

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

NETLIST, INC.,
Patent Owner.

Case No. IPR2022-00615
Patent No. 7,619,912

**OPENING BRIEF REGARDING 35 U.S.C. § 315(b)
TIME BAR PURSUANT TO PAPER 47**

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EXHIBIT LIST

Exhibit No.	Document
EX2001	Complaint for Patent Infringement and Summons in <i>Netlist, Inc., v. Google, Inc.</i> , Case No. 4:09-cv-05718 (“Google Action”), filed December 4, 2009.
EX2002	Complaint for Patent Infringement and Summons in <i>Netlist Inc. v. Inphi Corp.</i> , Case No. 2:09-cv-06900, filed September 22, 2009.
EX2003	Google’s Reply In Support of Its Motion to Strike Netlist, Inc.’s New Assertion of Claim 16 (Redacted), Google Action, filed August 27, 2021.
EX2004	Google’s Notice of Motion and Motion to Stay (Redacted), Google Action, filed June 3, 2022.
EX2005	Samsung’s Answering Brief in Opposition to Netlist’s Motion to Dismiss Plaintiff’s First Amended Complaint, Case No. 1:21-cv-01453-RGA (“Delaware Action”) filed March 2, 2022.
EX2006	Samsung’s Reply Brief In Support of Its Motion for Leave To File Second Amended Complaint, Delaware Action, filed February 14, 2022.
EX2007	Declaration of Michael C. Brogioli, Ph.D.
EX2008	Sumit Adhikari, <i>[Update: Video] Samsung & Google Launch Ad Campaign Highlighting Their Partnership</i> , Android Headlines (July 5, 2022).
EX2009	David Curry, <i>Android Statistics (2022)</i> , Business of Apps (Updated: May 4, 2022).
EX2010	Dieter Bohn, <i>Sundar Pichai And Rick Osterloh Think The Pixel 6 Is Google’s Breakout Phone</i> , The Verge (October 19, 2021).
EX2011	<i>A Decade in the Making: How Samsung Foldables Are Defining the Future of Smartphone Innovation</i> , Samsung Newsroom (December 31, 2021).
EX2012	<i>Samsung Galaxy Watches to Incorporate Wear OS</i> , Business Korea Daily News (May 20, 2021).

Exhibit No.	Document
EX2013	<i>Samsung And Google Introduce The World's First Chromebook - Samsung Series 5 Samsung Creates Another</i> , Business Wire (May 11, 2021).
EX2014	<i>Samsung and Google Sign Global Patent License Agreement</i> , Samsung Global Newsroom (January 27, 2014).
EX2015	Netlist Inc.'s Amended Disclosure of Asserted Claims and Infringement Contentions, Google Action, as filed August 20, 2021.
EX2016	Inphi's Corrected Request for Reexamination, filed May 7, 2010, Reexamination Control No. 95/001,339.
EX2017	Netlist Inc.'s First Amended Complaint for Patent Infringement, Case No. 09-cv-6900, filed December 23, 2009.
EX2018	Samsung DDR3 SDRAM Memory Product Guide (October 2016).
EX2019	Samsung DDR4 SDRAM Memory Product Guide (May 2018).
EX2020	Inphi Corporation, 2010 Form 10-K (March 4, 2011).
EX2021	<i>Inphi to Partner With Samsung Semiconductor to Showcase LRDIMM Technology at VMworld 2012</i> , GlobeNewswire (August 21, 2012).
EX2022	Inphi Corporation, 2015 Form 10-K (February 29, 2016).
EX2023	ORDER Re: Motions for Summary Judgement and Related Applications, in <i>Netlist Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 8:20-cv-00993, filed October 14, 2021.
EX2024	Samsung's Reply In Support of Its Motion for Leave to File Sur-Reply Brief (D.I. 29), Delaware Action, filed April 13, 2022.
EX2025	Redline Comparison of EX1035 (U.S. Patent No. 7,363,422 to Perego) With Related U.S. Patent No. 7,356,639.
EX2026	Joint Claim Construction and Prehearing Statement Under Patent Local Rule 4-3, Google Action, filed June 25, 2010.
EX2027	<i>Why Samsung Needs To Move Beyond Android – And Google</i> , ComputerWorld (July 11, 2014).

Exhibit No.	Document
EX2028	Smart Global Holdings, Inc. 2020 Form 10-K (October 22, 2020).
EX2029	Inphi's Feb. 13, 2012 Comments in Reexamination, Reexamination Control No. 95/001,339.
EX2030	Samsung Electronics Co., Ltd. 2021 Half-year Business Report.
EX2031	Xilinx, Programmable Logic Design Quick Start Handbook, (August 2003).
EX2032	<i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2022-00063, Paper 13 (P.T.A.B. May 5, 2022).
EX2033	<i>High-Speed Samsung LRDIMMs with Inphi Isolation Memory Buffer</i> , Principled Technologies (August 2012)
EX2034	Smart Modular Technologies (WWH), Inc., 2010 Form 10-K (November 3, 2010).
EX2035	Declaration of Jason G. Sheasby ISO Unopposed Motion for PHV Admission.
EX2036	Emails Between Netlist's Counsel and Samsung's IPR Counsel (Aug. 26 – 29, 2022).
EX2037	Emails Between Netlist's Counsel and Samsung's Litigation Counsel (Aug. 24 – 29, 2022).
EX2038	U.S. Patent No. 9,858,215.
EX2039	Unopposed Application for Extension of Time to Answer Complaint by Samsung Electronics America, Inc., in <i>Netlist, Inc. v. Samsung Electronics Co. Ltd. et al</i> , No. 2:22-cv-293-JRG, Dkt. 17 (E.D. Tex. Aug. 31, 2022).
EX2040	Unopposed Application for Extension of Time to Answer Complaint by Samsung Semiconductor Inc., in <i>Netlist, Inc. v. Samsung Electronics Co. Ltd. et al</i> , No. 2:22-cv-293-JRG, Dkt. 18 (E.D. Tex. Aug. 31, 2022).
EX2041	Waiver of the Service of Summons by Samsung Electronics Co., Ltd. in <i>Netlist, Inc. v. Samsung Electronics Co. Ltd. et al</i> , No. 2:22-cv-293-JRG, Dkt. 19 (E.D. Tex. Aug. 31, 2022).

Exhibit No.	Document
EX2042	2022-12-13 Katherine Reardon email to Michael Tezyan re Netlist v. Samsung, No. 21-cv-463 (E.D. Tex.) - AEO Designation for Jung & Park Transcripts.
EX2043	Emails Between Netlist's Counsel and Samsung's IPR Counsel (Dec. 13 – 26, 2022).
EX2044	Samsung's Fourth Amended Initial and Additional Disclosures, in <i>Netlist, Inc. v. Samsung Electronics Co.</i> , No. 2:21-cv-00463-JRG (E.D. Tex. Dec. 6, 2022).
EX2045	Cover pleading from Plaintiff and Counter-Defendant Netlist, Inc.'s Amended Disclosures of Asserted Claims and Infringement Contentions (Redacted), in <i>Netlist, Inc. v. Google LLC</i> , No. 4:09-cv-05718-SBA (N.D. Cal. June 18, 2021).
EX2046	Cover pleading from Plaintiff Netlist, Inc.'s Disclosure of Asserted Claims and Infringement Contentions, in <i>Netlist, Inc. v. Samsung Electronics Co.</i> , No. 2:22-cv-293-JRG (E.D. Tex. Nov. 17, 2022).

I. INTRODUCTION

It is time that the Board end the “repeated litigation and administrative attacks” on the ’912 Patent that have been “used as tools for harassment.” H.R. Rep. No. 112-98, at 48 (2011). The attack started *over 13 years ago* by Google and others, and continued for over a decade, resulting in two decisions by the Board. Netlist thought it had finally quieted title when the Federal Circuit, in 2021, affirmed the Board’s decision to uphold original claim 16 and other claims.

Concerned with liability, Google then sought indemnification from Samsung.

[REDACTED]

[REDACTED]

[REDACTED] Then, the day after it was adjudged that Samsung lost its license to Netlist’s patents, Samsung rushed to Delaware to seek a declaration of non-infringement of the ’912 Patent, [REDACTED]

[REDACTED]. Ex. 1049; [REDACTED]

[REDACTED] Samsung also filed this petition targeting claim 16, the sole claim implicating the DDR4 products [REDACTED]

[REDACTED]. Never once does Samsung deny that it filed the petition as a result of Google’s indemnification demand [REDACTED]

[REDACTED]. Nor does Samsung ever dispute that Google has an interest in the Petition or that Samsung considered Google’s interest when filing the Petition. In fact, it must

have had that interest in mind because [REDACTED]

[REDACTED]. The evidence establishes that Google is an RPI and/or privy such that the proceeding should be terminated under § 315(b) consistent with the Director’s Order. *See* Paper 40, at 2-3, 10-11.

II. FACTUAL BACKGROUND

A. The Undisputed Facts Before the Director Ordered Discovery and Reconsideration of the Section 315(b) Time Bar

Even before the Director ordered additional discovery, several key facts were not subject to debate. First, Netlist served Google with a complaint alleging infringement of the ’912 Patent over a decade before Samsung filed its Petition, and thus Google is time-barred under § 315(b). *See, e.g.*, Paper 20, at 2. Second, Netlist has alleged that Google infringes claim 16 of the ’912 Patent through the use of “Samsung’s 4-Rank DDR4 RDIMMs and LRDIMMs” in that litigation. Ex. 2004, at 6. Furthermore, Samsung itself had admitted in court pleadings shortly before filing this narrowly targeted IPR and a declaratory judgment suit that:

Netlist’s amended infringement contentions, served on June 18, 2021, formally alleged that certain JEDEC standard-compliant DDR4 LRDIMM and RDIMM memory modules—including memory modules supplied by [Samsung]—practice each and every limitation in claim 16. As a *direct and proximate result ... Samsung has received demands for indemnification*, including from Google and Lenovo.

Ex. 1051, ¶ 14 (emphasis added); *see also id.* ¶¶ 43-44. Samsung’s Petition

acknowledges, as it must, that a decision in this proceeding would affect the Google litigation. *See* Pet. at 1 (identifying related matters).

B. Samsung's Discovery Confirms the Relationship Between Google and Samsung, as Well as Google's Interest in This IPR

The additional discovery produced by Samsung pursuant to the Director's Order (Paper 40) further underscores Google's interest in the IPR and its structured, preexisting, and well-established business relationship with Samsung.

For example, Samsung produced [REDACTED]

[REDACTED]. *See* Ex. 1072. [REDACTED]

[REDACTED] In particular,

[REDACTED] *Id.* [REDACTED]

Id. [REDACTED]

[REDACTED] (*see id.*, [REDACTED]) [REDACTED]

(*see id.* [REDACTED]). Samsung attempts to de-emphasize its symbiotic relationship with

Google by attesting that its alleged JEDEC-compliant DDR4 RDIMM and LRDIMM memory modules are sold to many companies besides Google. Ex. 1071, ¶ 6. Regardless of whether Samsung has other customers, the documents plainly evidence a close relationship between Google and Samsung. Moreover, Google itself has indicated that “Samsung memory modules are the only products at issue in [the Netlist] litigation.” Ex. 2004, at 6.

Samsung and Google took [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹

Samsung attorney Jason Sonoda’s declaration asserts, misleadingly, that “Samsung is not indemnifying” Google or Lenovo, and that “this IPR was prepared and is being pursued by Samsung alone.” Ex. 1071, ¶¶ 2-5. The fact is, in response to Google’s and Lenovo’s indemnification requests, [REDACTED]

[REDACTED]

[REDACTED]

¹ Lenovo sought indemnification from Samsung [REDACTED]

[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

Accordingly, the day after Samsung lost its license defense (*see* Ex. 2023, at 20-21 (granting summary judgment on October 14, 2021)), Samsung rushed to file a declaratory judgment action, [REDACTED] [REDACTED]. *See* Ex. 1049 (filed Oct. 15, 2021). [REDACTED], Samsung filed this Petition, [REDACTED]. But because Samsung [REDACTED] (*id.*), it had to have acted in accordance with Google's interest.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

III. ARGUMENT

Samsung cannot meet its burden to show that Google is not a time-barred RPI or privy, and that the Petition should not be dismissed under § 315(b) as a result.

Google and Samsung share a structured, preexisting, and well-established business relationship that includes [REDACTED]. Google has sought [REDACTED] as a direct result of Netlist's infringement allegations. Samsung effectively obliged after it lost its license defense. In particular, even though Samsung also has additional products (e.g., DDR3) alleged to infringe *other* claims of the '912 Patent (*see, e.g.*, Ex. 2045, at 3; Ex. 2046, at 5), its Petition narrowly targeted claim 16, the only claim that implicates the DDR4 RDIMM/LDRIMM [REDACTED]. *See* Ex. 1049, ¶¶ 25-28; [REDACTED]. Samsung thus acted in Google's interest when filing the petition, regardless of any independent motivations of its own.

The proper application of the time bar here is bolstered not only by the new evidence produced by Samsung, but also the controlling legal framework that the Director specifically directed to the Board to apply (Paper 40, at 3), including *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336 (Fed. Cir. 2018) [hereinafter *AIT*]; *RPX Corp. v. Applications in Internet Time, LLC*, IPR2015-01750, Paper 128 (Oct. 2, 2020) (precedential); and *Ventex Co., Ltd. v. Columbia Sportswear N. Am., Inc.*, IPR2017-00651, Paper 152 (Jan. 24, 2019) (precedential). The Board's prior analysis appears inconsistent with this precedent, incorrectly implying that Netlist must establish that "Google is the only party with legal exposure to damage," and improperly relying on its conclusions that it is "unlikely

that Google is funding or controlling this proceeding” or that Samsung also faces liability for infringement of the ’912 Patent. Paper 20, at 13-15.

The Director also clarified that—at this stage of the proceeding—Samsung bears the “burden to establish that the Petition is not time-barred under 35 U.S.C. § 315(b).” Paper 40, at 2; *accord Ventex*, Paper 152, at 4-5 (holding that the petitioner “bears the burden of establishing that no real parties or privies were served with a complaint alleging infringement more than one year prior to the filing of [the] petition” (citing *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242 (Fed. Cir. 2018))).

A. Samsung Cannot Meet Its Burden to Establish That Google Is Not a Real Party in Interest to Samsung’s Petition

The Director ordered the Board not only to consider any newly produced evidence, but also to “consider the ‘extent to which [Google] has an interest in and will benefit from [Samsung’s] actions, and inquire whether [Samsung] can be said to be representing that interest after examining its relationship with [Google].’” Paper 40, at 3 (quoting *RPX*, 897 F.3d at 1353). Because the evidence shows that both are true, Samsung cannot meet its burden. Google is an RPI.

First, Samsung cannot credibly dispute that Google has an interest and will benefit from this IPR. The facts here are strikingly similar to those in *Ventex*: “[Google] would not receive a merely generalized benefit from [Samsung’s] filing of the Petition, but rather, the direct benefit of a finding of unpatentability of [claim

16 of the '912 Patent] for which [Netlist] had accused [Google] of infringing.” *Ventex*, Paper 152, at 10; *see also id.* at 9 (“There cannot be any credible assertion that a determination of invalidity as to claims of the patents would not inure to the benefit of Seirus in the Seirus Litigation.”). Likewise, in *RPX*, the Board “agree[d] with Patent Owner that, because of the pending litigation, the invalidation of the challenged patents would provide a benefit to Salesforce, supporting a conclusion that Salesforce is an RPI.” *RPX*, Paper 128, at 24-25. As the Federal Circuit has clarified, “the focus of the real-party-in-interest inquiry is on the patentability of the claims challenged in the IPR petition, bearing in mind who will benefit from having those claims canceled or invalidated.” *AIT*, 897 F.3d at 1348. Here, Google indisputably faces infringement charges for the single claim of the '912 Patent challenged by Samsung in a Petition that Google itself could not have filed.

Second, Samsung’s Petition represents Google’s vested interest in invalidating claim 16 of the '912 Patent. As the Federal Circuit has held, “a nonparty to an IPR can be a real party in interest even without entering into an express or implied agreement with the petitioner to file an IPR petition.” *AIT*, 897 F.3d at 1354. Ultimately, the Board should employ “a flexible approach that takes into account both equitable and practical considerations, with an eye toward determining whether the non-party is a clear beneficiary that has a preexisting, established relationship with the petitioner.” *Id.* at 1351. Here, Google and Samsung have an extensive and

detailed commercial relationship [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

And as discussed above, while Samsung may not *yet* have informed Google that it is [REDACTED], Samsung has taken actions [REDACTED] [REDACTED] to defend Google against infringement claims stemming from the products it supplied. In fact, it did so the very next day after its stated license defense evaporated (*see* Ex. 2023, at 20-21; Ex. 1049), and subsequently filed this petition.

Again, these facts closely resemble those in *Ventex*. The parties have a “specially structured, preexisting, and well established business relationship with one another.” *Ventex*, Paper 152, at 10. As in that case, the existence of contracts between the parties that are “the subject of infringement allegations tied to the [challenged] patents—incentivizes both parties to invalidate claims of [those] patents.” *Id.* at 8. Accordingly, “it *follows readily* that [Samsung] represents [Google’s] interests in this proceeding.” *Id.* (emphasis added). And that conclusion is particularly strong because “[Samsung] seeks relief in this forum that [Google] is barred under § 315(b) from seeking for itself.” *Id.*

Here, Samsung cannot disprove that Google is an RPI—a burden it is required

to meet—by showing that Google “did not directly fund, control, or expressly request these IPR proceedings.” *RPX*, Paper 128, at 33. This is because showing of funding or control “is not necessary to create an RPI relationship” where the parties share a “significant relationship,” and Samsung has “strong economic incentives ... to represent [Google’s] interests.” *Id.* at 25. Indeed, in *RXP*, the Board found an RPI relationship despite “no persuasive evidence that Salesforce expressly appointed RPX as its representative,” “explicitly requested that RPX file the IPR petitions,” “directly funded the IPRs,” or “directly exercised control over [the] proceeding.” *Id.* at 31-33. Similarly here, Google’s alleged non-involvement in the IPR is of no moment because [REDACTED]

[REDACTED]. Critically, Samsung does not dispute that Google’s indemnification demand influenced its decision to file this Petition or that Samsung’s Petition represents Google’s interest. Ex. 1071. Indeed, [REDACTED]
[REDACTED].

Google and Samsung cannot escape the time bar simply by refusing to acknowledge their common goal [REDACTED]. *See RPX*, Paper 128, at 33-34 (noting that “RPX, and presumably Salesforce, would have known that Salesforce could not directly fund, control, or expressly request the IPRs without immediately necessitating the listing of Salesforce as an RPI in the IPR

cases, triggering the § 315(b) bar, and derailing possible institution”).

Nor should the Board have attempted to predict the outcome or assess the merits of Netlist’s infringement claims based on dicta from the district court. *See* Paper 20, at 14 (citing Ex. 1053). The district court actually clarified that “the determination as to whether [the accused products] infringe claim 16 is beyond the scope of the instant motion.” Ex. 1053, at 11-12. Furthermore, Samsung corporate witness testimony (*see* Ex. 2044, at 20) undercuts the factual observations underlying the district court’s dicta. *Compare, e.g.*, Ex. 1084, at 19:1-6 (testifying “when MRS command is sent only one DRAM receives it in the PDA mode”), *and id.* at 15:25-16:3 (confirming “Samsung’s DDR4 LRDIMMs have a command signal that is transmitted to only one DDR memory device at a time when operating in PDA”), *with* Ex. 1053, at 11 (“[I]t appears from this evidence that DDR4 DIMMs operating in PDA mode transmit a command signal to all DRAM in a given rank at the same time.”). Samsung’s subsequent effort to undo the damaging testimony (*see* Ex. 1084, at 84-85, 88; Ex. 1087; Paper 45) only underscores the unresolved state of the infringement dispute and the impropriety of Samsung’s attempt to influence the Board’s view on liability. Whatever risk Google faces, it led Google to demonstrate a specific interest in challenging claim 16 of the ’912 Patent *after* the reexamination appeal concluded. *See* Paper 7, at 4-5, 8-12; Paper 15, at 1. For example, Google unsuccessfully moved to strike Netlist’s assertion of claim 16 and for summary

judgment of intervening rights as to claim 16, and sought indemnification from Samsung and Lenovo. [REDACTED]

[REDACTED].

The Board also erred in accepting Samsung’s argument “that ‘it would be deeply unfair to allow [Patent Owner] to manufacture a time bar against [Petitioner]’ merely by amending its complaints *after* the Petition was filed.” Paper 20, at 18. As Samsung has admitted, “Netlist first provided notice to Google on May 19, 2021, in the form of a claim chart, that Netlist would assert that JEDEC standard-compliant DDR4 LRDIMM and RDIMM memory modules incorporated in Google’s servers infringe claim 16 of the ’912 patent” (Ex. 1051, ¶ 14), and Samsung filed its Petition on February 17, 2022. These and other litigation developments addressed by the Board took place long before this Petition was filed, but the RPI analysis properly focuses on Google’s interest at the time of institution in October 2022. *See, e.g., Power Integrations, Inc. v. Semiconductor Components Indus., LLC*, 926 F.3d 1306, 1318 (Fed. Cir. 2019). Google had an obvious interest in defeating Netlist’s ’912 Patent infringement assertions as of October 2022, as evidenced by at least its indemnification request. [REDACTED]

[REDACTED].

Finally, the Board erred in attempting to isolate a single RPI in this case. “Congress planned for [§ 315(b)] to apply broadly,” and “did not speak of there

being only one interested party in each case; instead, it chose language that bars petitions where proxies or privies would benefit from an instituted IPR, even where the petitioning party might separately have its own interest in initiating an IPR.” *AIT*, 897 F.3d at 1346-47. As the Federal Circuit has made clear, “it is not an either-or proposition,” and “[t]he point is not to probe [Samsung’s] interests.” *Id.* at 1353; *see also Ventex*, Paper 152, at 9-10 (rejecting petitioner’s argument that it “had its own reasons for filing this action” because whether “Ventex had interest in invalidating claims ... does not address whether Seirus is a real party in interest”). At bottom, Samsung filed a Petition that directly benefits Google, a Petition that Google could not file itself, and a Petition that followed indemnification demands related to an established and pre-existing relationship focused on the very products at issue in the Google litigation. Google is a time-barred RPI regardless of Samsung’s motivations.

B. Samsung Cannot Meet Its Burden to Establish That Google Is Not in Privity with Samsung

The Director ordered the Board to consider not only any newly produced evidence, but also that “[t]he notion of ‘privity’ is more expansive, encompassing parties that do not necessarily need to be identified in the petition as a ‘real party-in-interest.’” Paper 40, at 3 (quoting Consolidated Trial Practice Guide [CTPG] at 14). The Board should determine whether “the relationship between [Google] and [Samsung] is sufficiently close such that both should be bound by the trial outcome

and related estoppels.” CTPG at 14-15. The evidence reflects such a relationship.

As discussed above, Samsung and Google share an established and pre-existing relationship [REDACTED]

[REDACTED]. As with RPI, “‘control’ is not the exclusive analytical pathway for analyzing privity.” *WesternGeco LLC v. ION Geophysical Corp.*, 889 F.3d 1308, 1320 (Fed. Cir. 2018). The Supreme Court has provided a non-exhaustive list for examining whether the legal relationship between two parties establishes that one is the privy of the other. *See Taylor v. Sturgell*, 553 U.S. 880, 894-95 (2008). “Analysis under any one of the factors can support a finding of privity.” *Ventex*, Paper 152, at 12. Here, at least two of those factors support a finding that Google is a privy, including “pre-existing substantive legal relationships between the parties” and “where the non-party acts as a proxy for the named party to relitigate the same issues.” *AIT*, 897 F.3d at 1360 (Reyna, J., concurring) (citing *Taylor*, 553 U.S. at 894-95). The factors are met for at least the same reasons discussed above in connection with RPI.

This case is unlike *WesternGeco*, where evidence showed no “expectation that ION would be responsible for stepping in, or otherwise protecting PGS from a patent infringement suit,” and the Board found the indemnification provision “non-specific” in nature and potentially “limited to options such as replacing or modifying a product found to have infringed a patent.” *WesternGeco*, 889 F.3d at 1321. In

contrast, Samsung [REDACTED] and immediately attacked the '912 Patent after it lost its license defense, by filing first a declaratory judgment action and then this Petition. [REDACTED]

[REDACTED]

[REDACTED]. The facts here once again more closely track *Ventex*. There, the Board ultimately relied on its conclusion that “the record suggests that their interests were aligned and that invalidation of the claims subject to this inter partes review would directly benefit Seirus.” *Ventex*, Paper 152, at 15. The same is true here.

[REDACTED]

[REDACTED] Although Samsung objects to those two exhibits because they allegedly do not relate to indemnification or this IPR (see Paper 45, at 16-17), they reflect [REDACTED] regarding the '912 Patent, the subject of this IPR.

IV. CONCLUSION

In view of the foregoing RPI and privity analyses, particularly in view of Samsung's burden and the legal framework emphasized by the Director, Netlist respectfully requests that the Board vacate the institution decision and deny the Petition as time-barred under 35 U.S.C. § 315(b).

Respectfully submitted,

Dated: April 5, 2023

/Philip Warrick/

Philp Warrick (Reg. No. 54,707)

IRELL & MANELLA LLP

CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. sections 42.6, that on April 5, 2023, a complete copy of **OPENING BRIEF REGARDING 35 U.S.C. § 315(b) TIME BAR PURSUANT TO PAPER 47** and **EXHIBITS 2044-2046** were served upon the following, by ELECTRONIC MAIL:

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. section 42.6, that on April 13, 2023, a complete copy of the public version of **OPENING BRIEF REGARDING 35 U.S.C. § 315(b) TIME BAR PURSUANT TO PAPER 47**, originally filed on April 5, 2023, was served by electronic mail, as agreed to by the parties, upon the following:

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