



**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



**SAMSUNG’S POST-HEARING SUR-REPLY BRIEF IN
OPPOSITION TO MOTION FOR A PRELIMINARY INJUNCTION**



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I. INTRODUCTION

Whirlpool falls far short of carrying its burden for the “drastic and extraordinary remedy” of a PI. After multiple rounds of briefing and an evidentiary hearing, it still has no evidence of actual or likely irreparable harm. Whirlpool failed to reconcile its request for extraordinary relief with a record showing delay, attenuated market evidence, and a generalized “better rack” theory untethered to the asserted claim limitations.

Whirlpool’s Reply does not cure the multiple defects Samsung identified in opposition. Instead, it doubles down on the same unsupported theories that collapsed at the hearing, where Whirlpool’s corporate representative admitted “no data” showing lost market share, lost floor space, or diminished brand strength. And Whirlpool still does not confront her concession that the sworn declaration on which Whirlpool built its irreparable-harm narrative was “not accurate.”

The record undeniably establishes that Whirlpool waited six months after learning of the DW90F before seeking relief, which alone fatally undercuts any irreparable harm claim. And the market evidence is no better for Whirlpool. KitchenAid’s premium dishwasher share rose to its highest level in four years. Samsung did not take a single Whirlpool floor spot. There is no evidence of price or brand erosion. Unable to show real-world injury, Whirlpool argues that in some hypothetical but-for world, its market share would have grown even more. Such unsupported conjecture cannot justify an injunction.

Sidestepping Fifth Circuit authority on delay, Whirlpool attempts to invent a special rule for “slow-moving” markets. No court recognizes such an exception, and Whirlpool cites none. The law still requires *proof* of *imminent, irreparable harm*—and there is none. In the end, Whirlpool’s irreparable-harm case fails for a simple reason: it has no evidence to support it.

Turning to the merits, Whirlpool’s Reply only confirms the strength of Samsung’s non-infringement and invalidity positions. Whirlpool repeats the arguments it presented in its Opening

Brief, while largely ignoring the rebuttal arguments presented in Samsung's Opposition, and mischaracterizing those few rebuttal arguments with which it does engage.

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

II. WHIRLPOOL HAS NOT ESTABLISHED IRREPARABLE HARM

A. Whirlpool's Shifting Excuses for Its Six-Month Delay Remain Unavailing.

Whirlpool's Reply ("Rep," Dkt. 72) fails to reconcile its six-month delay with its claim of imminent, irreparable harm. Whirlpool, by its own admissions, learned of the accused product by April 2025, yet did not move for a preliminary injunction until October 2025.

Whirlpool's attempts to explain the delay have shifted repeatedly. In its opening motion, Whirlpool argued that immediate relief was necessary to stop Samsung's in-store rollout. Dkt. 4 ("Mot.") 2. That theory failed because the rollout was already substantially complete months before Whirlpool's filing. In its post-hearing brief, Whirlpool retreated, characterizing flooring as only "one (small) piece" of its irreparable-harm theory. Dkt. 63 ("Op. Br.") 11. Now, in Reply, Whirlpool pivots again, arguing that six months is not that long in the supposedly "slow-moving kitchen-appliances market." Rep. 1-2. Whirlpool tries to explain away a delay it cannot justify.

Whirlpool's theory also fails on its own terms. If the market is so "slow-moving" that six months do not matter, then the alleged harm is not imminent. Dkt. 69 ("Opp.") 11. And while citing no authority for such an exception, Whirlpool attempted to dismiss several of Samsung's cited cases as not patent cases, an irrelevant distinction. *See* Op. Br. 12; Opp. 3. In the Fifth Circuit, delay weighs heavily against a finding of irreparable harm regardless of the type of case. *Id.* And Whirlpool's effort to distinguish *Pruvit Ventures, Inc. v. Forevergreen Int'l LLC*, 2015 WL 9876952 (E.D. Tex. Dec. 23, 2015) (a patent case) fares no better. Rep. 4. Samsung already explained why Whirlpool's focus on which party sought relief there is a red herring. Opp. 3.

Whirlpool offers no answer in its Reply.

With no legal support to stand on, Whirlpool resorts to mischaracterizing Samsung's arguments. Samsung does not contend Whirlpool had an affirmative duty to police the market the moment the accused product appeared. Rep. 2. The point is narrower and undisputed: the DW90F was publicly available by March 2025 and Whirlpool knew of it by April 2025, yet Whirlpool waited until October 2025 to seek relief. The Energy Star registration is relevant only because it confirms how long the product was publicly known before Whirlpool acted. *Cf.* Rep. 2.

Whirlpool's invocation of "reasonable and responsible due diligence" does not cure its problem. Rep. 2. The burden is Whirlpool's to justify its delay. It has not done so. The accused feature is a simple, visible mechanical rack configuration, and Whirlpool does not explain why *six months* were allegedly necessary to analyze it. And that time passage only reinforced the absence of irreparable harm, as the evidence shows no loss of floor space, price erosion, or brand injury.

The later issuance of the '922 Patent does not alter the analysis. Whirlpool argues it did not delay as to that patent because it amended its complaint the day the patent issued. *Id.* That misses the point. As Samsung explained, the '922 Patent is a continuation of the '681 Patent, covers the same subject matter, and is asserted against the same product. The absence of irreparable harm in the months after launch as to the originally asserted patents confirms its absence as to the continuation patent as well. Opp. 6. Whirlpool offers no meaningful response.

Whirlpool's blaming Samsung for a "singular focus on flooring" is also misplaced. Rep. 2. Flooring was *Whirlpool's* irreparable harm theory. Whirlpool's motion asserted that Samsung's rollout would displace KitchenAid floor space and cause immediate competitive injury. Mot. 2. That prediction failed. Whirlpool states the DW90F is floored [REDACTED]

[REDACTED] suggesting (without evidence) that the flooring will expand. Rep.

2. But the evidence shows [REDACTED]. See Opp. 5. Speculation that Samsung may “seek additional floor space in the future” does not establish a present emergency. Cf. Rep. 2.

Whirlpool’s six-month delay is strong evidence of no imminent or irreparable harm.

B. Whirlpool’s Reply Confirms the Absence of Irreparable Harm.

No market-share harm. Whirlpool does not dispute that it dwarfs Samsung in market share. Opp. 10. To concoct its harm theory, Whirlpool retreats to a hypothetical “but-for world,” arguing the relevant question is whether KitchenAid’s market share *might* have been even higher absent the accused product. Rep. 3. But Whirlpool offers no evidence—no expert testimony, no analysis, no data tying Samsung’s launch to any supposed suppression of KitchenAid’s growth. Its own witness admitted she had “no data” of lost market share due to the DW90F and that it was “very hard to tell” what effect, if any, Samsung’s launch had on KitchenAid’s share. Tr. 55:12-16, 56:12-18. The actual evidence is fatal to Whirlpool’s theory: [REDACTED]

[REDACTED] *Id.* 115:3-8. Whirlpool’s speculation about some imagined world should be rejected.

Whirlpool’s reliance on *SmartSky Networks, LLC v. Gogo Bus. Aviation, LLC* fails for the same reason. Rep. 3 n.2. The Federal Circuit noted there that the movant continued to gain customers and investment after the alleged infringement, finding that evidence “still relevant” to “rebut[ting] a case for irreparable injury.” 2024 WL 358136, at *5 (Fed. Cir. Jan. 31, 2024). That is exactly Whirlpool’s problem: KitchenAid continued to gain market share after Samsung’s launch. Whirlpool’s complaint that Samsung may further “entrench” itself before trial is just a request to be shielded from ordinary competition, not irreparable harm. Rep. 3.

No brand-equity harm. Whirlpool’s brand-harm theory fares no better. In its Reply, Whirlpool effectively concedes that its rack was not actually “unique,” arguing instead that

[REDACTED]

Samsung studied KitchenAid's third rack—not Bosch's—and regarded KitchenAid as a market leader in customer satisfaction. Rep. 3. That position is a sharp reversal from Whirlpool's earlier claim that its so-called "hero" feature was the "significant innovation" of moving from shallow racks to a deep third rack capable of holding full-sized glasses. *Id.* 2. And Whirlpool's assertion that KitchenAid's third rack is superior to competing products defeats any claim of brand-equity harm: if KitchenAid remained superior in the marketplace, then Bosch's earlier sale of a similar product did not diminish KitchenAid's brand equity. Although Whirlpool insists Bosch's third rack is different, it identifies no patented feature that meaningfully distinguishes the two. Rep. 3.

No loss of consumer demand. Whirlpool's reliance on product reviews fails. Because the DW90F's reviews are "actually very positive," Tr. 110:14-111:5, Whirlpool is left with the illogical theory that isolated criticism of Samsung's product will depress demand for KitchenAid's product, the same theory this Court rejected in *Multilift Wellbore Tech. Ltd. v. ESP Completion Techs. LLC*, 2017 WL 10222420, at *2 (E.D. Tex. July 25, 2017). Whirlpool's attempt to distinguish *Multilift* as involving sophisticated purchasers fails; customers choosing between well-known brands like KitchenAid and Samsung are fully capable of telling them apart. *See* Rep. 4.

Whirlpool's reliance on *Tinnus* is also without basis. Rep. 4 (citing *Tinnus Enters., LLC v. Telebrands Corp.*, 2015 WL 11089479, at *8 (E.D. Tex. Sept. 11, 2015)). Unlike there, here Whirlpool provides no evidence that a consumer would be "confused about which product is which," i.e., mistake a Samsung dishwasher for a KitchenAid one. *Id.*

No price erosion. General, vague testimony that Samsung is "known" to compete on price is not evidence KitchenAid reduced prices because of the DW90F, and Whirlpool identifies no such price reduction. Rep. 4. The record shows that, [REDACTED]

[REDACTED]

██████████ and Whirlpool’s own witness admitted the 4 series is comparably priced to the DW90F. Opp. 11. Whirlpool rebuts none of that. Rep. 4.

In the end, Whirlpool has no evidence of the claimed harms and, instead, offers a theory that harm must exist because Samsung entered the market with a competing product. But lawful competition is not irreparable harm, and speculation is not proof.

C. Whirlpool’s “Nexus” Evidence Remains Insufficient.

Whirlpool’s nexus showing fails because it conflates general product appeal with demand for the claimed invention. Its Reply labels Samsung’s internal documents “irrefutable admissions,” but they show ██████████. That is not enough.

██████████ says nothing about whether consumers are buying because of the specific patented features Whirlpool asserts—the angular depression and spray-tube configuration. *Cf.* Rep. 5. Whirlpool does not (and cannot) tie any alleged harm to those claimed features. The question is not whether consumers like functional third racks, but whether the patented features drive product demand. Opp. 12. Whirlpool offers no such evidence.

BoxCast Inc. v. Resi Media LLC, 2022 WL 884261 (E.D. Tex. Mar. 24, 2022), which Whirlpool ignores, underscores the point. There, this Court denied a PI as the plaintiff failed to show the alleged harm was tied to the alleged infringement. *Id.* at *4. Here too, Whirlpool makes no attempt to isolate demand for the narrow claimed elements from that for the product as a whole.

Whirlpool’s reliance on supposed “copying” does not help. Rep. 1. As the Court noted at the hearing, unlike in *Apple*, there has been no finding of infringement here. Tr. 25:21-24. And Whirlpool’s own witness admitted that Samsung’s rack differs from KitchenAid’s and that competitive benchmarking—buying, inspecting, and photographing competing products—is “a normal thing” in this industry. Tr. 76:10-25, 77:7-78:4. Such ordinary benchmarking is not nexus.

III. WHIRLPOOL HAS NOT ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE MERITS

A. Samsung's Rack Does Not Infringe

No spray tube ('385 Patent). Whirlpool acknowledges it is relying on an interpretation of “spray tube” that would cover any dishwasher spray system. Rep. 7. But the patentee recognized the difference between “spray tubes” and “spray discs,” and chose to claim “spray tubes,” *not* “spray discs.” ’385 Patent, 10:49-53 (discussing “other types of sprayers” including “spray discs”). Whirlpool also offers no explanation for the claim limitation requiring spray “along the angled” portion, or how its interpretation does not render that limitation meaningless.

No upwardly angled bottom wall that terminates at the side wall ('385 and 681 Patents). In its Reply, Whirlpool relies heavily on Figure 3 of the ’681 Patent, repeatedly describing it as the “preferred embodiment” and arguing that it shows the same horizontal segment as is present in Samsung’s rack. Rep. 5-6. But the specification never describes its rack as including such a horizontal segment. Nor is it proper to infer structural features from a drawing alone. *See, e.g., Nystrom v. TREX Co.*, 424 F.3d 1136, 1149 (Fed. Cir. 2005) (“[A]bsent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value.”). Indeed, in *Acufloor, LLC v. EvenTile, Inc.*, the Federal Circuit rejected an argument that a claim construction that excluded an illustrated embodiment could not be correct, holding that such an argument—based “entirely on an interpretation of the perceived dimensions of the drawing”—was insufficient. No. 2023-1887, 2025 WL 1513766, at *7 (Fed. Cir. May 28, 2025).

Moreover, as Samsung explained in its Opposition, the requirement that the upwardly angled bottom wall terminate at the side wall was added during prosecution to overcome the prior art, for both the ’681 and ’385 Patents. Whirlpool largely ignores this, acknowledging the prosecution history only as it relates to the Doctrine of Equivalents. Rep. 8. In particular,

Whirlpool argues that the distinct function provided by the horizontal segment of Samsung's rack—namely, to support glasses above, rather than directly on, the angled rack wires—does not foreclose DOE, because that function “has no relationship to the prior art that was distinguished in the prosecution history.” *Id.* But this improperly conflates the standard for application of DOE with that for prosecution history estoppel. *Id.* And, Whirlpool merely repeats Dr. Tanbour's opinion that the prosecution history “does not result in forfeiture of the Doctrine of Equivalents (‘DOE’) argument,” offering nothing in response to Samsung's criticism of that opinion as unsupported and entirely conclusory. Rep. 8; Opp. 19.

Nor does Whirlpool address Dr. Cameron's criticisms of Dr. Tanbour's measurement methods, which render his opinion that the horizontal segment in Samsung's rack is tilted by 3 degrees unreliable. Instead, Whirlpool criticizes Dr. Cameron for not performing her own measurements, ignoring that she confirmed her visual conclusion that the segment is horizontal by referencing the precise CAD design specification—a methodology Dr. Tanbour himself has relied upon in rendering his expert opinion in other cases. *See* Ex. 4.

Whirlpool ignores Samsung's arguments for the '922 Patent. Whirlpool does not confront any of the evidence presented in Samsung's Opposition regarding the '922 Patent. Opp. 20-22. Whirlpool does not even mention the prosecution history, let alone respond to Samsung's explanation of how the amendment adding the “includes” language was done to overcome the prior art Tuller reference, which taught a planar rack on which a separate utensil holder could be supported. And, while Samsung explained in detail how Samsung's interpretation is entirely consistent with the dependent claims (Opp. 22), rather than attempting to rebut those arguments, Whirlpool simply asserts—incorrectly—that “Samsung [] overlooks that its interpretation would render the patent's dependent claims unpracticable.” Rep. 9.

B. Whirlpool's Patents Are Invalid

Whirlpool misrepresents Samsung's invalidity grounds. Samsung presents two separate anticipatory prior art references for the '681 and '922 Patents—Bosch 800 and Carr—each of which independently raises substantial questions of invalidity. Rather than identifying any actual flaws in Dr. Cameron's invalidity mappings—because it cannot—Whirlpool tries to downplay these references by repeatedly misrepresenting Samsung's invalidity positions as presenting “the combination of Carr and Bosch,” rather than two separate anticipatory grounds. Rep. 6, 9.

Whirlpool's “cup seat” arguments conflict with the specification ('681 and '922 Patents). Whirlpool attempts to defend its unduly narrow construction of “cup seat” by arguing that it refers to a “cup-specific” surface not intended to hold “a bowl or anything else.” Rep. 6-7. But both Carr and Bosch 800 expressly teach angled walls on which cups may be placed for washing, as required by the claims (Opp. 15), and the fact that those surfaces can also hold other items does not disqualify them. Nor does the specification include any “cup-specific” requirement. To the contrary, it makes clear that the “cup seat” of the rack can accommodate larger items such as cups, as well as “other objects ... such as, but not limited to, baby bottles, plates, bowls, pans, or the like” ('681 Patent, 7:54-58), a feature that was absent from then-existing third racks that could “only accommodate silverware or other low profile utensils.” '681 Patent, 1:28-32.

Whirlpool mischaracterizes the Bosch-Ochoa combination for the '385 Patent. Whirlpool asserts that the motivation-to-combine for the Bosch-Ochoa ground “is wholly unsupported and was *never raised* either in the litany of declarations offered by its expert or at the hearing.” Rep. 8 (emphasis in original). But that is not true. As Dr. Cameron plainly explained: “Both references address dishwashing performance at a dish rack's lateral regions using spray streams that reach the interiors of cups and glasses, while seeking to deliver thorough coverage.” Final Cameron Decl. ¶ 154. And while Whirlpool takes issue with Dr. Cameron's illustration of

[REDACTED]

the Bosch-Ochoa combination, it appears to agree that lowering Bosch's peaks would indeed be one way to combine the two references. Rep. 8-9. Whirlpool also maintains that the horizontal wires in Bosch's Figure 3 form the bottom wall, without confronting any of the evidence Samsung presented in rebutting that contention, including that Bosch clearly illustrates the horizontal wires as positioned in front of the angled bottom wall of the rack, as would be expected for an image of the front side wall of the rack. Opp. 20.

IV. THE EQUITIES AND PUBLIC INTEREST DISFAVOR AN INJUNCTION

Whirlpool does not dispute that the DW90F is "fully entrenched in the marketplace" after a nationwide rollout [REDACTED] many months ago or that removing it would harm Samsung. See Rep. 14–15. Instead, Whirlpool relies on an irrelevant hypothetical—what if the DW90F had not replaced its predecessor, the 9950. But it did. Samsung cannot go back in time or replace the DW90F with a product that is no longer active. Whirlpool also fails to address the real harms Samsung will suffer if the DW90F is taken off the market or rebut that the third rack is just one part of this complex, multi-featured product. In sum, Whirlpool does not show that the DW90F provides an existential threat warranting the "drastic and extraordinary remedy" of a PI.

Finally, a \$150 million bond is appropriate because, as Mr. Stumacher testified, Samsung stands to lose [REDACTED] plus lost R&D costs. Tr. 117:14-119:2. 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" an injunction would cause Samsung. *Id.* 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 completely detached from the scale of a nationwide product injunction. See Fed. R. Civ. P. 65(c).

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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 June 17, 2026.

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