

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.

Plaintiff,

v.

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

Defendants.

Civil Case No. 2:21-cv-00463-JRG

JURY TRIAL DEMANDED

THE SAMSUNG DEFENDANTS' ANSWER

Defendants Samsung Electronics Co., Ltd. ("SEC"), Samsung Electronics America, Inc. ("SEA"), and Samsung Electronics Semiconductor, Inc. ("SSI") (collectively referred to herein as "Samsung" or "Defendants") file this Answer to the Complaint for Patent Infringement ("Complaint"; Dkt. No. 1) filed by Plaintiff Netlist, Inc. ("Netlist" or "Plaintiff"). Samsung denies the allegations and characterizations in Netlist's Complaint unless expressly admitted in the following numbered paragraphs, which correspond to the numbered paragraphs in the Complaint.

1. Samsung admits that Plaintiff's pleading purports to be a Complaint against Samsung Electronics Co., Ltd. ("SEC"), Samsung Electronics America, Inc. ("SEA"), and Samsung Semiconductor, Inc. ("SSI"). Samsung lacks knowledge or information sufficient to

form a belief about the truth of the other allegations in Paragraph 1 of the Complaint, and therefore denies them.

2. To the extent that the allegations of Paragraph 2 set forth legal conclusions, no response is required. Samsung admits that purported copies of U.S. Patent Nos. 10,860,506 (the “506 Patent,”), 10,949,339 (the “339 Patent,”), and 11,016,918 (the “918 Patent,”) (collectively, the “Patents-In-Suit”) are attached to the Complaint as Exhibits 1, 2, and 3, respectively. Samsung lacks knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 2 of the Complaint, and therefore denies them.

THE PARTIES¹

3. To the extent that the allegations of Paragraph 3 set forth legal conclusions, no response is required. Samsung admits that Netlist is a corporation organized and existing under the laws of the State of Delaware. Samsung lacks knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 3 of the Complaint, and therefore denies them.

4. To the extent that the allegations of Paragraph 4 set forth legal conclusions, no response is required. SEC admits it is a corporation organized and existing under the laws of the Republic of Korea, with its principal place of business located at 129 Samsung-ro, Yeongtong-gu, Suwon-si, Gyeonggi-do, Republic of Korea. SEC admits that it is a parent corporation of SEA and SSI. SEC admits that the Device Solutions division has involvement in certain semiconductor products. SEC admits that it is involved in the design, manufacture, and

¹ Samsung repeats the headings set forth in the Complaint to simplify comparison of the Complaint and this response. In doing so, Samsung makes no admissions regarding the substance of the headings or any other allegations of the Complaint. Unless otherwise stated, to the extent that a particular heading can be construed as an allegation, Samsung specifically denies all such allegations.

provision of certain products sold by SEA. Samsung denies any remaining allegations of Paragraph 4.

5. To the extent that the allegations of Paragraph 5 set forth legal conclusions, no response is required. SEA admits it is a corporation organized and existing under the laws of New York. SEA admits that it maintains an office at 6625 Excellence Way, Plano, Texas 75023 and that its registered agent is CT Corporation System, located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201. SEA further admits that it is a wholly owned subsidiary of SEC. Samsung denies any remaining allegations of Paragraph 5.

6. To the extent that the allegations of Paragraph 6 set forth legal conclusions, no response is required. SSI admits that it is a corporation organized and existing under the laws of California. SSI admits that its registered agent is National Registered Agents, Inc., 1999 Bryan St., Ste. 900, Dallas, TX 75201. SSI further admits that it is a wholly owned subsidiary of SEA. Samsung denies any remaining allegations of Paragraph 6.

7. To the extent that the allegations of Paragraph 7 set forth legal conclusions, no response is required. Samsung denies that SEC and SSI make the Accused Instrumentalities in this judicial district. Samsung denies that SEA makes or sells the Accused Instrumentalities in this judicial district. Samsung lacks knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 7 of the Complaint, and therefore denies them.

JURISDICTION AND VENUE

8. To the extent that the allegations of Paragraph 8 set forth legal conclusions, no response is required. Samsung admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338 in that this this action arises under the patent laws of the United States, 35 U.S.C. Title 35 § 101 *et seq.*, but denies that Netlist's claims are meritorious. Samsung denies all allegations of patent infringement, and further denies that Netlist is entitled to any relief for

its allegations of patent infringement whether by award of damages, injunction, or otherwise. Samsung denies any remaining allegations in Paragraph 8.

9. To the extent that the allegations of Paragraph 9 set forth legal conclusions, no response is required. Except as expressly admitted, Samsung lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 9, and therefore denies them.

10. To the extent that the allegations of Paragraph 10 set forth legal conclusions, no response is required. Samsung denies that SEC and SSI make the Accused Instrumentalities in the State of Texas or the Eastern District of Texas. Samsung denies that SEA makes or sells the Accused Instrumentalities in the State of Texas or the Eastern District of Texas. Except as expressly admitted, Samsung lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 10, and therefore denies them.

11. To the extent that the allegations of Paragraph 11 set forth legal conclusions, no response is required. Samsung denies that SEC maintains a regular and established place of business at 6625 Excellence Way, Plano, Texas 75023. Samsung admits that SEA maintains an office at 6625 Excellence Way, Plano, Texas 75023. Samsung denies that it has committed acts of infringement in this District or elsewhere, or that it has committed any act, directly or indirectly, that would give rise to any cause of action under the Complaint. Samsung denies that venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b), in part, because the Patents-In-Suit are properly part of a declaratory judgment action in the District of Delaware, which was filed over two months before this action. *See Samsung Electronics Co., Ltd., et al. v. Netlist, Inc.*, Case No. 1:21-cv-01453, D.I. 1 (D. Del.) (the “Delaware Declaratory Judgment Action”) (filed on October 15, 2021). Because Samsung filed the Delaware

Declaratory Judgment Action before this action, the claims should proceed in Delaware under the first-to-file rule. *See Merial Ltd. v. Cipla Ltd.*, 681 F.3d 1283, 1299 (Fed. Cir. 2012). This rule applies in cases of duplicative infringement and declaratory judgment actions filed in separate district courts. *See, e.g., id.*; *see also Elecs. for Imaging, Inc. v. Coyle*, 394 F.3d 1341, 1345–46 (Fed. Cir. 2005). The Delaware Declaratory Judgment Action is the first-filed action with respect to the claims concerning the Patents-In-Suit because these claims relate back to the claims in Samsung’s complaint in the Delaware Declaratory Judgment Action. *See Merial*, 681 F.3d at 1299 (“[W]hat matters is the initiation of suit.”); *see also Anza Tech., Inc. v. Mushkin, Inc.* 934 F.3d 1359, 1369–70 (Fed. Cir. 2019) (“[N]ewly alleged claims, based on separate patents, relate back to the date of the original complaint” where “the general factual situation or the aggregate of operative facts underlying the original claim for relief [gives] notice to [the other party] of the nature of the allegations it was being called upon to answer.”). Samsung denies any remaining allegations in Paragraph 11

12. To the extent that the allegations of Paragraph 12 set forth legal conclusions, no response is required. Samsung admits that it did not contest proper venue in *Arbor* or *Acorn* solely for the purposes of those actions. *See Arbor Global Strategies LLC v. Samsung Elecs. Co., Ltd.*, No. 2:19-cv-333, Dkt. 43 at ¶ 10 (E.D. Tex. Apr. 27, 2020) (“The Samsung Defendants, however, do not contest, *solely for purposes of the present action*, whether venue over them properly lies in this District, but the Samsung Defendants deny that venue in this District is convenient.”) (emphasis added); *see also Acorn Semi, LLC v. Samsung Elecs. Co., Ltd.*, No. 2:19-cv-347, Dkt. 14 at ¶ 29 (E.D. Tex. Feb. 12, 2020) (“Samsung does not contest at this time, and *solely for the purpose of the present litigation*, whether venue over it properly lies in this District, but SEC, SSI and SAS deny that venue in this District is convenient and SEC,

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