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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

19 ADVANCED MICRO DEVICES, INC.,  
20 et al.,  
21  
22 Plaintiffs,  
23  
24 v.  
25 SAMSUNG ELECTRONICS CO., LTD.,  
26 et al.,  
27  
28 Defendants.

Case No. CV-08-0986-SI  
**PLAINTIFFS' OPPOSITION TO  
SAMSUNG'S MOTION FOR  
SUMMARY JUDGMENT OF  
NON-INFRINGEMENT OF U.S.  
PATENT NO. 6,784,879**  
  
Date: May 5, 2010  
Time: 3:30 p.m.  
Courtroom: 10, 19th Floor  
Judge: The Honorable Susan Illston

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## INTRODUCTION

1  
2 Samsung, following the *Markman* hearing in this matter, now makes a second attempt to  
3 read limitations into the '879 claims that do not exist anywhere in the intrinsic record. Knowing  
4 that the term “computer display” will not suffice to support summary judgment of  
5 noninfringement, Samsung requests that the Court re-construe “control panel” to incorporate  
6 limitations such as “general purpose” and “windows-based.” The specification does not support  
7 either of these limitations, which come only from extrinsic evidence.

8 The specification expressly teaches what components must be connected to a “computer  
9 display”—a processing unit and memory. The specification therefore clarifies the meaning of  
10 “computer display” consistent with the claims and the Court’s prior construction of “control  
11 panel.” When construed properly in this manner, there is no dispute that the accused products all  
12 contain a “computer display.”

13 Samsung also now is dissatisfied with the parties’ agreed construction of “in focus,”  
14 which comes directly from the inventor’s definition in the specification. By expanding the claim  
15 term at issue to “application . . . in focus,” Samsung attempts to avoid the “or” in the construction  
16 of “in focus”—“actively being displayed and/or being worked upon.” Samsung argues that a  
17 necessary characteristic of an “application” is that it can be worked upon. The inventor’s  
18 definition of “in focus,” using “or,” expressly contradicts Samsung’s interpretation that focuses  
19 solely on one clause, “worked upon,” and avoids “actively being displayed.” Once again, this  
20 interpretation comes solely from extrinsic dictionaries and expert testimony.

21 As an alternative argument to reach the same result, Samsung asks the Court to limit  
22 “actively” being displayed to something capable of being worked upon, which would convert the  
23 definition of “in focus” to “capable of being worked upon and/or being worked upon.” Again  
24 Samsung’s proposed limitation contradicts the inventor’s express definition given in the  
25 specification.

26 Finally, Samsung argues that some accused products do not display “live video.”  
27 Samsung asks the Court to construe the term solely to exclude the accused devices, which is  
28 reversible error. The intrinsic record also does not support Samsung’s proposed limitations on

1 “live video.”

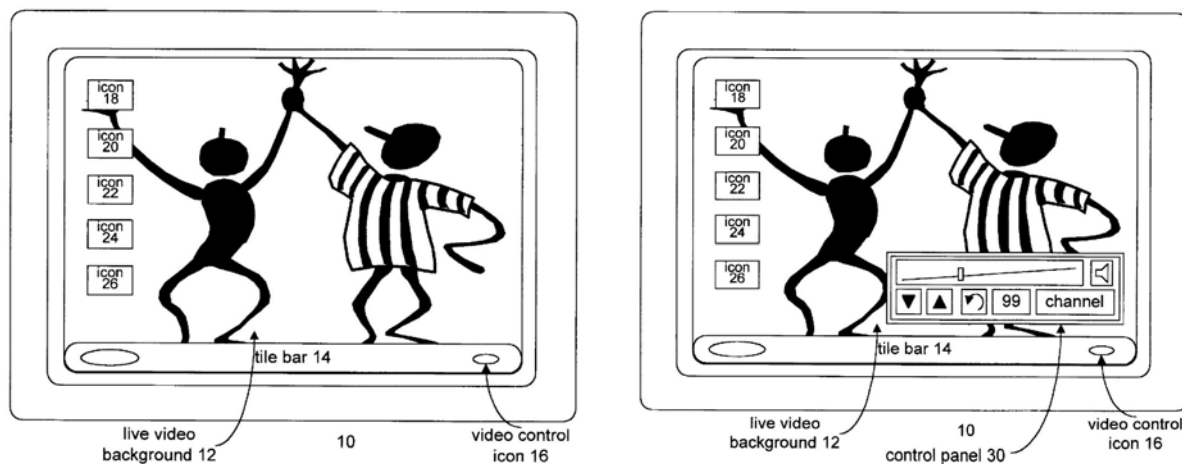
2 Under most of Samsung’s proposed limitations, the accused products satisfy the claim  
3 elements at issue, and at the very least, genuine issues of material fact exist regarding  
4 infringement, both literally and under the doctrine of equivalents. For all of these reasons, AMD  
5 requests that Samsung’s motion be denied.

## 6 BACKGROUND

### 7 I. The ’879 Patent Claims an Apparatus and Method for Controlling Background Video.

8 The ’879 patent teaches a video control icon that, when selected, brings up a control panel  
9 for adjusting attributes of background video while foreground applications remain in focus. ’879  
10 at Abstract (Ex. 1).<sup>1</sup> The inventions of the ’879 patent address the need to control background  
11 video without losing the focus on the applications in the foreground. ’879 at 2:2-17 (Ex. 1). The  
12 patent provides a better viewing experience and an improved user interface for controlling a  
13 computer display that can present both background video and applications in the foreground. *Id.*

14 Figure 1 illustrates one embodiment of the invention including a computer screen 10  
15 which displays live video background 12, a video control icon 16, and a plurality of icons 18-26:  
16



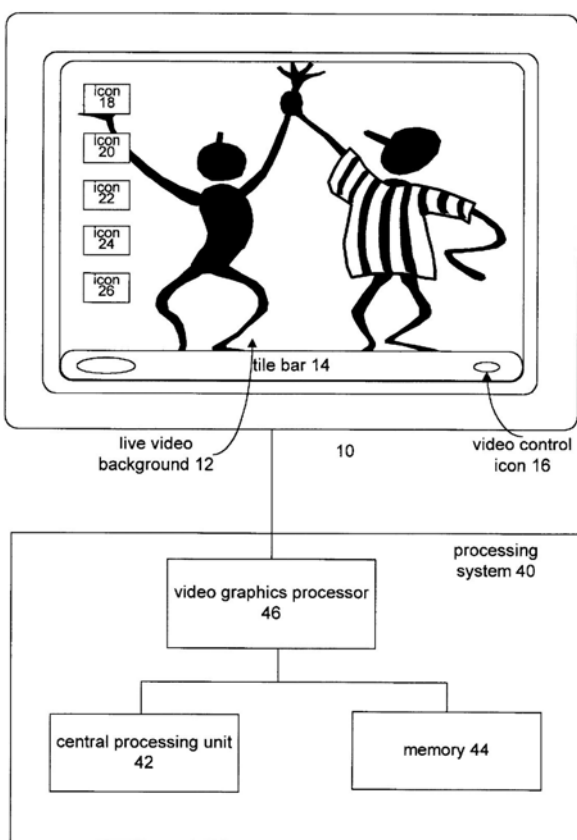
27 ’879 at Fig. 1 (Ex. 1). The live video is in the background and “the tile bar 14, the video control  
28 icon 16, and the icons 18-26 are in focus, i.e., overlaying the live background video 12.” ’879 at

<sup>1</sup> Citations to “Ex. \_” refer to Exhibits to the Declaration of Aaron R. Fahrenkrog in Support of Plaintiffs’ Opposition to Samsung’s Motion for Summary Judgment of Noninfringement, filed with this brief.



1 2:22-25 (Ex. 1). When the video control icon 16 is selected, a control panel 30 is presented in  
 2 focus. '879 at 2:25-29 (Ex. 1). The video control icon can be selected using a mouse, a touch  
 3 screen, a keyboard, "or any other means for selecting an icon." *Id.* "While the control panel 30 is  
 4 in focus, the live video remains in the background." *Id.* at 2:31-32. As shown in Figure 1, the  
 5 other displayed elements, including "icons 18-26," remain in focus.

6 Figure 2 illustrates a schematic block diagram of a processing system 40 that is "coupled  
 7 to the computer display 10" to practice the claimed invention. '879 at 2:49-60 (emphasis added)  
 8 (Ex. 1). That system includes a central processing unit 42, a memory 44, and a video graphics  
 9 processor 46.



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24 '879 at Fig. 2 (Ex. 1). The specification provides examples of the central processing unit and  
 25 memory and does not restrict the types of those components that can be used:

26 The processing system 40 is operably coupled to the computer display 10. The  
 27 central processing unit 42 may include a microprocessor, microcontroller, a digital  
 28 signal processor, a microcomputer, or any other means for processing digital  
 information based on programming instructions. The memory may be cache

1 memory, hard drive, floppy disk, CD ROM, or any other means for storing digital  
 2 information.

3 '879 at 2:49-60 (emphasis added) (Ex. 1). The video graphics processor 46 may be part of the  
 4 central processing unit. '879 at 2:61-66 (Ex. 1). The processing unit performs programming  
 5 instructions stored in the memory in order to perform the operations described in the claims. '879  
 6 at 2:59-60, 2:66 – 3:3 (Ex. 1).

7 The structural elements in '879 apparatus claims 11-24 correspond to the components  
 8 described in Figure 2. Claims 11-16 recite the structural components “a processing unit” and  
 9 “memory that stores programming instructions” that allow the processing unit to perform the  
 10 described user interface functions. Claims 17-24 recite “a processing unit” and “storage means”  
 11 which corresponds to the memory in Figure 2. The apparatus claims do not recite any additional  
 12 structural limitations.

13 **II. The Court Already Has Construed “Control Panel.”**

14 The Court’s Claim Construction Order construed the disputed claim limitation “control  
 15 panel” as “[a]n area of the computer display containing control functions.” Dkt. #255 at 33.  
 16 Samsung argued that a control panel should be limited to “personal computer.” *Id.* at 30. The  
 17 Court rejected Samsung’s argument, finding that “the intrinsic evidence does not limit the control  
 18 panel application to use on a ‘personal’ computer.” *Id.* at 32.

19 The Court used the word “computer display” instead of “computer screen,” because to  
 20 construe otherwise “could confuse jurors by leading them to believe that a control panel can *only*  
 21 be displayed on a computer screen.” *Id.* (emphasis in original). The Court noted that “claim 5  
 22 discloses that a television could be used for a computer display.” *Id.* The Court did not give a  
 23 specific definition to the term “computer.”

24 **III. AMD Has Accused Four Categories of Samsung Products that Each Contain a**  
 25 **Processing Unit and Memory Coupled to a Display.**

26 AMD has accused Samsung televisions, phones, cameras, and camcorders of infringing  
 27 claims 11-24 of the Orr '879 patent. *See* Haskett Decl. Ex. 1 (Exs. CC, DD, EE, FF, GG, HH, II,  
 28 JJ, KK, and LL). AMD’s Final Infringement Contentions were based on the exemplar groupings

1 agreed to by the parties in the Stipulation Regarding Exemplar Products for the Purposes of  
 2 Proving Infringement/Noninfringement (Dkt. #278). Exhibit G to that Stipulation contained the  
 3 agreed groupings for the '879 patent. Ex. 2. The accused products use the claimed inventions to  
 4 provide Samsung's customers an improved user interface. Each of the accused products contains  
 5 a processing unit and memory coupled to a display. Wolfe Decl. ¶¶ 23, 32-47.<sup>2</sup> AMD's expert,  
 6 Dr. Andrew Wolfe, has reviewed extensive documents describing all of the accused products and  
 7 also has obtained and tested the products themselves to determine that they infringe under the  
 8 proper meaning of the claims to one of ordinary skill in the art as of the time of the invention.  
 9 Wolfe Decl. ¶ 18.

### ARGUMENT

#### **I. Summary Judgment Must Be Denied If a Genuine Issue of Material Fact Exists.**

12 Summary judgment is not appropriate if there is a genuine issue of material fact. Fed. R.  
 13 Civ. P. 56(c); *Hunt v. Cromartie*, 526 U.S. 541, 549 (1999); *Anderson v. Liberty Lobby, Inc.*, 477  
 14 U.S. 242, 247-48 (1986). In deciding a motion for summary judgment, the Court must consider  
 15 the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
 16 affidavits, if any" to determine whether there is a genuine issue as to any material fact and  
 17 whether the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c);  
 18 *Yodlee, Inc. v. Cashedge, Inc.*, 2007 WL 2220970, \*1 (N.D. Cal. Aug. 1, 2007). A fact is  
 19 "material" if it "might affect the outcome of the suit under the governing law." *Anderson*, 477  
 20 U.S. at 248. An issue of material fact is "genuine . . . if the evidence is such that a reasonable  
 21 jury could return a verdict for the nonmoving party." *Id.* All factual disputes and all inferences  
 22 must be resolved in favor of AMD. *United States v. Diebold*, 369 U.S. 654, 655 (1962);  
 23 *Anderson*, 477 U.S. at 255.

24 Samsung has the burden of production to identify the basis for its motion and to  
 25 demonstrate that no evidence supports AMD's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323

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27 <sup>2</sup> Citations to "Wolfe Decl." refer to the Declaration of Andrew Wolfe, Ph.D. in Support of  
 28 Opposition to Samsung's Motion for Summary Judgment of Non-infringement of U.S. Patent No.  
 6,784,879.

1 (1986); *Arthur A. Collins Inc. v. Northern Telecom Ltd.*, 216 F.3d 1042, 1046 (Fed. Cir. 2000).  
 2 In particular, a party moving for summary judgment of noninfringement must “point[] to the  
 3 specific ways in which accused systems did not meet the claim limitations.” *Exigent Tech., Inc.*  
 4 *v. Atrana Solutions, Inc.*, 442 F.3d 1301, 1308-09 (Fed. Cir. 2006).

5 **II. Infringement Cannot Be Determined Without First Construing the Claims, But**  
 6 **Samsung Has Proposed No Constructions.**

7 “A determination of infringement [or noninfringement] requires a two-step analysis.”  
 8 *Terlep v. Brinkmann Corp.*, 419 F.3d 1379, 1381 (Fed. Cir. 2005). The first step is to determine  
 9 the scope of the claim, which is a matter of law for the Court. *Markman v. Westview Instruments,*  
 10 *Inc.*, 517 U.S. 370, 372-73, (1996). The second step is to compare the claim as properly  
 11 construed to the accused device or process, which is a question of fact for the jury. *Id.*

12 Samsung has not properly proposed constructions for the terms it has asked the Court to  
 13 construe. Without proposed constructions, AMD and the Court cannot determine the scope of the  
 14 claims that Samsung is proposing, and therefore cannot determine whether the accused products  
 15 fall within Samsung’s proposed scope.

16 First, Samsung asks the Court to re-construe the term “control panel.” Samsung’s brief  
 17 attempts to limit the “computer display” in the Court’s construction to “a general purpose  
 18 computer operating in a windows-based environment,” but does not articulate that phrase as a  
 19 proposed construction. In other places, Samsung’s brief suggests that the Court should read in a  
 20 definition of “computer” from the specification. Dkt. #435 at 8 (“The patent specification defines  
 21 the term ‘computer’ as follows . . .”).

22 Second, Samsung expressly asks the Court to construe “application . . . in focus” and “live  
 23 video,” Dkt. #435 at 4 n.1, but provides no proposed constructions. For each of these terms,  
 24 Samsung identifies many varied limitations it would like incorporated, but does not propose  
 25 constructions.

26 Instead of proposing a definite construction for each term, Samsung asks the Court to  
 27 construe the terms solely to exclude the accused devices. Construing claim terms as Samsung  
 28 requests is error. *Cohesive Techs., Inc. v. Waters Corp.*, 543 F.3d 1351, 1367-68 (Fed. Cir. 2008)

1 (“A claim is construed in light of the claim language . . . not in light of the accused device.”  
2 (quotation omitted)).

3 Samsung’s failure to propose a scope for each claim term means that Samsung has not  
4 satisfied its burden of production to “point[] to the specific ways in which accused systems did  
5 not meet the claim limitations.” *Exigent*, 442 F.3d at 1308-09. Samsung cannot have identified  
6 the ways in which the accused products do not meet the claim limitations without explaining what  
7 those limitations are. Put another way, the Court cannot determine whether any fact is “material”  
8 because materiality is determined based on whether the fact “might affect the outcome of the suit  
9 under the governing law.” *Anderson*, 477 U.S. at 248. To determine infringement, part of the  
10 “governing law” is the proper construction of the claims.

11 AMD therefore requests that the Court deny Samsung’s motion in its entirety for failure to  
12 meet its burden of production sufficient to support a motion for summary judgment. As a  
13 practical matter, Samsung’s failure to propose constructions leaves AMD to guess at which  
14 phrasings of claim limitations Samsung wants the Court to adopt. Samsung’s motion in its  
15 entirety should be denied solely on this basis.

16 However, in the event that the Court does not do so, AMD has proposed constructions for  
17 the terms “application” and “live video.” The Court already construed “control panel,” and it  
18 needs no additional construction. The parties agreed to the construction of “in focus,” and it also  
19 needs no additional construction. If the Court does not deny Samsung’s motion for failure to  
20 meet its burden of production, AMD respectfully requests that the Court adopt AMD’s proposed  
21 constructions.

22 Samsung’s reply brief should be restricted to a discussion of AMD’s proposed  
23 constructions. That is, Samsung should not be allowed to propose its own constructions in its  
24 reply because AMD will not have the opportunity to respond. If Samsung does propose  
25 constructions, its reply brief unquestionably will contain new matter not raised in its opening  
26 brief.

27 Left with no other choice, AMD has attempted to discern Samsung’s proposed scope of  
28 each claim term from the various statements regarding limitations in Samsung’s brief and expert

1 declaration. The intrinsic record not only does not support any of Samsung's proposed  
 2 limitations, but expressly contradicts Samsung's limitations. As properly construed, the asserted  
 3 claims cover the accused devices. Therefore, AMD requests that the Court deny Samsung's  
 4 motion in its entirety.

5 **III. A Genuine Issue of Material Fact Exists Regarding Whether the Accused Products**  
 6 **Contain a "Computer Display" and Therefore Satisfy the Claim Limitation "Control**  
 7 **Panel."**

8 **A. "Computer Display" in the Court's Construction of "Control Panel"**  
 9 **Requires a Processing Unit and Memory Coupled to a Display.**

10 The Court has construed "control panel" to mean "[a]n area of the computer display  
 11 containing control functions." Dkt. #255 at 33. The Court also has suggested that to determine  
 12 whether a device contains a "computer display," one must determine whether the device's display  
 13 is connected to a "computer." Dkt. #255 at 32 ("Claim 5 merely lists types of devices that can  
 14 display the patented application when those devices are connected to a computer."); *id.*  
 15 ("Contrary to AMD's contention, the reference to channel controls in some claims does not  
 16 establish that the control panel can be displayed on a television without a computer."). Therefore,  
 17 to establish infringement of the '879 apparatus claims, AMD must demonstrate that the display in  
 18 each accused device is connected to a "computer." The Court did not limit "computer."

19 AMD and Samsung dispute what constitutes the "computer" required to make a "display"  
 20 a "computer display" to satisfy the Court's construction of "control panel." AMD's position is  
 21 that no additional construction is required because the claims and specification demonstrate that  
 22 the "computer" required to implement the invention, and connected to the "computer display,"  
 23 contains a processing unit and memory that stores programming instructions. '879 at 2:49-53  
 24 (Ex. 1). Samsung, however, now asserts that the "computer" must be "a general purpose  
 25 computer operating in a windows-based environment, and not . . . any device in the world that  
 26 contains a processor, memory, and programming instructions, as AMD contends." Dkt. #435 at  
 27 9.

28 Samsung's new definition of "computer" reargues its prior claim construction proposal by  
 substituting "general purpose computer in a windows-based environment" for "personal

1 computer.” The Court already decided that the intrinsic record does not support the “personal”  
 2 limitation. Dkt. #255 at 32. Samsung now asks the Court to substitute different limiting words  
 3 that effectively mean the same thing as “personal.” The intrinsic record does not support  
 4 Samsung’s new limiting words “general purpose” and “windows-based.” AMD requests that the  
 5 Court reject Samsung’s attempt to read additional limiting words into “control panel.”

6 The claim term at issue is “control panel,” not “computer” or “computer display.”  
 7 Because the Court construed “control panel” to require a “computer display,” and Samsung now  
 8 argues that a “computer display” must be limited to a display connected to “a general purpose  
 9 computer operating in a windows-based environment,” AMD here addresses the intrinsic and  
 10 extrinsic support for the meaning of “computer” and “computer display” as if those terms  
 11 themselves appeared in the claims.

12 1. The Claims and Specification Demonstrate that the “Computer” Described  
 13 Requires Only a Processing Unit and Memory.

14 The specification teaches that the “computer display” discussed in the patent and  
 15 incorporated in the construction of “control panel” must be coupled to a processing unit and  
 16 memory. The specification explains:

17 FIG. 2 illustrates a schematic block diagram of a processing system 40 which  
 18 includes a central processing unit 42, memory 44, and a video graphics processor  
 46. The processing system 40 is operably coupled to the computer display 10.

19 ’879 at 2:49-53 (emphasis added) (Ex. 1). This statement identifies three components required to  
 20 be connected to a “computer display:” a central processing unit, memory, and a video graphics  
 21 processor.

22 The specification also teaches that “the video graphics processor may be part of the  
 23 central processing unit.” ’879 at 2:64-66 (Ex. 1). Therefore, in a preferred embodiment of the  
 24 invention, a “computer display” is present when a display is connected to two components: a  
 25 processing unit and memory. The specification’s description of a processing unit and memory  
 26 coupled to a “computer display” is consistent with how one of ordinary skill in the art would  
 27 understand the term “computer” in 1997. *See Wolfe Decl.* ¶¶ 24-31, 48-53.

28 The preferred embodiment corresponds precisely to the asserted apparatus claims, which



1 recite two “computer” components: a processing unit and memory. The claims and specification  
2 therefore explicitly teach that to constitute a “computer display,” a display must be coupled to a  
3 processing unit and memory. The claims on their face read on this embodiment and should not be  
4 construed to exclude it. *Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1345-46 (Fed.  
5 Cir. 2008). The Court’s construction of “control panel” to require a “computer display” is in  
6 harmony with the claims and specification and needs no additional construction.

7 2. The Specification Does Not Disclaim Televisions, Phones, Cameras, and  
8 Camcorders.

9 The specification can limit claim terms in two ways: definition or disclaimer. *Phillips v.*  
10 *AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005). AMD understands that the Court found that  
11 the specification implicitly defined the term “control panel” based on the Court’s statement that  
12 “[a]s the patentee consistently uses ‘control panel’ in the specification to denote a mechanism for  
13 controlling video on a computer display, this understanding of the term is incorporated into the  
14 claim language.” Dkt. #255 at 31. The page from *Bell Atlantic* cited by the Court discusses  
15 implicit definitions. *Id.* at 31-32; *Bell Atl. Network Servs., Inc. v. Covad Commc’ns Group*, 262  
16 F.3d 1258, 1271 (Fed. Cir. 2001). AMD does not read the Court’s Order as finding that the ’879  
17 specification disclaims any particular device. AMD understands that instead, the Court found a  
18 definition.

19 Samsung, on the other hand, misconstrues the Court’s statements in order to argue that the  
20 claims exclude all products named “television,” “phone,” “camera,” or “camcorder.” Dkt. #435  
21 at 7-8, 12. An implicit definition, however, is not the same thing as a disclaimer that excludes  
22 particular devices, which requires the inventors to “demonstrate an intent to deviate from the  
23 ordinary and accustomed meaning of a claim term by including in the specification expressions of  
24 manifest exclusion or restriction, representing a clear disavowal of claim scope.” *Teleflex, Inc. v.*  
25 *Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). The specification does not contain a  
26 disavowal of any kind of devices that contain the claimed processing unit and memory. The  
27 specification contains nothing that one of ordinary skill would understand as a disavowal of all  
28 televisions, phones, cameras, and camcorders even when they include the claimed structures.



1 Wolfe Decl. ¶ 31.

2 AMD does not contend, as Samsung alleges, that every television, phone, camera, and  
3 camcorder in existence can infringe the '879 claims. The question of infringement of an  
4 apparatus claim turns not on what a product is named or on its intended use, but instead on  
5 whether it includes the claimed structures. *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek*,  
6 424 F.3d 1293, 1311-12 (Fed. Cir. 2005). Because the intrinsic record does not include a  
7 sweeping disclaimer of all televisions, phones, cameras, and camcorders, AMD requests that the  
8 Court disregard Samsung's argument that the Court already has ruled that televisions, phones,  
9 cameras, and camcorders cannot infringe regardless of the components they contain.

10 3. The Specification Does Not Contain a Definition that Limits "Control  
11 Panel" to a Display Connected to a "General Purpose" or  
12 "Windows-Based" Computer.

13 The specification does not define the term "computer" as Samsung has alleged. Samsung  
14 relies on the specification's statement from the Background of the Invention:

15 Computers are known to include a central processing unit, cache memory, hard  
16 drive memory, floppy disk drive memory, CD ROM drive, audio processing  
17 circuitry, and video processing circuitry. The computer further includes a  
18 computer monitor which provides visual representations of the data being  
19 manipulated. Such visual representations are originated from, for example, a word  
20 processing algorithm, a drawing algorithm, and, more recently, the displaying of  
21 video images.

22 '879 at 1:11-17 (Ex. 1). Samsung has not made clear what it is asking the Court to read into the  
23 claims from this description. At some points in its brief, Samsung seems to request that the Court  
24 re-construe "control panel" to incorporate this description verbatim. *See* Dkt. #435 at 8. At other  
25 points Samsung suggests that based on the description, the specification implicitly defines the  
26 "computer" that must be connected to the "computer display" as a "general purpose computer  
27 operating in a windows-based environment." *See id.* at 9-10. Neither position is supported by the  
28 specification. Also, there can be no dispute that the specification does not expressly define  
"computer display" or "computer" as "general purpose computer operating in a windows-based  
environment," because the specification does not use the terms "general purpose" or "windows-  
based."

1 a. The Background of the Invention Does Not Expressly Define  
2 “Computer.”

3 The Background’s description of a “computer” cannot define the term because it does not  
4 “clearly express [an] intent” to “assign [the] term a unique definition that is different from its  
5 ordinary and customary meaning.” *Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527 F.3d  
6 1379, 1381 (Fed. Cir. 2008). Instead, the description says “[c]omputers are known to include”  
7 and lists several exemplary components. It does not say “a ‘computer’ is” a particular set of  
8 components, does not say “all computers include” certain components, and does not otherwise  
9 reflect a clear intent to give a precise definition to the term. *Id.* This general description contrasts  
10 with the inventor’s demonstration of clear intent to define the term “in focus,” where the  
11 specification says “in focus (i.e., actively being displayed and/or being worked upon).” ’879 at  
12 1:43-44 (emphasis added) (Ex. 1). Because the inventor clearly indicated an intent to define “in  
13 focus,” AMD agreed to the definition of that term. The general description of “computers” comes  
14 nowhere near this clear intent to define.

15 Also, the description of a “computer” contains many components, such as a floppy disk  
16 drive, that are not necessary to implement the claimed invention. Reading these components into  
17 the claims would be improper, because “[w]hen the claim addresses only some of the features  
18 disclosed in the specification, it is improper to limit the claim to other, unclaimed features.”  
19 *Broadcom v. Qualcomm*, 543 F.3d 683, 689 (Fed. Cir. 2008) (quoting *Ventana Med. Sys., Inc. v.*  
20 *Biogenex Labs., Inc.*, 473 F.3d 1173, 1181 (Fed. Cir. 2006)).

21 The specification makes clear that the invention can be implemented with various types of  
22 memory, and does not require “hard drive memory, floppy disk drive memory, [and a] CD ROM  
23 drive.” ’879 at 1:12-15 (Ex. 1). Instead, when discussing the embodiment of the invention, the  
24 specification explains “[t]he memory may be cache memory, hard drive, floppy disk, CD ROM,  
25 or any other means for storing digital information.” ’879 at 2:56-58 (Ex. 1).

26 Incorporating the specification’s description of an example “computer” in the construction  
27 of “control panel” would lead to the result that a device cannot satisfy the “control panel”  
28 limitation without, for example, a floppy disk drive. Such a construction would be completely

1 detached from the claims and specification. The general description of “computers” from the  
2 Background of the Invention cannot be read into the claims.

3 b. The Background of the Invention Does Not Implicitly Define  
4 “Computer.”

5 The specification also does not implicitly define the terms “computer” or “computer  
6 display” to require a “general purpose computer operating in a windows-based environment.”  
7 Implicit definition requires “a patentee to use[] a claim term throughout the entire patent  
8 specification, in a manner consistent with only a single meaning.” *Bell Atl.*, 262 F.3d at 1271.  
9 Like Samsung’s previous proposed limitation “personal,” its new proposed limitations “general  
10 purpose” and “windows-based” do not appear in the specification. Reading these made-up  
11 limitations into the claims based on the example “computer” components listed in the  
12 Background of the Invention conflicts with the description of the preferred embodiment. As  
13 described above, the specification uses the term “computer display” to mean a display connected  
14 to a central processing unit and memory, without limitation on those components. ’879 at Fig. 2,  
15 2:49-60 (Ex. 1). The ’879 specification therefore does not use the terms “computer” or  
16 “computer display” “throughout the specification, in a manner consistent with only a single  
17 meaning” of “general purpose computer operating in a windows-based environment.” The  
18 specification cannot have defined “computer” or “computer display” by implication.

19 Through its discussion of suitable central processing units for the invention, the  
20 specification makes even more clear that “general purpose computer operating in a window-based  
21 environment” cannot be an implicit limitation. The specification states “the central processing  
22 unit 42 may include a microprocessor, microcontroller, a digital signal processor, a  
23 microcomputer, or any other means for processing digital information based on programming  
24 instructions.” ’879 at 2:53-56 (Ex. 1). One of ordinary skill in 1997 would recognize that a  
25 microcontroller or digital signal processor would not be suitable for the central processing unit of  
26 a “general purpose computer operating in a window-based environment.” Wolfe Decl. ¶ 50.  
27 Because the specification contradicts Samsung’s proposed implicit limitation, the limitation  
28 cannot be adopted.



1 claim construction mandated by the claims themselves, the written description, and the  
2 prosecution history.” *Kara Tech. Inc. v. Stamps.com Inc.*, 582 F.3d 1341, 1348 (Fed. Cir. 2009).

3 6. The Testimony of the Inventor Cannot Limit the Claims.

4 “The testimony of an inventor cannot be relied on to change the meaning of the claims.”  
5 *Howmedica*, 540 F.3d at 1346 (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 983  
6 (Fed. Cir. 1995)). The Federal Circuit has stated explicitly “[w]e hold that inventor testimony as  
7 to the inventor’s subjective intent is irrelevant to the issue of claim construction.” *Howmedica*,  
8 540 F.3d at 1347. Samsung’s citations of Mr. Orr’s testimony and documents describing the  
9 context in which he conceived of the ’879 inventions, therefore, are irrelevant to the claim  
10 construction issues before the Court.

11 7. Samsung’s Proposed Limitations Would Exclude Many Devices  
12 Considered to Be “Computers” in 1997.

13 Samsung’s proposed limitations, in contrast, would exclude many devices that one of  
14 ordinary skill would have considered to be “computers” in 1997. Wolfe Decl. ¶ 51, 107. The  
15 original IBM PC, for example, did not operate in a windows-based environment. Wolfe Decl.  
16 ¶ 51. In addition to the IBM PC, Dr. Wolfe has described others in his declaration that would be  
17 excluded by Samsung’s proposed limitations. *Id.* Samsung’s proposed limitations, therefore, do  
18 not constitute ordinary meaning to one of skill in the art at the time of the invention.

19 **B. The Accused Products Contain a Display Coupled to a “Processing Unit” and**  
20 **“Memory,” and Therefore Contain a “Computer Display” and Literally**  
21 **Satisfy the “Control Panel” Limitation.**

22 Samsung has requested that the Court enter summary judgment of noninfringement for all  
23 accused televisions, phones, cameras, and camcorders on the basis that none of these products  
24 satisfy the limitation “control panel.” Samsung does not allege that the accused products do not  
25 contain “an area of the . . . display containing control functions.” Samsung has alleged only that  
26 the accused products do not contain a “computer display,” and therefore do not satisfy the Court’s  
27 construction.

28 As discussed above, “control panel” as construed by the Court needs no additional  
construction, because the “computer display” must be coupled only to a processing unit and

1 memory, as claimed and described in the specification. Samsung does not allege in its motion  
2 that any accused product does not contain the claimed processing unit and memory that stores  
3 programming instructions. In fact, each of the accused products contains these claimed  
4 components which are coupled to a display. Wolfe Decl. ¶¶ 23, 32-47. Therefore, if the Court  
5 agrees that the “computer display” must be coupled to only a processing unit and memory,  
6 Samsung’s motion must be denied with respect to the claim limitation “control panel.”

7 The accused products all contain programmable processing units and memory  
8 components. Dr. Wolfe has analyzed documents describing the accused products in detail to  
9 identify the processing unit and memory components of each product. Dr. Wolfe’s declaration, at  
10 ¶¶ 32-47, identifies the specific components in each exemplar product and all of the evidence  
11 supporting his analysis. This evidence also is analyzed and discussed in AMD’s Final  
12 Infringement Contentions for the ’879 patent, attached to the Declaration of Christine Haskett as  
13 Exhibit 1.

14 In the accused products, the computer components connected to the display process the  
15 video and generate the claimed user interface features. The accused products therefore differ  
16 from conventional analog televisions, cameras, and camcorders, in which incoming live-video  
17 signals were presented directly to a display device such as a cathode-ray tube without being  
18 processed by computer components. Wolfe Decl. ¶ 47. In some conventional products, for  
19 example, a simple microcontroller could generate other signals representing text or lines and  
20 combine these with the incoming video signal in the analog domain. *Id.* The accused products do  
21 not work this way. *Id.* In the accused devices, the live video is processed by the computer  
22 components which then generate a digital image for display. *Id.* The computer components also  
23 generate the graphical elements claimed in the ’879 patent, such as the video control icon and the  
24 control panel, as well as graphics or video for other applications in the foreground. *Id.* That the  
25 accused products also perform tasks traditionally associated with televisions, mobile phones,  
26 cameras, and camcorders does not impact the infringement analysis. Samsung’s motion should  
27 be denied.

1           **C. Even if the Court Restricts the Claims to a “General Purpose Computer,” the**  
 2           **Accused Products Satisfy that Limitation and Literally Satisfy the “Control**  
 3           **Panel” Limitation.**

4           AMD requests that the Court deny Samsung’s motion even if the Court adopts Samsung’s  
 5           proposed limitation that to constitute a “computer display,” a display must be connected to a  
 6           “general purpose computer.” The accused products contain components found in “general  
 7           purpose” computers and perform functions typically associated with “general purpose”  
 8           computers. Wolfe Decl. ¶¶ 54-64. Based on the evidence AMD has submitted with this motion,  
 9           a reasonable jury could find that each accused product satisfies the “control panel” limitation.  
 10          AMD therefore requests that the Court deny Samsung’s motion.

11          As discussed above, AMD agrees that not all televisions, phones, cameras, and  
 12          camcorders in the world are “computers,” and certainly not “general purpose” computers. This is  
 13          true, for example, of conventional consumer electronic devices that do not process programming  
 14          instructions such as analog televisions, non-digital telephones, film cameras, and analog  
 15          camcorders. Wolfe Decl. ¶ 47.

16          The accused products perform many tasks traditionally associated with “general purpose”  
 17          computers. Wolfe Decl. ¶ 54. Many accused products can run multiple software programs. *Id.*  
 18          Many accused products can download new software programs. *Id.* Many accused products can  
 19          interact with computer networks and peripherals, such as printers. *Id.* Many accused products  
 20          allow for high-speed connections to Ethernet, Wi-Fi, and 3G data networks. *Id.* at ¶¶ 34, 54, 55,  
 21          57, 60.

22          The accused Samsung UN46B8000 television, for example, contains computer  
 23          components that provide regular television viewing and the control functions claimed in the ’879  
 24          patent, as well as the ability to run applications that typically are associated with a “general  
 25          purpose” computer. Wolfe Decl. ¶¶ 60-61. The UN46B8000 includes an Ethernet connection  
 26          and an optional Wi-Fi adapter to connect to a home network or the Internet. *Id.* It can access and  
 27          display digital audio, pictures, video, and can access other files over the network or from a USB  
 28          drive. Ex. 46 at SAMAMD0562588-609; Wolfe Decl. ¶ 60. The UN46B8000 can automatically



1 detect software updates that are available from Samsung over the Internet, and download and  
2 install those updates without any user interaction. Wolfe Decl. ¶ 60. This is very similar to the  
3 “Automatic Update” option commonly available on “general purpose” computers that run  
4 Microsoft Windows. *Id.* The UN46B8000 uses standard computer protocols, reads standard file  
5 systems, and runs the Linux operating system, which is a standard general purpose computer  
6 operating system used by IBM, HP, and Dell. *Id.*; Ex. 46 at SAMAMD0562588-609. The  
7 UN46B8000 runs numerous internet applications traditionally associated with personal computers  
8 such as Yahoo News, Amazon, YouTube, Flickr, Twitter and weather forecasts, and allows the  
9 user to download and play games. Wolfe Decl. ¶ 61. Amazingly, the UN46B8000 performs all  
10 of these functions without any external computer or cable box. *Id.*

11 The accused cell phones also perform tasks traditionally associated with “general purpose  
12 computers.” The accused Samsung SCH-u940 “Glyde” phone includes a web browser that  
13 allows the user to interact with the internet over a wireless network. Wolfe Decl. ¶¶ 55-56; Ex.  
14 21 at AMD003619508-10. The Glyde includes an external typewriter-style keyboard and can  
15 download and install email applications that allow users to receive the same email they would  
16 receive on their desktop or laptop computers. Wolfe Decl. ¶¶ 55-56. The Glyde also can  
17 download and play computer games. *Id.*

18 The accused Samsung SCH-i910 “Omnia” phone runs a version of Microsoft Windows,  
19 can interact with the internet over a 3G wireless network or Wi-Fi, has a touchscreen and a mouse  
20 device, and can use an internal display or output video to an external television. Ex. 26 at  
21 AMD003620067-69; Wolfe Decl. ¶¶ 57-58. An Omnia user can view and create documents with  
22 versions of Microsoft Word, Excel, and PowerPoint, access web sites such as ESPN, Yahoo, and  
23 Flickr using Internet Explorer, read and send email, and play games. Wolfe Decl. ¶ 58. A  
24 reasonable jury presented with a device with a mouse, display, processor, memory, network  
25 connection, and this functionality could find that it is a “general purpose computer.” *Id.*

26 The accused cameras and camcorders also perform tasks generally associated with general  
27 purpose computers. Some of the accused cameras and camcorders are able to install firmware  
28 updates, upload pictures and videos to the internet, and allow the user to edit picture and video



1 attributes directly on the device. Wolfe Decl. ¶¶ 62-64. In addition, the computer components in  
 2 the accused S860 camera and accused SC-HMX10 camcorder can directly connect to and control  
 3 a printer using a USB cable. Ex. 35 at AMD003620231-33; Ex. 39 at AMD003620350-56;  
 4 Wolfe Decl. ¶¶ 62, 64. The SC-HMX10 camcorder can also edit digital movies directly on the  
 5 device, something that traditionally was done on an external computer. Ex. 39 at  
 6 AMD00362050-56; Wolfe Decl. ¶ 64.

7 Each category of products at issue in Samsung's motion contains products that exhibit a  
 8 wide variety of features associated with "general purpose" computers. The evidence described  
 9 above and discussed at length in the Declaration of Dr. Wolfe, ¶¶ 54-64, provides a sufficient  
 10 basis for a reasonable jury to return a verdict that the accused products satisfy Samsung's  
 11 proposed, unsupported "general purpose computer" limitation. Therefore, even if the Court  
 12 adopts this unsupported limitation, AMD requests that Samsung's motion be denied.

13 **D. If the Court Restricts the Claims to a "General Purpose Computer Operating**  
 14 **in a Windows-Based Environment," the Accused Products Satisfy the**  
 15 **"Control Panel" Limitation Under the Doctrine of Equivalents.**

16 Even if the Court adopts all of Samsung's proposed limitations on the term "control  
 17 panel," a genuine issue of material fact still exists regarding whether the accused products satisfy  
 18 that limitation under the doctrine of equivalents.

19 1. The Accused Control Panel in Each Accused Samsung Product Is  
 20 Equivalent to the Claimed "Control Panel."

21 A finding of infringement under the doctrine of equivalents requires a showing on a  
 22 limitation-by-limitation basis that the accused product performs substantially the same function in  
 23 substantially the same way to achieve the same result as each claim limitation. *Amgen Inc. v. F.*  
 24 *Hoffman-LA Roche Ltd.*, 580 F.3d 1340, 1382 (Fed. Cir. 2009). Identification of a claim  
 25 element's function, way, and result "focuses on an examination of the claim and the explanation  
 26 of it found in the written description of the patent." *AquaTex Indus., Inc. v. Techniche Solutions*,  
 27 479 F.3d 1320, 1326 (Fed. Cir. 2007).

28 The '879 element at issue is "control panel." The function of the "control panel" in the  
 '879 claims and specification is to allow the user to input desired adjustments to the attributes of

1 live video. '879 at claims 1-24; 2:10-15; 3:23-25; 3:34-42; 3:46-50 (Ex. 1); Wolfe Decl. ¶¶ 68-  
 2 69. The way the “control panel” performs this function is by reading and executing programming  
 3 instructions stored in memory (1) to calculate color and brightness values for pixels in the  
 4 graphical user interface and provide those pixels to the display, and (2) to receive inputs from the  
 5 graphical user interface so that the processing unit can process those inputs and output the desired  
 6 adjustment. '879 at claims 1-24; 2:7-15; 1:58-60; 2:53-60; 3:20-25; 3:31-45; 3:46-50 (Ex. 1);  
 7 Wolfe Decl. ¶ 70. As a result, the user is able to adjust the live video in a controlled manner.  
 8 '879 at claims 1-24; 2:10-15; 3:23-25; 3:34-42; 3:46-50 (Ex. 1); Wolfe Decl. ¶ 71.

9 All Samsung accused products have a display. Wolfe Decl. ¶ 71. The area of the display  
 10 containing control functions in each Samsung accused product performs substantially the same  
 11 function, in substantially the same way, to achieve the same result as the claimed “control panel.”  
 12 Wolfe Decl. ¶¶ 65, 68-81. Therefore, a reasonable jury could find that the structures in the  
 13 accused products are insubstantially different than the claimed “control panel,” and Samsung’s  
 14 motion should be denied.

15 2. Samsung’s Doctrine of Equivalents Arguments Do Not Follow the Proper  
 16 Legal Framework.

17 Samsung does not argue that the accused products perform a substantially different  
 18 function as the “control panel,” or perform the same function as the “control panel” in a  
 19 substantially different way. Samsung does not address the “function” or “way” of the “control  
 20 panel” limitation at all. Instead, Samsung argues that substituting the accused products do not  
 21 achieve the same result as the claimed “control panel.” Samsung’s arguments regarding the  
 22 “result,” however, do not follow the proper equivalents analysis and must be disregarded.<sup>3</sup>

23 Samsung argues that “substituting the accused telephones, televisions, camcorders or  
 24 cameras for the claimed ‘computer’” would “result in entirely different systems from those  
 25 claimed in the '879 patent.” Dkt. #435 at 13-14. This analysis violates both the requirement that

26 <sup>3</sup> AMD incorporated its equivalents analysis for the claimed “control panel” in AMD’s Final  
 27 Infringement Contentions, so Samsung has had notice of AMD’s positions since December 2009.  
 28 Samsung’s failure to address the “function” or “way” in its brief is a concession that it agrees that  
 the accused products perform substantially the same function in substantially the same way.

1 the equivalents analysis be performed on a limitation-by-limitation basis and the principle that the  
2 function, way, and result must be determined by reference to the claims and specification.

3 First, Samsung improperly considers only the device as a whole, not the “control panel”  
4 limitation at issue. Dkt. #435 at 13 (“[N]o reasonable finder of fact could find that substituting  
5 the accused telephones, televisions, camcorders or cameras for the claimed ‘computer’ achieves  
6 the same result as the claims of the ’879 patent. Rather such substitutions result in entirely  
7 different systems from those claimed in the ’879 patent.”) (emphasis added). The Supreme Court  
8 has rejected such an analysis. *Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co.*, 520  
9 U.S. 17, 29 (1997) (“[T]he doctrine of equivalents must be applied to individual elements of the  
10 claim, not to the invention as a whole.”). The result of providing a control panel cannot be “a  
11 system that one ‘works upon,’” as Samsung asserts. That result has nothing to with the invention  
12 which provides for controlling background video. The result of providing a control panel is that  
13 the user can adjust background video in a controlled manner.

14 Second, Samsung fails to consider the claims and specification of the ’879 patent to  
15 identify the proper function, way, and result of the “control panel” limitation. *AquaTex*, 479 F.3d  
16 at 1326. Instead, Samsung relies solely upon unsupported expert opinion, which also fails to  
17 consider the claims or specification. Samsung’s equivalents analysis has no basis in the proper  
18 legal framework.

19 3. The Specific Exclusion Principle Does Not Exclude Televisions, Phones,  
20 Cameras, and Camcorders from the Claimed “Control Panel.”

21 Samsung incorrectly states that the Court specifically excluded televisions, phones,  
22 cameras and camcorders from the scope of the ’879 claims when it construed the term “control  
23 panel” to require a computer display. Under the specific exclusion principle, equivalent subject  
24 matter cannot “embrace a structure that was specifically excluded from the claims.” *Scimed Life*  
25 *Systems, Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1345 (Fed. Cir. 2001).

26 Samsung’s argument rests on a mistaken reading of the Court’s Claim Construction Order.  
27 As discussed above, AMD understands that the Court did not find that the term “control panel”  
28 specifically excludes any products, but rather that to satisfy the limitation, a product must contain

1 a “computer display.” AMD understands the Court’s comments regarding televisions, phones,  
2 cameras, and camcorders to mean that the claimed “control panel” does not cover those devices  
3 unless they contain a “computer display.” For example, the Court explicitly contemplated that a  
4 television could satisfy “computer display” if connected to a “computer.” Dkt. #255 at 32  
5 (“[C]laim 5 discloses that a television could be used for a computer display.”). The Court did not  
6 limit “computer.” AMD therefore does not believe that the Court already has excluded all  
7 products named “television,” “phone,” “camera,” or “camcorder” from the scope of the claims,  
8 which the intrinsic record would not support.

9 Samsung’s reliance on *Athletic Alternatives, Inc. v. Prince Manufacturing, Inc.* therefore  
10 is misplaced. 73 F.3d 1573, 1582 (Fed. Cir. 1996). In *Athletic Alternatives*, the court declined to  
11 apply the doctrine of equivalents because the proposed equivalent was “specifically excluded  
12 from the scope of the claims” during claim construction. *Id.* Here, the Court has not issued such  
13 a broad exclusion. Instead it has limited the literal scope of the claims to devices that contain a  
14 “computer display.”

15 Federal Circuit cases after *Athletic Alternatives* have made clear that specific exclusion  
16 applies in “binary” situations where there are only two structural options, and the patentee’s  
17 claiming of one structural option implicitly and necessarily precludes the capture of the other  
18 structural option. *Scimed*, 242 F.3d at 1346 (“[B]ecause the scope of the claim was limited in a  
19 way that plainly and necessarily excluded a structural feature that was the opposite of the one  
20 recited in the claim, that different structure could not be brought within the scope of patent  
21 protection through the doctrine of equivalents.”); *Ethicon Endo-Surgery, Inc. v. U.S. Surgical*  
22 *Corp.*, 149 F.3d 1309, 1317 (Fed. Cir. 1998) (subject matter is “specifically excluded” from  
23 coverage under the doctrine of equivalents if its inclusion is “inconsistent with the language of the  
24 claim”); *see also, e.g., Moore, U.S.A., Inc. v. Standard Register Co.*, 229 F.3d 394, 400 (Fed. Cir.  
25 2000) (holding that a claim requiring adhesive to extend “the majority of the lengths” of a form  
26 specifically excluded adhesive extending a minority of the length of a form under the doctrine of  
27 equivalents); *Eastman Kodak Co. v. Goodyear Tire & Rubber Co.*, 114 F.3d 1547, 1561 (Fed.  
28 Cir. 1997) (holding that a claim requiring “an inert gas atmosphere” specifically excluded

1 reactive gases under the doctrine of equivalents).

2 Displays in televisions, phones, cameras, and camcorders are not “opposites” of  
3 “computer displays,” or even displays coupled to “general purpose computers operating in a  
4 windows-based environment,” as Samsung has proposed. That is, the term “control panel” is not  
5 a “binary” term with only two structural options where specific exclusion could apply so that  
6 claiming one of the options specifically excludes the other option. Instead, Samsung asks the  
7 Court to broadly expand the specific exclusion principle to the extent that nothing could ever be  
8 equivalent to a computer display. However, the Federal Circuit has made clear that “any analysis  
9 of infringement under the doctrine of equivalents necessarily deals with subject matter that is  
10 ‘beyond,’ ‘ignored’ by, and not included in the literal scope of a claim.” *Ethicon*, 149 F.3d at  
11 1317 (emphasis added). If there can be no possible equivalent to the claimed computer display as  
12 Samsung argues, the specific exclusion principle has swallowed the entire doctrine of equivalents.  
13 The Court should not allow Samsung’s unprecedented expansion of the specific exclusion  
14 principle.

15 4. The Scope of Equivalents for the Orr ’879 Patent Does Not Encompass the  
16 Prior Art.

17 In a one-sentence footnote, Samsung argues that AMD is “barred from using the doctrine  
18 of equivalents” to “extend” the scope of the ’879 claims to the Samsung accused products so as to  
19 ensnare the prior art. Dkt. #435 at 15, n. 6. Under an ensnarement analysis, the Court looks at a  
20 hypothetical claim that is broad enough in scope to literally read on the accused devices and  
21 determines whether the hypothetical claim would have been allowed by the PTO in view of the  
22 prior art. *Wilson Sporting Goods Co. v. David Geoffrey & Associates*, 904 F.2d 677, 684 (Fed.  
23 Cir. 1990). “If the hypothetical claim could have been allowed, then prior art is not a bar to  
24 infringement under the doctrine of equivalents.” *Id.*

25 Assuming that the Samsung accused products do not already literally infringe the ’879  
26 patent, a hypothetical construction of the ’879 patent claims where the “control panel” limitation  
27 is read to include phone, camera, camcorder or television displays does not ensnare the prior art.  
28 AMD’s expert, Dr. Andrew Wolfe, has reviewed Samsung’s prior art references cited in Dr.

1 Grimes's declaration and has determined that none of Samsung's prior art references invalidate  
2 the claims of the '879 patent when the "control panel" claim limitation is read to include phone,  
3 camera, camcorder and television displays. Wolfe Decl. ¶¶ 66-67. Samsung fails to provide any  
4 evidence that a hypothetical claim where "control panel" is read to include phone displays was  
5 present in the prior art. Grimes Decl. ¶ 4 (omitting phones from the list of prior art user interfaces  
6 available at the time of the '879 patent).

7 The proper ensnarement inquiry is whether the claims of the '879 patent as a whole were  
8 present in the prior art when "control panel" is read to include phone, computer, camera or  
9 television displays. *Wilson*, 904 F.2d at 684 (stating that the proper inquiry is "whether that  
10 hypothetical claim could have been allowed by the PTO over the prior art") (emphasis added).  
11 Samsung's expert improperly focuses on hypothetical claim limitations and not on hypothetical  
12 claims. He opines that a hypothetical "control panel" limitation that includes phones, cameras,  
13 camcorders and televisions was present in the prior art, but does not offer any opinion as to  
14 whether the hypothetical claims as a whole were present in the prior art. *See* Grimes Decl. at 4  
15 ("[T]he particular user interfaces AMD has accused of infringing the '879 patent were available  
16 in at least televisions, cameras, and camcorders at the time of the '879 patent."). Samsung fails to  
17 provide any evidence that a hypothetical claim where "control panel" is read to include phone  
18 displays was present in the prior art. Without a comparison of the prior art to the hypothetical  
19 claims as a whole, Samsung's argument fails.

20 **IV. A Genuine Issue of Material Fact Exists Regarding Whether the Accused Products**  
21 **Display the Claimed "Application . . . In Focus."**

22 Samsung apparently wants to limit the claim term "application" to something that can be  
23 "worked upon" in order to support its noninfringement argument that a user cannot "work upon"  
24 picture-in-picture windows, battery meters, and time codes. That proposed construction conflicts  
25 with the parties' agreed construction of "in focus," which comes verbatim from the inventor's  
26 lexicography in the specification. Samsung therefore asks the Court not only to construe  
27 "application," but also to re-construe the term "in focus" to narrow it from what the inventor  
28 explicitly told the public. AMD requests that the Court refuse Samsung's attempt to read



1 additional limitations into the claims from extrinsic evidence.

2 Samsung has not proposed a construction for “application,” and therefore has not properly  
3 addressed the scope of the term. Instead, Samsung has asked that the Court incorporate many  
4 different limitations on the term in order to exclude the accused products. Therefore, Samsung  
5 has denied AMD and the Court the ability to assess whether a genuine issue of material fact exists  
6 regarding whether the accused products fall within the scope of Samsung’s absent construction.  
7 AMD requests that the Court deny the portion of Samsung’s motion relating to the term  
8 “application” on that basis and adopt AMD’s proposed construction discussed below. The  
9 discussion below proposes a proper construction for “application” and addresses why the many  
10 varied limitations Samsung attempts to place on the term are improper and not supported by the  
11 intrinsic record.

12 **A. In 1997, One of Ordinary Skill Would Understand “Application” to Mean**  
13 **“Software that Enables a Computer to Accomplish a Task.”**

14 AMD proposes that the Court construe the term “application” to mean “software that  
15 enables a computer to accomplish a task.” This is the ordinary meaning of the term in the context  
16 of the ’879 patent to one of skill in the art in 1997. Wolfe Decl. ¶¶ 83-90. Contemporaneous  
17 dictionaries support this construction. For example, one dictionary defines “application” as:

- 18 1. The system or problem to which a microcomputer can be devoted. Applications  
19 range from the computational type (in which arithmetic operations predominate) to  
20 the processing type (in which data-handling operations are the major function).
- 21 2. A set of computer programs and/or subroutines used to solve problems and  
22 perform specific tasks in a particular application.

23 *McGraw-Hill Illustrated Dictionary of Personal Computers* (4th ed. 1995) at 20 (Ex. 48). This  
24 indicates that an “application” allows a computer to “solve problems” or “perform specific tasks.”  
25 AMD’s proposed construction “accomplish a task” encompasses these concepts.

26 The claimed “application” is always recited as being “in focus,” which the parties agreed  
27 means “actively being displayed and/or being worked upon.” Dkt. #92 at 2. AMD agreed to this  
28 definition of “in focus” because it is expressed as lexicography in the specification—  
“applications that were in focus (i.e., actively being displayed and/or being worked upon).” ’879

1 at 1:42-45 (emphasis added) (Ex. 1). An “application” therefore must be capable of being  
2 “actively displayed” or being “worked upon.” AMD’s proposed construction, “software that  
3 enables a computer to accomplish a task,” is consistent with the inventor’s definition of “in  
4 focus.” Samsung’s proposed limitations, however, are not.

5 1. The Specification Does Not Limit “Application” to Something that Is  
6 Capable of Being “Worked Upon.”

7 That the patent consistently describes and claims “applications” as being “in focus (i.e.,  
8 actively being displayed and/or being worked upon)” demonstrates that an “application” must be  
9 capable of either “actively being displayed” or “being worked upon” or both. The patentee’s  
10 chosen language expressly uses “and/or” instead of only “and.” Samsung’s request that the Court  
11 restrict “application” to something a user can work upon<sup>4</sup> therefore asks the Court to ignore the  
12 patentee’s chosen words. *See* Dkt. #435 at 16 (“[T]he term ‘application’ referred to a computer  
13 program that a user performed work upon . . .”). The specification cannot implicitly define  
14 “application” in some other way when the inventor’s clear intent is demonstrated by the express  
15 definition of “in focus.” *Phillips*, 415 F.3d at 1316.

16 The specification also does not contain any clear and unequivocal disclaimer of any type  
17 of “application,” and Samsung does not argue that one exists. Samsung’s focus on what it  
18 identifies as the purpose of the invention, therefore, carries no weight. *Martek Biosciences*, 579  
19 F.3d at 1383 (“[A]bsent a clear disclaimer of particular subject matter, the fact that the inventor  
20 may have anticipated that the invention would be used in a particular way does not mean that the  
21 scope of the invention is limited to that context.” (quotation omitted)). The claims and  
22 specification demonstrate that an “application” must be capable of being “in focus,” and that “in  
23 focus” means either “actively being displayed” or “being worked upon.” Therefore, an  
24 “application” cannot be limited to something that can be “worked upon.”

25 2. “Actively” Being Displayed in the Agreed Construction of “In Focus”  
26 Cannot Mean “Capable of Being Worked Upon.”

27 In order to avoid the conflict between Samsung’s proposed limitation on “application” and

28 <sup>4</sup> In this section relating to “application,” AMD has addressed what it understands are Samsung’s proposed limitations. Samsung has not articulated what limitations it asks the Court to adopt.



1 the inventor's clear teaching in the specification, Samsung proposes that the Court modify the  
2 agreed construction of "in focus." Samsung now asks the Court to re-construe this term to  
3 exclude the first part of the construction—"actively being displayed." This proposal is a second  
4 attempt to restrict an "application" to something that can be "worked upon."

5 Specifically, Samsung proposes that "the Court should construe 'actively being displayed'  
6 to refer to the window in a windows-based environment capable of receiving cursor movements,  
7 commands, and text entry." Dkt. #435 at 19. In other words, Samsung asks the Court to construe  
8 "actively being displayed" to mean capable of being worked upon.

9 The support for Samsung's proposed limitation of the inventor's words comes again from  
10 its perceived purpose of the invention and extrinsic evidence. Again, the purpose of the invention  
11 cannot limit the claims absent a clear disclaimer of claim scope. *Howmedica*, 540 F.3d at 1345.  
12 Samsung's extrinsic evidence consists of self-serving dictionary definitions and expert testimony  
13 that apply only to a windows-based computer. Because the purpose cannot limit the claims,  
14 extrinsic evidence limited to that purpose also cannot limit the claims. *Id.*

15 In any event, Samsung's extrinsic evidence explains that even in a dictionary written by  
16 Microsoft, the creator of Microsoft Windows, "active" can mean "[a]n adjective describing the  
17 program, document, device, or portion of the screen that is currently operational." Haskett Decl.  
18 Ex. 3 at 9. This statement does not limit "active" to something that can be "worked upon" or is  
19 "capable of receiving cursor movements, commands, and text entry." Instead it uses the broad  
20 term "operational." Even Samsung's extrinsic evidence provides no support for rewriting the  
21 inventor's definition of "in focus."

22 Finally, the claimed requirement that the "application" be "in focus" does not require that  
23 the "application" be capable of going out of focus. The claims do not address whether the  
24 "application" can go out of focus. Under Samsung's proposal, no device would ever infringe,  
25 because by virtue of an "application" always remaining "in focus," which satisfies the claims, the  
26 patentee could not demonstrate that the accused "application" could go out of focus. Going out of  
27 focus is not claimed and cannot limit the term "in focus."  
28

1                   3.       The Claim Term “Application” Does Not Exclude an “Icon.”

2                   a.       The Specification Demonstrates that the Claimed “Application”  
3                   Can Be an Icon.

4                   The ’879 specification illustrates that the claimed “application . . . in focus” covers icons.  
5                   The specification provides one figure, Figure 1, to illustrate the interaction of the claimed control  
6                   panel, background video, and applications in focus. ’879 at Fig. 1 (Ex. 1). In Figure 1, “icons  
7                   18-26” are identified as “in focus, i.e., overlaying the live background video.” *Id.* at 2:18-25.  
8                   The specification states that “the live video remains in the background” once the control panel is  
9                   presented. *Id.* at 2:30-31. Therefore the icons (18-26) remain “in focus,” as claimed. Figure 1  
10                  does not illustrate a “window” in the foreground, a word processing document, or any of the other  
11                  things to which Samsung contends the term “application” must be restricted. The claims should  
12                  not be read to exclude the Figure 1 embodiment (the only illustrated embodiment) that shows that  
13                  icons remain “in focus” when the control panel is provided. “Application” should not exclude an  
14                  icon so long as the icon satisfies the definition of “in focus,” which is “actively being displayed  
15                  and/or being worked upon.”

16                  The use of the different terms “icon” and “application” in the claims does not demonstrate  
17                  that the patentee intended them to have mutually exclusive meanings. The claims simply recite  
18                  the “video control icon” as an element separate from the “application.” The claims also recite  
19                  parts of the control panel, such as the “volume adjust icon” and “mute icon,” as elements separate  
20                  from the “application.” These recitations show only that an infringing device must contain an  
21                  “application” in addition to the various claimed “icons.” The claims do not suggest in any way  
22                  that another, unclaimed “icon” never can satisfy the “application” element. The presumption that  
23                  different claim terms have different meanings does not logically extend to Samsung’s conclusion  
24                  that different claim terms must have mutually exclusive meanings.

25                  b.       The Patentee Did Not Disclaim a Battery Meter or Other “Icon”  
26                  from the Scope of “Application” During Prosecution.

27                  Prosecution disclaimer can arise through the applicant’s arguments to the patent examiner  
28                  only if the arguments “constitute clear and unmistakable surrenders of subject matter.” *Cordis*

1 *Corp. v. Medtronic AVE, Inc.*, 511 F.3d 1157, 1177 (Fed. Cir. 2008). The applicant’s discussion  
 2 during prosecution of a reference that described a “battery meter” does not rise to a clear and  
 3 unmistakable surrender of an “icon” from the term “application” because the file history  
 4 argument at issue did not relate to the claim term “application”—it related to the claim term  
 5 “video control icon.”

6 The examiner found that U.S. Patent No. 5,668,571 (Pai) contained the “video control  
 7 icon” limitation claimed in the ’879 application. The applicant responded that “Applicant  
 8 respectfully submits that Pai fails to disclose, among other things, the video control icon relating  
 9 to the live video that is being presented as a background on a display.” Haskett Decl. Ex. 6 at  
 10 AMDFH000000201. In addition, “[m]ore specifically, Pai directly discloses the hardware icon  
 11 being a general icon relating to any type of icon found on a normal computer display, such as a  
 12 trash can or a battery symbol.” *Id.*

13 The applicant’s statements do not relate to the term “application” and do not discuss  
 14 whether an “icon” can satisfy the claim term “application.” The statements do not contradict the  
 15 specification’s teaching that an icon can be the “application . . . in focus.” The statements explain  
 16 only that the “video control icon” the examiner identified did not “relate to live video.” That the  
 17 applicant referred to the battery symbol as an “icon” and not an “application” is not surprising  
 18 because the claim term at issue was “video control icon.” The applicant’s statement, which is  
 19 irrelevant to the term “application,” cannot be converted to a “clear and unmistakable surrender”  
 20 through Samsung’s misreading of the claims and specification, which do not distinguish “icons”  
 21 from “applications.” The file history does not limit the term “application.”

22 4. The Patentee Did Not Disclaim a Video Window from the Scope of  
 23 “Application” During Prosecution.

24 The applicant also did not disclaim a video window, such as picture-in-picture, from the  
 25 scope of “application” during prosecution. The applicant’s comments cited by Samsung explain  
 26 that U.S. Patent No. 5,754,170 (Ranganathan) does not disclose that “live video remains in the  
 27 background and an application that was in focus remains in focus.” Haskett Decl. Ex. 6 at  
 28 AMDFH000000172-73. The applicant distinguished the Ranganathan reference on the basis that

1 it did not disclose video in the background, not on the basis that a video window could not be an  
2 “application.”

3 The applicant explained that Ranganathan teaches that “[i]n one embodiment, multiple  
4 video windows may be used.” This does not constitute a “clear and unmistakable surrender” of a  
5 video window from “application” because the two video windows taught in Ranganathan are  
6 placed in separate areas of the screen, so one does not overlay the other. Haskett Decl. Ex. 7 at  
7 13:14-16 (“Two or more movie windows may be separately overlaid onto the graphics data . . .  
8 .”); Wolfe Decl. ¶ 90. That is, neither is in the foreground or the background compared to the  
9 other. *Id.* Ranganathan therefore does not teach, as the applicant explained, “having an  
10 application in a foreground position with the live video being in the background,” because  
11 Ranganathan does not teach any video in the background. Haskett Decl. Ex. 6 at  
12 AMDFH000000173. The applicant did not distinguish Ranganathan on the basis that a video  
13 window is not an “application,” so the file history does not limit “application” to exclude a video  
14 window.

15 5. Samsung Cannot Now Exclude Products that It Claims Do Not Meet the  
16 “Application . . . In Focus” Limitation Because AMD Relied on Samsung’s  
17 Proposed Exemplar Groupings.

18 Samsung should be precluded from asking the Court to find that 29 phones do not infringe  
19 because they do not display a battery meter in camera mode. Samsung grouped these 29 phones  
20 for infringement purposes with phones that do display a battery meter in camera mode. Samsung  
21 even had the chance to reorganize its proposed exemplar groupings after AMD served its FICs, if  
22 Samsung thought that the product AMD charted did not adequately represent its group for  
23 infringement purposes. Samsung did not do so, and AMD has relied on Samsung’s proposed  
24 groupings, so AMD requests that the Court deny Samsung’s belated attempt to separate products  
25 from the agreed groupings when it should have done so in January.

26 Samsung proposed the groupings that led to the parties’ Stipulation Regarding Exemplar  
27 Products for the Purposes of Proving Infringement / Non-infringement (Dkt. #264), which the  
28 Court entered as an Order (Dkt. #278). For the ’879 patent, the parties agreed to groupings in that

1 stipulation, but did not reach agreement to exemplar products. In the time leading to AMD’s  
 2 FICs, Samsung ignored AMD’s request for an explanation regarding why AMD’s proposed  
 3 exemplars were insufficient. AMD expected that any product in each of Samsung’s proposed  
 4 groups would adequately represent the group based on Samsung’s assertion that it “selected  
 5 exemplar groupings based on a visual analysis of the accused user interfaces.” Fahrenkrog Decl.  
 6 Ex. 49 (Letter from S. Ernst to A. Fahrenkrog, Nov. 13, 2009).

7 Having been ignored by Samsung, AMD charted in its FICs the exemplar product that  
 8 AMD had proposed for each group. Samsung then had three weeks, under the Court’s Order, to  
 9 review AMD’s FICs and propose modifications to the agreed exemplar groupings if the charted  
 10 exemplars did not adequately represent the group. Dkt. #278 at § XIV.<sup>5</sup> The January 14, 2009,  
 11 deadline passed without Samsung proposing any amendment to the exemplar groupings for the  
 12 ’879 patent.

13 The Court ordered that Samsung could amend the agreed exemplar groupings following  
 14 AMD’s FICs, but also ordered that Samsung had a hard deadline of January 14. Samsung missed  
 15 that deadline and never sought to amend the groupings. AMD requests, therefore, that the Court  
 16 deny Samsung’s request for partial summary judgment that 29 phones do not display a battery  
 17 meter in camera mode. AMD’s FICs for phones clearly accused the camera mode battery meter  
 18 as the claimed “application.” *See, e.g.*, Haskett Decl. Ex. 1 at Ex. GG p. 9, Ex. HH p. 10, Ex. II p.  
 19 11. Samsung should have taken its opportunity to re-group the phones at issue in its motion  
 20 according to the deadlines in the Court’s Order. For the parties’ exemplar Stipulation and the  
 21 Court’s Order to have meaning, Samsung’s motion must be denied.

22 **B. The Accused Products Display an “Application . . . In Focus.”**

23 The accused exemplar phones, cameras, and camcorders display a battery meter  
 24 “application” in focus when the background video is adjusted. Exs. 25, 29, 34, 38, 41, 45; Wolfe  
 25 Decl. ¶¶ 91-93. This battery meter satisfies the “application . . . in focus” limitation when  
 26 “application” is properly construed as “software that enables a computer to accomplish a task.”

27  
 28 <sup>5</sup> Samsung conditioned its agreement to the exemplar Stipulation on this provision; AMD did not reserve the right to amend the exemplar groupings it proposed for its own products.

1 In each accused exemplar product, the battery meter is provided by a software routine running on  
2 the product's processing unit. Wolfe Decl. ¶ 92. That software enables the computer components  
3 (processing unit and memory) within each accused exemplar product to provide a battery meter  
4 on the display that is updated as the battery level of the device increases or decreases. *Id.* The  
5 battery meter software therefore "enables a computer to perform a task" of providing a feature  
6 that informs the user of the device's remaining battery life. *Id.* Therefore, the battery meter in  
7 each product is an "application," as the term is properly construed.

8 The battery meter in each accused product also remains "in focus" when the control panel  
9 is displayed on the screen. Exs. 25, 29, 34, 38, 41, 45; Wolfe Decl. ¶ 93. The battery meter is  
10 "actively being displayed" because it is being displayed on the screen without being obscured and  
11 is actively being updated based on the remaining battery level of the device. *Id.* Therefore, the  
12 battery meter in each product is "in focus."

13 Based on the evidence presented by AMD describing the battery meters in the accused  
14 phones, cameras, and camcorders, a reasonable jury could find that those battery meters satisfy  
15 the limitation "application . . . in focus" under the proper construction of the term. Therefore, a  
16 genuine issue of material fact exists regarding the presence of this limitation in the accused  
17 phones, cameras, and camcorders.

18 The accused televisions display a picture-in-picture "application . . . in focus" when  
19 adjusting background video. The picture-in-picture window satisfies the proper construction of  
20 "application," "software that enables a computer to accomplish a task." Wolfe Decl. ¶¶ 94-95.  
21 The creation, size, and placement of the picture-in-picture window is accomplished using  
22 software in the accused televisions. Wolfe Decl. ¶ 94. That software enables the computer  
23 components within each accused television to accomplish the task of displaying a second video  
24 window for the viewer. *Id.*

25 The picture in picture window also is presented "in focus," or "actively being displayed,"  
26 in the accused televisions. Exs. 8, 15; Wolfe Decl. ¶ 95. The picture in picture is continuously  
27 updated with a video signal, and therefore is "actively" being displayed on the screen. *Id.*

28 Based on the evidence presented by AMD describing the picture-in-picture windows in

1 the accused televisions, a reasonable jury could find that those picture-in-picture windows satisfy  
 2 the limitation “application . . . in focus” under the proper construction of the term. Therefore, a  
 3 genuine issue of material fact exists regarding the presence of this limitation in the accused  
 4 televisions.

5 **V. A Genuine Issue of Material Fact Exists Regarding Whether the Accused Products**  
 6 **Display “Live Video.”**

7 As with the other terms at issue in Samsung’s motion, Samsung proposes no construction  
 8 to allow AMD or the Court to determine the scope of “live video.” Instead, Samsung asks the  
 9 Court to construe the term “solely to exclude the accused device[s],” phones and cameras, which  
 10 is error. *Cohesive Techs.*, 543 F.3d at 1367-68. Without a proposed scope of the claim term,  
 11 neither AMD nor the Court can evaluate whether the accused products satisfy the limitation. That  
 12 is, it cannot be determined whether or not facts regarding the accused products are “material.”  
 13 AMD therefore requests that the Court deny Samsung’s motion for failure to meet its burden of  
 14 production sufficient to support a motion for summary judgment.

15 Below, AMD has proposed a construction for “live video” based on the ordinary meaning  
 16 to one of skill in the art and has explained why the intrinsic record supports that construction and  
 17 does not support Samsung’s proposed limitations. If the Court does not deny Samsung’s motion  
 18 for failure to meet its burden, AMD requests that the Court adopt AMD’s construction and deny  
 19 Samsung’s motion for summary judgment on that basis.

20 **A. In the Context of the ’879 Patent, “Live Video” Means “Video that Is**  
 21 **Currently Being Displayed.”**

22 One of ordinary skill in the art in 1997, reading the ’879 intrinsic record, would  
 23 understand “live video” to mean “video that is currently being displayed.” Wolfe Decl.  
 24 ¶¶ 96-103. The specification does not place any type of restriction on “live video,” and the  
 25 claims demonstrate that it has broad meaning and encompasses video received by the processing  
 26 unit from many different sources.  
 27  
 28







1 should not be restricted to those explicitly recited in the dependent claims. Wolfe Decl. ¶ 99. In  
2 addition, claim 22 also recites a “volume” adjustment, demonstrating that “live video” cannot be  
3 as limited as Samsung proposes. That is, reading pause, mute, fast-forward, and rewind  
4 adjustment limitations into “live video” would make dependent claim 22, which recites a volume  
5 adjustment in addition to these three, broader than independent claim 21. This construction  
6 cannot be correct.

7 Samsung’s proposed limitation on “live video”—which gives no meaning to the term but  
8 solely excludes the accused devices—excludes video in its most “live” sense, video received  
9 directly from a camera sensor. Wolfe Decl. ¶ 103. The claims and specification demonstrate that  
10 “live video,” in the context of the ’879 patent, means “video that is currently being displayed.”  
11 Wolfe Decl. ¶¶ 97-103.

12 2. Inventor Testimony Cannot Limit the Scope of “Live Video.”

13 As explained above with respect to the term “control panel,” “inventor testimony as to the  
14 inventor’s subjective intent is irrelevant to the issue of claim construction.” *Howmedica*, 540  
15 F.3d at 1347. This applies equally to the testimony of Mr. Orr cited by Samsung in support of its  
16 proposed limitations on “live video.”

17 **B. A Genuine Issue of Material Fact Exists Regarding Whether the Accused**  
18 **Phones and Cameras Display “Live Video.”**

19 Under the proper construction of “live video,” “video that is currently being displayed,”  
20 the accused phones and cameras satisfy this limitation. Wolfe Decl. ¶¶ 104-106. In camera  
21 mode, the computer components within the accused products, including a camera sensor, process  
22 incoming video and display it on the screen. Wolfe Decl. ¶ 105. The camera image that appears  
23 on the screen in the accused phones and cameras is video and is “currently being displayed,” so it  
24 satisfies the proper construction of “live video.” Wolfe Decl. ¶ 106. Based on the evidence  
25 presented by AMD, a reasonable jury could find that the accused phones and cameras satisfy this  
26 limitation. Therefore, AMD requests that the Court deny Samsung’s motion for these accused  
27 products.  
28

**CONCLUSION**

Samsung has not met its burden of production for its motion because it has not proposed constructions for any of the claim terms at issue. Without knowing the scope of the claims, the Court cannot determine whether a fact about the accused products is material.

The term "control panel" already has been construed and needs no additional construction. Samsung's additional limiting arguments are not supported by the intrinsic record and cannot be adopted.

The term "application" in the context of the '879 patent means "software that enables a computer to accomplish a task." Samsung's limiting arguments contradict the intrinsic record.

The term "live video" in the context of the '879 patent means "video that is currently being displayed."

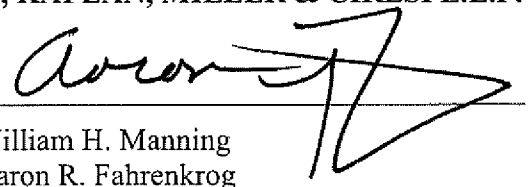
Under the proper construction of the claims, genuine issues of material fact exist regarding whether the accused televisions, phones, cameras, and camcorders literally infringe. Even under Samsung's limiting arguments, genuine issues of material fact exist regarding whether the accused products infringe under the doctrine of equivalents.

For all of these reasons, AMD respectfully requests that the Court deny Samsung's motion for summary judgment of noninfringement of the '879 patent.

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