UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

AFFINITY LABS OF TEXAS, LLC
Patent Owner

Case IPR2014-01181*
Patent 8,532,641 B2

Before the Honorable KEVIN F. TURNER, LYNNE E. PETTIGREW, and JON B. TORNQUIST, *Administrative Patent Judges*.

PETITIONERS' FIVE-PAGE SUBMISSION RESPONSIVE TO PATENT OWNER'S SUBMISSION (PAPER 26)**

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*Case Nos. IPR2014-01182 and IPR2014-01184 have been consolidated with the instant proceeding. *See* IPR2014-01181, Paper 15; IPR2014-01182, Paper 15; and IPR2014-01184, Paper 15.

**Per the PTAB's Sept. 23, 2015 email from Maria Vignone, Petitioners limit their submission to responding to the pages and line numbers explicitly identified on pages 1-5 of Patent Owner's submission (Paper 26), and not citations or arguments identified in Exhibit A to Paper 26 that are not explicitly identified on pages 1-5 of Patent Owner's submission.

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GLOSSARY OF ABBREVIATIONS

Shorthand	Description
BRI	Broadest Reasonable Interpretation
IPR	*Inter Partes* Review
P1	IPR2014-01181, Paper 4, Corrected Petition For *Inter Partes* Review of United States Patent No. 8,532,641
P2	IPR2014-01182, Paper 4, Corrected Petition For *Inter Partes* Review of United States Patent No. 8,532,641
P3	IPR2014-01184, Paper 4, Corrected Petition For *Inter Partes* Review of United States Patent No. 8,532,641
PO	Patent Owner
R##	IPR2014-01181, Paper 20, Patent Owner's Response at p. ##
RP##	IPR2014-01181, Paper 23, Petitioners' Reply ("Reply") at p##
Pap.	Paper
Q1##	Ex. 1023 (July 23, 2014 Declaration of Dr. Quackenbush, submitted in IPR2014-001181) ¶¶##
Q2##	Ex. 1023 (July 23, 2014 Declaration of Dr. Quackenbush, submitted in IPR2014-001182 (now joined with IPR2014-01181)) ¶¶##
QR##	Ex. 1025 (August 31, 2015 Rebuttal Declaration of Dr. Quackenbush, submitted in IPR2014-01184) ¶¶##
W##	Ex. 2005 (Declaration of Dr. Wolf) ¶¶##

Note: All emphasis herein added unless otherwise stated.

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While PO argues the Reply and *every* reply exhibit "must be stricken . . . for improperly exceeding the scope of reply," it fails to identify even a *single* new argument or exhibit that constitutes "improper reply evidence." The Reply and Dr. Quackenbush's Rebuttal Decl. expressly link each argument and piece of reply evidence with PO's arguments they are rebutting, underscoring that each is proper rebuttal evidence. *E.g.*, 77 Fed. Reg. at 48,620 ("*replies may rely upon appropriate evidence*"); IPR2014-00164, Pap51 at 24 ("the very nature of a reply is to *respond to the opposition*"); *id.* ("The need for relying on evidence not previously discussed in the Petition may not exist until a certain argument has been raised in the [PO] Response."); CBM2012-00002, Pap. 66 at 86-69; IPR2013-00292, Pap.93 at 59-60 (evidence "directly responsive" to arguments in PO's Response is proper rebuttal). In instituting trial, the Board concluded that Petitioners made a *prima facie* case of invalidity based on the evidence submitted with the Petitions. Petitioners' rebuttal evidence, in contrast, responded to PO's efforts to attack Petitioners' *prima facie* case. While the Reply continued to urge the grounds instituted by the Board, this is entirely proper—it certainly did not transform Petitioners' rebuttal evidence into part of its *prima facie* case, or otherwise make it untimely or improper.

I. PO is wrong that the Reply improperly includes arguments and evidence on claim construction. In the Petitions, Petitioners proposed constructions for "stream" / "streaming audio signal", "[wireless] communication rate," and "CD

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quality listening experience." P1 10-12; P2 10-12; P3 25-26. For all other terms, Petitioners expressly applied the BRI in light of the specification. *Id.* PO's Response proposed constructions for "wireless telephone device," "stream a signal" / "streaming audio signal," "portable electronic device," "communication rate that provides for a CD quality listening experience," and "while." R4-11. Petitioners' Reply properly responds to these claim construction arguments raised in PO's Response. *See, e.g.*, IPR2014-00164, Pap. 51 at 24 ("[PO's] proposed claim construction was raised for the first time in these proceedings in [PO's] Response. The Reply complies with 37 C.F.R. §42.23 as it only responds to arguments raised in PO's response."). In particular, with respect to "communication rate that provides for a CD quality listening experience," the Reply (RP6-9; QR51-58 and Exs. 1030-1035) directly responds to PO's arguments (R10-11; W128-134,175) to show how PO's proposed construction is inconsistent with the BRI.

For "means for recharging," PO argued that "claim 14 involves means-plus-function claiming" and that Petitioners did not identify structure under §112(6). R39-40,69-70,118-120. The Reply directly responds to PO's argument—explaining that the term is not governed by §112(6). RP28-29,39,50-51. And Petitioners did not "bury" this term as PO asserts—PO only raised this issue with respect to discussion of claim 14, *not in its claim construction section*. Petitioners accordingly responded to this issue in its discussion of claim 14.

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II. The Reply properly responds to PO's arguments in its Response regarding priority. Petitioners' priority arguments in its Reply (RP41-46) are directly responsive to the priority arguments first made in PO's Response (R73-109), and Dr. Quackenbush's rebuttal testimony (QR187-207) directly responds to Dr. Wolf's testimony (W283-293). In particular, PO argued in its Response that the '812 application "makes clear that a [GUI] can be present on a variety of electronic devices" and that "one such electronic device is the recipient device." R98. The Reply is directly responsive to PO's argument—explaining that none of the passages PO cited (R81-101) discloses that a "recipient device" displays the GUI. RP43-44. In addition, Petitioners directly rebut PO's arguments regarding related proceedings on the '228 patent (RP45 rebuts R106-109), '833 patent (RP45-46 rebuts R102-103), and '926 patent (RP46 rebuts R103-105). Finally, there is no basis for a sur-reply: Petitioners bear the ultimate burden of persuasion to prove unpatentability and the final burden of production to respond to PO's priority arguments. *Dynamic Drinkware,* 2015 U.S. App. LEXIS 15764 at *6, 9-10 (Fed. Cir. 2015); CBM2012-00010, Ex. 2300 at 26:6-8 ("[P]etitioner gets the last word. That's the rule. They bear the burden.").

III. PO is wrong that the Reply includes "improper new substantive arguments and evidence." Contrary to PO's assertions, Ericsson Review 3 (Ex. 1007A/1108A) is *not "a new reference" at all*—it was cited in the Petitions (P1 15,25; P2 15-16)

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