Nos. 2023-2184, 2024-1399, 2024-1400

# UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

POWER2B, INC.,
*Appellant,*

v.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.,
*Cross-Appellants*.

Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Proceeding Nos. IPR2022-00300 and IPR2022-00405

## CROSS-APPELLANT'S RESPONSE TO PETITION FOR PANEL HEARING AND/OR REHEARING *EN BANC* OF APPELLANT

RYAN YAGURA
NICHOLAS WHILT
BENJAMIN HABER
ABIGAIL GRACE MCFEE
O'MELVENY & MYERS LLP
400 S. HOPE STREET, 19TH FLOOR
LOS ANGELES, CA 90071-2811
(213) 430-6000

WILLIAM FINK
ARGIRENIA ZERVOS
O'MELVENY & MYERS LLP
1625 EYE STREET, NW
WASHINGTON, DC 20006
(202) 383-5300

THOMAS MCCLINTON HARRIS
O'MELVENY & MYERS LLP
610 NEWPORT CENTER DRIVE
17TH FLOOR
NEWPORT BEACH, CA 92660-6429
(949) 823-6900

*Attorneys for Cross-Appellants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.*

July 14, 2025

# UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

## CERTIFICATE OF INTEREST

**Case Number** 23-2184, 24-1399, 24-1400

**Short Case Caption** Power2B, Inc. v. Samsung Electronics Co., Ltd.

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

**Instructions:**

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

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

Date: 07/14/2025

Signature: /s/ Benjamin Haber

Name: Benjamin Haber

| **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.<br>☑ 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.<br>☐ None/Not Applicable |
| Samsung Electronics Co., Ltd. | | None |
| Samsung Electronics America, Inc. | | 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

| | | |
|---|---|---|
| O'Melveny & Myers LLP | Benjamin Haber | Nicholas Whilt |
| Ryan Yagura | William Fink | Thomas McClinton Harris |
| Abigail Grace McFee | Argirenia Zervos | |

**5. Related Cases.** Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☑ Yes (file separate notice; see below) ☐ No ☐ N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

**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**

INTRODUCTION ........................................................................................ 1

ARGUMENT ........................................................................................ 2

I. Rehearing is not appropriate ........................................................ 2

II. The majority considered the record and properly concluded that Samsung's petition presented evidence that the prior art teaches claim 20 for the same reasons it teaches claims 6, 7, 13, and 17 ......... 3

A. Samsung's petition expressly referred to its argument for substantially similar claims in its argument for claim 20 .......... 3

B. The majority recognized the dispute as one involving claim interpretation and applied the correct controlling precedent ........................................................ 6

C. Power2B was unable to articulate any difference between a "control signal" and the limitations taught by the prior art ........................................................ 8

D. Power2B's two pages of new argument misunderstands the claims ........................................................ 10

E. Power2B's burden shifting and forfeiture arguments lack merit ........................................................ 14

CONCLUSION ........................................................................................ 15

CERTIFICATE OF COMPLIANCE ................................................................ 17

# TABLE OF AUTHORITIES

**Page(s)**

**Cases**

*Am. Policyholders Ins. Co. v. Nyacol Prods., Inc.*,
989 F.2d 1256 (1st Cir. 1993)....................11

*CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG*,
224 F.3d 1308 (Fed. Cir. 2000)....................6

*Corephotonics, Ltd. v. Apple, Inc.*,
84 F.4th 990 (Fed. Cir. 2023)....................10

*Costo v. United States*,
922 F.2d 302 (6th Cir. 1990)....................11

*Easley v. Reuss*,
532 F.3d 592 (7th Cir. 2008)....................11

*Edwards Lifesciences LLC v. Cook, Inc.*,
482 F.3d 1322 (Fed. Cir. 2009)....................7

*FDIC v. Massingill*,
30 F.3d 601 (5th Cir. 1994)....................11

*Holley v. Seminole County Sch. Dist.*,
763 F.2d 399 (11th Cir. 1985)....................11

*Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*,
381 F.3d 1111 (Fed. Cir. 2004)....................7

*Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*,
821 F.3d 1359 (Fed. Cir. 2016)....................4

*Interactive Gift Exp., Inc. v. Compuserve Inc.*,
256 F.3d 1323 (2001)....................14

*Netflix, Inc. v. DivX, LLC*,
84 F.4th 1371 (Fed. Cir. 2023)....................3, 4

*Nystrom v. TREX Co.*,
424 F.3d 1136 (Fed. Cir. 2005)....................7

# TABLE OF AUTHORITIES
# (continued)

**Page(s)**

*Ohio Willow Wood Co. v. Alps S.*, LLC,
735 F.3d 1311 (Fed. Cir. 2013) ....................................................7, 10

*Pentax Corp. v. Robison,*
135 F.3d 760 (Fed. Cir. 1998) ....................................................10

*Peter v. Hess Oil Virgin Islands Corp.*,
910 F.2d 1179 (3d Cir. 1990) ....................................................11

*Singleton v. Wulff*,
428 U.S. 106 (1976)....................................................14

**Statutes**

35 U.S.C. 312(a)(3)....................................................3

**Other Authorities**

U.S. Ct. App. Fed. Cir., Information Sheet Re: Filing a Petition for
Hearing En Banc or a Petition for Rehearing,
https://www.cafc.uscourts.gov/wp-
content/uploads/RulesProceduresAndForms/FilingResources/Petiti
ons_Rehearing_En_Banc_-_Information_Sheet.pdf....................................................2

**Rules**

Fed. R. App. P. 40(b)(1)(A)....................................................2, 6

## INTRODUCTION

Power2B's petition for rehearing adopts the dissent's view and contends that the majority is wrong because the recited terms in claim 20 are "different" from the terms in independent claims 1, 10, and 17 and dependent claims 6, 7, and 13—all of which were found unpatentable by the Board, and affirmed by this Court. Despite extensive briefing and argument, Power2B could not articulate any difference between these substantially similar claim terms, much less point to any intrinsic evidence demonstrating that the claim 20 terms are patentably distinct.

Power2B had a full and fair opportunity to make the arguments it re-presents in its petition for rehearing. Aside from a new argument in its petition—which, by definition, the majority could not have overlooked or misapprehended—the majority has already addressed and disagreed with Power2B. It is telling that the petition for rehearing does not even substantively analyze the cases that Power2B now claims are contrary to the majority's opinion and that require a different outcome as a matter of law. The reason is simple: these cases are readily distinguishable. The majority did not misapprehend or overlook anything, and did not misapply controlling law.

At bottom, Power2B disagrees with the majority's decision. But mere disagreement does not warrant a grant of rehearing.

# ARGUMENT

## I. REHEARING IS NOT APPROPRIATE

A petition for rehearing "should not be used to reargue issues that were previously presented but not accepted by the merits panel." U.S. Ct. App. Fed. Cir., Information Sheet Re: Filing a Petition for Hearing En Banc or a Petition for Rehearing.[1] Rather, petitions for rehearing are intended for situations where petitioner believes the court has overlooked or misapprehended a point of law or fact. *See* Fed. R. App. P. 40(b)(1)(A) ("A petition for panel rehearing must . . . state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended").

Here, Power2B attempts to re-present the same arguments in its petition that it already presented to the merits panel. *See* Yellow Br. 58-59 (arguing "Samsung wholly failed to address the 'generating control signals by the input circuitry' limitation recited by claim 20"); *id*. at 60 ("Samsung's arguments on cross-appeal are new, unsupported, and should not be considered."). Power2B also presents a belated argument that misunderstands how its claims fit together. Regardless, Power2B already had a full and fair opportunity to present its case to the merits panel, and the majority explained why it found Power2B's arguments

---

[1] https://www.cafc.uscourts.gov/wp-content/uploads/RulesProceduresAndForms/FilingResources/Petitions_Rehearing_En_Banc_-_Information_Sheet.pdf

unconvincing in a fulsome opinion applying this Court's precedential authority to the relevant facts.

Contrary to Power2B's characterization of this appeal as raising "precedent-setting questions of exceptional importance," Rehearing Petition vi, this is an unremarkable case that turns entirely on its facts. Power2B has not identified a failure to follow existing precedent and certainly nothing that warrants the extraordinary remedy of en banc review. Power2B's petition should be denied.

## II. The majority considered the record and properly concluded that Samsung's petition presented evidence that the prior art teaches claim 20 for the same reasons it teaches claims 6, 7, 13, and 17

### A. Samsung's petition expressly referred to its argument for substantially similar claims in its argument for claim 20

Power2B asserts that Samsung "failed to address a claim limitation—in any manner—in its petition for inter partes review." Rehearing Petition iv, v-vi (citing *Netflix, Inc. v. DivX, LLC*, 84 F.4th 1371, 1378 (Fed. Cir. 2023)). Power2B makes a similar argument that the majority's decision "undermines the specific statutory requirement that a petitioner must identify 'with particularity' the 'evidence that that [sic] supports the grounds for the challenge to each claim' in the initial petition." *Id*. at 7 (citing 35 U.S.C. § 312(a)(3)). But there is nothing the majority overlooked. In contrast to *Netflix* and consistent with 35 U.S.C. § 312(a)(3), Samsung did not ask the Board (and has not asked this Court) to "cobble together assertions," 84 F.4th at 1379, and infer new arguments not made in its Petition.

And unlike *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd*., Samsung is not presenting new theories or evidence. *See* 821 F.3d 1359, 1369-1370 (Fed. Cir. 2016) ("IBS supported its new theory of invalidity by reference to new evidence.").

Instead, as this Court has explained, the Board "should not take an overly mechanistic view of a petition and decline to address an argument because the petitioner did not present it with ideal vigor and clarity"—it must "consider the entirety of the record." *Netflix*, 84 F.4th at 1377. Here, as the majority found, Samsung addressed the "generating control signals by the input circuitry" limitation of claim 20 in its Petition together with substantially similar claims 6, 7, and 13, as well as claim 17, from which claim 20 depends. Opinion 10 (citing Appx5475). Samsung also expressly cross-referenced related arguments and evidence. Appx5463-5464 (mapping prior art to claim 17's "input circuitry"), Appx5473-5477 (incorporating "as above for claim 13"), Appx5496-5504. Significantly, Power2B's argument that Samsung failed to address generating control signals, Rehearing Petition 1, is undercut by the dissenting administrative patent judge (APJ), who found the evidence Samsung presented below sufficient and persuasive. Appx150 (Melvin, APJ, dissenting-in-part) ("Even if claim 20's 'generating control signals' does further limit the claim [beyond claim 17's 'electronic input'], I believe the Petition adequately addresses the limitation. For

claim 20 under Bird, Ishii, and Geva, the Petition references its contentions for claim 13.”).

Samsung also thoroughly explained the relationship between the antecedent independent claim 17 limitations and the grouped dependent claims 6, 7, and 13 in its cross-appeal briefing. Red Br. 70-78. Thus, here, the majority’s finding that “[i]n the portion of its petition addressing claim 20, Samsung explicitly incorporated by reference its argument as to claim 13,” Opinion 14, is a well-supported and correct reading of the record below. *See also id*. at 15 (“[Samsung] sufficiently addresse[d] the broad claim language requiring ‘generating control signals by the input circuitry.’”).

Moreover, at oral argument, Samsung did not concede any failure of proof, as Power2B argues, Rehearing Petition 4, for the reasons explained by the majority. Opinion 12-13 n.7. Specifically, as presented to the merits panel, Samsung explained the significance of the relationship between the independent claims and dependent claims 13 and 20: “in claim 13, when you have the output of the intensity, . . . you create a signal that is sent to the microprocessor 16 in Geva, . . . . And granted, it’s not . . . *in hac verba*, that this is the generating control signals, . . . [but] that is the only signal that Samsung talks about in the dependent claims.” Oral Arg. at 27:05-27:28; *see also id*. at 29:25-29:30 (“we believe we did [address claim 20] by putting [the arguments for the related claims 6, 7, 13, and

17] together"); 29:57-30:05 ("our view was, it was clear from the teachings of claim 13 that there's an output signal").

Thus, as the majority concluded, "Samsung extensively demonstrated both in its briefing on appeal and at oral argument how it made this argument before the Board." Opinion 11. Power2B's disagreement with the majority does not identify any particular fact that was "overlooked or misapprehended." Fed. R. App. P. 40(b)(1)(A).

### B. The majority recognized the dispute as one involving claim interpretation and applied the correct controlling precedent

Relying on *CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG*, 224 F.3d 1308 (Fed. Cir. 2000), Power2B argues that Samsung did not adequately address a limitation in claim 20 because cross-referenced[2] claim 13 uses different words. Rehearing Petition 7. Power2B asserts that *CAE* dictates a controlling "presumption" that resolves the issue as a matter of law in its favor. *Id*. But Power2B is wrong; it mistakes this presumption for a burden of persuasion. The presumption discussed in *CAE* is simply a "rule of interpretation," Opinion 14, and it applies only "in the absence of any evidence to the contrary." 224 F.3d at 1317. As the majority here made clear, it considered the evidence to the contrary and, in contrast to *CAE*, found any presumption overcome. Opinion 14.

---

[2] The dissent agreed this is accepted and "well-established practice." Dissent-in-Part 5 n.1.

Instead, as the majority explained, this Court has regularly construed "[d]ifferent terms and phrases in separate claims to cover the same subject matter." Opinion 14 (quoting *Edwards Lifesciences LLC v. Cook, Inc.*, 482 F.3d 1322, 1330 (Fed. Cir. 2009); *Nystrom v. TREX Co*., 424 F.3d 1136, 1143 (Fed. Cir. 2005)). The majority further explained "where claims use slightly different language to describe substantially the same invention, the mere use of different words . . . does not create a new issue of invalidity." Opinion 14 (quoting *Ohio Willow Wood Co. v. Alps S., LLC*, 735 F.3d 1311, 1319 (Fed. Cir. 2013)). Such is the case here.

Based on the parties' arguments and the patent specification, the majority concluded that, if anything, control signals could be broader than output indications—thus "the latter is clearly included in the former." Opinion 14. Therefore, in contrast to *CAE*, the majority found these terms to be more akin to *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc*., 381 F.3d 1111, 1120 (Fed. Cir. 2004). In that case, "the patent owner sought to distinguish the terms 'operatively connected' and 'operatively associated,'" but this Court found "the patentee used different words to express similar concepts." Opinion 14-15. The dissenting opinion found the terms at issue here "quite different" from those at issue in *Innova/Pure Water*, but words can differ more substantially and still describe the same invention. *See Ohio Willow Wood*, 735 F.3d at 1342-43 (finding no patentable significance between the term "polymeric" gel found in invalid

claims and the term "block copolymer" gel found in unadjudicated claims). The same is true here.

### C. Power2B was unable to articulate any difference between a "control signal" and the limitations taught by the prior art

In all of its briefing below and before this Court, Power2B itself has never identified any distinction between a "control signal" and an "output indication" (claim 13) or "electronic input" (claims 1, 7, 10, and 17) at any point—because it cannot. The term Power2B bases patentability on does not appear anywhere in the specification or in any other claims. Oral Arg. at 27:28-52 ("[Control signals] is undefined, it only shows up in claim 20."). And although Power2B mentioned "generating control signals" in its Patent Owner Response, the majority rightly recognized that this took the form of a "generic denial." Opinion 10 n.6 (citing Appx 7527). Samsung responded in its Petitioner Reply by addressing Power2B's *substantive arguments* addressing claim 20, which were focused on the "detecting thresholds of intensity" limitation. Appx9383-9385. After this, Power2B raised no further issue regarding claim 20. Not in its Sur-Reply, where Power2B responded with a single, catch-all denial: "Petitioner failed to bear its burden to provide the dependent claims are not unpatentable." Appx9750. And not at the PTAB oral hearing. *See generally* Appx5211-5305.

Despite claim 20's scope being the entire basis of Samsung's cross-appeal, Power2B still could not articulate in its briefing or at argument what the broad

"control signals" term meant, much less why it conferred patentability on an otherwise unpatentable claim:

> Court: Okay. So why couldn't though the control signal be the thing that's the electronic input that's being received? I think that's the position of the [Board's] dissent, right?
>
> Power2B: Your Honor, we're seeing that for the first time in terms of it was not in the petition. There was no construction, there was no issues.
>
> Court: You don't have an answer to it?
>
> Power2B: Your Honor, I don't have an answer other than to say I believe a control signal is something that is different and I believe that it is different than just a mere output.
>
> Court: What is it? I mean, what is it then? I mean you should be prepared for this question, for sure.

Oral Arg. at 33:59-34:42. Power2B's non-answer confirms the dissenting APJ's view that "control signals" is "a vague and nonrestrictive term that does not appear to limit claim 20 beyond the independent claim [17] from which it depends." Appx149 (Melvin, APJ, dissenting-in-part).

Thus, throughout, other than relying on the weak "presumption" that different words mean something different, Power2B did not provide anything at all to support its position. Again, the majority did not unfairly "shift the burden to patent owner to prove that different patent claim terms have different meanings." Rehearing Petition vi, 7. Rather, the meaning of the terms at issue and whether they describe patentably different subject matter was the focus of disagreement among the APJs below and is the key dispute in this cross-appeal. *See*

*Corephotonics, Ltd. v. Apple, Inc.*, 84 F.4th 990, 1003 (Fed. Cir. 2023) ("Claim construction based solely on intrinsic evidence is a question of law."). As the Court pointed out at oral argument, Power2B should have expected, and been prepared, to address this issue. *See Ohio Willow Wood*, 735 F.3d at 1343 ("But [patentee] . . . ***has not provided any explanation regarding how the [similar] limitation is patentably significant*** in view of the obviousness determination regarding the claims of the [related] patent." (emphasis added)). The majority decided the issue correctly.

**D. Power2B's two pages of new argument misunderstands the claims**

In its rehearing petition, Power2B now argues that the "control signal" and "output indication" are produced by different hardware so "they must be different." Rehearing Petition 5-6. Power2B's new argument is both untimely and demonstrates confusion regarding the relationships between claim dependencies and the substantially similar claim limitations.

As an initial matter, this Court need not consider the new argument on rehearing because it could not have misapprehended or overlooked arguments that were not presented to it. *See Pentax Corp. v. Robison,* 135 F.3d 760, 762 (Fed. Cir. 1998) ("[T]he government's theory was not overlooked or misapprehended. The theory was not presented on appeal. . . . [W]e decline to address the government's

new theory raised for the first time in its petition for rehearing.”).[3] As support for its belated arguments, Power2B cites only the ’364 patent itself, at Appx169-170, rather than any prior briefing—because it’s all new argument that was not previously presented in any prior paper or argument. *See generally* Yellow Br. 57-63; Oral Arg. at 30:40-36:45. This Court need go no further.

Moreover, before turning to Power2B’s new claim 13 argument, the majority’s decision is independently supported by claim 17 alone. Even now, Power2B still cannot explain how claim 20’s “generating output signals by the input circuitry” is materially different than claim 17[F]’s “electronic input.” Red Br. 73; Gray Br. 1-2. During argument, both the majority and dissenting judge asked about this electronic input/control signals relationship and never received a satisfactory answer.[4] Indeed, at one point, Power2B conceded “there may be instances where [an electronic input signal to the device and a control signal] are one and the same.” Oral Arg. at 34:56-35:00; Appx149 (Melvin, APJ, dissenting)

---

[3] This Court’s sister Courts of Appeal follow the same rule. *See Easley v. Reuss*, 532 F.3d 592, 593-94 (7th Cir. 2008); *FDIC v. Massingill*, 30 F.3d 601, 605 (5th Cir. 1994); *Am. Policyholders Ins. Co. v. Nyacol Prods., Inc.*, 989 F.2d 1256, 1264 (1st Cir. 1993); *Costo v. United States*, 922 F.2d 302, 302–03 (6th Cir. 1990); *Peter v. Hess Oil Virgin Islands Corp.*, 910 F.2d 1179, 1181 (3d Cir. 1990); *Holley v. Seminole County Sch. Dist.*, 763 F.2d 399, 400–01 (11th Cir. 1985).

[4] *E.g.*, Oral Arg. at 33:25-33:50 ([Court] noting the Gray Brief, page 1, and asking Power2B to identify the material difference between electronic input and control signal; [Power2B] responding “[T]hey use different words”); 33:59-34:20 (reproduced above).

("I do not read claim 20's 'control signals' as anything beyond claim 17's recitation that the input circuitry provide an 'electronic input.'"). The claim 20 dependency on claim 17 alone supports the majority's conclusion that claim 20's "generating control signals by the input circuitry" limitation is unpatentable over the same evidence, as Samsung explained in its Petition and briefing on appeal.

As to the belated argument itself, Patent Owner contends that control signal (in claim 20) and output indication (in claim 13) are provided by different hardware elements, "input circuitry" and "sensor array" and so "must be different." Rehearing Petition 5-6. This argument misunderstands the relationship between independent and dependent claims. The first part of claim 20 ("detecting thresholds of intensity") is indistinct from dependent claim 13 ("sensing and providing an output indication of intensity"). Red Br. 74. Through dependency, claim 20 incorporates the input circuitry from claim 17[F], which receives the output of the senor array recited in claim 17[B/E]. Claim 7 (also grouped with claims 6, 13, and 20 and also found unpatentable) makes this relationship explicit. Red Br. 77 ("[C]laims 7 and 20 have 'input circuitry' that uses that [intensity information] to provide an 'electronic input' or 'control signal.'").[5] The output of claim 20's input

[5] In a footnote, Power2B similarly argues that "there can be no sustainable argument that the 'input circuitry' that 'generates' the 'control signals' in claim 20 is the same as the 'sensor array' that 'provide[s]' the 'output indication' in claim 13." Rehearing Petition 5, n.1. But, for the same reasons, this misunderstands the

circuitry includes the output indication of intensity that the input circuitry received from the sensor array. Claim 13's input circuitry likewise receives the sensor array's output indication of intensity, and includes it in its output. Importantly, as the majority found, the "control signals" of claim 20 and the "output indications" of claim 13 do exactly the same thing—they both "control the data displayed on the device." Opinion 14. And, if anything, control signals is broader because it encompasses the output (i.e., electronic input) provided by the input circuitry. *Id*. at 14-15.

At bottom, with respect to claim 13, Power2B still misses the mark. The control signals generated by the input circuitry of claims 17[F]/20 do not materially differ from those of unpatentable claims 10[E]/13. Appx150 (Melvin, APJ, dissenting) ("Even if claim 20's 'generating control signals' does further limit the claim [over claim 17], I believe the Petition adequately addresses the limitation. . . . ***[A]pplying a threshold and indicating intensity relative to the threshold sufficiently addresses the broad claim language requiring 'generating control signals by the input circuity.'***"). Samsung's position has been consistent throughout. By contrast, other than saying that the second half of claim 20 uses

---

dependency of claim 13's (and 20's) input circuitry that receives the output indication from the sensor array and then provides the electronic input. *See* Red Br. 76 (table grouping similar claim limitations).

different words, Power2B has yet to explain why this adds anything patentable to what is taught in claims 1-19, 21, and the first half of claim 20.

### E. Power2B's burden shifting and forfeiture arguments lack merit

Power2B concludes by restating its "burden shifting" and "forfeiture" arguments. Rehearing Petition 7. These are repetitive of Power2B's other arguments at pages 1-4 and pages 4-6, respectively, and miss the mark for the reasons addressed in full above. *See* II.A (addressing alleged forfeiture); II.B-C (addressing alleged "burden shifting").

Power2B concludes its rehearing petition: "Samsung forfeited its opportunity to make [its argument] . . . . [so] Power2B should not be deprived of its property right." Rehearing Petition 8. As discussed, the majority correctly concluded there was no forfeiture here. Regardless, forfeiture is a discretionary doctrine and it generally applies only to "an issue not passed upon below." *Interactive Gift Exp., Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1344 (2001) (quoting *Singleton v. Wulff*, 428 U.S. 106, 120-121 (1976)); *see also, id*. at 1346 ("The doctrine of waiver is limited in its application."). Here, as discussed throughout this appeal and above, the APJ panel majority addressed (i.e., "passed upon") claim 20, e.g., by considering Power2B's generic denial, even though they did not engage with the dissenting APJ's reasoned view that the "vague and restrictive" "controls signals" limitation was addressed in at least two different

ways. Thus, because all three APJs found every other claim—and their materially identical limitations—unpatentable, Power2B cannot claim that cancellation of claim 20 will deprive it of any legitimate property right.

**CONCLUSION**

For the foregoing reasons, Power2B's request for rehearing should be denied.

Respectfully submitted,

*<u>/s/ William Fink</u>*

RYAN YAGURA
NICHOLAS WHILT
BENJAMIN HABER
ABIGAIL GRACE MCFEE
O'MELVENY & MYERS LLP
400 S. HOPE STREET, 19TH FLOOR
LOS ANGELES, CA 90071-2811
(213) 430-6000

WILLIAM FINK
ARGIRENIA ZERVOS
O'MELVENY & MYERS LLP
1625 EYE STREET, NW
WASHINGTON, DC 20006
(202) 383-5300

THOMAS MCCLINTON HARRIS
O'MELVENY & MYERS LLP
610 NEWPORT CENTER DRIVE
17TH FLOOR
NEWPORT BEACH, CA 92660-6429
(949) 823-6900

*Attorneys for Cross-Appellants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.*

July 14, 2025

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the type-volume limitation of Federal Circuit Rule 40(e). This brief contains 3,373 words, excluding the portions of the brief exempted by Fed. R. App. P. 32(f). I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

July 14, 2025

Respectfully submitted,

*/s/ Benjamin Haber*

*Attorney for Cross-Appellants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.*