

statements that Samsung’s 3G and 4G products use standards that *hundreds* of KPN patents have been declared essential to, including many more than those that Samsung cherry-picked to feature in this lawsuit. *See id.* & Exs. 2, 3. Such generalized statements are insufficient to create an actual case or controversy.

Moreover, Samsung’s conduct confirms that it never found KPN’s statements threatening. Samsung does not allege that it did anything different in the face of KPN’s letters since 2019; rather, it continued business as usual—filing the instant suit only after KPN secured its state court judgment. *See Albecker v. Countour Prods., Inc.*, 2013 WL 5423843, at *8–11 (N.D. Ill. Sept. 27, 2013) (rejecting declaratory judgment jurisdiction where plaintiff did “not allege that [defendant] placed [plaintiff] in a position where he could only choose between infringing [defendant’s] patent or abandoning what he believed were legal rights”); *Cepheid v. Roche Molecular Sys., Inc.*, 2013 WL 184125, at *11–13 (N.D. Cal. Jan. 17, 2013) (dismissing declaratory judgment claims because the “[p]laintiff ha[d] not refrained from manufacturing or selling any of its products on reliance on threats from [d]efendants”).

iii. KPN’s Prior Lawsuits Fail to Support Declaratory Judgment.

KPN’s prior lawsuits against Samsung and unrelated companies are also insufficient to show an actual case or controversy. *See* FAC ¶¶11, 25–28. It is well established that prior suits “premised on other patents” are “entitled to only

minimal weight in analyzing whether such a controversy has been created.” *Prasco*, 537 F.3d at 1340; *see also Cepheid*, 2013 WL 184125, at *11–13 (dismissing declaratory judgment claims where “[t]he parties had not previously engaged in litigation over the [patent-in-suit], and [d]efendants were not engaged in a larger pattern of litigation on the patent”).

Here, there are no allegations that KPN has engaged in *any* pattern of litigating the Patents-in-Suit, much less one that threatens to imminently sweep in Samsung. The cases Samsung relies on were filed between three and eleven years ago and, with few exceptions, did not involve any Patent-in-Suit. *See* FAC ¶¶11, 25–28. It is not reasonable to assume that KPN will sue Samsung for infringing the Patents-in-Suit based on KPN’s assertions of different patents against different companies with different products, years ago. *Id.* ¶¶26, 28. “Any reasonable apprehension by [Samsung] which may have been caused by [KPN’s] previous conduct has undoubtedly diminished with time.” *Glove Cotyarn Pvt. Ltd. v. AAVN, Inc.*, 2023 WL 2665596, at *4–5 (M.D.N.C. Mar. 28, 2023) (quotation omitted) (dismissing declaratory judgment action which relied on alleged “aggressive enforcement activity” from five years before suit).

iv. KPN’s Breach-of-Contract Damages Are Irrelevant.

Samsung claims that “KPN’s attempt to recoup royalties from Samsung for the time period of 2010 through 2024” in the prior breach-of-contract suit supports

a case or controversy regarding infringement. *See, e.g.*, FAC ¶48. Not so.

Samsung apparently attempts to align this case with authority finding a controversy based on demands for royalty payments for infringement of a specific patent. *See, e.g., Medimmune*, 549 U.S. at 121, 128 (holding an actual controversy existed where the plaintiff’s obligation to pay “royalties under the licensing agreement” hinged on the validity and enforceability of the licensed patent). But Samsung points to no such demand by KPN,⁸ nor does its agreement with KPN require the enforceability of KPN’s patents. *See* FAC, Ex. 1 at Art. 2.3.1 (2016 KPN-Samsung Agreement).

Instead, in the prior state court case, KPN sought breach-of-contract damages for Samsung’s failure to pay, as promised, a portion of its settlement payment, which the parties had agreed was to be calculated per the terms of applicable patent pool royalty agreements. *See* FAC, Ex. 4 at 465:18–466:3⁹ (testimony of KPN’s damages expert). Those damages plainly were not infringement royalties; they were contractual damages based on the contractual provisions set forth in the parties’ 2016 settlement agreement, which provided Samsung with the right to use the bulk to KPN’s patent portfolio through December 31, 2024. *Id.* at 457:17–458:9; FAC Ex. 1 at Art. 2.3 (2016 KPN-

⁸ Samsung’s desperate attempts [REDACTED] only confirms its lack of support.

⁹ Citations to the trial transcript use the pagination in blue font at the top of the page.

Samsung Agreement). Indeed, Samsung itself alleges that it could not be sued by KPN for patent infringement prior to December 31, 2024. FAC ¶¶12–14.

v. The Expiration of the Covenant Not to Sue Does Not Establish an Imminent Threat of an Infringement Lawsuit.

Contrary to what Samsung contends, *see* FAC ¶¶12, 14, 48, the expiration of KPN’s contractual covenant not to sue Samsung cannot give rise to subject matter jurisdiction. The Federal Circuit has specifically held that “the absence of a covenant not to sue ... [does] not create a justiciable case or controversy” absent an “affirmative act by the patentee to assert patent rights against [the plaintiff] for any present or planned activity.” *AIDS Healthcare Found., Inc. v. Gilead Scis., Inc.*, 890 F.3d 986, 994–95 (Fed. Cir. 2018).

III. THIS COURT SHOULD DECLINE TO EXERCISE JURISDICTION

Even if this Court were to find that it has personal and subject matter jurisdiction, it should exercise its discretion to dismiss Samsung’s claims. *See Wilton*, 515 U.S. at 282 (“[D]istrict courts possess discretion in determining whether and when to entertain an action under the Declaratory Judgment Act[.]”). Samsung did not file this case because it genuinely believes KPN will sue Samsung for patent infringement. This lawsuit was part of a plan “to mak[e] the litigation as painful as possible” to try to force KPN to abandon its judgment in lieu of defending the eight different proceedings Samsung filed in the span of a few weeks—an approach another court described as a “sharp practice that *falls far*

short of model professional conduct.” *Vasudevan Software*, 2013 WL 12174179, at *3 (emphasis added). The Court can and should decline to waste valuable judicial resources in furtherance of Samsung’s ulterior motives.

IV. THIS COURT SHOULD DISMISS SAMSUNG’S CLAIMS WITH PREJUDICE

In response to KPN’s first motion to dismiss, Samsung could have amended its complaint to address KPN’s well-founded arguments or re-filed this action in the Eastern District of Texas, where personal jurisdiction is proper. Samsung did neither, electing instead only to drop TNO as a defendant. This decision reveals the absence of any additional facts that would show the existence of either personal jurisdiction or subject matter jurisdiction. As such, the Court should decline to give Samsung yet another chance to amend its complaint. *See Koken v. GPC Intern., Inc.*, 443 F.Supp.2d 631, 633 (D. Del. 2006) (“[A] district court has discretion to deny a request to amend if it is apparent from the record that [] the moving party has demonstrated undue delay, bad faith or dilatory motives [or] the amendment would be futile[.]”). Samsung’s claims should be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, KPN respectfully requests that the Court dismiss this action.

Dated: April 7, 2025

Respectfully submitted,

FARNAN LLP

/s/ Brian E. Farnan

Brian E. Farnan (Bar No. 4089)
Michael J. Farnan (Bar No. 5165)
919 North Market Street, 12th Floor
Wilmington, DE 19801
Telephone: (302) 777-0300
bfarnan@farnanlaw.com
mfarnan@farnanlaw.com

Lexie White (admitted *pro hac vice*)
Hunter Vance (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
1000 Louisiana, Suite 5100
Houston, TX 77002-5096
Telephone: (713) 651-9355
lwhite@susmangodfrey.com
hvance@susmangodfrey.com

Andres Healy (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
401 Union Street, Suite 3000
Seattle, WA 98101
Telephone: (206) 516-3880
Fax: (206) 516-3883
ahealy@susmangodfrey.com

Tamar Lusztig (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
One Manhattan West
New York, NY 10001-8602
Telephone: (212) 336-8330
Fax: (212) 336-8340
tlusztig@susmangodfrey.com

Eliza Finley (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.

KPN Ex. 2111, Page 28

IPR2025-00533

1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
Fax: (310) 789-3150
efinley@susmangodfrey.com

Attorneys for Defendant KPN

WORD COUNT CERTIFICATION

Under this Court's November 10, 2022 Standing Order Regarding Briefing in All Cases, counsel for KPN certifies as follows:

The text of this brief is 14-point in size and Times New Roman typeface.

There are 4,997 words appearing in this brief from the Introduction to the Conclusion, as reported by the word count tool in Microsoft Word. Words in the caption, table of contents, table of authorities, the signature, and this certification were not included in the count.

Dated: April 7, 2025

/s/ Brian E. Farnan
Brian E. Farnan (Bar No. 4089)