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18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA

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

21 Plaintiffs and Counterdefendants,

22 v.

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

24 Defendants and Counterclaimants.
 25
 26
 27
 28

Case No. 3:08-CV-0986-SI

**REPLY MEMORANDUM IN SUPPORT
 OF DEFENDANTS AND
 COUNTERCLAIMANTS' 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

PUBLIC/REDACTED VERSION

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18 *Chisum on Patents* § 18.03[2][c][iv] 6

1 **I. INTRODUCTION**

2 AMD's opposition to summary judgment seeks to relitigate the dispute that this Court
3 already resolved in its claim construction order: whether the '879 patent is directed at an invention
4 that has a computer display, or is instead applicable to televisions, telephones, camcorders,
5 cameras, cash registers, voting machines, automobile engines, and any other product that uses a
6 processor, memory, and programming instructions. The Court rejected AMD's broad reading of its
7 patent, holding that the "[t]he specification of the '879 patent unequivocally limits this invention to
8 computers," (Dkt. No. 255 at 30); that "[n]one of the intrinsic evidence cited by AMD support th[e]
9 conclusion" that "the '879 patent also encompasses user interfaces in devices such as digital
10 cameras, camcorders, and cell phones," (*Id.* at 32); and that the "control panel" limitation of all
11 asserted claims means "[a]n area of the computer display containing control functions." *Id.* at 33.

12 Faced with the "computer display" limitation, AMD attempts to render it meaningless,
13 arguing that because certain of the claims of the '879 patent recite a "processing unit," "memory,"
14 and "programming instructions," these terms are the only limits on the definition of the word
15 "computer." AMD ignores additional claim limitations, which require the computer display to
16 show applications, control panels, and icons—features that are displayed on computers, and not on
17 televisions and cameras. AMD also ignores the specification, which describes a "computer
18 display," and not a television or camera screen: "The computer further includes a computer monitor
19 which provides visual representations of the data being manipulated. Such visual representations
20 are originated from, for example, a word processing algorithm, a drawing algorithm, and more
21 recently, the displaying of video images." '879 patent at 1:15-20. Only a computer display shows
22 such things as word processing and drawing algorithms—applications that the user "manipulate[s]".
23 And it is computer displays—and not television screens—that displayed video images only
24 "recently." Hence, AMD is incorrect that the "computer display" limitation means that only a
25 processor and memory are required. The claim limitations and the purpose of the invention as
26 described in the specification require a "computer display," as the Court has already ruled.

27 It is AMD that is attempting to reconstrue the "control panel" limitation because under the
28

1 Court's correct construction, the accused products do not infringe its computer patent. Nor can
2 AMD sweep in Samsung's products under the doctrine of equivalents because doing so would
3 ensnare the prior art, would violate the specific exclusion principle, and because no reasonable jury
4 could conclude that the accused products are equivalent to computer displays.

5 Samsung is entitled to summary judgment on the alternative grounds that AMD has failed to
6 point to anything in the accused products that meets the "application . . . in focus" limitation of all
7 asserted claims. AMD attempts to overcome this by arguing for a nearly boundless definition of the
8 term "application," which would effectively apply to any feature on a display, no matter its purpose
9 and function, including simple icons, such as battery meters and time counters. Further, it leads
10 AMD to argue that television is both "live video" and an "application" at the same time, even
11 though these are separate claim terms. But the intrinsic evidence makes clear that an "application"
12 is not so broad. "Application" refers to a computer program that a user either can perform, or is
13 performing, work upon, such as a word processing program. This is fundamental to the central
14 purpose of the '879 patent—allowing a user to continue to "work[] upon" an "application" while
15 adjusting desktop video. This is also why the claims require that the application be "in focus,"
16 which the parties agree means "actively being displayed and/or worked upon." Battery meters and
17 timers are not capable of receiving user input and cannot be worked upon and are therefore not "in
18 focus" applications.

19 In addition, the patent clearly differentiates between icons, such as the accused battery
20 meters, and applications. Simply put, icons are not applications; the claims use both terms. The
21 specification refers to them in the disjunctive: "or when another icon or application is selected."
22 '879 patent at 2:45-46. Dependent claims 13, 16, 20, and 24 all add as additional limitations that
23 the control panel is removed when another "displayed element is selected," where "displayed
24 element" is explained in the specification as "[s]uch displayed elements m[a]y [sic] be another icon
25 or an open application." *Id.* at 3:26-27. Thus, AMD's infringement allegations fail for the camera,
26 camcorders, and phones because AMD has not identified an *application* that remains in focus when
27 the alleged "live video" is adjusted. AMD's allegation with respect to TV's is doomed by the
28

1 prosecution history, because the patentee told the PTO that live video in the foreground was the
2 “opposite” of his invention.

3 AMD proposes a construction of “live video” that is similarly broad and divorced from the
4 intrinsic patent evidence in an attempt to argue that the preview image in a camera screen is “live
5 video.” AMD’s argument disregards the specification, which states that “live video” is sourced
6 from a television broadcast or a recording, and again disregards the purpose of the invention.

7 II. ARGUMENT

8 A. Samsung Has Proposed Constructions for The Claim Terms That Remain in 9 Dispute on This Motion.

10 AMD’s feigned uncertainty as to whether Samsung has proposed constructions for the
11 additional terms it asks the Court to construe is manifestly untrue. AMD Br. at 6-7:¹

- 12 • Samsung asked the Court to construe the term “**application . . . in focus**,” and argued
13 that “[a]t the time of the ‘879 patent, the term ‘application’ referred to a computer
14 program that a user performed work upon, and was distinguished from ‘utilities’ and
15 ‘operating systems.’” Opening Br. at 16.
- 16 • Samsung asked the Court to construe the term “**actively being displayed**,” and argued
17 that “to a person of ordinary skill in the art, ‘actively being displayed’ is a term of art
18 referring to the window in a windows-based environment that is capable of receiving
19 cursor movements, commands, and text entry.” Opening Br. at 18.
- 20 • Samsung asked the Court to construe the term “**live video**,” and argued that this term
21 should be given the definition appearing in the specification: “video images may be
22 received from a live television broadcast, video cassette player, satellite television, cable
23 television, or DVD players.” Opening Br. at 24.

24 Moreover, it is unclear why AMD believes Samsung’s perceived omission would prevent
25 the Court from engaging in claim construction—that the Court must either deny Samsung’s motion
26 or “adopt AMD’s proposed constructions.” AMD Br. at 7. Because claim construction is purely a
27 legal issue, the Court is not bound to accept either party’s proposed construction, but need only
28

23 ¹ Although AMD was permitted to file an additional 15 pages in opposition and has received
24 the special setting it requested—a request that itself contained extensive argument—it appears that
25 this argument is merely laying the groundwork for yet another surreply in this matter. *See* AMD
26 Br. at 7 (“Samsung should not be allowed to propose its own constructions in its reply because
27 AMD will not have the opportunity to respond. If Samsung does propose constructions, its reply
28 brief unquestionably will contain new matter not raised in its opening brief.”) The Court should
reject any further attempt by AMD to multiply and needlessly complicate these proceedings. *See*,
e.g., Dkt. No. 387 (AMD’s Motion for Leave to File a Surreply in Opposition to Samsung’s Motion
to Strike), Dkt. No. 226 (AMD’s Motion for Leave to File a Surreply in Opposition to Samsung’s
Motion for Summary Judgment of Invalidity of the ‘592 Patent).

1 construe the claims correctly under the law.

2 **B. The Accused Products Do Not Infringe The “Control Panel” Limitation.**

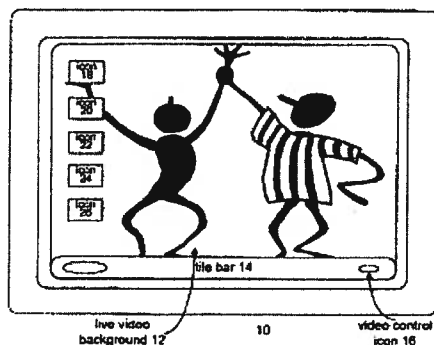
3 **1. The “computer” limitation does not merely repeat the separate**
4 **“processing unit” and “memory” limitations.**

5 AMD is correct that “The Court Already Has Construed ‘Control Panel.’” AMD Br. at 4.
6 Nor is Samsung “request[ing] that the Court re-construe ‘control panel.’” *Id.* at 1. Because the
7 Court construed “control panel” to mean “[a]n area of the computer display containing control
8 functions,” (Dkt. No. 255 at 33), and because the Samsung accused products do not have a
9 “computer display,” Samsung is entitled to summary judgment of non-infringement.

10 AMD seeks to avoid this result by stripping the term “computer display” of meaningful
11 limits, arguing that “the ‘Computer’ Described Requires Only a Processing Unit and Memory.”
12 AMD Br. at 9. AMD’s argument cannot be reconciled with the claims or the specification. Certain
13 of the claims require a “processing unit” and “memory” as limitations separate from the “control
14 panel” limitation; but these limitations do not set the only limits on the meaning of the term
15 “computer display.” Rather, all of the claims also require the claimed computer background video,
16 an “application . . . in focus,” and a “control panel.”

17 In other words, a “computer display,” unlike a television and the other devices AMD has
18 accused, displays “applications” that a user manipulates: “word processing algorithms” and
19 “drawing algorithms.” ‘879 patent at 1:15-20. The specification, which uses the word “computer”
20 some twenty-two times, describes something more specific than just any device with a processor
21 and memory: “The computer further includes a computer monitor which provides visual
22 representations of the data being manipulated. Such visual representations are originated from, for
23 example, a word processing algorithm, a drawing algorithm, and, more recently, the displaying of
24 video images.” *Id.* The “computer display” limitation has real meaning, and refers to a particular
25 device well-known in the art.

26 This is perhaps best illustrated in the patent’s figures. These depict a computer display with
27 different graphical features that a user can “manipulate[]”: a tile bar, icons, and desktop video:
28



AMD focuses exclusively on the part of the specification that discusses a processor and memory. AMD Br. at 9. AMD ignores the rest of the specification, which uses the term “computer” some twenty-two times to describe the background of the invention, the problem to be solved, and the *claimed invention*: “the present *invention* provides a method and apparatus for controlling background video on a *computer* display,” (‘879 patent at 2:3-4), not a method and apparatus for controlling background video in any system containing a processor and memory.

That the invention is applicable to a “computer display” [REDACTED]

[REDACTED] See Opening Br. at 6 (citing Haskett Decl., Ex. 2 at 29:12-30:7)); see also ‘879 patent at 1:29-30 (“Alternatively, the live video may be presented in a window of the computer screen . . .”) (emphasis added).²

That the claimed inventions are limited to a computer display is also confirmed by the purpose of the claimed inventions as described in the specification—allowing for control of desktop

² AMD is incorrect that the Court must disregard the inventor’s testimony altogether in considering claim construction. “This court in *Markman* did not hold that the inventor cannot explain the technology and what was invented and claimed; the Federal Circuit held only that the inventor cannot by later testimony change the invention and the claims from their meaning at the time the patent was drafted and granted.” *Voice Techs. Group, Inc. v. VMC Sys., Inc.*, 164 F.3d 605, 615 (Fed. Cir. 1999). AMD’s own case, *Howmedica*, acknowledges this, stating that “[t]he testimony of an inventor, of course, may be pertinent as a form of expert testimony, for example, as to understanding the established meaning of particular terms in the relevant art.” 540 F.3d at 1347 n. 5 (citing *Phillips*, 415 F.3d at 1318) Just recently, the Federal Circuit, in determining whether a parent application provided support for subsequently filed claims, cited testimony of the inventor concerning what the earlier filed application disclosed. *Anascape v. Nintendo*, No. 2008-1500, 2010 WL 1441772, *3 (Fed. Cir. Apr. 13, 2010). Because Mr. Orr’s testimony is wholly consistent with the scope of the patented inventions as disclosed in the intrinsic evidence, the Court may consider it in confirming that the ‘879 patent is limited to the computer context.

1 video without interrupting work upon an application in focus. '879 patent at 3:47-53. This purpose
2 only makes sense in the context of a computer, because it is only in such a system that a user works
3 in one area of the display while playing live video in another area. See Opening Br. at 9.³

4 AMD argues that the Court must disregard the purpose of the invention as stated in the
5 intrinsic evidence, but this is not the law. Rather,

6 "Applying the principles that a claim is to be read in the light of the specification but
7 that limitations are not to be read into a claim, court decisions take the specification
8 discussion of problem and solution and of objectives into account in construing
9 patent claim language but do not strictly limit a patent claim to the embodiments that
10 fully achieve that objective." 18 *Chisum on Patents* § 18.03[2][c][iv] at 18-485
11 (citing *CVI/Beta Ventures, Inc. v. Tura LP*, 112 F.3d 1146, 1160 (Fed. Cir. 1997)).

12 In *CVI*, the court determined that the term "elasticity" in a patent directed at eyeglass frames
13 "refers to the ability of an eyeglass frame component to return completely and spontaneously to its
14 original shape" *Id.* at 1158. The court reasoned that "our interpretation of the claims is
15 consistent with and furthers the purpose of the invention." *Id.* at 1160. This purpose was to allow
16 the frame to return to its original shape, and "it is reasonable to conclude that the references to 3%
17 and 4% 'elasticity' in the claims was intended to describe an eyeglass frame that would have that
18 desirable and important property." *Id.* The court held that "[i]n construing claims, the problem the
19 inventor was attempting to solve, as discerned from the specification and the prosecution history, is
20 a relevant consideration." *Id.* Consistent with this principle, the Federal Circuit has often
21 construed claims consistently with the purpose of the invention. In *Phillips v. AWH Corp.*, 415
22 F.3d 1303 (Fed. Cir. 2005) (en banc), the Federal Circuit considered that "[t]he specification
23 discusses several other purposes served by baffles" in construing that term. *Id.* at 1325.

24 That there are particular limitations on this principle does not mean that the purpose of the
25 invention should be discounted, as AMD contends. Nor do the cases AMD cites stand for this

26 ³ None of the accused Samsung products allows for this type of multitasking, allowing for a
27 user to work on multiple applications in multiple windows, as the patent describes. AMD and
28 AMD's expert make the bland assertion that "[m]any accused products can run multiple software
programs," (AMD Br. at 17, citing Wolfe Decl. ¶ 54), but this is not true, and AMD fails to offer
any evidence to support this assertion or even to identify a particular type of accused product where
this is possible. Moreover, AMD carefully omits to assert that any accused product can run
multiple software programs at the same time, which in fact only occurs on a "computer display," if
it is operating in a windows-type environment, as the claimed inventions require.

1 proposition. In *Martak Biosciences Corp. v. Nutrinova, Inc.*, 579 F.3d 1363 (Fed. Cir. 2009) the
2 court held that the claim terms “raising” and “feeding” in a food-product patent did not limit the
3 claims to animal feed and exclude applications for humans because the patent specification “plainly
4 contemplates that the invention is applicable to humans.” *Id.* at 1381. *Howmedica Osteonics Corp.*
5 *v. Wright Medical Technology, Inc.*, 540 F.3d 1337 (Fed. Cir. 2008) stands for the unremarkable
6 proposition that where the intrinsic evidence states multiple purposes or advantages of an invention,
7 every claim need not be construed to meet all of these purposes. *Id.* at 1345.

8 Here, unlike in *Martak*, the intrinsic evidence nowhere mentions that the inventions claimed
9 in the ‘879 patent are applicable to camcorders, cameras, telephones, or to televisions if they are not
10 being used as a computer display. And unlike in *Howmedica*, Samsung is not attempting to limit
11 each of the claims such that they meet multiple purposes or advantages of the ‘879 patent as
12 described in the intrinsic evidence. The ‘879 patent recites a single purpose—allowing a user to
13 adjust desktop video without interrupting work on an “application.” The result is that “the overall
14 operation of a computer system is improved.” ‘879 patent at 3:52-53. The patent should be
15 interpreted in light of this purpose of the invention, which applies only in the context of computers.

16 AMD argues that limiting the patent beyond any device that contains a processor and
17 memory “would exclude many devices that one of ordinary skill would have considered to be
18 ‘computers’ in 1997.” AMD Br. at 15. As evidence for this proposition, AMD cites to the
19 declaration of its expert, Dr. Wolfe, who in turn cites to patents purportedly showing that
20 components within a cash register, an ATM machine, a voting machine, an automobile engine, and
21 a camera are all “computers.” Wolfe Decl. ¶ 50. None of this extrinsic evidence is relevant to the
22 meaning of the term “computer display” as used to define “control panel” in the ‘879 patent. This
23 is because none of these patents discuss displays that show live video as the desktop of a display
24 while applications remain “in focus”—all concepts that are unique to “computer displays.”⁴

25 _____
26 ⁴ AMD does not explain why it believes the claims must be construed to encompass the
27 “original IBM PC” (AMD Br. at 15), particularly in light of the specification’s statement that
28 computers provide visual representations of data being manipulated, such as word processing and
drawing algorithms “and, **more recently, the displaying of video images.**” ‘879 patent at 1:15-20
(emphasis added). Thus, the “original IBM PC” did not present the problem addressed by the ‘879

(Footnote continued)

1 Moreover, these patents distinguish between the recited “computer” and the wide array of
2 end-user products to which AMD would like to extend that term, just as the ‘879 distinguishes
3 computer displays from a TV. ‘879 patent at 1:20-22. U.S. Patent No. 5,832,139 (“‘139 patent”) is
4 directed at a “Method and Apparatus for Determining Degrees of Freedom of a Camera.” Wolfe
5 Decl., Ex. W7. Although the claims of the patent recite “a digital computer,” it is a *separate device*
6 from the claimed camera in a multi-device system. Claim 27 claims a system that has three
7 elements, “a camera having an optical image forming apparatus for forming an image on an image
8 sensor . . .”; “an optical image converting apparatus for converting said formed image . . . to an
9 electrical video signal”; and, as a separate element, “a digital computer responsive to said electrical
10 video signal . . .” *Id.*, Ex. W7 at cl. 27. Similarly, U.S. Patent No. 5,878,399 is directed at a
11 computerized voting system that includes, as separate devices, a “digital camera” and a “computer.”
12 *Id.* Ex. W5 at 3:52-53. The patent recognizes that a “digital camera” is not a computer (despite
13 being “digital” and presumably therefore containing a processor and memory). Rather, “[a] digital
14 camera 52 captures a digital image of the voter and inputs the information into computer 48.” *Id.*,
15 Ex. W5 at 52-53 and Fig. 2. In other words, the camera is the source of input for a computer, not
16 the computer or computer display itself. Accordingly, Dr. Wolfe’s extrinsic evidence only serves to
17 confirm that such things as cameras, voting machines, cash registers, and car engines are distinct
18 from “computers,” which are recited as separate elements from any “computer” in these patents.⁵

19 AMD argues that stretching the claims of the ‘879 patent to encompass any device with a
20 processor and memory nonetheless imposes meaningful limits on the claims because it would still
21 exclude “analog televisions, non-digital telephones, film cameras, and analog camcorders.” AMD
22

23 _____

24 patent of controlling desktop video while working on an application in focus because it did not have
25 a desktop, and was not capable of displaying desktop video at the same time an application was in
26 focus. *See, e.g.*, Wolfe Decl ¶ 51 (stating that “the original IBM PC . . . was generally not capable
27 of operating in a windows-based environment or running multiple applications at once.”)

28 ⁵ Moreover, if Dr. Wolfe is implying that the claims of the ‘879 patent are broad enough to
encompass this wide-array of products, the patent lacks a written description to support such broad
claims, because the specification only discusses computers that display desktop video, in-focus
applications, control panels, and icons. *See generally, Ariad Pharms. v. Eli Lilly & Co.*, No. 2008-
1248, 2010 WL 1007369 (Fed. Cir. Mar. 22, 2010) (en banc).

1 Br. at 17. This is incorrect. Analog televisions might not use a processor and memory to display
2 video images, but they do use these structures to display on-screen graphics menus such as AMD
3 accuses of infringing the “control panel” limitation. For example, the prior art Sony television that
4 would anticipate the ‘879 patent under AMD’s broad reading of the claims used analog signals to
5 display the main video image and picture-in-picture window, but it used a processor, memory, and
6 programming instructions to display on-screen menus, which is all that the claims of the ‘879 patent
7 require. Grimes Decl., Ex. 2 at 1-2. Accordingly, AMD’s broad construction of its patent would
8 encompass analog televisions and many other devices known for decades in the prior art.

9 **2. Because the accused products are not “computers,” they do not meet the
10 “control panel” limitation.**

11 AMD argues that even under the Court’s construction, the accused televisions, telephones,
12 cameras, and camcorders meet the “control panel” limitation because they are, as it turns out,
13 “computers,” and “perform many tasks traditionally associated with ‘general purpose’ computers.”
14 AMD Br. at 17. To support this contention, AMD argues that a Samsung television “includes an
15 Ethernet connection and an optional Wi-Fi adapter.” AMD Br. at 17. AMD argues that several of
16 the accused telephones connect to the internet and run email programs, and that some accused
17 cameras and camcorders can connect to a printer and to the internet. *Id.* at 18-19.

18 These assertions are wholly irrelevant to infringement of the ‘879 patent. None of the
19 features identified by AMD are mentioned in the ‘879 patent. A “computer” in the context of the
20 ‘879 patent is not defined as any device that can connect to the internet or a printer, any more than
21 it is defined as any device that has a processor and memory. Rather, a “computer” is defined in the
22 ‘879 patent as a device that can display desktop video, “applications . . . in focus,” icons, and a
23 control panel—it is a computer operating in a windows based environment as that product was
24 known at the time of the patent. AMD’s evidence that certain Samsung products can connect to the
25 internet or send email is not evidence that these products infringe a single limitation of the ‘879
26 patent because these features are nowhere mentioned or claimed in that patent. The irrelevance of
27 these “facts” is underscored by the fact that AMD cited to none of these features of Samsung
28 products as evidence of infringement in its infringement contentions. *See* Haskett Decl., Ex. 1.

1 **3. The accused products do not meet the “control panel” limitation under**
2 **the doctrine of equivalents.**

3 **a. The accused products are not equivalent to computers.**

4 AMD is incorrect that in analyzing the doctrine of equivalents, Samsung improperly focuses
5 on the “invention as a whole,” rather than applying its analysis on a limitation-by-limitation basis.
6 Samsung’s argument focuses on a particular limitation—the “control panel” limitation—which is
7 “[a]n area of the computer display containing control functions” that control the live video on the
8 desktop. Samsung is entitled to summary judgment that the accused products do not infringe under
9 the doctrine of equivalents because no reasonable jury would conclude that substituting a telephone,
10 camcorder, camera, or television for the claimed “computer display” would achieve the same result
11 as the “control panel” limitation—allowing a user to work on an “application . . . in focus” while
12 adjusting desktop video on a computer display. *See* Opening Br. at 13-14.

13 **b. The specific exclusion principle bars application of the DOE.**

14 AMD’s attempt to recapture by equivalents what the claim construction order specifically
15 excludes would also violate the specific exclusion principle. AMD is incorrect that this principle
16 applies only “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.” AMD Br. at 22. The principle applies where the parties ask the Court to resolve
19 a dispute during claim construction as to whether the claims cover particular subject matter and the
20 claim construction specifically excludes that subject matter. *See, e.g., Affymetrix, Inc. v. Multilyte*
Ltd., No. C 03-03779 WHA, 2005 WL 1513147, *3 (N.D.Cal. June 23, 2005).

21 For example, in *Novartis Pharms. Corp. v. Abbott Labs.*, 375 F.3d 1328, 1339 (Fed. Cir.
22 2004), the court held that the claim term “lipophilic component” as properly construed specifically
23 excluded surfactants, even though these two terms are not binary opposites. And in *Athletic*
24 *Alternatives, Inc. v. Prince Mfg., Inc.*, 73 F.3d 1573, 1582-83 (Fed. Cir. 1996), the court held that
25 the claim term “varies between” specifically excluded two different splay-creating offset distances
26 between the strings of a tennis racket, even though this is not a “binary situation.”

27 Just as in these cases, the Court here has resolved the primary dispute between the parties as
28 a matter of claim construction: whether the ‘879 patent applies to computers or whether it applies

1 broadly to cameras, phones, camcorders, and televisions. The Court resolved that question in favor
2 of Samsung, specifically excluding cameras, phones, and camcorders from the scope of the claims,
3 and specifically excluding televisions where they are not merely being used as a computer display
4 (an indirect theory of infringement that AMD has not alleged in its infringement contentions). The
5 Court held as follows: “AMD argues that [the] invention taught in the ‘879 patent also encompasses
6 user interfaces in devices such as digital cameras, camcorders, and cell phones. None of the
7 intrinsic evidence cited by AMD supports this conclusion.” Dkt. 255 at 32. The Court further held
8 that “[c]ontary to AMD’s contention, the reference to channel control in some claims does not
9 establish that the control panel can be displayed on a television without a computer.” *Id.* And the
10 Court held that “[t]he specification of the ‘879 patent unequivocally limits this invention to
11 computers.” *Id.* at 30. These statements of specific exclusion resolved the question of infringement
12 between the parties, and bar AMD from using the doctrine of equivalents to reopen that issue.

13 **c. Application of the DOE would ensnare the prior art.**

14 Finally, AMD is barred from applying its invention to the accused products because doing
15 so would ensnare the prior art. Opening Br. at 14-15 & n.6; Grimes Decl. at ¶¶ 18-20 & Exs. 3-5.
16 AMD faults Samsung for making this argument briefly and succinctly. However, Samsung’s
17 argument and evidence are complete. Dr. Grimes has attached claim charts and documents
18 describing prior art televisions, which demonstrate on a limitation-by-limitation basis that a
19 hypothetical claim substituting AMD’s broad interpretations for the proper limitations of the ‘879
20 patent would be anticipated by prior art televisions, which provided menus for controlling the main
21 image on a television screen while a picture-in-picture window remained visible on the screen. *Id.*

22 **C. The Accused Products Do Not Infringe the “Application . . . In Focus”
Limitation.**

23 AMD proposes that the Court construe “application” to mean any and all “software that
24 enables a computer to accomplish a task.” AMD cites to no intrinsic evidence to support this
25 construction, and it should be rejected as failing to impose any meaningful limits on the claim term,
26 applying potentially to any feature on the user interface, including video windows, which the
27 patentee disclaimed as “applications” during prosecution. *See* Opening Br. at 17-18, 23.

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1 Samsung's proposed construction—a computer program that a user performs work upon—is
2 based on the intrinsic evidence, which explains that the purpose of the invention is to allow the user
3 to adjust desktop video without interrupting work upon the “application . . . in focus.” Moreover,
4 the patentee clearly and unmistakably disclaimed video windows as the claimed application (such
5 as AMD accuses in Samsung televisions), arguing that the ‘879 application was patentable over
6 Ranganathan because “Ranganathan teaches a technique for video overlay, i.e., a video window in a
7 foreground position with respect to graphics data. In contrast, the present invention has the live
8 video in the background, with an application in a foreground position. As such, Ranganathan
9 teaches the opposite of an aspect of what the present invention is claiming.” Haskett Decl., Ex. 6 at
10 AMDFH000000173. Because the picture-in-picture video windows in Samsung televisions are not
11 “applications,” Samsung televisions do not infringe the ‘879 patent as a matter of law.

12 The intrinsic record also evidences a distinction between “icons” and “applications,” which
13 precludes AMD from arguing that battery meters and time codes in Samsung accused products,
14 which are mere icons, are also applications. “Application” and “icon” are two separate claim terms,
15 and must therefore have different meanings. The ‘879 inventor stated during prosecution that “a
16 trash can and a battery symbol” are “general icon[s].” *Id.*, Ex. 6 at AMDFH000000201. He also
17 distinguished these types of icons as providing alerts to the user, rather than accepting inputs from
18 or permitting users to work upon them. *Id.* They cannot, therefore, constitute the claimed
19 “application,” which is a separate claim limitation.

20 AMD's argument that Figure 1 requires “icons” to count as “applications” because only
21 icons are depicted must be rejected. The specification discussion of Figure 1 makes clear that the
22 claimed “application” is simply not depicted; only a “live video background,” a “tile bar,” the
23 “control panel,” and the various “icons” are depicted. ‘879 patent at 2:19-30. The reason for this is
24 quite simple. The drawings were submitted with the initial application, and none of the claims, at
25 that time, contained any limitation related to an application. Haskett Decl., Ex. 6 at
26 AMDFH000000024-25. The “application” limitation was added only later by amendment, and the
27 applicant never submitted new drawings that depicted the claimed “application.” *Id.*, Ex. 6 at
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1 AMDFH000000105. Because the battery meters and time codes that AMD accuses in Samsung
2 telephones, camcorders, and cameras are “icons,” not “applications,” these products do not infringe.

3 The accused products do not infringe on the separate and independent basis that they do not
4 meet the “in focus” aspect of the “application . . . in focus” limitation. The parties agree that “in
5 focus” means “actively being displayed and/or worked upon.” It is undisputed that one does not
6 work on a battery meter, a time code or a picture-in-picture window. The only question is what is
7 the definition of “actively being displayed”? It is not sufficient that “actively being displayed”
8 merely refers to something visible on the display, because this renders superfluous the “actively”
9 part of the limitation. The specification and relevant dictionary definitions make clear that
10 “actively being displayed” refers to “the window in a window-based operating environment that is
11 capable of receiving cursor movements, commands, and text editing.” Samsung Opening Br. at 18-
12 19. AMD is incorrect that this construction renders the “and/or worked upon” portion of the
13 limitation redundant. AMD Br. at 26. For example, when one window partially overlays another
14 window, the foremost window is being worked upon and is also actively displayed, because it can
15 receive user input. The second window is not being worked upon; however, it is actively being
16 displayed because it can receive user input. If a user clicks on it, it becomes the foremost window.
17 Accordingly, an application can be “actively displayed” when it is not being worked upon, and the
18 terms are not redundant. However, because battery meters and time codes can neither receive
19 commands nor can be worked upon, it is undisputed that they are not “applications . . . in focus.”

20 Finally, even if the Court were to agree with AMD that a battery meter can be an
21 “application . . . in focus,” AMD has presented no evidence to show that many of the battery meters
22 in the accused phones remain “in focus” as the claims require; in fact, the “battery meters” in these
23 phones disappear when the camera is in preview mode. Opening Br. at 21-22. AMD has no
24 evidence to rebut this showing or support infringement by these products. AMD only responds
25 with a procedural argument that because Samsung agreed to exemplar product groupings, Samsung
26 cannot now argue that particular products within those groupings lack the accused battery meter.

27 However, the parties never agreed to the exemplar products to represent each product
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1 grouping. AMD unilaterally demanded that Samsung change the exemplars, but Samsung never
2 agreed. Fahrenkrog Decl., Ex. 49 at 2 (“Regarding your request that we change the exemplar
3 products for two of the phone groupings, we would prefer to keep the exemplars we have
4 selected.”) Samsung’s exemplar for Telephone Group B was the SGH-T739 phone, and the
5 exemplar for Telephone Group C was the SPH-M800 phone. Dkt. No. 264-9, Ex. G. Both of these
6 phones do not infringe the ‘879 patent, even under AMD’s constructions, because they do not
7 display a battery meter during preview mode. Opening Br. at 21-22. Samsung never agreed to
8 change these exemplars and nothing in the exemplar stipulation effected that change merely by
9 virtue of AMD’s insistence. Accordingly, if AMD insists that the exemplar stipulation should
10 govern, despite the fact that the parties never arrived at a final agreement with respect to the ‘879
11 exemplars, then Samsung is entitled to summary judgment that all telephones within exemplar
12 groups B and C, as set forth in Exhibit G to the exemplar stipulation, do not infringe the ‘879
13 patent. Rather than pursuing this course, Samsung has requested the more reasonable relief of
14 summary judgment on this basis as to the telephones listed in its opening brief, for which AMD has
15 no evidence that a battery meter is displayed during camera preview mode.⁶

16 **D. The Accused Telephones and Cameras Do Not Meet the “Live Video”
Limitation of All Asserted Claims.**

17 AMD’s construction of “live video” as “video that is currently being displayed,” begs the
18 question: What is “video” and what makes it “live”? The flaw in AMD’s non-definition of video is
19 exemplified by its infringement contentions against cameras and telephones with cameras.
20 Cameras traditionally, and the accused products still do, provide the ability to see an image of the
21 person to be photographed. But no one called the people in the image, as seen before the still
22 picture was snapped or the action recorded, a picture or “video.” The picture or video only existed
23 once the image was recorded in some fashion, either on film, on a videotape, in a memory, or in
24

25 ⁶ As for the remainder of the accused battery meters and time codes, AMD has not shown
26 that these features are ever capable of going out of focus, as Samsung explained in its opening brief.
27 AMD is incorrect that this is not required by the claims of the ‘879 patent. The claims require the
28 application to “remain in focus” while desktop video is being adjusted, which implicitly requires
that the application be capable of not remaining in focus in other situations.

1 some other medium making the picture or video suitable for display or transmission. When someone
2 asks to see the “video” of your birthday party, they are not asking you to show them your
3 viewfinder. Yet AMD is forced to argue that the image seen in a viewfinder or LCD screen before
4 it is recorded, and only before it is recorded, is “live video.” AMD points to nothing in the intrinsic
5 record to support that argument or definition of “live video.” The only discussion of “live video” in
6 the specification supports Samsung proffered construction, which states that “video images may be
7 received from a live television broadcast, video cassette player, satellite television, cable television,
8 or DVD player.” *Id.* at 1:20-22.

9 AMD argues that the list of sources of “live video” given in the specification is not
10 exhaustive. Even if it were correct in this assertion, any additional sources should share the same
11 characteristics as these examples from the specification—*i.e.*, video that is received by the
12 computer display from another source, either broadcast or from a recording. But no reasonable
13 factfinder could conclude that “live video” encompasses the images one sees in a camera
14 viewfinder prior to snapping a picture. Such a broad reading makes no sense in the context of this
15 patent, which is directed at facilitating the user’s control of video playing in the background
16 without interrupting work on an application. The image in a camera preview screen is not playing
17 in the background; it is in the cross-hairs of the camera’s viewfinder. Moreover, the notion that
18 “video” could be the real-world input to a camera, rather than the video image that the camera
19 generates is contradicted by one of the patents Dr. Wolfe himself relies upon. The ‘139 patent
20 describes the object in a camera viewfinder as the “optically modulated target”; it is only after the
21 photograph or video is taken that the camera produces a video signal that is then sent to the
22 separately recited computer for processing. Wolfe Decl., Ex. W7 at 3:17-25. Because no
23 reasonable finder of fact could conclude that the image in a camera viewfinder is “live video,” the
24 accused Samsung telephones and cameras do not infringe the ‘879 patent as a matter of law.

25 III. CONCLUSION

26 For the foregoing reasons, Samsung requests that the Court grant its motion for summary
27 judgment, or grant it in part as requested in Samsung’s opening papers.
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Respectfully submitted,

2 COVINGTON & BURLING LLP

3
4 /s/Robert T. Haslam

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