UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC., AND HP INC.
Petitioners

v.

NEODRON LTD,
Patent Owner.

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Case No. IPR2020-00282
U.S. Patent No. 7,821,502

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# PETITIONER'S REPLY BRIEF ADDRESSING ISSUES RELATED TO 37 C.F.R. § 42.104(b)

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# I. INTRODUCTION

Patent Owner incorrectly alleges that Petitioners are taking inconsistent claim construction positions regarding terms of the '502 Patent in co-pending litigation (the "Related Litigation"). Paper 4 at 3. Contrary to Patent Owner's contention, Petitioners have consistently applied the plain and ordinary meaning or the meaning expressly set forth in the claims, and have demonstrated that the prior art renders the claims invalid under those constructions.

# II. BACKGROUND

In accordance with the applicable orders, on March 6, 2020, the parties exchanged preliminary lists of claim terms that may require construction in the Related Litigation. Petitioners then withdrew three terms, but Patent Owner elected to construe two of the withdrawn terms. After meeting and conferring, Petitioners proposed the following constructions for the five remaining terms:

| Claim Term | Petitioners' Proposed Construction |
|---|---|
| "a substrate having a surface with an arrangement of electrodes mounted thereon" | Plain and ordinary meaning: "a substrate having a side with an arrangement of electrodes mounted thereon" |
| "sensing cells" | Plain and ordinary meaning: "sensing cells" |
| "sensing area" | "an area defined by the sensing electrodes" |
| "wherein row sensing electrodes of sensing cells at opposing ends of at least one of the rows are electrically coupled to one another by respective row wrap-around | Plain and ordinary meaning: "wherein row sensing electrodes of sensing cells at opposing ends of at least one of the rows are electrically coupled to one another by respective row wrap-around connections |

| Claim Term | Petitioners' Proposed Construction |
|---|---|
| connections made outside of the sensing area" | made outside of the sensing area" |
| "electrically coupled" | Plain and ordinary meaning: "connected with an electrical conductor" |

## III. PETITIONERS COMPLIED WITH THEIR DUTIES UNDER 37 C.F.R. § 42.104 (b), AND HAVE CONSISTENTLY APPLIED THE PLAIN AND ORDINARY MEANING OF THE CLAIM TERMS

Petitioners complied with their duties under 37 C.F.R. § 42.104(b), and identified how the challenged claims are to be construed. In the Petition, Petitioners asserted that no term required explicit construction to resolve the grounds presented, but nevertheless reserved their rights to assert claim constructions in litigation not asserted in the Petition. For example, as in the Related Litigation, Petitioners may be required to identify the plain and ordinary meaning of claim terms, where Patent Owner's apparent construction and application of the terms in its infringement contentions deviate from the plain and ordinary meaning. Similarly, because district court litigation involves a lay jury, a statement of the plain and ordinary meaning may assist the jury, whereas that generally would not be of any benefit to a panel of PTAB judges.

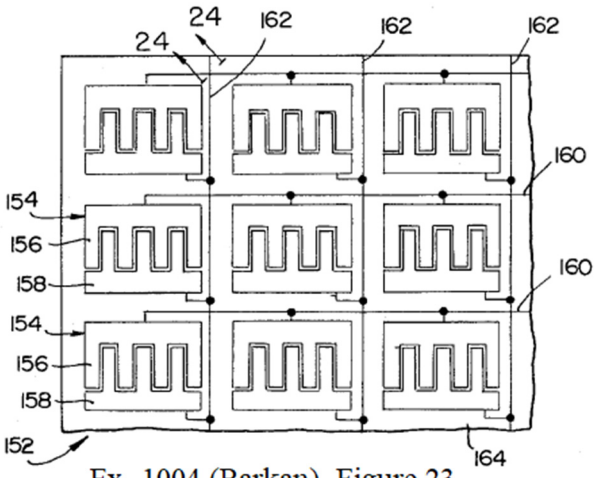
In its POPR, Patent Owner mischaracterizes the parties' claim construction positions in several important respects. First, Patent Owner improperly suggests that Petitioners alone identified the foregoing terms for construction, when in fact,

Patent Owner insisted on construing two of the five terms in spite of Petitioners' determination that those terms do not require construction.

More importantly, Patent Owner incorrectly alleges that Petitioners are taking inconsistent claim construction positions before the Board and the District Court. This is not true. The Petition states Petitioners' position that no claim construction issues are dispositive as to the grounds presented and applies the plain and ordinary meaning of the terms in analyzing the prior art. *E.g.*, Paper 4 at 10-11, n.2. Consistent with that approach, Petitioners propose constructions in the Related Litigation that reflect the plain and ordinary meaning of the claim terms. Indeed, all but one of Petitioners' proposed constructions expressly recite "plain and ordinary meaning." The only exception is Petitioners' construction of "sensing area," which mirrors the express definition of that term in Claim 1 and is the plain and ordinary meaning in view of that language. Ex.-1001, Cl. 1 (reciting "wherein ***the electrodes define an array of sensing cells*** arranged in columns and rows ***to form a capacitive sensing area***") (emphasis added); *see also id.*, 5:44-47 ("The sensing electrodes 26 define a sensing area…").

Contrary to Patent Owner's allegations, these constructions are consistent with Petitioners' analysis of the prior art. For example, the Petition explains that U.S. Patent No. 3,757,322 ("Barkan") teaches a touch interface with a single layer of electrodes disposed on the upper side, or surface, of a substrate. *E.g.*, Paper 4 at

22-23. With reference to Figure 23 below, the Petition further explains that Barkan discloses an array of "contact areas (154)," each of which is composed of an "X contact sub-area (156) and a Y contact sub-area (158)." *Id.*, 24-27. Consistent with Petitioners' proposed constructions, the Petition explains that a POSITA would have understood the contact sub-areas are sensing electrodes and the contact areas formed by those electrodes are "sensing cells" that collectively form a "sensing area" as required by Claim 1 of the '502 Patent. *Id.*



Ex.-1004 (Barkan), Figure 23

The analysis in the Petition is also consistent with Petitioners' constructions of the last two terms. Petitioners' proposed construction for the "wherein" clause matches the claim language, and thus reflects the plain and ordinary meaning. Similarly, Petitioners' construction for the term "electrically coupled" appearing within the "wherein" clause is the plain and ordinary meaning, "connected with an electrical conductor." For both of these terms, the Petition identifies the uppermost "lead 160" in Figure 23 of Barkan, which is an electrical conductor that connects the X contact sub-areas (156) (i.e., "row sensing electrodes") at opposite ends of the uppermost row and lies outside the sensing area defined by the electrodes. *Id.* Notably, this connection in Barkan is virtually identical to the "column wrap-

around connections made outside of the sensing area" depicted as 40, 41 in Figures 3, 7 and 8 of the '502 Patent. Ex. 1001, 3:17-20, Cl. 4, Figs. 3, 7, 8.

Significantly, Patent Owner does ***not*** contend that the Petition analyzes Barkan in a manner inconsistent with the plain and ordinary meaning of the claim terms, as set forth by Petitioner in the Related Litigation. Accordingly, Patent Owner has not identified any discrepancies between the Petitioner's proposed constructions in the Related Litigation and its positions herein that would have any bearing on the outcome of this IPR. In this regard, the present case is far different from the cases cited by Patent Owner, in which the Petitioner took conflicting positions in the co-pending litigation.

In view of the foregoing, it is clear Petitioners are not taking inconsistent claim construction positions. In all cases, Petitioner has satisfied the requirements of 37 C.F.R. § 42.104(b)(3) by identifying how the claims should be construed—that is, according to their plain and ordinary meaning, or as expressly defined in the text of the claims. As discussed above, the Petition also correctly demonstrates how Claims 1-21 of the '502 Patent are unpatentable under those constructions. *Id.*

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

The undersigned certifies pursuant to 37 C.F.R. § 42.6(e) and § 42.105 that on April 13, 2020, a true and correct copy of this **Petitioner's Reply Brief Addressing Issues Related to 37 C.F.R. § 42.104(b)** was served on counsel for Patent Owner via electronic mail.

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Respectfully submitted,

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