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

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

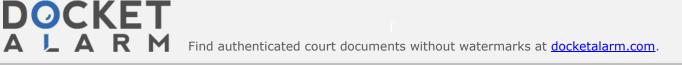


TABLE OF CONTENTS

I. INTRODUCTION	1
II. STANDARD	3
III. ARGUMENT	3
1. Joinder Would Prejudice Patent Owner	3
2. Joinder Would Impact the Trial Schedule	6
a. Joinder Would Introduce New Claim Construction Issues	7
b. Joinder Would Require Additional Discovery as to RPIs	10
3. Joinder Would Waste Time, Effort, and Resources	11
IV. CONCLUSION	12

TABLE OF AUTHORITIES

Cases

Applications in Internet Time v. RPX Corp., 897 F.3d 1336 (Fed. Cir., July 9, 2019)
CyWee Group Ltd. v. Samsung Elec. Co. Ltd. et al. C.A. No. 2:17-cv-00140 (E.D. Tex.) passim
<i>Famy Care Ltd. v. Allergan, Inc.,</i> IPR2017-00566 (PTAB July 12, 2017)
Google LLC v. CyWee Group Ltd., IPR2018-012581
<i>Kyocera Corp. v. Softview, LLC,</i> Case IPR2013-00004 (PTAB Apr. 24, 2013)
Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Matal, 868 F.3d 1013 (Fed. Cir. 2017) (Dyk, J. and Wallach, J. concurring)7
Proppant Express Investments LLC, et al., v. Oren Tech., LLC, IPR2018-00914, Paper 21 at 5 (PTAB Nov. 8, 2018)7
Unified Patents, Inc. v. PersonalWeb Tech., LLC, et al., IPR2014-00702, Paper 12 at 2-3 (PTAB July 24, 2014)3, 5, 7, 11
Statutes and Rules
35 U.S.C. § 315(c)
37 CFR § 42.122
Other Authorities

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 Actionand 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

DOCKET A L A R M



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.