

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LG DISPLAY CO., LTD.,  
Petitioner

v.

SOLAS OLED, LTD.,  
Patent Owner

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Case IPR2020-01238  
U.S. Patent No. 7,573,068

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**PATENT OWNER PRELIMINARY RESPONSE SUR-REPLY**

## PATENT OWNER'S EXHIBIT LIST

Ex.	Description
<b>2001</b>	Solas's preliminary infringement contentions cover pleading in <i>Solas OLED Ltd. v. LG Display Co., Ltd., LG Electronics, Inc., and Sony Corporation</i> , Case No. 6:19-cv-236-ADA (" <i>Solas v. LG</i> ") served on November 26, 2019
<b>2002</b>	Scheduling Order, <i>Solas v. LG</i> , Dkt. 59 (W.D. Tex., Dec. 21, 2019)
<b>2003</b>	Claim Construction Order, <i>Solas v. LG</i> , Dkt. 79 (W.D. Tex., June 9, 2019)
<b>2004</b>	Order Setting Jury Selection and Trial, <i>Solas v. LG</i> , Dkt. 86 (W.D. Tex. Aug. 20, 2020)
<b>2005</b>	Amended Scheduling Order, <i>Solas v. LG</i> , Dkt. 133-1 (W.D. Tex., Nov. 20, 2020)
<b>2006</b>	Joint Claim Construction Statement, <i>Solas v. LG</i> , Dkt. 76 (W.D. Tex. May 1, 2020)
<b>2007</b>	Law360 Article: West Texas Judge Says He Can Move Faster Than PTAB
<b>2008</b>	WDTex Divisional Standing Order Regarding Trials in Waco dated August 18, 2020
<b>2009</b>	Judge Gilstrap Order regarding Eastern District of Texas in-person trials dated November 20, 2020
<b>2010</b>	Defendants' final invalidity contentions cover pleading in <i>Solas v. LG</i> served on July 31, 2020
<b>2011</b>	Institution Decision, <i>LG Display v. Solas</i> , IPR2020-01055
<b>2012</b>	Email chain with counsel regarding Apple and Motorola cases

Ex.	Description
2013	Order Transferring Trial Venue in <i>VLSI Technology LLC v. Intel Corporation</i> , USDC WD Tex Case No. 1:19-cv-00977
2014	“U.S. Starts Vaccine Rollout as High-Risk Health Care Workers Go First,” NYTimes article (available at <a href="https://www.nytimes.com/live/2020/12/14/world/covid-19-coronavirus/the-weapon-that-will-end-the-war-vaccinations-begin-across-virus-ravaged-america">https://www.nytimes.com/live/2020/12/14/world/covid-19-coronavirus/the-weapon-that-will-end-the-war-vaccinations-begin-across-virus-ravaged-america</a> )
2015	Order Granting Motion to Extend Scheduling Deadlines, <i>Solas v. LG Display</i> , USDC WD Tex. Case No. 6:19-cv-00236
2016	Defendants’ Invalidation Contentions, served on January 24, 2020
2017	<i>Mass Engineered Design, Inc., etc. v. Ergotron, Inc., et al.</i> , 250 F.R.D. 284 (2008)
2018	Excerpts from Douglas Holberg Corrected Expert Report regarding Invalidation, served on December 5, 2020
2019	Appendix B-1 to the Expert Report of Douglas Holberg regarding Invalidation, served on December 5, 2020

This IPR has similar facts to the -1055 IPR in which the Board denied institution under the *Fintiv* factors. IPR2020-01055, Paper 10 (Ex. 2011). But compared to the -1055 IPR: (a) this Petition was filed more than a month later and (b) the institution decision won't arrive until 2.5 months later. Thus, most of the *Fintiv* factors, including Factors 1–4, weigh more strongly against institution.

Petitioner's primary argument—that the '068 patent is “oft-asserted” and instituting review is needed to “protect the public” (Reply at 1)—is wrong on the facts and law. Patent Owner has reached an agreement in principle that will lead to dismissals of the Apple, Motorola, and Dell cases. *See* Ex. 2012. The only other case will be Samsung, who hasn't even answered the complaint.

Regardless, the existence of other defendants is nearly irrelevant where, as here, they aren't involved in this IPR or the underlying WDTex litigation. The relevant “parallel proceeding” is the one against Petitioner set for trial in March. And despite Petitioner's invitation, the Board shouldn't issue advisory opinions on validity to “protect” other/future defendants, who are capable of filing their own IPRs.

***Fintiv* Factor 1:** Factor 1 weighs against institution. By the time of the institution decision, the parties will have completed expert reports and summary judgment motions on the '068 patent and be one month before trial. And at least one of the three asserted patents (the '137 patent) won't be subject to any IPRs. These facts are specific to this case and undermine the possibility of a stay. *See Fintiv Order* at 7–8 (“proximity of the court's trial date and investment of time are relevant” to assess the court's willingness to stay) (citing *DMF, Inc. v. AMP Plus, Inc.*, Case No.

2-18-cv-07090 (C.D. Cal. July 12, 2019 (denying motion to stay after PTAB instituted in view of approaching trial date and advanced discovery)).

***Fintiv* Factors 2 & 5:** Petitioner is a defendant in the WDTex case and closely related to the other LG/Sony Defendants. *See* POPR at 22–23. Thus, Factor 5 weighs against institution. As to Factor 2, Petitioner’s assertions about court congestion, COVID-19,<sup>1</sup> and possible conflicts with trial (Reply at 2–3) are speculative at best. The WDTex case is set for trial in Waco. And just last month, Judge Albright transferred a case from Austin to Waco for purposes of conducting a January 2021 trial. *See* Ex. 2013 at 1 (“if the Austin courthouse does not reopen in time for a January trial, the trial for the -00254 case will be held in Waco”). In doing so, Judge Albright emphasized the importance of speedy trials and the harm from delay. *See id.* at 5–6 (“delaying one trial further delays other trials) (“because patents have a limited term, the Court does not believe it should unnecessarily delay a trial date”).

Indeed, last week, Judge Albright issued a docket entry in the WDTex case reiterating the March 2021 trial date. Ex. 2015 (Dkt. 139 on 12/9/21) (“Trial remains set for 3/29/21 at 9:00am”). This is nearly a full year before the March 2022 FWD deadline. Thus, even if trial were delayed by three months (and there’s no non-speculative reason it will be), this would still be nine months before the FWD deadline.<sup>2</sup>

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<sup>1</sup> On December 13, 2020, the US began the most ambitious vaccination campaign in its history, which Gov. Cuomo called “the weapon that will end the war.” Ex. 2014.

<sup>2</sup> Petitioner’s reliance on the *Seven* and *Maxell* (Reply at 3) is unavailing. Both found Factor 2 to favor denial and instituted review because of unique circumstances not

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