl. ¶¶ 65-70. Moreover, as discussed above, it is upwardly angled at approximately three degrees. *Supra* II.A.2. In addition, Claim 17 is also satisfied by the Doctrine of Equivalents. *See Sage Prods., Inc. v. Devon Indus., Inc.*, 126 F.3d 1420, 1424 (Fed. Cir. 1997) (“The doctrine of equivalents prevents an accused infringer from avoiding infringement by changing only minor or insubstantial details of a claimed invention while retaining their essential functionality.”). Here, the Accused Product performs substantially the same function in substantially the same way to achieve substantially the same result as the patented invention. Dr. Cameron’s so-called “horizontal portion” serves no utilitarian or functional purpose, making the designs essentially interchangeable. To the degree any differences exist, they are immaterial. Samsung argues that prosecution history estoppel precludes application of the Doctrine of Equivalents in this case. It does not. “Prosecution history estoppel applies as part of an infringement analysis to prevent a patentee from using the doctrine of equivalents to recapture subject matter surrendered from the literal scope of a claim during prosecution.” *Trading Techs. Int’l, Inc. v. Open E Cry, LLC*, 728 F.3d 1309, 1322 (Fed. Cir. 2013). Here, Samsung fails to establish that Whirlpool has attempted to recapture subject matter surrendered during prosecution. *See* Tanbour Rebuttal Decl. ¶¶ 72–73.

As to the second argument, the Accused Product contains a “spray tube with nozzles

emitting spray along the angled portion.” Samsung argues that the Accused Product contains “spray discs,” which it says are distinct from “spray tube with nozzles.” But Samsung’s own marketing material uses the term “spinning nozzles.”¹³ Further, Samsung erroneously asserts that the specification limits Claim 17. The specification, at 10:45-53, reads:

The rack spray assembly 32 has been shown and described as having stationary and rotating spray tubes with spray nozzles, and other numbers of spray tubes, such as up to five spray tubes, or other types of sprayers are acceptable for use with the rack spray assembly 32. Examples of other types of sprayers include, but are not limited to, rotating spray arms, individual spray nozzles, stationary spray heads with multiple spray nozzles, spray discs, flexible spray tubes, translating front to back sprayers, etc.

Samsung argues that this passage suggests that sprayer discs are a different type of sprayer than “spray tube having nozzles” and therefore a “spray tube having nozzles” cannot include spray discs. Tr. 205:16–206:4. But the specification says no such thing. Samsung’s strained reading improperly aims to transform specification language into an additional claim limitation. *See SuperGuide*, 358 F.3d at 875. But even if the specification suggests that standalone spray discs are a different type of sprayer than a spray tube having nozzles, it does not follow that discs cannot be included as part of a spray tube having nozzles. Claim 17’s broad use of the term “spray tube having nozzles” is appropriate given that the innovation of the ’385 Patent is not a spray configuration, but rather a premium third rack with a mounted spray tube. Samsung’s additional argument is that the Accused Product does not “emit[] spray along the angled portion” because the angle of the water emitted from the nozzle of its spray tube does not match the angle of the angled portion. Here, too, Samsung attempts to invent new claim limitations. There is no requirement in Claim 17 about the angle of the water emitted from the spray tube nozzle.

¹³ Samsung, *Auto Open-Door Dishwasher w/AI Wash and Upgraded 3rd Rack Washing System*, <https://www.samsung.com/ca/dishwashers/built-in/dw90f-24t-dw90f89p0usraa-dishwasher-ai-wash-3rd-rack-washing-system-16-place-settings-silver-dw90f89p0usraa/> (last visited April 29, 2026).

B. Samsung Has Failed to Establish a “Substantial Question” of Validity as to Any, Let Alone All, of the Asserted Patents.

It is textbook law that “[a] patent shall be presumed valid.” 35 U.S.C. § 282. This is true “during preliminary injunction proceedings as at other stages of litigation.” *Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1377 (Fed. Cir. 2009). Here, there is no dispute that Whirlpool holds all necessary ownership, title, and interest in and to the Asserted Patents. Samsung’s only questions about validity relate to anticipation and obviousness.

1. There is No Substantial Question that the ’922 Patent is Valid.

Samsung argued at the hearing that three references render the ’922 Patent invalid: (1) U.S. Patent Appl. No. 15/423,617 (“Carr”); (2) the Bosch 800 Series Brochure (“Bosch 800”); and (3) U.S. Patent No. 2,910,207 (“Andrew”).¹⁴ All of these references were considered by the Examiner during prosecution, and the patent issued over them. *See Guangdong Alison Hi-Tech Co. v. Int’l Trade Comm’n*, 936 F.3d 1353, 1365 (Fed. Cir. 2019) (“[R]eferences already considered by the Patent Office may carry less weight with the fact finder.”).

Samsung asserts that Carr and Bosch 800, which are basically the same, anticipate or render obvious independent Claim 1 and dependent Claims 2-4 of the ’922 Patent. Not so. Neither Carr nor Bosch 800 teach cup seats. Claim 1 discloses a “first angled wall defines a first set of cup seats” and a “second angled wall defines a second set of cup seats.” Both Carr and Bosch 800 teach a third rack that is designed for bowls, not cups. Samsung disregards this by pointing to a few stray mentions of “cups” in both references. But neither specifically teaches *cup seats*. Viewing the ’922 Patent holistically, the ordinary meaning of a “cup seat” to a POSITA is a seat that is designed to cradle drinkware. Tanbour 922 Rebuttal Decl. ¶ 132; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313

¹⁴ Samsung’s declarations mention another reference: U.S. Patent Appl. No. 11/667,718 (“Mailander”), but Samsung did not discuss it at the hearing.

(Fed. Cir. 2005) (holding that a POSITA “is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.”).

Samsung’s contrary view is that any area of a dishrack into which a cup could be inserted is a “cup seat.” But that reading renders “seat” meaningless – and would make it no different from “cup zone” or “cup area” or “cup space.” Yet, unlike those other terms, “seat” indicates some sort of structure that specifically cradles or captures an item. Samsung points to no disclosures in Carr or Bosch 800 that satisfy the actual meaning of “cup seat.”

Samsung further contends that Andrew in view of Carr renders obvious Claims 1-4 and 7-25 of the ’922 Patent. This is also wrong. As discussed, Carr does not teach a cup seat in its top third rack. And Andrew does not teach a top third rack at all. Instead, Andrew is a 1959 patent depicting a two-rack dishwasher whose bulky upper rack is fundamentally incompatible with three-rack dishwashers. As Dr. Tanbour explained, a POSITA motivated to learn about three-rack dishwashers would not have looked to Andrew at all. Tanbour 922 Rebuttal Decl. ¶ 137. Additionally, Andrew does not teach a space large enough to accommodate utensil holders and its front-to-back wire configuration does not teach a cup seat capable of cradling cups in the manner disclosed in the ’922 Patent. Thus, Samsung’s Frankenstein combination of Andrew and Carr does not render obvious independent Claim 1 or any dependent claims of the ’922 Patent.

2. There is No Substantial Question that the ’681 Patent is Valid.

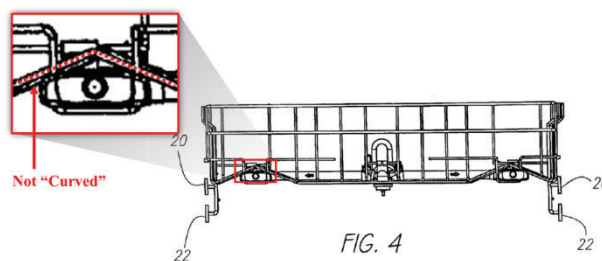
Samsung argues that two references render the ’681 Patent invalid: (1) Carr and (2) Bosch 800.¹⁵ But just like Claim 1 of the ’922 Patent, Claim 14 of the ’681 Patent requires cup seats. As discussed above, neither Carr nor Bosch 800 teach cup seats. Thus, neither reference anticipates

¹⁵ Samsung did not present at the hearing its additional arguments as to Mailander and China Patent Appl. No. 201610943203.3 (“Cao”).

nor renders obvious the Asserted Claims of the '681 Patent.

3. There is No Substantial Question that the '385 Patent is Valid.

Samsung argues that two references render the '385 Patent invalid as obvious: (1) German Patent No. DE6810173U ("Bosch"); and (2) U.S. Patent Publication No. 2003/0192578 ("Ochoa")—which was before the Examiner during prosecution of the '385 Patent.¹⁶ As Dr. Tanbour explained, a POSITA would not have been motivated to combine the teachings of Bosch and Ochoa. While Bosch teaches a rack, Ochoa teaches a water spray system for a dishwasher. Further, neither reference teaches an "upwardly angled portion formed in the bottom wall comprising a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall." The bottom wall of Bosch is flat with no angled or inclined portions. To the extent there are angled portions, they do not form the bottom wall. *See Tanbour Rebuttal Decl.* ¶ 105. Dr. Cameron erroneously states that Bosch's bottom wall is, in fact, angled by creating her own figure that extrapolates wildly from Figure 3 to create a 3-D model that is divorced from the language or the teachings of Bosch. Cameron 3-17 Decl. ¶ 155. Further, neither Bosch nor Ochoa teaches a "curved mounting portion" as required by Claim 17. Samsung's argument that Ochoa teaches a curved portion is belied by Ochoa's figures:



The wires in Ochoa appear to meet at an angle (as annotated above), but in any event they do not clearly and convincingly demonstrate a curved structure. *Tanbour Rebuttal Decl.* ¶¶ 109, 142-143.

¹⁶ Samsung did not discuss at the hearing its third reference, U.S. Patent No. 10,045,681 ("Schessl").

III. The Balance of Equities Tips in Whirlpool's Favor.

The balance of equities also decidedly favors Whirlpool's motion. On the one hand, Whirlpool will suffer the above types of irreparable harm without a preliminary injunction. On the other, Samsung's arguments about the hardship it might face if it were enjoined from selling its "only premium dishwasher" provides no basis to deny relief. Tr. 30:19–21. As this court and the Federal Circuit have recognized, an injunction may issue even if it targets a defendant's primary product. *See Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1156 (Fed. Cir. 2011) ("A party cannot escape an injunction simply because . . . its primary product is an infringing one."); *Windsurfing*, 782 F.2d at 1003 n.12 ("One who elects to build a business on a product found to infringe cannot be heard to complain if an injunction against continuing infringement destroys the business so elected."). The hardships Samsung predicts are merely inherent in the "exclusionary rights of a patent" *Polymer Techs.*, 103 F.3d at 975.

Samsung could, of course, continue selling dishwashers that do not infringe Whirlpool's patents. [REDACTED]

[REDACTED] Finally, even if this factor did not weigh in Whirlpool's favor, a neutral finding on the balance of hardships does not preclude the issuance of a preliminary injunction. *See Hybritech Inc. v. Abbott Labs.*, 849 F.2d 1446, 1457–58 (Fed. Cir. 1988) (affirming PI despite finding that "neither party has a clear advantage" on this factor).

Any undue impact on Samsung can also be mitigated by a bond. Should the court grant the requested preliminary injunction, Whirlpool is prepared to post a bond of \$1 million or an otherwise reasonable amount under Federal Rule of Civil Procedure 65(c) to secure any damages Samsung may suffer if the injunction is later lifted. "The amount of security required is a matter for the discretion of the trial court; it may elect to require no security at all." *Corrigan Dispatch*

Co. v. Casa Guzman, S. A., 569 F.2d 300, 303 (5th Cir. 1978).

Samsung's demand for a \$150 million bond is excessive, unsubstantiated, and internally contradictory for at least three reasons. [REDACTED]

[REDACTED]

Samsung produced no data to substantiate this calculation. Even if the numbers are accurate, Samsung has not explained why the court should calculate the bond amount using revenue, not profit. *Contra Sanofi-Synthelabo*, 470 F.3d at 1384–85 (affirming district court's bond amount calculated based on "potential lost *profits*, lost market share and associated costs of relaunch" (emphasis added)). [REDACTED]

[REDACTED]. Third, Samsung's enormous \$150 million figure is irreconcilable with its self-characterization as a bit player in the kitchen appliance market and the DW90F's relative market insignificance. Tr. 30:19–21 ("Samsung is only a small player with one ... premium dishwasher in the marketplace."), 75:7–11 ([REDACTED] of the DW90F compared to KitchenAid's 1.7 million).

IV. The Public Interest Favors an Injunction.

The public interest likewise favors Whirlpool. It is well established that the public interest supports the enforcement of patent rights. *See, e.g., Celsis In Vitro*, 664 F.3d at 931. Here, the public has no "critical" interest in Samsung's continued sale of infringing dishwashers. Conversely, the public does have an interest in enjoining copies of patented inventions. *See Douglas*, 717 F.3d at 1346. "While the general public certainly enjoys lower prices, cheap copies of patented inventions have the effect of inhibiting innovation and incentive." *Id.* at 1346. Enjoining Samsung from copying Whirlpool's invention is plainly aligned with the patent system's purpose of incentivizing useful innovations for the public. *See* U.S. CONST. art. I, § 8, cl. 8.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on May 5, 2026.

/s/ Joseph S. Grinstein
Joseph S. Grinstein