Paper No. _____
Filed: September 10, 2015

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NVIDIA CORPORATION
Petitioner

v.

SAMSUNG ELECTRONICS COMPANY, LTD.
Patent Owner

Case IPR2015-01318
Patent No. 8,252,675

Patent Owner's Preliminary Response to Petition for *Inter Partes* Review of U.S. Patent No. 8,252,675

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I. Introduction

Patent Owner Samsung Electronics Company, Ltd. ("Patent Owner" or "Samsung") respectfully submits this preliminary response in accordance with 35 U.S.C. § 313 and 37 C.F.R. § 42.107, responding to the Petition for *Inter Partes* Review (the "Petition") filed by nVidia Corporation ("Petitioner" or "nVidia") against Samsung's U.S. Patent No. 8,252,675 ("the '675 patent"). The Board should not institute *inter partes* review because Petitioner has not met its burden of demonstrating a reasonable likelihood of prevailing with respect to any of the challenged '675 patent claims.

For instance, Petitioner improperly relies on multiple distinct embodiments in the primary reference to support its anticipation positions. In addition, Petitioner fails to show how the prior art discloses or renders obvious certain features. For each of these and other reasons discussed below, the Board should deny the Petition and not institute an *inter partes* review of the '675 patent.

II. The Petition Fails to Show a Reasonable Likelihood that the Petitioner Will Prevail With Respect to the Challenged Claims

In order for an *inter partes* review to be instituted, the Petition must show a "reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a). Here, the Petition contends that claims 1-8 and 10-15 of the '675 patent are unpatentable under 35 U.S.C. § 102 based on U.S. Patent Publication No. 2009/0065809 to Yamakawa

("*Yamakawa*"), and that claim 9 is unpatentable under 35 U.S.C. § 103(a) based on *Yamakawa* and U.S. Patent No. 8,039,381 to Yeh ("*Yeh*"). (Pet. at 3.) However, as discussed below, the Petition fails to establish a reasonable likelihood that the Petitioner will prevail with respect to even one claim challenged in the Petition.

A. Petitioner Has Not Shown that *Yamakawa* Anticipates Claims 1-8 and 10-15 Because the Petition Improperly Combines Elements from Distinct Embodiments of *Yamakawa*

Petitioner cannot establish anticipation of claims 1-8 and 10-15 because it improperly combines elements from distinct embodiments in *Yamakawa*. *See, e.g.*, *Panasonic Corp., et al. v. Optical Devices, LLC*, IPR2014-00302, Paper No. 9 at 13-14 (July 11, 2014) (noting that "picking and choosing" from different embodiments "has no place in the making of a 102, anticipation rejection") (citing *Application of Arkley*, 455 F.2d 586, 587-88 (CCPA 1972)); *Symantec Corp. v. RPost Communications Ltd.*, IPR2014-00357, Paper No. 14 at 20 (July 15, 2014) (explaining that Petitioner cannot rely on "alternative" embodiments in an anticipation rejection); *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008) (same).

For example, independent claim 1 recites, *inter alia*,

> patterning the dummy gate electrode layer and the buffer gate electrode layer in sequence to define a buffer gate electrode on the gate insulating layer and a dummy gate electrode on *the buffer gate electrode*; . . .

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