

Filed: February 8, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.
Petitioner

v.

CYWEE GROUP LTD.
Patent Owner

Case IPR2019-00535
Patent No. 8,552,978

OPPOSITION TO PETITIONER'S MOTION FOR JOINDER TO *INTER PARTES* REVIEW IPR2018-01258

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I. INTRODUCTION

Samsung Electronics Co., Ltd. (“Petitioner” or “Samsung”) has filed a petition against CyWee Group Ltd. (“CyWee” or “Patent Owner”) for *inter partes* review of U.S. Patent No. 8,441,438 (the “‘438 Patent”) concurrently with a Motion for Joinder (the “Motion”) with *Google LLC v. CyWee Group Ltd.*, IPR2018-01258 (the “Google IPR”). The Google IPR was instituted on December 11, 2018, challenging claims 1, 3, 4, and 5 of the ‘438 Patent.

Samsung is one of four parties now seeking joinder with the Google IPR. The other parties are LG Electronics Inc. (“LG”); ZTE (USA), Inc. (“ZTE”); and Huawei Device USA, Inc., et al. (“Huawei”). All of these parties are also parties to infringement actions before various district courts involving the ‘438 Patent. Petition, Paper 1 at 2. Samsung has challenged the validity of the ‘438 Patent in *CyWee Group Ltd. v. Samsung Elec. Co. Ltd. et al.* C.A. No. 2:17-cv-00140 (E.D. Tex.) (the “District Court Action”).

The District Court Action was filed on February 17, 2017. District Court Action, Complaint, Doc. 1. Samsung is nearly a full year past the deadline for which it could have filed a petition for its own IPR pursuant to 37 C.F.R. § 42.101(b). During the two years since Samsung was first served with the complaint in the District Court Action, Samsung has not indicated any interest in challenging

the validity of the '438 Patent by IPR, opting instead to pursue an invalidity defense in the District Court Action. The District Court Action has progressed considerably. A claim construction order issued in the District Court Action on July 9, 2018. *Id.*, Claim Construction Order, Doc. 117. That claim construction favored CyWee and has been repeatedly upheld despite two requests for reconsideration by Samsung, one of which was based upon issues raised in the Google IPR. Fact discovery has concluded in the District Court Action, as has expert discovery for validity and infringement. Case dispositive motions and motions to strike expert opinions were filed on February 6, 2019, and a trial date has been set for May 2019. Samsung now seeks to stay the District Court Action—and subvert the claim construction order there—by joining the Google IPR. CyWee has opposed Samsung's motion to stay the District Court Action. Moreover, although Samsung originally asserted *Bachmann*, a key reference in the Google IPRs, it dropped that reference from its invalidity contentions and did not raise it in any of its expert reports on invalidity. Samsung should not be permitted to resurrect its long-abandoned reliance on *Bachmann* through joinder here.

Allowing joinder here will severely prejudice the Patent Owner; will introduce new issues requiring additional discovery; will impact the schedule of this proceeding and related proceedings; and will waste the time, effort, and

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