

IPR2023-00701 (U.S. Patent No. 8,510,407)
PO's Sur-Reply

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

DODOTS LICENSING SOLUTIONS LLC,
Patent Owner

Case IPR2023-00701
U.S. Patent No. 8,510,407 B1

**PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY
TO PATENT OWNER'S PRELIMINARY RESPONSE**

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Cases

Amkor Tech, Inc. v. Tessera, Inc.,
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Ivantis Inc et al. v. Glaukos Corp et al.,
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Other Authorities

37 C.F.R. §42.104(c).....2

37. C.F.R §1003

37. C.F.R § 1043

37 CFR §42.20(c).....1

37 CFR § 42.23(a).....1

PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	<i>Lenovo Holding Co, Inc. et al. v. DoDots Licensing Sols.</i> , IPR2019-01279 (P.T.A.B. Jan. 19, 2021)
2002	<i>Lenovo Holding Co. v. DoDots Licensing Sols. LLC</i> , 2021 U.S. App. LEXIS 36126, at *2 (Fed. Cir. Dec. 8, 2021)
2003	Defendants' Proposed Claim Constructions, dated March 1, 2023, submitted in <i>DoDots Licensing Solutions LLC, v. Samsung Electronics Co., Ltd et al.</i> , Case No.: 6:22-cv-00535-ADA-DTG (W.D. Tex)
2004	Relevant portions of Prosecution History of U.S. Patent No. 8,510,407
2005	June 21, 2022, Memo Regarding Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation
2006	Agreed Scheduling Order, dated December 29, 2022
2007	Excerpts from Dr. Schmidt's three declarations in support of Samsung's petitions in IPR2023-00621, IPR2023-00756, and IPR2023-00701
2008	Samsung's counsel's first email to DoDots' counsel regarding meet and confer on the alleged typographical error
2009	July 27, 2023 Order from the United States District Court, Western District of Texas in <i>DoDots Licensing Solutions LLC v. Samsung Electronics Co., Ltd. et al.</i> , 6:22-cv-00535-ADA, (W.D. Tex.)

I. Dr. Schmidt's use of an incorrect claim construction standard is not a "typographical error."

A. Petitioner failed to meet its burden of proof in showing that Dr. Schmidt's recitation and use of BRI was a "typographical error."

Samsung admits that Dr. Schmidt's declaration recites the wrong claim construction standard and asks to correct it as a purported "typographical error." *See Reply* at 1-2. It is undisputed, however, that Samsung has the burden of proof under 37 CFR §§42.20(c) and 42.23(a) to show that its expert made a "typographical error." Samsung has wholly failed to meet its burden. Tellingly, Samsung does not even mention the burden it bears to show that Dr. Schmidt made a typographical error.

Samsung's reply relies *solely* on attorney arguments to claim that Dr. Schmidt made a typographical error. Samsung fails to provide any testimonial evidence as to the nature of the error, an explanation of how the purported error occurred, and how it was discovered. *See Ivantis Inc et al. v. Glaukos Corp et al.*, IPR 2018-01180, Paper 14 at 9 (P.T.A.B. Dec. 6, 2018) (holding that the nature and circumstances of the error is a factor in determining whether the error can be deemed typographical or not). Indeed, Samsung fails to provide *any* evidence from anyone with firsthand knowledge that Dr. Schmidt did not intend to rely on BRI. Samsung's bare say-so and arguing that Dr. Schmidt is not an attorney are not enough to meet the burden. With no evidence whatsoever and only attorney

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