

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

Vervain, LLC	§	
	§	
Plaintiff	§	Civil Action No. 1:24-cv-254-ADA
	§	
v.	§	
	§	
Kingston Technology Company, Inc.,	§	
Kingston Digital, Inc., and	§	
Kingston Technology Corporation,	§	
	§	
Defendants	§	

**DEFENDANTS’ FINAL INVALIDITY CONTENTIONS**

Defendants Kingston Technology Company, Inc., Kingston Digital, Inc., and Kingston Technology Corporation (collectively, “Kingston”) hereby serve the following Final Invalidity Contentions for the asserted claims of U.S. Patent Nos. 8,891,298 (the “298 Patent”); 9,196,385 (the “385 Patent”); 9,997,240 (the “240 Patent”); 10,950,300 (the “300 Patent”); 11,830,546 (the “546 Patent”); 11,854,612 (the “612 Patent”); 11,967,369 (the “369 Patent”); and 11,967,370 (the “370 Patent”) (collectively, the “Asserted Patents”).

**I. INTRODUCTION**

In accordance with the Agreed Scheduling Order (Dkt. 19) and with Section II, paragraph 4 of the Standing Order Governing Patent Proceedings (OGP) 4.4-Patent Cases, these Final Invalidity Contentions include: (1) charts setting forth examples of where in the prior art references each element of the Asserted Claims are found; (2) an identification of any limitations Kingston submits are indefinite, lack written description and/or lack enablement under 35 U.S.C. § 112; and (3) an identification of any claims that Kingston submits are directed to patent-ineligible subject matter under 35 U.S.C. § 101.<sup>1</sup> In addition,

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<sup>1</sup> In addition, along with these contentions, Kingston is producing documents pursuant to Section II of the OGP.

including the invalidity arguments and evidence in the associated petitions, supporting declarations, and exhibits, into these Final Invalidation Contentions.

Kingston further incorporates by reference prior art references of record before the USPTO during prosecution of the '298 Patent and any related patents/applications or proceedings.

## **2. '298 Patent: Obviousness Based on 35 U.S.C. § 103**

The Asserted Claims of the '298 Patent are invalid as obvious under Pre-AIA 35 U.S.C. § 103. The prior art identified above with respect to anticipation for this Asserted Patent render its Asserted Claims obvious, alone or in combination with additional prior art, including but limited to the prior art identified in Tables O1-O3, admitted prior art, and/or the knowledge of a "POSITA." Due, in part, to the similarity of their respective disclosures and related fields of endeavor (*e.g.*, flash memory systems), any of the prior art references identified in Tables O1-O3 could be combined with any other identified reference (or references) and/or with the knowledge of a POSITA. Kingston provides below exemplary combinations of prior art that render obvious the Asserted Claims of this Asserted Patent. To the extent any of the asserted prior art, alone or in combination, does not expressly disclose any element of any Asserted Claim of this Asserted Patent, such elements would still be obvious in view of the other identified prior art and the knowledge of a POSITA. Where the anticipatory references identified by Kingston incorporate other patents or publications by reference, to the extent the Court determines that the incorporated patents or publications should not be deemed a single reference along with the "host" document for purposes of anticipation, it would be obvious to combine those references to render the claim obvious under Pre-AIA 35 U.S.C. § 103.

To the extent Vervain disputes the correspondence of any of the asserted prior art references to any particular element of the Asserted Claims, Kingston reserves the right to supplement these contentions accordingly. Likewise, to the extent that Vervain challenges any of Kingston's obviousness combinations, Kingston reserves the right to supplement these contentions to further specify the motivation to combine the prior art. Kingston may rely on cited or uncited portions of the prior art, other documents, and expert testimony to establish that a POSITA would have been motivated to modify or to

combine the prior art so as to render the claims obvious. Additionally, Kingston relies on the positions and arguments regarding teachings, suggestions and motivations to modify or to combine the prior art, including as stated in Sections V and VI and in the corresponding Exhibits of these Final Invalidity Contentions, which are hereby incorporated by reference.

Further, Sections V and VI, this section below, and the accompanying, corresponding Exhibits attached hereto, provide obviousness combinations and explanations of why the prior art renders the Asserted Claims obvious. These combinations should not be construed to suggest that any reference or sub-combination of references included in these combinations would not, alone, have rendered the Asserted Claims obvious. These explanations should also not be construed to suggest that no other motivation to combine and/or modify references exists. As stated above, Kingston has not yet completed its investigation, discovery, or analysis of matters relating to the invalidity or unenforceability of the Asserted Claims. Kingston reserves the right to rely on additional or alternative obviousness combinations and motivations to combine or modify references, particularly after the Court construes the Asserted Claims and as Kingston’s investigation continues.

Claims	Table A2 – Exemplary Obviousness Combinations
1, 3-5, 11	<p>'591 Moshayedi alone and in view of the knowledge of a POSITA, '335 Gonzalez, '460 Dusija, '918 Sutardja, '654 Sutardja, '192 Lee, '749 Kolokowsky, '168 Chou, '012 Weathers, '184 Yu, and/or '490 Freitas. <i>See Ex. A – 101.</i></p> <p>'335 Gonzalez alone and in view of the knowledge of a POSITA. <i>See Ex. A – 102.</i></p> <p>'460 Dusija alone and in view of the knowledge of a POSITA, '591 Moshayedi, '335 Gonzalez, '180 Paley, '654 Sutardja, '918 Sutardja, '012 Weathers, '192 Lee, '749 Kolokowsky, '168 Chou, '184 Yu, and/or '490 Freitas. <i>See Ex. A – 103.</i></p> <p>'654 Sutardja alone and in view of the knowledge of a POSITA, '591 Moshayedi, '335 Gonzalez, '460 Dusija, '918 Sutardja, '012 Weathers, '180 Paley, '555 Conley, '993 Conley, '192 Lee, '749 Kolokowsky, '168 Chou, '184 Yu and/or '490 Freitas. <i>See Ex. A – 104.</i></p> <p>'555 Conley alone and in view of the knowledge of a POSITA. <i>See Ex. A – 105.</i></p> <p>'184 Yu alone and in view of the knowledge of a POSITA, '335 Gonzalez, '460 Dusija, '918 Sutardja, '654 Sutardja, '192 Lee, '749 Kolokowsky, '168 Chou, and/or '490 Freitas. <i>See Ex. A – 106; see also Ex. A – 101 (for exemplary disclosures of combination art).</i></p> <p>'918 Sutardja alone and in view of the knowledge of a POSITA, '654 Sutardja, '591 Moshayedi, '335 Gonzalez, '460 Dusija, '012 Weathers, '180 Paley, '555 Conley, '993</p>

Claims	Table A2 – Exemplary Obviousness Combinations
	<p>Conley, '192 Lee, '749 Kolokowsky, '168 Chou, '184 Yu, and/or '490 Freitas. <i>See Ex. A – 107.</i></p> <p>'912 Gorobets alone and in view of the knowledge of a POSITA, '460 Dusija, '845 Gorobets, '911 Sprouse, '196 Gorobets, and/or '012 Weathers. <i>See Ex. A – 108.</i></p> <p>'601 Gavens alone and in view of the knowledge of a POSITA, '591 Moshayedi, '335 Gonzalez, '180 Paley, '654 Sutardja, '918 Sutardja, '012 Weathers, '192 Lee, '167 Lee, '528 Chen, '749 Kolokowsky, '168 Chou, '184 Yu and/or '490 Freitas. <i>See Ex. A – 109.</i></p> <p>Duann alone and in view of the knowledge of a POSITA, '335 Gonzalez, '460 Dusija, '918 Sutardja, '012 Weathers, '654 Sutardja, '192 Lee, '749 Kolokowsky, '168 Chou, '184 Yu, and/or '490 Freitas. <i>See Ex. A – 110.</i></p>
11	<p>'591 Moshayedi alone and in view of the knowledge of a POSITA, '335 Gonzalez, '460 Dusija, '918 Sutardja, '654 Sutardja, '192 Lee, '490 Freitas '804 Kang, and/or '234 OH. <i>See Ex. A – 101.</i></p> <p>'654 Sutardja alone and in view of the knowledge of a POSITA, '591 Moshayedi, '335 Gonzalez, '460 Dusija, '918 Sutardja, '180 Paley, '555 Conley, '993 Conley, '192 Lee, '749 Kolokowsky, '168 Chou, '804 Kang, '234 OH and/or '490 Freitas. <i>See Ex. A – 104.</i></p> <p>'918 Sutardja alone and in view of the knowledge of a POSITA, '654 Sutardja, '591 Moshayedi, '335 Gonzalez, '460 Dusija, '180 Paley, '555 Conley, '993 Conley, '192 Lee, '749 Kolokowsky, '168 Chou, '804 Kang, '234 OH and/or '490 Freitas. <i>See Ex. A – 107.</i></p> <p>'184 Yu alone and in view of the knowledge of a POSITA, '335 Gonzalez, '460 Dusija, '918 Sutardja, '654 Sutardja, '192 Lee, '749 Kolokowsky, '168 Chou, '804 Kang, '234 OH, and/or '490 Freitas. <i>See Ex. A – 106; see also Ex. A – 101 (for exemplary disclosures of combination art).</i></p> <p>'601 Gavens alone and in view of the knowledge of a POSITA, '591 Moshayedi, '335 Gonzalez, '180 Paley, '654 Sutardja, '918 Sutardja, '192 Lee, '167 Lee, '528 Chen, '749 Kolokowsky, '168 Chou, '184 Yu, '804 Kang, '234 OH, and/or '490 Freitas. <i>See Ex. A – 109.</i></p> <p>Duann alone and in view of the knowledge of a POSITA, '335 Gonzalez, '460 Dusija, '918 Sutardja, '654 Sutardja, '192 Lee, '490 Freitas '804 Kang, and/or '234 OH. <i>See Ex. A – 110.</i></p>

Further, Kingston incorporates by reference contentions regarding where specifically in prior art each limitation of each Asserted Claim is found as set forth in petitions for *inter partes* review of the Asserted Claims, including IPR2021-01547 and IPR2025-00212, including the invalidity arguments and evidence in the associated petitions, supporting declarations, and exhibits, into these Final Invalidation Contentions.

Dated: February 28, 2025

Respectfully submitted,

/s/ Cono A. Carrano

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been served upon all counsel of record on 28th day of February, 2025 by email on counsel for Plaintiff.

/s/ George Andrew Lever Rosbrook  
George Andrew Lever Rosbrook