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15 AMERICA, LLC, and SAMSUNG DIGITAL IMAGING CO., LTD.

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

18 ADVANCED MICRO DEVICES, INC., et al.,

19 Plaintiffs and Counterdefendants,

20 v.

21 SAMSUNG ELECTRONICS CO., LTD., et al.,

22 Defendants and Counterclaimants.
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Case No. 3:08-CV-0986-SI

**SAMSUNG'S MOTION FOR LEAVE
TO FILE REPLY IN SUPPORT OF
SAMSUNG'S MOTION FOR LEAVE
TO FILE MOTION FOR
RECONSIDERATION PURSUANT TO
LOCAL RULE 7-9**

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SAMSUNG'S MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF SAMSUNG'S MOTION FOR LEAVE TO FILE
MOTION FOR RECONSIDERATION; CV-08-0986-SI

1 On August 25, 2010, AMD filed a response to Samsung's Motion for Leave to File Motion
2 for Reconsideration of the Denial of Samsung's Motion for Summary Judgment of Invalidity of
3 U.S. Patent No. 5,545,592 Pursuant to Local Rule 7-9. Dkt. # 653. AMD's response twists the
4 factual record and presents a misleading picture of the circumstances that surrounded Samsung's
5 motions for summary judgment relating to the '592 patent. Samsung therefore requests leave to file
6 a reply in support of its Motion for Leave under Local Rule 7-9(d).

7 AMD argues that reconsideration is unwarranted primarily because Samsung was
8 purportedly not diligent in acquiring declarations and discovery from Joseph Hillman, Chantal
9 Arena, and Tokyo Electron prior to filing its initial motion for summary judgment of invalidity.
10 AMD's contention is misleading and inaccurate for several reasons. First, while the court found
11 that Samsung's summary judgment motions were "closely related" in terms of their subject matter,
12 these motions were brought under two different sections of the pertinent statute, with different
13 evidentiary requirements. Samsung's first motion was brought under 35 U.S.C. § 102(e), and the
14 central issue under that provision was whether the '912 patent disclosed each and every limitation
15 of the asserted claims of the '592 patent to one of ordinary skill in the art. Samsung's second
16 motion, brought under 35 U.S.C. § 102(g), asked the court to find that the invention claimed in the
17 '592 patent "was made in this country by another inventor who had not abandoned, suppressed, or
18 concealed it." 35 U.S.C. § 102(g)(2). Samsung contends that the '912 inventors actually reduced
19 their invention to practice, and what is disclosed in the '912 patent itself is irrelevant to this issue.¹
20 Thus, declarations describing the work actually performed by Hillman and Foster, while not
21 essential to determine what was disclosed by the '912 patent document, under Section 102(e), are of
22 paramount importance to determine whether Hillman and Foster actually made the invention
23 claimed by the '592 patent, under Section 102(g).

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26 ¹ Samsung alternatively contends that the inventions of the '912 patent were constructively
27 reduced to practice upon the filing of the '912 patent, and the disclosures of the '912 patent *are*
28 relevant to this separate issue. It is for this reason that the testimony of AMD's expert, Dr. Glew,
discussed below, remains relevant to Samsung's motion, in addition to the declarations of the '912
inventors.

1 Second, prior to receiving AMD’s expert declaration in opposition to Samsung’s first
2 motion, Samsung could not have foreseen that AMD would offer an alternative interpretation of the
3 phrase “nitrided silicide titanium” as used in the ‘912 patent; rather, Samsung and its expert
4 believed that this language was clear and unambiguous. Thus, at the time Samsung brought its first
5 motion, it could not have foreseen that there would be a fact dispute over what was disclosed by the
6 ‘912 patent under Section 102(e).

7 Samsung also disagrees with AMD’s arguments regarding the testimony of its expert, Dr.
8 Glew, and the impact of that testimony on Samsung’s motion for reconsideration. AMD argues, in
9 its opposition, that permitting reconsideration would be a waste of judicial resources because there
10 is “conflicting expert testimony.” Dkt. # 653 at 9. But under 35 U.S.C. § 102(g), the key issue is
11 what the inventors of the ‘912 actually *did* and *made* in conceiving of their invention and reducing
12 it to practice. Dr. Glew was not present during Hillman’s or Arena’s work, and his opinion is thus
13 of limited—if any—value in determining invalidity under Section 102(g), and should be no bar to
14 granting reconsideration on this basis.

15 AMD further distorts the record by suggesting that Dr. Glew’s recent deposition testimony
16 does not undermine the declaration with which he created a dispute of fact that precluded summary
17 judgment on Samsung’s initial motion for invalidity. Dr. Glew, in his declaration in opposition to
18 Samsung’s initial motion, opined that the ‘912 patent was ambiguous as to the meaning of the
19 phrase “nitrided silicide titanium,” and contended that the phrase could refer to the nitridation of
20 pure elemental titanium. In his recent deposition testimony, however, Dr. Glew revealed that the
21 phrase does not logically refer to nitridation of pure titanium. Such a shift is sufficient to justify
22 granting Samsung’s motion for reconsideration. *See Board of Trustees of the Leland Stanford Jr.*
23 *University v. Roche Molecular Systems, Inc.*, No. C 05-04158 MHP, 2008 WL 706251, at *1-2
24 (N.D. Cal. Mar. 5, 2008) (granting leave to move for reconsideration of claim construction order
25 based on new facts that emerged through conflicting deposition testimony of opposing party’s
26 expert).

27 Finally, while AMD argues that reconsideration is a “waste of judicial resources,” AMD
28 ignores that Samsung seeks partial summary judgment as to a number of facts relating to the

1 conception and reduction to practice of the '912 invention, as well as the corroboration of those
2 facts. Even adjudication of these issues will streamline trial, ease the burden on the jury, and limit
3 the disputes between the parties engaged in complicated litigation involving twelve patents.
4 Indeed, other motions for summary judgment have already resulted in streamlining the case, as
5 issues have been dropped in response to the filing of the motions.

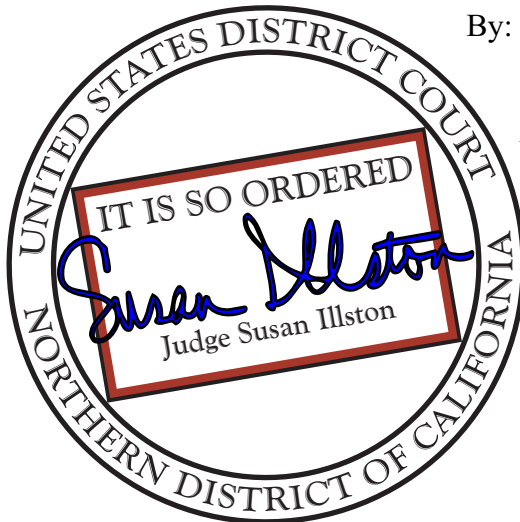
6 **I. CONCLUSION**

7 Based on the foregoing, Samsung respectfully requests that the Court grant Samsung leave
8 to file its reply in support of its motion for leave to file for reconsideration of the denial of its
9 Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,545,592.

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11 DATED: August 30, 2010

COVINGTON & BURLING LLP

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