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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

[redacted]

SAMSUNG'S POST-HEARING RESPONSIVE BRIEF IN OPPOSITION TO MOTION FOR A PRELIMINARY INJUNCTION

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I. INTRODUCTION

The preliminary injunction ("PI") hearing only served to confirm that Whirlpool's motion rests on speculative and factually incorrect assertions, and falls far short of the standard for a PI. Indeed, the evidence and testimony adduced at the hearing not only failed to support Whirlpool's position, it affirmatively strengthened Samsung's arguments against the extraordinary relief Whirlpool seeks. After initially trying to excuse its months-long delay in filing suit based on the supposed absence of the accused Samsung dishwashers from the floors of brick-and-mortar stores (Dkt. 4 at 2), Whirlpool's corporate representative, Ms. Villarroel, was forced to admit at the hearing that her sworn declaration regarding this alleged unavailability was "***not accurate.***" She was further forced to acknowledge that the accused dishwashers have been on sale in ***hundreds*** of brick-and-mortar locations ***nationwide*** since April 2025—***six months before Whirlpool filed suit***.

Given the false premise of its "flooring" theme—the centerpiece of its original motion—it is no surprise Whirlpool has all but abandoned it post-hearing, now calling it only "one (small) piece of the irreparable-harm puzzle." Dkt. 63 at 11. Whirlpool now tries to excuse its six-month delay by claiming the time was needed "to purchase, inspect, and thoroughly analyze that product before filing suit." *Id*. But the "technology" of this case could not be simpler (the mechanical configuration of a rack), and Whirlpool does not explain why it needed six months to "analyze" what can be plainly observed by merely looking at the accused rack. Further, despite six months of sales of the accused dishwashers online and in stores before Whirlpool filed its motion, Whirlpool has provided ***no evidence*** of actual harm or likelihood of such harm, instead relying on unsupported and factually incorrect speculation. That speculated harm also lacks nexus to the alleged infringement: Whirlpool's motion relies on a single sub-feature of a $1,000 appliance, without showing that the patented angle-depression/spray-tube configuration—not the broader and unpatented "third rack" concept—drives purchasing decisions. Whirlpool's ***six-month delay***,

during which no actual harm materialized, belies any claim of irreparable injury, as courts in this District and the Fifth Circuit have consistently ruled.

Whirlpool similarly fails to show a likelihood of success on the merits. For all asserted patents, Samsung has identified strong non-infringement defenses and invalidating prior art, including anticipatory prior art for the '681 Patent. The equities and public interest likewise weigh against Whirlpool. A preliminary injunction would disrupt Samsung's manufacturing and sales after Samsung has already expended significant resources in a nationwide rollout that occurred months ago, during which time Whirlpool did not even notice the product on retail floors, let alone suffer any existential threat to its business.

Because all four factors weigh against a PI, Whirlpool's motion should be denied.

II. LEGAL STANDARD

Whirlpool must show that: (1) it is likely to succeed on the merits, (2) it will suffer irreparable harm without injunctive relief, (3) the balance of hardships tips in its favor, and (4) an injunction is in the public's interest. *Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1323 (Fed. Cir. 2012). "A preliminary injunction . . . is 'a drastic and extraordinary remedy that is not to be routinely granted.'" *Multilift Wellbore Tech. Ltd. v. ESP Completion Techs. LLC*, 2017 WL 10222420, at *1 (E.D. Tex. July 25, 2017).

III. ARGUMENT: WHIRLPOOL'S MOTION SHOULD BE DENIED

Despite months of investigation and discovery, including email discovery, Whirlpool has not satisfied ***any*** of the four PI factors. The hearing confirmed that its irreparable-harm contentions rest on speculation and incorrect factual assertions, and Whirlpool cannot show likelihood of success given the more than substantial non-infringement and invalidity issues raised by Samsung.

A. Whirlpool Has Not Shown Irreparable Harm

To demonstrate irreparable harm, Whirlpool must show "a likelihood of substantial and

immediate irreparable injury." *Apple Inc. v. Samsung Elecs. Co.*, 695 F.3d 1370, 1374 (Fed. Cir. 2012). Whirlpool cannot do so, which alone is fatal to its motion.

1. **Whirlpool's Six-Month Delay Alone Defeats Irreparable Harm.**

Whirlpool's narrative keeps shifting, but the facts do not: Whirlpool knew the Accused Product was available "in or around April 2025," yet waited ***six months*** to file its PI motion. Dkt. 4 ("Mot.") at 3; Tr. 49:19-50:4 (Villarroel). Precedent and the record show Whirlpool's six-month delay is inexcusable and defeats irreparable harm, as undue delay in seeking a preliminary injunction "negates the idea of irreparability." *Pfizer, Inc. v. Teva Pharm., USA, Inc.*, 429 F.3d 1364, 1381-82 (Fed. Cir. 2005). After abandoning its retail flooring excuse (Mot. at 2), Whirlpool's new claim that it "filed at exactly the right moment in time" (Tr. 19:22-20:6) is equally meritless. Courts in this Circuit have held comparable delays weigh strongly against injunctive relief. *See Boire v. Pilot Freight Carriers, Inc*., 515 F.2d 1185, 1193 (5th Cir. 1975) (three-month delay); *Pruvit Ventures, Inc. v. Forevergreen Int'l LLC*, 2015 WL 9876952, at *8 (E.D. Tex. Dec. 23, 2015), *R&R adopted*, 2016 WL 231160 (E.D. Tex. Jan. 19, 2016) (five months); *Gonannies, Inc. v. Goupair.Com, Inc.*, 464 F. Supp. 2d 603, 609 (N.D. Tex. 2006) (same); *H.D. Vest, Inc. v. H.D. Vest Mgmt. and Servs., LLC*, 2009 WL 1766095, at *4 (N.D. Tex. June 23, 2009) (same).

Whirlpool's Post-Hearing Brief does not meaningfully rebut this authority, arguing instead that some cases are "not even patent cases." Dkt. 63 ("Whirlpool Br.") at 12. But "[t]he grant, denial, or modification of a preliminary injunction [] is not unique to patent law" and Whirlpool cites no contrary authority. *Aevoe Corp. v. AE Tech Co.*, 727 F.3d 1375, 1381 (Fed. Cir. 2013). Whirlpool's attempt to distinguish *Pruvit*, a patent case, also fails. The primary factor in the court's analysis was not which party sought relief, as Whirlpool suggests, but the length of the delay. *Cf.* Whirlpool Br. at 12. The court pointed out that "five months have elapsed from [the] launch of [accused product]" to the date the PI motion was filed. *Pruvit*, 2015 WL 9876952, at *8

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(citing multiple patent and non-patent cases for the proposition "that the expiration of five months or similar timeframe . . . could serve to rebut a claim of irreparable harm.").

Whirlpool cites only two cases that purportedly "support[] Whirlpool's timing," Whirlpool Br. at 12, but neither does. Whirlpool argues *Natera, Inc. v. NeoGenomics Labs., Inc.,* 106 F.4th 1369, 1380 (Fed. Cir. 2024), "affirm[ed] preliminary injunction notwithstanding seven-month delay." *Id.* Not so. There, the seven-month period ran from ***patent issuance*** to the PI motion, not from the start of alleged infringement, and the motion was filed "four days after [the accused product] was approved for Medicare coverage and within four months of [it] becoming commercially available." 106 F.4th at 1380. Whirlpool's reliance on *Hybritech Inc. v. Abbott Labs*. fares no better. Although *Hybritech* states that delay does not *automatically* bar a finding of irreparable harm, it also makes clear that delay "may be so significant, in the district court's discretion, as to preclude a determination of irreparable harm." 849 F.2d 1446, 1457 (Fed. Cir. 1988). Neither case supports Whirlpool, and neither was decided under Fifth Circuit law.

None of Whirlpool's excuses for delay holds water. Whirlpool initially claimed its PI came at a "critical juncture" as "Samsung … plans to expand the launch into brick-and-mortar stores by the end of this year and as early as this fall." *See* Mot. at 1. That allegation was wrong. The Accused Product launched for sale ***both online and in stores*** starting in March 2025, after public trade-show previews in January and February 2025 and publication of Energy Star information on February 21, 2025. Tr. 93:10-94:20, 95:3-10. Indeed, Whirlpool's corporate representative, Ms. Villarroel, admitted she learned of the Accused Product in early April 2025 and that her team bought one then for analysis. *Id.* 49:19-50:4, 75:14-17. By early June 2025, Samsung had largely completed in-store rollout. [redacted]

[redacted]

[redacted]

Whirlpool's argument that Samsung has not completed the rollout because "Samsung has yet to pursue flooring at the remaining 67% of Lowe's stores" and at Home Depot is baseless. Whirlpool Br. at 11. [redacted]

[redacted]

[redacted]

Whirlpool retreats from its prior brick-and-mortar flooring theme[1] and now claims it waited to file until it had "done sufficient diligence" and could "show . . . demonstrable harm." Tr. 19:22-20:6, 22:8-10; Whirlpool Br. at 11. But that supposed "diligence" completely missed six months of the Accused Product being available on retail floors and being fully rolled out, even though Whirlpool monitors retail locations and flooring data. *See id.* 72:7-18. And Whirlpool has no evidence of harm ***before or after*** the filing. *See* Section III.A.2; Tr. 77:1-6 (admitting that KitchenAid premium dishwasher market share rose after Accused Product launch).

Whirlpool also sets up a strawman, incorrectly asserting, without citation, that Samsung "argues [] that Whirlpool filed too early before it experienced a measurable decrease in market share." Whirlpool Br. at 11. Samsung has made no such argument. A PI requires a "***likelihood*** of substantial and immediate irreparable injury," not proof that injury already occurred. *See Apple*, 695 F.3d at 1374. But Whirlpool's delay allowed months of market data to accumulate, confirming that any alleged injury was neither immediate nor likely—and did not materialize at all.

Lastly, the later issuance of the '922 Patent likewise does not excuse Whirlpool's six-

[1] Compare Mot. at 7 (arguing that the "timing and details of Samsung's [in-store] launch are directly relevant to the preliminary-injunction analysis" and that "[a]t brick-and-mortar retailers, floor space is a finite and valuable resource") with Whirlpool Br. at 11 (asserting that "[f]looring is only one (small) piece of the irreparable-harm puzzle.").

month delay. First, Whirlpool never amended its PI motion to include it. *See* Tr. 174:9-175:8. Second, because the '922 Patent is a continuation of the '681 Patent, covers the same general subject matter as both originally asserted patents, and targets the same Accused Product as those patents, the absence of irreparable harm in the months after launch as to the other two patents confirms no irreparable harm (likely or actual) exists as to the '922 Patent either.[2]

2. **Whirlpool's Claimed Speculative Harms Have Not Occurred.**

Whirlpool offers generalized claims of brand harm, market share loss, and future price erosion. Mot. at 6-13. But Whirlpool did not present any concrete evidence that those harms are both likely ***and*** not reasonably compensable. "[N]either the difficulty of calculating losses in market share, nor ***speculation that such losses might occur***, amount to proof of special circumstances justifying the extraordinary relief of a[] [PI]." *Nutrition 21 v. U.S.*, 930 F.2d 867, 871 (Fed. Cir. 1991).[3] As Ms. Villarroel admitted, Whirlpool presented "no data about KitchenAid or Whirlpool losing market share," "no data about Whirlpool losing floor space," and "no studies on the strength of the brand, particularly as it relates to third racks." Tr. 66:10-67:2. What the evidence instead shows is a crowded, multi-brand market with no in-store displacement or consumer-behavior impact during the six months between the launch and Whirlpool's PI motion.

No loss of brand equity or product leadership: Whirlpool's "brand equity" theory, centered around Whirlpool's claim that, with Samsung's product on the market, "Whirlpool's 'hero' feature" and "premium brand is no longer unique," fails. Whirlpool Br. at 2-4. A premium

[2] Whirlpool's microwave litigation experience is another red herring and only shows the contortions Whirlpool must go through to try to justify its extensive delay. *See id.* 58:22-59:6; Whirlpool Br. at 11 n.7. Ms. Villarroel testified that the microwave experience "is where we learned that we can't wait until it's too late, until we've seen the harm, for us to take action and try to limit the copycats." Tr. 58:22-59:6. But that contradicts Whirlpool's counsel, who argued Whirlpool deliberately waited until it *could* show "demonstrable harm." *See id.* 19:22-20:6.

[3] Emphasis added throughout unless noted otherwise.

[redacted]

third rack has ***never*** been "unique" to Whirlpool. *Id.* at 3. Indeed, Bosch has sold dishwashers with third racks for holding cups and utensils since 2019, Cameron Decl. ¶¶ 50-54, Ex. F, before Whirlpool's 2020 launch of the feature. Thus, three-rack competition is not an imminent harm, but a longstanding market reality that Whirlpool has not shown caused any injury. If anything, Whirlpool's assertion that consumers' "preference for KitchenAid's premium third rack outpaced that of its nearest competitor by four times," undermines its argument by proving *no loss* of "brand equity" in the face of such competition. Whirlpool Br. at 4.

Irreparable harm cannot be shown "by positing potential competition from third parties," as Whirlpool does here. *Nuclear-Chicago Corp. v. Nuclear Data, Inc.*, 465 F.2d 428, 429 (7th Cir. 1972). Whirlpool's authorities are distinguishable. *Douglas* involved a request for a *permanent* injunction after the patents were found infringed and not invalid. *Douglas Dynamics, LLC v. Buyers Prods. Co.*, 717 F.3d 1336, 1343 (Fed. Cir. 2013). Further, there "[t]he district court found that [plaintiff] had a reputation as an innovator" regarding the product at issue. *Id.* at 1344. There was no such determination here, and there likely won't be given Bosch's introduction of deep third racks *before* Whirlpool's. Similarly, in *i4i Ltd. P'ship v. Microsoft Corp.*, the Federal Circuit affirmed a ruling on a *permanent* injunction, after a jury found Microsoft willfully infringed. 598 F.3d 831, 839 (Fed. Cir. 2010). In so doing, the court found no abuse of discretion for the district court to conclude monetary damages would be inadequate "when the infringing acts significantly change[d] the relevant market," with the infringer capturing 80% of it. *Id.* at 862. *Celsis in Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 930-31 (Fed. Cir. 2012) is also inapposite. Unlike the hotly-disputed issues here, that case involved "unrebutted expert testimony" regarding price, reputation, and business opportunities, and the Federal Circuit affirmed the district court because it "s[aw] no error in the district court's reliance on [that] unrebutted testimony." *Id.*

[redacted]

No alleged "erosion of consumer demand": Whirlpool's theory that Samsung's third rack will cause Whirlpool to suffer "erosion of consumer demand for the premium third rack feature more broadly" is unsupported and legally irrelevant. Whirlpool Br. at 5. Whirlpool argues it implemented ***non-patented*** improvements to its three-rack dishwashers and, because Samsung's accused dishwashers lack these other improvements, Samsung will erode the reputation and market for ***all*** such dishwashers. *Id*. But if Samsung's products are inferior, ***Samsung's*** reputation would suffer, and consumers would choose Whirlpool. This Court rejected a similar theory in *Multilift*, denying a PI because the plaintiff's "inference that … customers … would attribute a difficulty with [defendant's product] to [patentee's product] – and decide not to purchase either product – is simply not supported, nor logical." 2017 WL 10222420, at *2; *see also Pruvit*, 2015 WL 9876952, at *5 ("it is difficult to imagine under what extraordinary set of circumstances the introduction of a product with a lower reputation for quality would, instead of highlighting the higher quality of its competitors, reflect adversely upon the field as a whole.") (cleaned up). And if negative impressions of Samsung dishwashers could harm Whirlpool, then a customer who "had a good experience with Samsung, it should also benefit KitchenAid." Tr. 110:1-13.

Putting aside the wholly illogical nature of Whirlpool's argument, it also fails legally. Courts reject "market erosion" and reputational harm claims lacking "objective, empirical" support, such as "surveys, interviews, or other material" and resting instead on speculation. *Chrysler Motors Corp. v. Auto Body Panels of Ohio, Inc.*, 908 F.2d 951, 954 (Fed. Cir. 1990). Whirlpool cites no such objective indicia of degraded performance or cross-brand feature aversion. Instead, it relies on cherry-picked negative reviews of the Accused Product. Tr. 62:22-63:2; Whirlpool Br. at 3. This Court has rejected similar arguments before. *Pruvit*, 2015 WL 9876952, at *5 ("[A]ny reputational harm to [Movant's product] remains purely speculative; the number and

[redacted]

frequency of any complaints about [Non-Movant's product] does not concretely establish that the reputation of [Movant's product] and/or the ketosis supplement market as a whole will be permanently damaged."). The Accused Product reviews are "actually very positive, a minimum of 4.4 [out of 5] and above." Tr. 110:14-111:5. And despite six months of broad availability, Whirlpool has no evidence of actual "erosion of consumer demand." Nor could it: Bosch has sold a comparable third-rack design since 2019 (Cameron Decl. ¶¶ 50-54, Ex. F), with no erosion or market-wide aversion to Whirlpool's own three-rack dishwashers.

No loss of market share or market opportunity: "Proof of lost market share and lost sales alone are insufficient to establish irreparable harm." *Pruvit*, 2015 WL 9876952, at *6. Regardless, Whirlpool has shown neither. Instead, Whirlpool's main argument in its original motion was speculation that it would lose market share and flooring to Samsung. *See* Mot. at 7-8. Faced with the facts, Whirlpool is running away from that argument post-hearing because Samsung's rollout onto physical floors was long complete before Whirlpool filed its motion and the Accused Product did not take any Whirlpool floor space.

Whirlpool predicted the Accused Product would displace KitchenAid floor space at Home Depot. Dkt. 4-8 at 9. That was wrong: Whirlpool now admits the Accused Product was ***never*** even floored at The Home Depot. Tr. 72:20-73:20; [redacted]

Whirlpool's fallback argument—that KitchenAid "would have had the opportunity to secure th[e] spots" lost by Samsung's predecessor product at Lowe's but for the Accused

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Product—fails too. Whirlpool Br. at 8. [redacted] The premise also undercuts irreparable harm: because Samsung's predecessor product was already losing floor space *before* the Accused Product launched, Samsung's Lowe's footprint was shrinking, not expanding at KitchenAid's expense. The Accused Product replaced a Samsung product within that shrinking footprint; it did not take, or threaten to take, Whirlpool floor space.

Whirlpool's argument that it would suffer irreparable harm through "share loss" ignores the facts. Whirlpool Br. at 6. Whirlpool dwarfs Samsung in dishwashers. Ms. Villarroel admitted she would "not be surprised" if Whirlpool's practicing products had over six times more annual sales than the Accused Product. Tr. 74:8-75:13. [redacted] Whirlpool's witness could not attribute any KitchenAid share decrease to the Accused Product's launch. Tr. 55:12-56:18. Instead, KitchenAid market share *rose* after launch. *Id*. 77:1-6.

Unable to show any actual or likely market-share loss, Whirlpool argues "inherent difficulties in isolating the market effects" and tries to minimize KitchenAid's gain by claiming, without evidence, that its growth was "suppressed" by the Accused Product. Whirlpool Br. at 6. Whirlpool's reliance on *Douglas* is also misplaced: that case involved a request for a *permanent* injunction after findings of infringement and validity. 717 F.3d at 1343. And in *SmartSky Networks LLC v. Gogo Business Aviation, LLC*, the Federal Circuit distinguished *Douglas*, crediting evidence the plaintiff "continued to secure investments and customers" after the alleged infringement. 2024 WL 358136, at *5 (Fed. Cir. 2024). The same is true here: Whirlpool not only continued securing customers after launch, it achieved its highest market share in years. In any event, even in direct competition cases, there must be a causal connection between the patented

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features and consumer demand, which Whirlpool cannot show here. *See Apple Inc. v. Samsung Elecs. Co.*, 809 F.3d 633, 641 (Fed. Cir. 2015); *infra* Section III.A.3.

Whirlpool's claim that Samsung's market share increased "dramatically" is misleading. Whirlpool Br. at 7. [redacted]

Whirlpool's claim that it cannot yet quantify lost market share because the dishwasher market moves "slowly" and operates on a "multi-year product lifecycle," Whirlpool Br. at 7, in fact confirms that immediate injunctive relief is unwarranted here. If effects unfold only gradually over years, as Whirlpool posits, there is no basis for extraordinary relief before trial.

No price erosion: Courts "require[] concrete evidence of reduced price to find price erosion." *SmartSky Networks*, 2024 WL 358136, at *5. Because it has no evidence of actual price erosion, Whirlpool resorts to comparing apples to oranges, by focusing on products not comparable to the Accused Product. *See* Whirlpool Br. at 8-9.

Whirlpool's protestations to the apple-to-oranges analogy cannot evade the facts. Contrary to Whirlpool's litigation-driven comparison of the KitchenAid 7 series to the Accused Products, [redacted] As Whirlpool's witness Ms. Villarroel admitted, the 4 series "is comparably priced to the 90F," *id.* 74:1-3, whereas the KitchenAid 7 series is the "one with all the bells and whistles." *Id.* 69:12-14. And although Ms. Villarroel testified there have "been times" when KitchenAid dishwashers practicing the Asserted

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Patents were "price[d] lower" than the Accused Product (*id.* 60:10-14), there is no evidence Whirlpool changed its comparable products' prices because of it. Even if a price decrease occurred, Whirlpool has not shown damages would be incalculable, let alone that "failing to grant a [PI] would permit [Samsung] to drop its prices in order to drive [Whirlpool] out of the market entirely." *Automated Merch. Sys., Inc. v. Crane Co.*, 357 F. App'x 297, 301 (Fed. Cir. 2009).

Whirlpool's cited authorities are inapposite. In *Purdue Pharma*, the Federal Circuit affirmed a PI where the district court held the plaintiff "made a clear showing of its likely success on the merits" and was afforded a rebuttable presumption of irreparable harm. *Purdue Pharma L.P. v. Boehringer Ingelheim GmbH*, 237 F.3d 1359, 1363 (Fed. Cir. 2001). In its turn, the defendant failed to rebut plaintiff's "economics expert [testimony] that price erosion and loss of market position was likely." *Id.* at 1368. Whirlpool is entitled to no such presumption, and presents no credible evidence of price erosion. And in *Celsis*, the Federal Circuit affirmed because it found "no error in the district court's reliance on [the plaintiff's] *unrebutted* expert testimony." 664 F.3d at 930. Here, Whirlpool has no evidence, let alone unrebutted expert evidence, of actual price erosion or likelihood of such price erosion.

3. **There Is No Nexus Between Any Claimed Harm and Infringement.**

Because irreparable harm "cannot be shown if sales would be lost regardless of the infringing conduct," Whirlpool must "show that the infringement caused [the] harm in the first place." *Apple*, 678 F.3d at 1324. Nexus requires evidence the patented feature "is ***one of several features that cause consumers to make their purchasing decisions***" or that its "inclusion or absence . . . makes a product ***significantly*** more or less desirable." *Genband US LLC v. Metaswitch Networks Corp.*, 2018 WL 11357619, at *2 (E.D. Tex. Mar. 22, 2018). This often requires "survey evidence showing that the infringer's customers would be willing to pay a 'price premium' for a product with the claimed features." *Id.* Whirlpool has no such evidence here. The asserted claims

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cover only incremental improvements to the geometry and spray system of a dishwasher's smallest of three racks. *See* Mot. at 3; Cameron Decl. ¶¶ 12-21, 27-36. Whirlpool offers no proof those drive consumer choice.

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On similar facts, in *BoxCast Inc. v. Resi Media LLC*, this Court denied a PI request because the plaintiff failed to make "a clear showing" of nexus. 2022 WL 884261, at *3 (E.D. Tex. Mar. 24, 2022). The Court held the plaintiff had "not adequately shown that the alleged harm is tied to the alleged acts of infringement" because it "ignore[d] the evidence in the record that shows that ***[defendant]'s product provides additional features and . . . costs significantly more than [plaintiff]'s product***." *Id*. Here too, as Whirlpool admits, the Accused Product has unique features. *See* Ex. 5 at 8 (listing "AI Wash," "StormWash dual Wash arms," and "Energy Star" rating). It also costs as much or more than Whirlpool's product, as noted above (*see* Section III.A.2), thus defeating nexus and irreparable harm. Further, that Whirlpool's witness could not attribute any KitchenAid share decrease to the Accused Product's launch (Tr. 55:12-56:12), confirms no causal connection between the alleged infringement and claimed harm.

Whirlpool misstates the law by claiming irreparable harm exists "[e]ven if a consumer did not purchase a Samsung Accused Product specifically for its enhanced top rack." Mot. at 12. *Douglas*, cited by Whirlpool, does not support irreparable harm without a causal link between the

[redacted]

patented feature and alleged harm. 717 F.3d at 1344. That case recognized only that irreparable injury can take different forms, not that it can exist without a causal connection to infringement. *See id*. Whirlpool's motion should be denied on lack of irreparable harm alone.

B. Whirlpool's Copying Argument Fails on the Facts and the Law

Whirlpool tries to blur the issue by alleging Samsung "copied" Whirlpool's premium third rack, and that copying "bolster[s]" causal nexus. Whirlpool Br. at 9. This argument is factually incorrect and legally unsupported. First, Samsung did not copy Whirlpool: there is a significant divergence in design, including the spray system used (*see* Section III.C.2.a), and Whirlpool's own witness admitted the Samsung rack differs from the KitchenAid rack. Tr. 77:7-78:4. [redacted] But Whirlpool's witness agreed there was nothing wrong with buying a competitor's product, "taking pictures of it and comparing features," and that such activities are a "normal thing." Tr. 76:10-25. Whirlpool's reliance on *Apple*, 809 F.3d at 643 is similarly misplaced. As the Court noted, "one obvious difference between the *Apple* case and this case is that there has been no finding of infringement in this case as there was in *Apple*." Tr. 25:21-24. Further, unlike here, in *Apple,* the defendant "professed belief in the importance of the patented features as a driver of sales," and the district court credited multiple evidence of copying in defendant's documents. 809 F.3d at 642, 644. *Apple* is, thus, readily distinguishable.

C. Whirlpool Has Not Established a Likelihood of Success on the Merits

To establish a likelihood of success, Whirlpool must show that it is likely to prove infringement and to withstand Samsung's validity challenges. *Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1376 (Fed. Cir. 2009). Samsung need only "rais[e] a substantial question concerning either infringement or validity" to defeat that showing. *LifeScan Scotland, Ltd. v. Shasta Techs., LLC*, 734 F.3d 1361, 1366 (Fed. Cir. 2013). As detailed in Dr. Kimberly

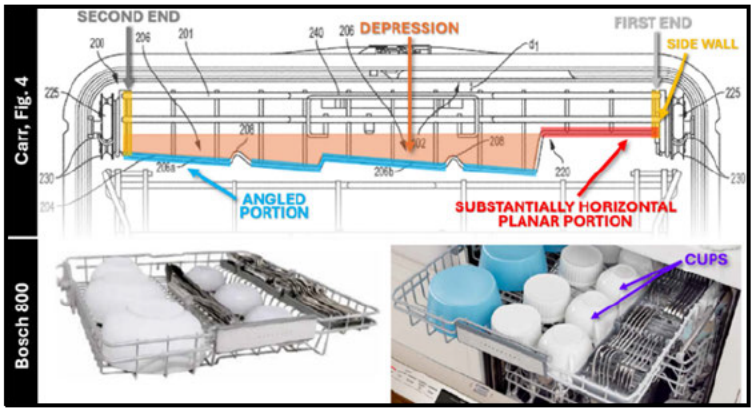
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Cameron's declarations,[4] and summarized below, Whirlpool cannot carry its burden.

1. **The '681 Patent**

a. **The '681 Patent Is Anticipated by Carr and Bosch 800**

According to Whirlpool, a "significant innovation behind Whirlpool's premium third rack" is that it can accommodate "glasses in addition to utensils." Whirlpool Br. at 2. The asserted '681 Patent targets that arrangement, claiming a rack with a "substantially horizontal planar portion" for supporting "utensil holders," and an "angled" portion defining "a cup seat for supporting one or more cups in [a] depression." But such an arrangement was already well-known. Each of U.S. Patent Pub. No. 2018/0220867 ("Carr") and its commercial embodiment, the Bosch 800 Series dishwasher, disclose a dishwasher rack with a horizontal portion for supporting a utensil basket and an angled portion for supporting cups, as claimed in the '681 Patent. Cameron Decl. ¶¶ 101-138; Cameron Final Decl. ¶¶ 118-128.



Whirlpool's only argument to try to avoid these anticipatory references is to construe "cup seat" to have a special meaning, requiring that the rack "cradle drinkware" by "support[ing] glasses and cups of ordinary dimension along their cylindrical edge." Whirlpool Br. at 21; Tanbour Rebuttal Decl. ¶ 122. But this is a dramatic departure from the plain and ordinary meaning of "cup

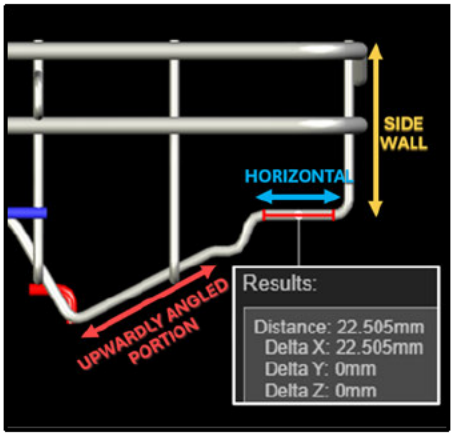
[4] Dr. Cameron has submitted three declarations in this matter, as follows:
- December 12, 2025 (Ex. 1, "Cameron Decl.") addressing non-infringement and invalidity of the '385 and '681 Patents
- March 3, 2026 (Ex. 2, "Cameron '922 Decl.") addressing non-infringement and invalidity of the '922 Patent
- March 17, 2026 (Ex. 3, "Cameron Final Decl.") responded to the opinions presented by Dr. Tanbour regarding infringement and validity of the three asserted patents

[redacted]

seat," which is simply a surface on which a cup can sit or rest.[5] Whirlpool can point to nothing in the specification that supports departing from that plain meaning. *See* Tr. 231:3-232:15. Nor can it dispute Carr and Bosch 800 each disclose a "cup seat" under this plain meaning. Cameron Decl. ¶¶ 119-121, 134-135.

b. **The Accused Product Does Not Infringe the '681 Patent**

All asserted claims of the '681 Patent recite "a dishrack having a first end spaced from a second end," and require that the "angled" portion of the rack is located "*at* the second end." The Accused Product does not meet this requirement because, as illustrated to the right, the upwardly angled portion in the Accused Product stops well short of the end of the rack, with an intervening horizontal portion extending to the side wall. Cameron Decl. ¶¶ 79-82, 88-98; Cameron Final Decl. ¶¶ 39-46, 57-62, 88-89.



Whirlpool responds that Samsung's interpretation "is incompatible with Figure 3, which it alleges is the same configuration as the Accused Product." Whirlpool Br. at 17. But what it points to in Figure 3 is not anywhere described as a horizontal portion, as found in the Samsung rack, and instead appears to be a bend transitioning to the peripheral wall. As Whirlpool itself argues, nothing in the claims requires the angle to be uniform. Whirlpool Br. at 18 ("There is no requirement in Claim 14 that the angle of the second portion be uniform."). Regardless, it is "the claims, not specification embodiments, [that] define the scope of patent protection." *Kara Tech. Inc. v. Stamps.com Inc.*, 582 F.3d 1341, 1348 (Fed. Cir. 2009). The claims require the angled portion to be "***at***" the second end, not merely near it, and this was added during prosecution to

[5] *See, e.g.*, American Heritage Dictionary, https://ahdictionary.com/word/search.html?q=seat (defining seat as "[t]he surface or part on which another part sits or rests").

obtain allowance. *See* Cameron Decl. ¶ 99. Claims such as this "that have been narrowed in order to obtain the issuance of the patent … cannot be sustained to cover that which was previously by limitation eliminated from the patent." *Graham v. John Deere Co.*, 383 U.S. 1, 33 (1966).

Nor can Whirlpool avoid a substantial question of non-infringement by contending that the horizontal portion of the Accused Product is actually angled by 3 degrees. Dr. Cameron identified serious methodological flaws with each measurement on which Dr. Tanbour relied for his 3-degree finding.[6] Indeed, Whirlpool itself acknowledges that "the second portion ***appears to be flat*** near the side wall in the Accused Product." Whirlpool Br. at 18. And the rack's CAD design file—which specifies its precise geometry for manufacturing purposes—confirms that the relevant segment is in fact horizontal. Cameron Final Decl. ¶¶ 43, 59.

2. **The '385 Patent**

a. **Samsung Does Not Infringe the '385 Patent**

The Accused Product does not infringe the '385 Patent because it relies on a fundamentally different sprayer system than the one claimed. All asserted claims of the '385 Patent require "a spray tube having nozzles configured to emit spray along the angled portion" of the rack. '385 Patent, Cl. 17. This limitation contemplates a specific structural element—a tubular conduit that itself contains or defines the nozzles through which liquid is emitted, as illustrated to the right, in Figure 9. *See* Cameron Decl. ¶ 83.

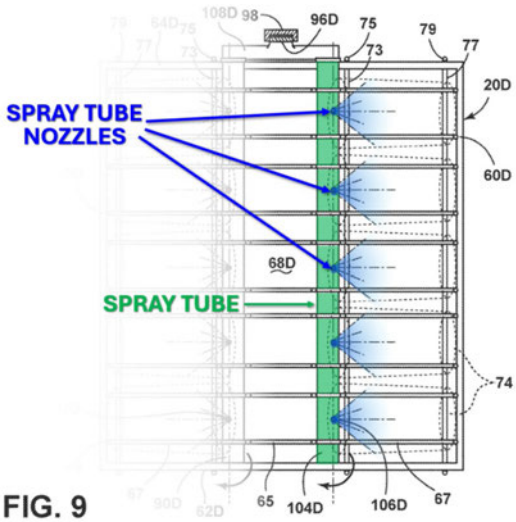
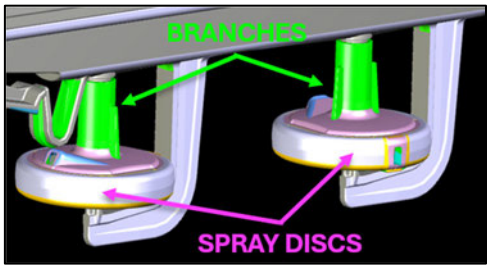


FIG. 9

[6] One measurement was obtained from an off-axis photo for which the appearance of a slight angle seems to be an artifact of perspective distortion, another measurement was taken at a point where the rack had already begun to curve downward, and the third measurement was unreliable, having been taken with a level that was unsupported at one end. Cameron Final Decl. ¶¶ 57-62.

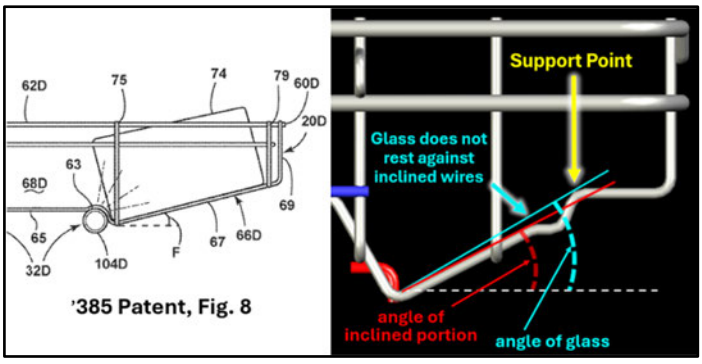
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In contrast, the sprayer system in the Accused Product relies, not on a spray tube, but on a set of spray discs, each coupled to a long manifold that supplies water to the disc through a distinct branch, as illustrated to the right. *Id.* ¶¶ 84-87. While Whirlpool argues for a broad reading of "spray tube" that would cover any spray system that includes both a tube and nozzles (Tr. 237:22-238:14), the specification plainly distinguishes "spray tubes" from "spray discs." '385 Patent, 10:45-53 (explaining that, while the figures depict "stationary and rotating spray tubes with spray nozzles," "***other types of sprayers are acceptable*** … includ[ing] … ***spray discs***"). Whirlpool's interpretation would collapse that distinction and treat any water path that ultimately emits water through an opening as a "spray tube," which, as the Court noted, would effectively cover any dishwasher. Tr. 237:22-238:14.



Even setting aside the threshold "spray tube" issue, Samsung's spray discs do not emit spray "along the angled portion" of the rack, as the claims require. Cameron Final Decl. ¶¶ 76-79. Dr. Tanbour concedes the perimeter nozzle does not meet the claims because it sprays horizontally (Tanbour Rebuttal Decl. ¶ 84), and Dr. Cameron's analysis of the upper nozzle shows it emits spray at an angle greater than that of the rack's angled portion. Cameron Final Decl. ¶ 78.

Yet another reason the Accused Product does not infringe the asserted claims of the '385 Patent is that it does not include "an ***upwardly angled*** portion formed in the bottom wall" from "spaced apart ***inclined*** portions" that "***terminat[e]*** at the side wall." As Whirlpool acknowledges, this is essentially the same non-infringement argument as for the '681 Patent, discussed at Section III.C.1.b, above. *See also* Cameron Decl. ¶¶ 79-82.

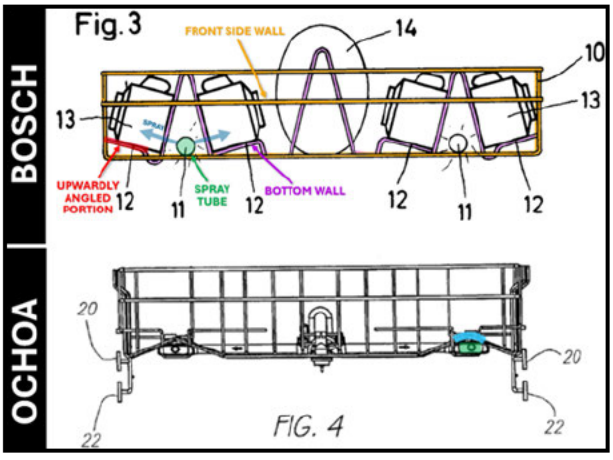


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While Whirlpool presents an alternative doctrine-of-equivalents theory, that only highlights the weakness of its case. *See, e.g.*, *Mylan Institutional LLC v. Aurobindo Pharma Ltd.*, 857 F.3d 858, 866 (Fed. Cir. 2017) (noting that "the grant of a preliminary injunction based on the doctrine of equivalents" is "unusual," because "equivalents cases are highly factual inquiries that rarely come clear on a premature record"). Moreover, the "terminat[e]" limitation was added during prosecution to obtain allowance, and prosecution history estoppel therefore bars Whirlpool from recapturing the surrendered scope. *See* Cameron Decl. ¶ 82. In any event, contrary to Whirlpool's DOE assertion, the horizontal portion serves a real purpose in the Accused Product not found in the Whirlpool design: it creates a support point for a glass on the rack, minimizing the direct glass-to-rack contact, as illustrated above. Cameron Final Decl. ¶¶ 51-56; *see also* Tr. 204:3-16.

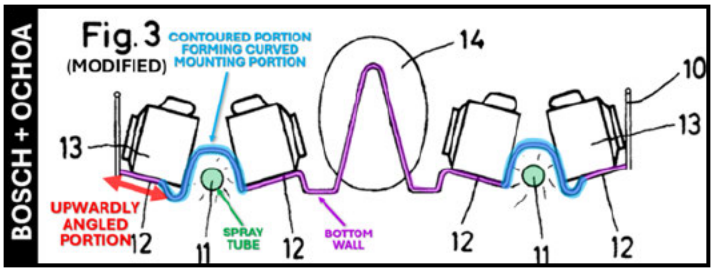
b. **The '385 Patent Is Invalid Over Bosch in View of Ochoa**

The '385 Patent also faces a serious obviousness challenge because Bosch and Ochoa together teach the same rack-mounted spray tube and angled-wall arrangement recited by the asserted claims. Cameron Decl. ¶¶ 166-98. As illustrated below, Bosch teaches rack-mounted spray tubes configured to wash cups resting on angled portions of the rack, while Ochoa teaches a conventional wire rack with an underside water-spraying system, and a POSITA seeking to implement Bosch's rack would have looked to Ochoa for implementation details for mounting Bosch's spray tube to the underside of the rack, as both references address the same problem of improving rack spray coverage. *Id.*



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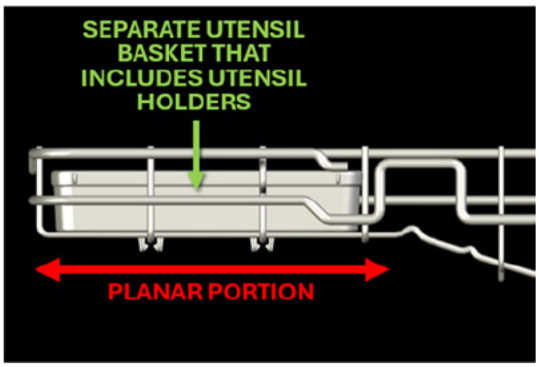
Whirlpool disputes that the combination (illustrated below) teaches the claimed "curved mounting portion," and asserts that Bosch's bottom wall is flat, but Dr. Cameron addressed both points: mounting Bosch's spray tubes to the underside of the rack, as Ochoa teaches, would have involved lowering Bosch's curved peaks and mounting the tubes adjacent to them (Cameron Final Decl. ¶¶ 154-55; Tr. 228:7-20), and the horizontal wires depicted in Bosch's Figure 3 correspond to the front side wall—not the bottom wall of the rack (Cameron Final Decl. ¶¶ 162-67).



3. **The '922 Patent**

a. **Samsung Does Not Infringe the '922 Patent**

The non-infringement dispute for the '922 Patent turns on whether Claim 1's requirement that "the planar portion ***includes*** a plurality of utensil holders" covers Samsung's separate, removable utensil tray. It does not. As illustrated to the right, in the Accused Product, the "planar portion" is a flat wire portion of the rack, while the utensil holders are formed in a separate tray resting on top of that planar portion. This is not disputed. While the planar portion may be "supporting" the utensil holders, they are not "include[d]" in it, as claimed by the '922 Patent. This is an important distinction because, while the parent '681 Patent (discussed above) merely requires utensil holders be "support[ed]" by the bottom wall or planar portion, the '922 Patent, which is a later-filed continuation of the '681 Patent, is directed to an alternative disclosed embodiment, where the utensil holders are integrated ("included") in it. *See* Cameron '922 Decl. ¶¶ 14-25.



[redacted]

The intrinsic record supports this distinction and points to only one natural reading of the "includes" claim language: the utensil holders must be constituent parts of the planar portion itself. The specification describes embodiments in which a utensil caddy "can ***rest on***" or "be directly coupled to" the planar portion, and alternative embodiments in which the utensil caddy is "integrally formed within the planar portion" and "form[s] a portion of the bottom wall." '922 Patent, 6:8-10, 6:51-53. As Dr. Cameron explained, the "includes" language was introduced to limit the claims to the latter type of structure. Cameron '922 Decl. ¶¶ 21-25.

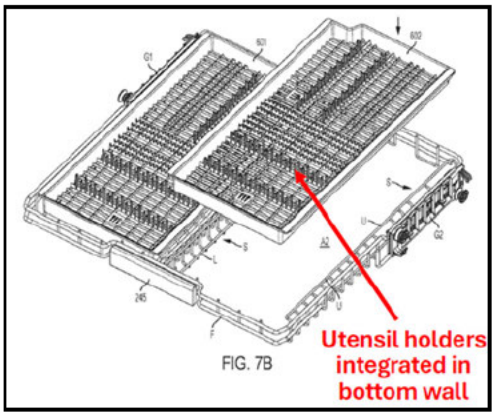
As originally filed, the claims broadly recited "an upper dish rack … defining a planar portion" and "***a plurality of utensil holders disposed in the planar portion***" (Cameron '922 Decl. ¶ 22)—language Whirlpool appears to acknowledge was broad enough to cover all disclosed embodiments, including the alternative "integrally formed" ones. Whirlpool Br. at 16-17. But the prior art Tuller reference cited by the Examiner disclosed a "silverware basket" that may be supported on the rack. Cameron '922 Decl. ¶ 24 (quoting Tuller ¶ 19). So, to overcome the prior art, the patentees agreed to an Examiner amendment requiring that "the planar portion ***includes***" the utensil holders. *Id.* ¶ 22. Thus, whereas before amendment, the claimed "utensil holders" could be a separate component positioned in relation to the "planar portion"; after amendment, they were required to be a structural feature of the planar portion itself.

Whirlpool's contrary account of the prosecution makes no sense. It reads "includes" to cover both integrated utensil holders and a separate utensil basket merely supported on the planar portion—the same (if not more) breadth it attributes to the superseded "disposed in" language. Whirlpool Br. at 17 n.11. That is not a plausible reading of the Examiner amendment made to overcome the prior art.

Whirlpool's remaining arguments fare no better. While Samsung's construction may

exclude certain embodiments in the patent figures (Whirlpool Br. at 15-16), it is fully supported by other embodiments described in the specification. Moreover, the law does not require every claim to cover every disclosed embodiment. *See, e.g.*, *Kyocera Senco Indus. Tools Inc. v. Int'l Trade Comm'n*, 22 F.4th 1369, 1382 (Fed. Cir. 2022) ("alternative [disclosed] embodiment … that is not encompassed by a claim construction does not outweigh the language of the claim"). The '922 Patent is the fourth continuation in its family, and its claims sensibly target embodiments different from those captured by earlier-issued family members. Indeed, "[i]t is often the case that different claims are directed to and cover different disclosed embodiments." *Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527 F.3d 1379, 1383 (Fed. Cir. 2008) (rejecting argument that claim construction was erroneous even though "it excludes both the preferred embodiment and every illustrated embodiment from the[] particular claims").

Nor do the dependent claims contradict Samsung's construction. In asserting that the dependent claims "are incompatible with Samsung's interpretation" (Whirlpool Br. at 16), Whirlpool assumes that a "removable" utensil basket necessarily must rest on top of an underlying rack. But prior art identified by the applicants during prosecution shows another possibility wholly consistent with Samsung's construction: utensil holders can be formed in a removable insert that itself forms part of the planar portion when coupled to the rack, as illustrated to the right. *See* Cameron '922 Decl. ¶¶ 99-105.

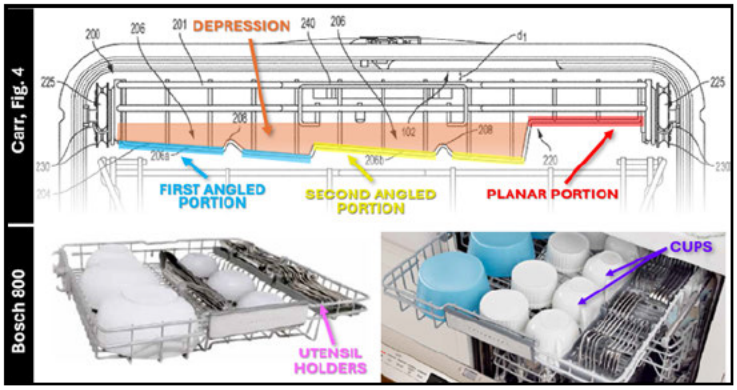


b. **The '922 Patent Is Invalid**

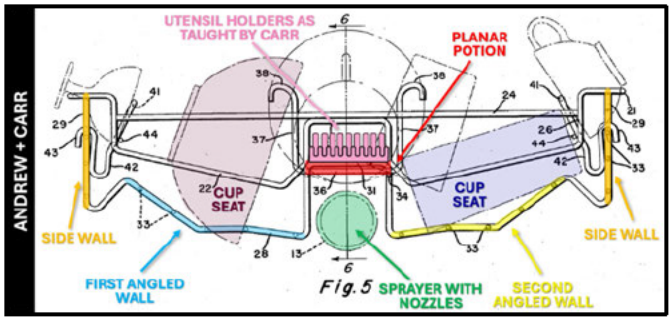
Claims 1-4 of the '922 Patent are also invalid over substantially the same prior art as the '681 Patent.

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As illustrated below, Carr and Bosch 800 each disclose a rack with a utensil-supporting planar region and angled regions for supporting cups in a depression—the same arrangement claimed by the '922 Patent. *See* Cameron '922 Decl. ¶¶ 77-107. Whirlpool's only response to Carr and Bosch 800 is the same unduly narrow, special meaning of "cup seat," which should be rejected for the same reasons discussed in Section III.C.1.a above. *See* Cameron Final Decl. ¶¶ 217, 221.



For the remaining asserted claims (Claims 7-25), which add sprayer and wire-frame limitations, the combination of Patent No. 2,910,207 ("Andrew") and Carr teaches every element, as shown below. Cameron '922 Decl. ¶¶ 123-76. Andrew discloses a wire-frame dish rack with angled cup-supporting walls, a central planar utensil region, and a spray tube configured to direct water into the cups. Andrew, 1:59-60, 2:43-47, 3:25-52. And Carr contributes the three-rack configuration and removable utensil caddy. *Id.*; Cameron Final Decl. ¶¶ 227-39.



Whirlpool disputes the motivation to combine Andrew and Carr, arguing a POSITA would not look to Andrew, a patent for a two-rack dishwasher from 1959, because it would not be able to accommodate Carr's third rack. Whirlpool Br. at 22. But, as Dr. Cameron explained, "modern dishwashers" have evolved since Andrew's time, "increas[ing] in size" to accommodate three racks, while continuing to use the same wire rack structure Andrew employs. Cameron Final Decl. ¶¶ 128-29. A POSITA designing a modern three-rack dishwasher would naturally look to

[redacted]

Andrew's proven upper-rack design—with its cup-supporting angled walls and integrated spray tube—to maximize the utility of the available space. *Id.* And while Whirlpool contends that Andrew's "flat support" is too narrow for Carr's utensil caddy (Whirlpool Br. at 22), Andrew plainly teaches that this portion of its rack is designed for holding utensils. Cameron Final Decl. ¶ 228. The combination is straightforward, and Whirlpool's objections do not raise a genuine question as to validity.

D. The Equities and Public Interest Favor Market Competition

Samsung's hardship from an injunction is concrete and significant, whereas Whirlpool's claimed hardship is speculative and compensable. Samsung only has one premium dishwasher—the Accused Product—the "retail rollout" of which was "[s]ubstantially complete in June [2025]." Tr. 86:18-87:1, 90:20-91:4. An injunction, nearly a year after a nationwide rollout to over 1,500 floors, "would be devastating from a revenue perspective, investment in the unit to launch it, the loss of flooring, reputation with retailers, as well." *Id.* 106:12-19, 117:5-13. Removing Samsung's only premium dishwasher would effectively remove Samsung from this market and could cost Samsung $30 million a year in revenues. *Id.* 118:4-11. An injunction would "[a]bsolutely" harm Samsung's brand reputation by creating a "bad experience" for customers and "degrad[ing]" how Samsung looks to retailers. *Id.* 120:4-22. Conversely, Whirlpool's dominance and past success—in a market with competitors' similar third-rack dishwashers—shows it can withstand competition and seek damages if Samsung is found to infringe. And, as Whirlpool's fact witness admitted, its market share has ***increased*** since the Accused Product launched. *Id.* 77:1-6. There is no existential threat warranting the "drastic and extraordinary remedy" of a PI. *Multilift*, 2017 WL 10222420, at *1. The balance of hardships thus weighs against an injunction as "stop[ping] production or sales . . . affect[s defendant's] relationships with its customers." *Celgard, LLC v. LG Chem, Ltd.*, 624 F. App'x 748, 754 (Fed. Cir. 2015).

[redacted]

The public interest similarly "does not support removing [products] from the market when the infringing components constitute such limited parts of complex, multi-featured products." *Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d 1352, 1372 (Fed. Cir. 2013). Yet, here, Whirlpool proposes to do exactly that: remove an advanced AI-powered Samsung dishwasher because of its third rack's geometry, which is less important to consumers than many other features. *See supra* § III.A.3. An "injunction would disserve the public interest" by "depriving the public of access to a large number of non-infringing features." *Apple*, 735 F.3d at 1372.

E. A Bond Must Sufficiently Compensate Samsung If Wrongfully Enjoined

If the Court grants an injunction, Samsung requests that Whirlpool post an appropriate bond of $150 million. As the Court explained, it is "in the nature of obtaining a preliminary injunction that the moving party bears the risk of damages if the injunction is determined to have been wrongfully issued." Tr. 27:11-14. In this case, Samsung stands to lose at least $150 million in net revenue and costs if the Accused Product is enjoined. As Mr. Stumacher testified, Samsung stands to lose $30 million a year for up to four years plus lost R&D costs. *Id.* 117:14-119:2.

Whirlpool claims "Samsung could, of course, continue selling dishwashers that do not infringe Whirlpool's patents." Mot. at 24. But, as Mr. Stumacher testified, Samsung has "nothing to fill the space with" (*i.e.*, no other premium dishwasher) so would likely lose that flooring, which would be "[e]xtremely difficult" to recover from alongside the "reputational damage" Samsung would suffer from an injunction. Tr. 119:3–120:22. In view of this three-pronged harm of lost revenue and R&D costs, floor space, and reputation that Samsung would incur, Whirlpool's suggested $1 million bond is woefully inadequate. *See* Fed. R. Civ. P. 65(c).

IV. CONCLUSION

For the foregoing reasons, the Court should deny Whirlpool's motion.

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Dated: May 20, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record are being served with a copy of this document via email on May 20, 2026.

/s/ Marc J. Pensabene
Marc J. Pensabene

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