

Nos. 22-1292

**United States Court of Appeals
for the Federal Circuit**

IN RE: CELLECT, LLC,
Appellant.

Appeal from the United States Patent and Trademark Office, Patent Trial and
Appeal Board in *Ex Parte* Reexamination Control No. 90/014,452

**BRIEF OF AMICI CURIAE SAMSUNG ELECTRONICS CO., LTD. AND
SAMSUNG ELECTRONICS AMERICA, INC. IN SUPPORT OF THE
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK
OFFICE**

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**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 22-1292

Short Case Caption In re: Collect, LLC

Filing Party/Entity Samsung Electronics Co., Ltd.; Samsung Electronics America, Inc.

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 08/02/2022

Signature: /s/ Douglas H. Hallward-Driemeier

Name: Douglas H. Hallward-Driemeier

FORM 9. Certificate of Interest

Form 9 (p. 2)
July 2020

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input type="checkbox"/> None/Not Applicable
Samsung Electronics Co., Ltd.	N/A	N/A
Samsung Electronics America, Inc.	N/A	Samsung Electronics Co., Ltd.

Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None/Not Applicable Additional pages attached

Matthew Shapiro (Ropes & Gray LLP)		

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

None/Not Applicable Additional pages attached

Collect LLC v. Samsung Electronics Co., Ltd. et al.	1:19-cv-00438	U.S. District Court - District of Colorado

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable Additional pages attached

TABLE OF CONTENTS

	Page
Interest of Amici Curiae.....	1
Argument.....	2
I. Collect’s Construction on Appeal Should Be Rejected as Inconsistent With Its Position in Parallel District Court Litigation and <i>Inter Partes</i> Review Proceedings and with the Plain Meaning of the Term	2
II. “Time Select Switch” Does Not Require Associated Circuitry Disclosed in the Specification’s Preferred Embodiment.....	5
Conclusion	9

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Amgen Inc. v. Hoechst Marion Roussel, Inc.</i> , 314 F.3d 1313 (Fed. Cir. 2003)	4
<i>Arthrex, Inc. v. Smith & Nephew, Inc.</i> , 935 F.3d 1319 (Fed. Cir. 2019)	7
<i>CCS Fitness, Inc. v. Brunswick Corp.</i> , 288 F.3d 1359 (Fed. Cir. 2002)	8
<i>Data Engine Techs. LLC v. Google LLC</i> , 10 F.4th 1375 (Fed. Cir. 2021)	3
<i>GE Lighting Sols., LLC v. Agilight, Inc.</i> , 750 F.3d 1304 (Fed. Cir. 2014)	7
<i>Williamson ex rel. Home Bondholders Liquidating Tr. v. Citrix Online, LLC</i> , 792 F.3d 1339 (Fed. Cir. 2015)	8
<i>RF Del., Inc. v. Pac. Keystone Techs., Inc.</i> , 326 F.3d 1255 (Fed. Cir. 2003)	7
<i>Watts v. XL Sys., Inc.</i> , 232 F.3d 877 (Fed. Cir. 2000)	8
<i>White v. Dunbar</i> , 119 U.S. 47 (1886).....	4
Statutes	
35 U.S.C. § 112(6)	4, 5, 7, 8
35 U.S.C. § 301(a)(2).....	2
Other Authorities	
157 Cong. Rec. S1375 (daily ed. Mar. 8, 2011)	2

INTEREST OF AMICI CURIAE¹

Amici curiae Samsung Electronics Co., Ltd. (“SEL”) and its subsidiary Samsung Electronics America, Inc. (“SEA”) (collectively “Samsung”) respectfully submit this brief in support of the Director of the United States Patent and Trademark Office. All Parties have consented to the filing of this brief. SEL is one of the world’s leading manufacturers of consumer electronic products, including mobile handsets, such as its flagship Galaxy phones and tablets. SEA sells various SEL products in the United States.

In 2019, Appellant Collect, LLC (“Collect”) accused Samsung of infringing claims 1 and 2 of U.S. Patent No. 6,982,740 (the “’740 patent”) in the United States District Court for the District of Colorado. *Collect, LLC v. Samsung Elecs. Co.*, No. 1:19-cv-00438 (D. Colo. filed Feb. 14, 2019) (the “District Court Litigation”). In February 2020, Samsung requested the *ex parte* reexamination subject to this appeal.

Across the District Court Litigation, the underlying reexamination, and an *inter partes* review (“IPR”) proceeding involving the ’740 patent (IPR2020-00474), Collect has taken inconsistent positions concerning the construction of the term “time select switch.” In the District Court Litigation, Collect argued that the “time

¹ Pursuant to Fed. R. App. P. 29(b)(4)(E), the amici state that no counsel for a party authored this brief in whole or in part, no party or its counsel contributed money that was intended to fund preparing or submitting the brief, and no one but the amici and their counsel contributed financially to the brief’s preparation and submission.

select switch” term should be construed broadly in an attempt to cover the accused products in the litigation. Now, in an effort to save its claims from invalidity, Collect argues that the “time select switch” should also require specific circuitry disclosed in the specification. The claim construction and invalidity issues presented in this appeal are central to Samsung’s dispute with Collect, and Samsung is uniquely well-placed to provide information about Collect’s inconsistent positions. Therefore, consistent with Congressional policy to limit a patent owner’s ability to take inconsistent positions on claim scope (*see* 35 U.S.C. § 301(a)(2); 157 Cong. Rec. S1375 (daily ed. Mar. 8, 2011) (explaining that “allow[ing] [patent owner’s prior] statements to be considered in reexaminations ... for purposes of claim construction” would permit “the Office to identify inconsistent statements made about claim scope”)), Samsung submits this brief as *amici curiae* to provide further clarification why the Patent Trial and Appeal Board’s (“Board”) final written decision should be affirmed.

ARGUMENT

I. Collect’s Construction on Appeal Should Be Rejected as Inconsistent With Its Position in Parallel District Court Litigation and *Inter Partes* Review Proceedings and with the Plain Meaning of the Term

Under the guise of plain meaning, Collect twists the meaning of the term “time select switch ... for selectively varying integration periods” one way to fit its needs in litigation and another to try to avoid prior art in this proceeding. Collect’s sole

argument on appeal is that the plain meaning of the term requires more than just a switch “for selectively varying integration periods,” but also separate circuitry disclosed in a preferred embodiment of the ’740 patent that actually varies the integration periods. Specifically, Collect now argues that “circuitry 318” from the specification must be part of the claimed “switch” because it is the structure that varies the integration periods in that embodiment. Blue Br. 5, 19, 24-25. Yet, in the parallel District Court Litigation, Collect’s proposed construction did not require “circuitry 318” or any circuitry to be part of the term—instead requiring merely a “feature for selectively varying integration periods to produce an image of desired brightness.” Parties’ Joint Claim Construction Chart Ex. 1, at 36, *Collect, LLC v. Samsung Elecs., Co.*, No. 1:19-cv-438 (D. Colo. May 8, 2020), ECF No. 68-1; Appx1209-1210 (3/11/2021 Second Advisory Action in Reexamination at 2-3 (discussing Collect’s district court and IPR construction)). During the parallel IPR proceeding, Collect proposed a similar construction, which again did not require “circuitry 318.” Appx1209-1210. Noting the inconsistencies between Collect’s positions in the district court and IPR proceedings versus its position in the *ex parte* reexaminations, the Examiner properly rejected Collect’s attempts to read this structure into the term and the Board affirmed. *Id.*; Appx17-18.

This Court consistently rejects efforts to twist claims “like a nose of wax” in “one way to avoid [invalidity] and another to find infringement.” *Data Engine Techs.*

LLC v. Google LLC, 10 F.4th 1375, 1381 (Fed. Cir. 2021) (alteration in original) (quoting *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1351 (Fed. Cir. 2001)); *see also Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1330 (Fed. Cir. 2003) (“It is axiomatic that claims are construed the same way for both invalidity and infringement.”); *White v. Dunbar*, 119 U.S. 47, 51-52 (1886). But that is exactly what Collect attempts to do: read the claims broadly for infringement purposes in the District Court Litigation and narrowly in the reexamination, in an attempt to avoid the prior art.

Indeed, Collect’s attempts to read this structure into the claims during the underlying reexamination and this appeal further highlights its inconsistencies. As part of the underlying reexamination, Collect argued that the structure of circuitry 318 is required because the “time select switch” alone was not capable of performing the claimed function of “selectively vary[ing] integration periods”—effectively arguing the term was subject to 35 U.S.C. § 112(6). Appx1168-1169. Indeed, the Examiner agreed at one point with Collect and found that “claim 1 (*under the purview of 112 6th paragraph*) requires the structure corresponding to circuitry 318 since it is used to perform the claimed function.” Appx1183 (Examiner’s Advisory Action) (emphasis added); *see also* Appx1200 (Collect’s Response to the Advisory Action; agreeing with the Examiner). However, after the Examiner discovered Collect’s inconsistent positions in the parallel IPR and District Court Litigation, he

properly found that the claim term “time select switch” does not invoke § 112(6) and concluded that it would be improper to read the structure into the claims. Appx1210. That latter position by the Examiner was correct. The claim term recites a structure of a time select “switch” as opposed to a “means for” doing so. Having failed to read structure from a preferred embodiment into the claims via § 112(6), Collect now concedes that the term is not written in means-plus-function format. Instead, Collect attempts to read in the structure from the preferred embodiment under the guise of “plain meaning.” Blue Br. 5 (“Did the Board err by disregarding the *plain meaning* of the claims ... ?”), 19.

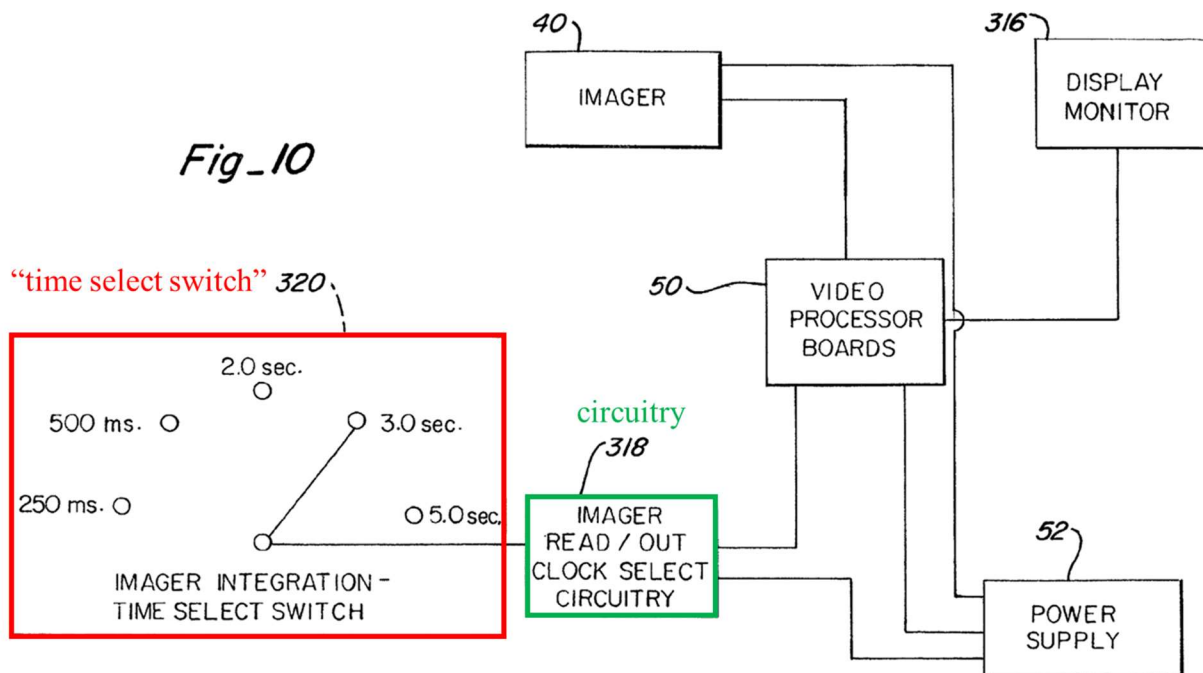
As demonstrated by Collect’s prior construction in the District Court Litigation and the IPR, the “plain meaning” of the term “time select switch” does not require separate circuitry 318. Collect’s attempts to continue to twist the claim scope one way and then another should be rejected.

II. “Time Select Switch” Does Not Require Associated Circuitry Disclosed in the Specification’s Preferred Embodiment

The intrinsic evidence confirms that “time select switch” does not require circuitry for varying the integration period, such as circuitry 318. Indeed, not only do Collect’s arguments violate basic canons of construction prohibiting attempts to read limitations from a preferred embodiment into the claims absent clear intent, but its arguments are also internally inconsistent. The “plain meaning” of the term should not necessitate reading in additional structure from a specification

embodiment. Collect’s construction should be rejected and the Board’s finding should be affirmed. Appx5.

The ’740 patent readily demonstrates that the “time select switch” is a separate element from the associated integration control circuitry. As shown below in connection with Figure 10 of the ’740 patent, “time select switch 320” (annotated red) and “imager readout clock select circuitry 318” (annotated green) are two separate components:



Appx53 (Fig. 10) (color annotations added). The “imager integration time select switch 320” is for “enabling an operator to manually select the desired integration period,” while the “imager readout clock select circuitry 318” “communicates with one or more of the video processor boards 50” to “incorporate variable charge integration capability.” Appx63 (19:42-47). The Board properly rejected Collect’s

“assertion that claim 1 must be read as the time select switch including circuitry 318.”

Appx23. Claim 1 recites the “time select switch”—not the separate circuitry 318.

Indeed, the claims’ plain language further supports this finding. Claim 1 recites “a time select switch ... for selectively varying integration periods to produce an image of a desired brightness.” Appx64 (21:12-15). The time select switch must be used for “selectively varying integration periods”—it is not required to include the actual processing circuitry for varying the integration period.

Collect’s attempt to incorporate circuitry 318 into the claimed time select switch not only ignores the intrinsic evidence, which as discussed above demonstrates that the claims are not so limited, but it also defies basic canons of claim construction. As is well settled, “[i]t is improper to read limitations from a preferred embodiment described in the specification ... into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited.” *GE Lighting Sols., LLC v. Agilight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014) (quoting *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004)); *see also RF Del., Inc. v. Pac. Keystone Techs., Inc.*, 326 F.3d 1255, 1264 (Fed. Cir. 2003); *Arthrex, Inc. v. Smith & Nephew, Inc.*, 935 F.3d 1319, 1330 (Fed. Cir. 2019). While means-plus-function terms are an exception to this rule, Collect concedes that “time select switch” is not governed by § 112(6) and for good reason—it is not satisfied. The claim term does not recite a “means for” and instead recites

the structure of a “switch.” *Williamson ex rel. Home Bondholders Liquidating Tr. v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015) (en banc) (explaining, for non-“means for” terms, challenger must “demonstrate[] that the claim term fails to ‘recite sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for performing that function’” to overcome the presumption § 112(6) does not apply) (quoting *Watts v. XL Sys., Inc.*, 232 F.3d 877, 880 (Fed. Cir. 2000)). Tellingly, Collect admits that “plain meaning” should apply (Blue Br. 5, 19)—further belying its attempts to read in additional structure from the specification. *See, e.g., CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1369 (Fed. Cir. 2002) (finding term “covers more than the ... structures (and their equivalents) shown in the patent’s drawing” because it is “not restricted by § 112 ¶ 6”); *Watts v. XL Sys., Inc.*, 232 F.3d 877, 881 (Fed. Cir. 2000) (“If § 112, paragraph 6 does not apply, then our precedent for the construction of limitations that are not means-plus-function limitations is applied in the customary way.”).

Collect does not dispute that, under the Board’s construction, the prior art discloses the “time select limitation.” For example, as the Board properly found, Tomoyasu teaches “the switch itself (i.e. the knob 23) is directly used to allow an operator to vary the integration.” Appx5 (adopting as its own “the reasons set forth by Examiner in the Examiner Answer”); Appx1251. Thus, the prior art teaches a time select switch for selectively varying integration periods to produce an image of

a desired brightness.

CONCLUSION

For these reasons and those discussed in the brief of the Director of the United States Patent and Trademark Office, Samsung respectfully requests that this Court affirm the Board's rejection of claims 1 and 2 of the '740 patent.

Respectfully submitted,

Dated: August 2, 2022

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CERTIFICATE OF SERVICE

On August 2, 2022, the undersigned caused the foregoing document to be filed electronically by using the Court's CM/ECF system. All parties are represented by registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Douglas Hallward-Driemeier
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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). The brief contains 1909 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 14-point font.

/s/ Douglas Hallward-Driemeier
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