

Docket No. 2026-1893

In the
United States Court of Appeals
For the
Federal Circuit

COLLISION COMMUNICATIONS, INC.,

Plaintiff-Appellant,

v.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.,

Defendants-Appellees.

*Appeal from the United States District Court for the Eastern District of Texas
Case No. 2:23-cv-00587-JRG · Honorable J. Rodney Gilstrap*

CORRECTED RESPONSE BRIEF

SEAN S. PAK
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
(415) 875-6600
seanpak@quinnemanuel.com

JOHN F. BASH
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
300 West 6th Street, Suite 2010
Austin, TX 78701
(713) 221-7006
johnbash@quinnemanuel.com

VICTORIA F. MAROULIS
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
(650) 801-5000
victoriamaroulis@quinnemanuel.com

KEVIN HARDY
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
555 13th Street NW, Suite 600
Washington, DC 20004
(202) 538-8240
kevinhardy@quinnemanuel.com

*Attorneys for Defendants-Appellees Samsung Electronics America, Inc.
and Samsung Electronics Co., Ltd.*

Additional Counsel Listed On Inside Cover

JOHN THOMAS MCKEE
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
295 5th Avenue
New York, NY 10016
(212) 849-7000
johnmckee@quinnemanuel.com

ARIAN J. KOOCHESFAHANI
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
865 South Figueroa Street
Los Angeles, CA 90017
(213) 443-3000
ariankoochesfahani@quinnemanuel.com

*Attorneys for Defendants-Appellees Samsung Electronics America, Inc.
and Samsung Electronics Co., Ltd.*

CLAIM LANGUAGE AT ISSUE

U.S. Patent No. 7,593,492: Claim 1

A hybrid Multi-User Detector System for processing received signals, comprising:

- a parameter estimator coupled to said received signals providing received data information;

- a multi-user detector decision unit coupled to said parameter estimator and said received signals;

- at least two multi-user detectors coupled to said parameter estimator and said multi-user detector decision unit, said multi-user detector decision unit using decision criteria to determine a selected multi-user detector, wherein said selected multi-user detector outputs a plurality of information streams, one stream corresponding to each of said received signals; and

- a bank of decoders coupled to said plurality of information streams, wherein said decoders output a plurality of improved information streams.

CERTIFICATE OF INTEREST

Counsel for Appellees Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”) certifies the following:

1. The full names of the parties represented by undersigned counsel are Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.
2. There is no other real party in interest.
3. Samsung Electronics Co., Ltd. has no parent corporation and no publicly held corporation owns more than 10% of its stock. Samsung Electronics Co., Ltd. is the parent corporation of Samsung Electronics America, Inc.
4. The following law firms, partners, and associates appeared for Samsung below or are expected to appear in this Court:

Quinn Emanuel Urquhart & Sullivan, LLP: Brian E Mack, David Aaron Nelson, Patrick James Stafford, Brice Lynch, Olga Slobodyanyk, Nagendra Setty, Joseph Reed, Austin Buscher, Brady Huynh, Daniel Sieradzki, Seamus Lynch, Berit DeGrandpre

Gilliam & Smith, LLP: Melissa Richards Smith

Paul, Weiss, Rifkind, Wharton & Garrison, LLP: Gregory F. Laufer

5. Undersigned counsel is not aware of any pending case that may directly affect or be directly affected by this Court’s decision in this appeal.
6. This case involves no organizational victims, debtors, or trustees.

Dated: October 7, 2026

/s/ John F. Bash
John F. Bash

TABLE OF CONTENTS

	<u>Page</u>
CERTIFICATE OF INTEREST	ii
TABLE OF AUTHORITIES	v
STATEMENT OF RELATED CASES	xii
INTRODUCTION	1
COUNTERSTATEMENT OF THE ISSUES.....	4
COUNTERSTATEMENT OF THE CASE.....	4
A. Factual Background.....	4
B. Procedural History.....	6
C. The Order Denying A Permanent Injunction.....	11
SUMMARY OF THE ARGUMENT	13
ARGUMENT	15
I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING A PERMANENT INJUNCTION.....	15
A. The District Court Properly Denied Injunctive Relief Based On Its Factual Finding That Collision Had Not Established Specific Future Harm	16
1. The District Court Did Not Commit Clear Error In Its Assessment Of Collision’s Evidence	16
2. The District Court’s Finding Of No Specific Future Harm Forecloses Injunctive Relief	18
3. Collision Misreads The District Court’s Opinion.....	26
B. The Court Should Reject Collision’s Request To Overturn Settled Precedent	31
1. Collision’s Argument Conflicts With This Court’s Precedent And The Precedent Of Other Circuits.....	31
2. This Court Has Correctly Interpreted And Applied <i>eBay</i>	33
3. Collision’s Analysis Of Traditional Equitable Principles Is Wrong.....	36

II.	THE RECORD PROVIDES ALTERNATIVE GROUNDS TO AFFIRM THE DENIAL OF A PERMANENT INJUNCTION	44
A.	The District Court’s Analysis Of The <i>eBay</i> Factors Contained Fundamental Errors	44
1.	Collision’s “Design-Win” Theory Is Legally Erroneous	44
2.	The District Court Overlooked Samsung’s Considerable Evidence Of The Harm That An Injunction Would Cause.....	47
3.	Collision’s Ten-Year Delay In Seeking Injunctive Relief Disfavors A Permanent Injunction	51
B.	The Trial Record Does Not Contain Substantial Evidence Of Infringement	52
1.	Dr. Kowalski Did Not Testify That The Accused Products Perform The Claimed Function	54
2.	Dr. Kowalski’s Testimony On The ’492 Patent Was Entirely Conclusory	56
3.	Dr. Kowalski’s Testimony On Infringement And Marking Was Logically Inconsistent.....	59
	CONCLUSION	62
	CERTIFICATE OF COMPLIANCE	64

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases</u>	
<i>ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.</i> , 694 F.3d 1312 (Fed. Cir. 2012)	24, 25
<i>Advanced Cardiovascular Sys. v. Medtronic Vascular, Inc.</i> , 579 F. Supp. 2d 554 (D. Del. 2008).....	23
<i>Allington & Curtis Mfg. Co. v. Booth</i> , 78 F. 878 (2d Cir. 1897)	40
<i>Amazon.com Servs., LLC v. Perplexity AI, Inc.</i> , 184 F.4th 1083 (9th Cir. 2026)	50
<i>Amgen Inc. v. Sanofi</i> , 872 F.3d 1367 (Fed. Cir. 2017)	24
<i>Apple Inc. v. Samsung Elecs. Co.</i> , 735 F.3d 1352 (Fed. Cir. 2013)	32
<i>Apple Inc. v. Samsung Elecs. Co.</i> , 809 F.3d 633 (Fed. Cir. 2015)	25
<i>Apple Inc. v. Samsung Elecs. Co. Ltd.</i> , 695 F.3d 1370 (Fed. Cir. 2012)	19
<i>Apple, Inc. v. Samsung Elecs. Co. Ltd.</i> , 678 F.3d 1314 (Fed. Cir. 2012)	51
<i>Aransas Project v. Shaw</i> , 775 F.3d 641 (5th Cir. 2014)	20
<i>Bio-Rad Lab'ys, Inc. v. 10X Genomics Inc.</i> , 967 F.3d 1353 (Fed. Cir. 2020)	49
<i>Broadcom Corp. v. Emulex Corp.</i> , 732 F.3d 1325 (Fed. Cir. 2013)	17, 21, 22, 45
<i>Broadcom Corp. v. Emulex Corp.</i> , 2012 WL 13036855 (C.D. Cal. Mar. 16, 2012).....	22

<i>Broadcom Corp. v. Qualcomm, Inc.</i> , 543 F.3d 683 (Fed. Cir. 2008)	21
<i>Chicago General Railway Co. v. Chicago, B. & Q.R. Co.</i> , 54 N.E. 1026 (1899)	38-39
<i>City of Los Angeles v. Lyons</i> , 461 U.S. 95 (1983).....	19
<i>City of Walla Walla v. Walla Walla Water Co.</i> , 172 U.S. 1 (1898).....	39
<i>Dell Fed. Sys., L.P. v. United States</i> , 906 F.3d 982 (Fed. Cir. 2018)	53
<i>Dominion Energy, Inc. v. Alstom Grid LLC</i> , 725 F. App'x 980 (Fed. Cir. 2018)	58
<i>Donaldson v. Becket</i> (H.L. 1774), printed in <i>The Parliamentary History of England from the Earliest Period to the Year 1803</i> (William Cobbett ed., 1813)	42
<i>Donovan v. Pennsylvania Co.</i> , 199 U.S. 279 (1905).....	38
<i>eBay Inc. v. MercExchange, L.L.C.</i> , 547 U.S. 388 (2006).....	1, 12, 14, 15, 24, 27, 33-37, 41-43
<i>Edwards Lifesciences AG v. CoreValve, Inc.</i> , 699 F.3d 1305 (Fed. Cir. 2012)	23
<i>Electra-Med Corp. v. United States</i> , 791 F. App'x 179 (Fed. Cir. 2019)	52
<i>Ferring Pharms., Inc. v. Watson Pharms., Inc.</i> , 765 F.3d 205 (3d Cir. 2014)	33
<i>Finesse Wireless LLC v. AT&T Mobility LLC</i> , 156 F.4th 1221 (Fed. Cir. 2025)	58, 61
<i>Flava Works, Inc. v. Gunter</i> , 689 F.3d 754 (7th Cir. 2012)	33

<i>Fleet Eng’rs, Inc. v. Mudguard Techs., LLC</i> , 2023 WL 5219773 (Fed. Cir. Aug. 15, 2023)	32
<i>Genband US LLC v. Metaswitch Networks Corp.</i> , 861 F.3d 1378 (Fed. Cir. 2017)	45-46, 51
<i>Genuine Enabling Tech. LLC v. Sony Grp. Corp.</i> , 167 F.4th 1196 (Fed. Cir. 2026)	54
<i>Herb Reed Enters., LLC v. Fla. Ent. Mgmt., Inc.</i> , 736 F.3d 1239 (9th Cir. 2013)	33
<i>High Tech Med. Instrumentation, Inc. v. New Image Indus., Inc.</i> , 49 F.3d 1551 (Fed. Cir. 1995)	51
<i>Horton v. Maltby</i> , (1789) LI Misc MS 112	42
<i>i4i Ltd. P’ship v. Microsoft Corp.</i> , 598 F.3d 831 (Fed. Cir. 2010)	20, 21, 27
<i>i4i Ltd. P’ship v. Microsoft Corp.</i> , 670 F. Supp. 2d 568 (E.D. Tex. 2009).....	21
<i>Innogenetics, N.V. v. Abbott Lab ’ys</i> , 512 F.3d 1363 (Fed. Cir. 2008)	24
<i>Insulet Corp. v. EOFlow, Co.</i> , 104 F.4th 873 (Fed. Cir. 2024)	20
<i>Interactive Gift Exp., Inc. v. Compuserve Inc.</i> , 256 F.3d 1323 (Fed. Cir. 2001)	48
<i>JSLG, Inc. v. City of Waco</i> , 504 F. App’x 312 (5th Cir. 2012).....	20
<i>Kim v. ConAgra Foods, Inc.</i> , 465 F.3d 1312 (Fed. Cir. 2006)	58
<i>Liardet v. Johnson</i> , (1780) 62 Eng. Rep. 1000	42

<i>Litton Sys., Inc. v. Am. Tel. & Tel. Co.</i> , 525 F. Supp. 154 (S.D.N.Y. 1981)	20
<i>MercExchange, LLC v. eBay, Inc.</i> , 275 F. Supp. 2d 695 (E.D. Va. 2003)	34
<i>MercExchange, LLC v. eBay, Inc.</i> , 401 F.3d 1323 (Fed. Cir. 2005)	34
<i>Monsanto Chem. Co. v. Perfect Fit Prods. Mfg. Co.</i> , 349 F.2d 389 (2d Cir. 1965)	50
<i>Monsanto Co. v. Geertson Seed Farms</i> , 561 U.S. 139 (2010).....	15, 20, 35
<i>Murthy v. Missouri</i> , 603 U.S. 43 (2024).....	19
<i>Nichia Corp. v. Everlight Ams., Inc.</i> , 855 F.3d 1328 (Fed. Cir. 2017)	45
<i>Obsidian Sols. Grp, LLC, v. United States</i> , 54 F.4th 1371 (Fed. Cir. 2022)	52
<i>Odetics, Inc. v. Storage Tech. Corp.</i> , 185 F.3d 1259 (Fed. Cir. 1999)	54
<i>Orion Tech., Inc. v. United States</i> , 704 F.3d 1344 (Fed. Cir. 2013)	44
<i>Paice LLC v. Toyota Motor Corp.</i> , 504 F.3d 1293 (Fed. Cir. 2007)	24, 43
<i>Pelican Int’l, Inc. v. Hobie Cat Co.</i> , 655 F. Supp. 3d 1002 (S.D. Cal. 2023).....	55
<i>Perfect 10, Inc. v. Google, Inc.</i> , 653 F.3d 976 (9th Cir. 2011)	33
<i>Ridge Corp. v. Kirk NationaLease Corp.</i> , 181 F.4th 1224 (Fed. Cir. 2026)	2, 20, 47

<i>Robert Bosch LLC v. Pylon Mfg. Corp.</i> , 659 F.3d 1142 (Fed. Cir. 2011)	3, 32, 33
<i>Romag Fasteners, Inc. v. Fossil, Inc.</i> , 590 U.S. 212 (2020).....	37
<i>Rondeau v. Mosinee Paper Corp.</i> , 422 U.S. 49 (1975).....	38
<i>Rutila v. Dep’t of Transp.</i> , 12 F.4th 509 (5th Cir. 2021)	53
<i>Salinger v. Colting</i> , 607 F.3d 68 (2d Cir. 2010)	33
<i>Socket Sols., LLC v. Imp. Glob., LLC</i> , 185 F.4th 1150 (Fed. Cir. 2026)	3, 32
<i>Starbucks Corp. v. McKinney</i> , 602 U.S. 339 (2024).....	35
<i>Stearns-Roger Mfg. Co. v. Brown</i> , 114 F. 939 (8th Cir. 1902)	40
<i>Sterner Lighting, Inc. v. Allied Elec. Supply, Inc.</i> , 431 F.2d 539 (5th Cir. 1970)	61
<i>Stringer v. Whitley</i> , 942 F.3d 715 (5th Cir. 2019)	19
<i>TD Bank N.A. v. Hill</i> , 928 F.3d 259 (3d Cir. 2019)	33
<i>Texas v. United States</i> , 891 F.3d 553 (5th Cir. 2018)	38
<i>Texas v. United States Dep’t of Homeland Sec.</i> , 123 F.4th 186 (5th Cir. 2024)	39
<i>TransUnion LLC v. Ramirez</i> , 594 U.S. 413 (2021).....	19

<i>Trial Laws. Coll. v. Gerry Spence Trial Laws. Coll. at Thunderhead Ranch,</i> 23 F.4th 1262 (10th Cir. 2022)	33
<i>Trump v. CASA,</i> 606 U.S. 831 (2025).....	36, 43
<i>United States v. W. T. Grant Co.,</i> 345 U.S. 629 (1953).....	38
<i>Univs. of Oxford & Cambridge v. Richardson</i> (1802) 31 Eng. Rep. 1260.....	42
<i>US Inventor, Inc. v. Squires,</i> --- F.4th ---, 2026 WL 2450313 (Fed. Cir. Aug. 21, 2026).....	20
<i>VidStream LLC v. Twitter, Inc.,</i> 2024 WL 4820802 (Fed. Cir. Nov. 19, 2024)	32
<i>White v. Dunbar,</i> 119 U.S. 47 (1886).....	61
<i>Winter v. Nat. Res. Def. Council, Inc.,</i> 555 U.S. 7 (2008).....	20
<i>Wisconsin Alumni Rsch. Found. v. Apple Inc.,</i> 112 F.4th 1364 (Fed. Cir. 2024)	29

Statutes

35 U.S.C. § 283	36, 37, 43
35 U.S.C. § 287(a)	61

Other Authorities

7 Donald A. Chisum, CHISUM ON PATENTS (2009)	25
1 J. Story & A.E. Randall, COMMENTARIES ON EQUITY JURISPRUDENCE §§ 929-934 (3d ed. 1920)	42
4 John Norton Pomeroy, EQUITY JURISPRUDENCE AND EQUITABLE REMEDIES (3d ed. 1905)	42

Paul Clement, <i>Patent Rights v. Property: The Framers' Understanding of Patents</i> (2019).....	40
Sean Bottomley, THE BRITISH PATENT SYSTEM DURING THE INDUSTRIAL REVOLUTION, 1700-1852 (2014)	43

STATEMENT OF RELATED CASES

No other appeal in or from the case below was previously before this Court or any other appellate court. Undersigned counsel is not aware of any case pending in this or any other tribunal that will directly affect or be directly affected by this Court's decision in this appeal.

INTRODUCTION

Plaintiff Collision Communications (“Collision”) asked the district court for a sweeping injunction that would bar the defendants, Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (together, “Samsung”), from importing all 4G and 5G phones and tablets into the United States and would effectively prohibit Americans who own a Samsung device from obtaining repairs or upgrades from Samsung. Yet Collision provided no evidence at all that the requested injunction would prevent Collision from suffering future irreparable harm, such as harm to its competitive position. To the contrary, it admitted on the record that it had exited the market for developing technology nearly a decade ago, laying off all its employees, and that it has no future business plans beyond filing lawsuits. Appx1078, Appx1103.

Instead of attempting to establish future harm that an injunction would avert, Collision devoted almost the entirety of its filings and oral presentation below to the theory that a prevailing plaintiff in a patent case is entitled to a permanent injunction against ongoing infringement unless public-interest considerations disfavor injunctive relief or the defendant raises a meritorious equitable defense. In other words, it claimed that three of the four injunction factors set out in *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006), are met in every case of ongoing patent infringement. The district court (Gilstrap, J.) had little trouble rejecting that

argument as barred by precedent. And Collision’s only case-specific claim of harm was that it had lost what it called a “design-win competition” to Samsung back in 2014 when Samsung refused to enter into a joint-development agreement with Collision, years before Collision went out of business.

Given Collision’s complete lack of evidence of future irreparable harm, the district court denied the injunction on the ground that Collision had “fail[ed] to identify any particular hardship it would face if the injunction were to be denied” and had failed to offer any case-specific argument that the public interest would not be disserved by an injunction. Appx39.

That assessment of the evidence was not clearly erroneous, and it forecloses injunctive relief. It is blackletter law that to obtain an injunction, a plaintiff must establish that it “would suffer irreparable harm in the absence of injunctive relief.” *Ridge Corp. v. Kirk National Lease Corp.*, 181 F.4th 1224, 1234 (Fed. Cir. 2026). Collision did not even attempt to make that showing here. The district court therefore did not abuse its discretion in denying injunctive relief.

Collision’s principal argument on appeal—that “the district court itself” found that “Collision will face significant hardship absent a permanent injunction” (Br. 22)—misreads the court’s opinion. The opinion contains no such finding, and it states the opposite, twice. Appx38-39.

Collision also raises a variation on the revisionist take on *eBay* that it advanced below. It now claims that a prevailing plaintiff automatically establishes future irreparable harm and the inadequacy of legal remedies solely by virtue of the defendant's ongoing infringement, even if (like Collision here) the plaintiff fails to proffer any evidence of future harm. That argument is foreclosed by the plain text of *eBay*, which held that a prevailing plaintiff has the burden of demonstrating irreparable harm and inadequacy of legal remedies—a directive that would make no sense if those prerequisites were satisfied in every case. It is also foreclosed by fifteen years of this Court's precedent interpreting *eBay*. *See, e.g., Socket Sols., LLC v. Imp. Glob., LLC*, 185 F.4th 1150, 1156-57 (Fed. Cir. 2026); *Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1148-49 (Fed. Cir. 2011). And Collision's historical arguments are wrong on their own terms. That the Eighteenth Century English Court of Chancery ordinarily issued injunctions in cases involving market competitors—the typical scenario at the time—says nothing about whether district courts must grant injunctions to entities that exist only to file lawsuits and obtain settlement licenses, especially given the modern availability of prospective monetary relief.

The district court accordingly did not abuse its discretion in denying a permanent injunction. The Court should affirm.

COUNTERSTATEMENT OF THE ISSUES

1. Whether the district court abused its discretion in denying a permanent injunction based on its factual findings that the plaintiff had failed to demonstrate that it would suffer specific future harm in the absence of an injunction or that an injunction would not disserve the public interest.

2. Whether the judgment should be affirmed on one of the following alternative grounds:

a. Under this Court’s precedent, three considerations, alone or in combination, demonstrate that injunctive relief is not appropriate here: (i) merely failing to persuade a party to enter into a joint-development agreement does not amount to a loss in a “design-win competition”; (ii) an injunction against the vast majority of a company’s products imposes a hardship on the company and harms the public interest; and (iii) a decade-long delay in seeking injunctive relief strongly disfavors a permanent injunction.

b. The record lacks substantial evidence of infringement of U.S. Patent No. 7,593,492.

COUNTERSTATEMENT OF THE CASE

A. Factual Background

Mobile devices connect to cellular networks by sending and receiving signals to “base stations,” the network equipment located on cell towers. Appx874, Appx881, Appx884. Historically, when many user devices simultaneously sent

signals to a single base station using a given wireless channel (*i.e.*, a frequency band used to transmit data), it would cause collisions between signals, known as “interference,” which the base stations received as “noise.” Appx1374. That noise, in turn, decreased network quality and bandwidth efficiency.

In the 2000s, the multinational defense company BAE Systems obtained patents related to multi-user detection (“MUD”), a technology that offers one way to solve the interference problem. Rather than attempting to avoid interference, MUD technology purposely allows device signals to interfere while still recovering each user’s data. It achieves that result by estimating signal characteristics and using algorithms to separate the overlapping signals.

In 2011, Collision acquired the BAE Systems patents relating to MUD technology. Appx1057, Appx3642-3656. The same year, Collision attempted to commercialize the patents by proposing partnerships with Nokia Corp., Telefonaktiebolaget LM Ericsson (“Ericsson”), and Samsung to develop base-station technology based on a specific algorithm it had developed. Appx924-925, Appx1012, Appx1058-1059, Appx1086-1087, Appx1120-1121.

During its negotiations with Samsung over that base-station technology, Collision never shared its source code or MUD algorithms, Appx1012-1013, and did not identify the technology’s applicability to user devices like cell phones and tablets, Appx1086-1087, Appx1092-1093. Samsung decided in 2014 not to partner

with Collision, Appx1071, after determining that Collision's technology fell below expectations, Appx2849; *see also* Appx1111-1113, Appx2010-2011. Collision made further overtures to Samsung in 2016 and 2018, but the parties did not engage in negotiations or information-sharing. Appx1095-1097.

Collision ultimately reached an agreement with Nokia in 2016 to jointly develop base-station products. Appx944-945. But two years later, Nokia cancelled the project. Appx945. As a result, Collision "shut down [its] research and development operations," Appx1078, laying off all its employees, Appx945. Collision conceded below it has no plans to restart its development business. Appx1078, Appx1103.

Instead, Collision transitioned to patent litigation. Appx1114. Collision first sued Nokia and Ericsson, claiming that their base stations infringe its MUD patents. Collision settled both lawsuits by licensing its patent portfolio to each company. Appx1078-1079.

B. Procedural History

After settling with Nokia and Ericsson, Collision filed this action in the Eastern District of Texas against Samsung in December 2023. Collision alleges that since April 2015, Samsung has infringed its patents by importing and selling cell phones and tablets with the ability to connect to 4G and 5G networks ("Accused Products"). Appx1078-1079, Appx1442. Collision elected not to seek a preliminary

injunction, and it did not seek any form of expedition in the district court (with one trivial exception, *see* D.Ct.Dkt.281).

Collision ultimately asserted six claims from four patents, including one claim (claim 1) from U.S. Patent No. 7,593,492 (“the ’492 patent”). D.Ct.Dkt.273 at 1. Consistent with the basic function of MUD technology to differentiate between interfering signals, which a base station communicating with multiple user devices must do, the ’492 patent generally claims a system that enables a device to distinguish between signals during periods of high signal volume in a given channel. Claim 1 provides:

- A hybrid Multi-User Detector System for processing received signals, comprising:
 - a parameter estimator coupled to said received signals providing received data information;
 - a multi-user detector decision unit coupled to said parameter estimator and said received signals;
 - at least two multi-user detectors coupled to said parameter estimator and said multi-user detector decision unit, said **multi-user detector decision unit using decision criteria to determine a selected multi-user detector**, wherein said selected multi-user detector outputs a plurality of information streams, one stream corresponding to each of said received signals; and
 - a bank of decoders coupled to said plurality of information streams, wherein said decoders output a plurality of improved information streams.

Appx192 (boldface added). As the patent’s specification explains, the parameter estimator “processes the various parameters of the received raw data”—*i.e.*, the “received signals”—and “provides certain information to [a multi-user detector].” Appx185. At the same time, both the raw data and the parameter estimator’s information are fed into the multi-user detector decision unit, which decides which multi-user detection unit to select. Appx185. The selected unit then sends information corresponding to each signal to a bank of decoders—resulting in separate information streams for each of the received interfering signals. Appx184.

The parties agreed that the limitation describing the multi-user detector decision unit’s operation (in boldface above) is a means-plus-function limitation. Appx209-210. The district court construed the function as “using decision criteria to determine a selected multi-user detector.” Appx209-210. The court identified the corresponding structure as “MUD decision unit 220 (or decision logic unit 520) configured to perform one or more certain, specified algorithms.” Appx209-210, Appx424. Unit 220 is depicted in Figure 2 of the patent, and decision logic unit 520 is depicted in Figure 5c (as well as Figure 5a):

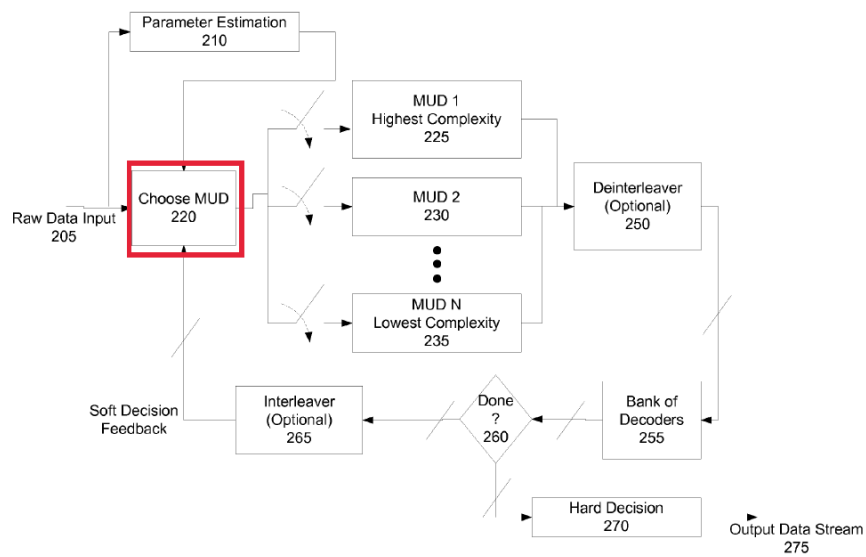


Figure 2

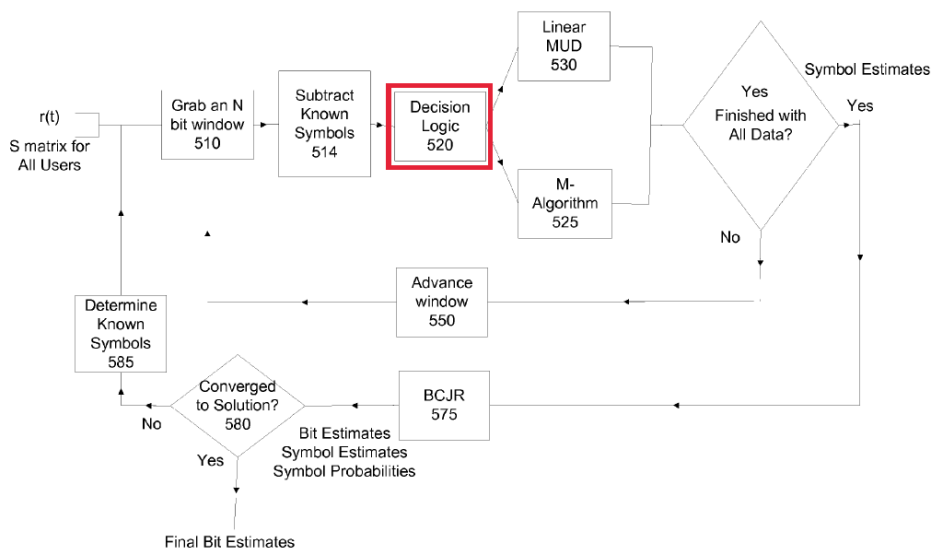


Figure 5c

Appx172, Appx180 (red boxes added).

The case proceeded to a jury trial. The main infringement disputes at trial arose out of the fact that the patents focus on a technology that encourages interference rather than avoiding it, using processing to disentangle interfering signals—hence, the '492 patent's "*multi-user* detector decision unit," Appx184 (emphasis added)—whereas Samsung's technology keeps signals from different users separate, avoiding interference, and processes them one-by-one. This was reflected in the name of the only functionality accused by Collision at trial: Samsung's advanced SU-MIMO (*single user* multiple input multiple output) reception in its mobile devices. Appx1184. Dr. Kowalski attempted to square that circle by claiming, often through conclusory assertions with no citation to source code or other documents, that the processing of MIMO signals from a single base station to a single user could meet the '492 patent's MUD technology claims.

The jury also heard considerable evidence about the parties' business activity. Collision's fact witnesses testified that its development business had shut down in 2018, Appx945, Appx1078, and Collision presented no evidence that it had plans to restart its business. In addition, the trial record showed that all of Samsung's imported 4G and 5G phones and tablets—some 267 million devices since the damages period began in 2017—contain the allegedly infringing technology. Appx1142, Appx1474, Appx1477.

Further, Dr. Kowalski testified that no non-infringing alternatives to the accused functionalities exist. Appx1446. And he did not dispute that, as Samsung's expert testified, if the technology was removed, Samsung's devices would not be able to connect with the carrier cellular networks. Appx1611. Collision's damages expert used Dr. Kowalski's testimony about the lack of non-infringing alternatives to calculate his recommended damages amount of \$445,494,160 in the form of a running royalty.

The jury found that Samsung infringed all asserted claims, the claims were not invalid, and Samsung's infringement was willful. It awarded a running royalty in the amount that Collision's expert had calculated. Appx700-707.

The parties filed post-trial motions. D.Ct.Dkts.343-348. As relevant to this appeal, Samsung's motion for judgment as a matter of law argued that Dr. Kowalski's infringement testimony was insufficient in certain respects. D.Ct.Dkt.347 at 13-25, 31-32. Samsung's motions remain pending.

C. The Order Denying A Permanent Injunction

In December 2025, two months after the jury verdict, Collision moved for a permanent injunction with respect to the '492 patent, which expires in 2028, without seeking expedited consideration. Appx2047.

After holding a hearing, the district court denied Collision's motion. The court concluded that injunctive relief was not appropriate under the four-factor test

required by *eBay*, 547 U.S. at 391, because Collision had made “no effort to identify any particular or specific hardship it would face if an injunction were not to issue” and had made no case-specific showing that an injunction would not disserve the public interest. Appx38.

As an initial matter, the district court rejected as “inconsistent with *eBay*” Collision’s principal argument that a permanent injunction must issue after a finding of infringement of a valid patent unless the public interest disfavors injunctive relief or an equitable defense applies. Appx28-29. The district court then proceeded to apply the *eBay* factors to the record.

With respect to the first factor, irreparable harm, the court found that Collision had engaged in a “‘design-win’ competition” with “Samsung[’s] in-house team” when it unsuccessfully sought to enter into a joint-development agreement in the 2011-2014 period. Based on that failure a decade ago, “taken alongside Samsung’s ongoing infringement,” the district court found that “Collision has established that it has suffered irreparable harm.” Appx33-34.

The district court deemed satisfied the second factor, the inadequacy of legal remedies, with no case-specific analysis beyond concluding that Collision’s request for money damages for past harms did not automatically mean that legal remedies were adequate. Appx34-36.

As to the third factor, the balance of hardships, the court found that Collision “has not met its burden.” Appx39. The court explained that Collision had made “no effort to identify any particular or specific hardship it would face if an injunction were not to issue.” Appx38. The court also concluded that Collision had failed to substantiate its new claim that Samsung could readily comply with the injunction through a non-infringing alternative. Appx39 & n.2.

With respect to the fourth factor, the public interest, the district court again could “not find that Collision has met its burden.” Appx42. The court found that “Collision has made no showing that in *this* case, on *these particular facts*, the importance of upholding the patent system and encouraging future parties to negotiate with patent holders rather than to strategically infringe meets its burden to show that the public interest will not be disserved by an injunction.” Appx42.

SUMMARY OF THE ARGUMENT

The Court should affirm the district court’s denial of a permanent injunction.

I. A. The district court properly denied injunctive relief on the ground that Collision had failed to present evidence that it would suffer specific future harm in the absence of injunctive relief and that the public interest would not be disserved by an injunction. Those findings were not clearly erroneous. To the contrary, they were compelled by Collision’s total failure to bring forward evidence of future harm and its concession that it had exited the development market nearly a decade ago

with no plans to return. And because it is blackletter law that an injunction may not issue absent a realistic threat of future irreparable harm that an injunction could avert, the district court did not abuse its discretion in denying injunctive relief.

B. Collision’s request that this Court jettison two decades of precedent on the requirements of *eBay* lacks merit. This Court has repeatedly reaffirmed its conclusion in 2011 that *eBay* forecloses any presumption of irreparable harm or inadequacy of legal remedies in patent cases. That precedent correctly interprets *eBay*, which would not have instructed courts to apply the four-factor test in patent cases if the first two factors were met in every case of ongoing harm. Collision’s historical arguments are also wrong. Patent-infringement decisions in the Eighteenth Century English Court of Chancery did not recognize any irrebuttable presumption of irreparable harm or inadequacy of legal remedies.

II. The record provides alternative grounds to affirm the order.

A. The district court’s *eBay* analysis was flawed in key respects. First, the conclusion that Collision lost a “design-win competition” when Samsung refused to license its technology in 2014 misconceives that legal concept. Second, under this Court’s precedent, barring a company from importing the vast majority of its products into the United States and effectively prohibiting millions of consumers from seeking repairs or upgrades necessarily implicates the third and fourth *eBay*

factors. Third, Collision’s decade-long delay in seeking injunctive relief strongly disfavors a permanent injunction for the tail end of the ’492 patent’s life.

B. Although the Court need not reach the question in this appeal unless it is otherwise inclined to direct the entry of an injunction rather than remand for further proceedings, the verdict of infringement of claim 1 of the ’492 patent is not supported by substantial evidence. Collision’s technical expert failed to provide any testimony that the relevant structure in the Accused Products performs the function required by the claim’s means-plus-function element; offered conclusory testimony on other elements unsupported by any source code or other documents; and set forth logically inconsistent opinions on infringement and marking.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING A PERMANENT INJUNCTION

“An injunction is a drastic and extraordinary remedy.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). Under *eBay*, to obtain a permanent injunction, “[a] plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *eBay*, 547 U.S. at 391.

In seeking a permanent injunction below, Collision devoted almost all of its

briefing and argument to the theory that an injunction against ongoing infringement should issue as a matter of course after a patent is found to be valid and infringed absent countervailing public-interest considerations or an equitable defense, asserting that historically even “a defendant’s hardship in complying with a permanent injunction was immaterial.” Appx2052; *compare* Collision Br. 31 (claiming it never said this). That view sharply conflicts with both *eBay* and this Court’s post-*eBay* precedent, *see infra* § I.B.1-2, and the district court properly rejected it, Appx38.

Aside from that argument, Collision made almost no effort to substantiate its request through evidence or arguments specific to this case. As a result, the district court found that Collision had “fail[ed] to identify any particular hardship it would face if the injunction were to be denied” and had failed to meet its burden on the public-interest factor. Appx39. Because the district court’s findings were not clearly erroneous and its resulting order was not an abuse of discretion, this Court should affirm.

A. The District Court Properly Denied Injunctive Relief Based On Its Factual Finding That Collision Had Not Established Specific Future Harm

1. The District Court Did Not Commit Clear Error In Its Assessment Of Collision’s Evidence

The district court did not clearly err in finding that Collision had failed to present evidence that it would suffer harm absent an injunction.

In its filings below, after relying almost entirely on its novel reimagining of *eBay* and historical precedents, Collision made a two-page argument in the alternative that “Samsung’s infringement *did cause* Collision consequential, competitive injury”—past tense—back in 2014. Appx2062 (emphasis added). According to Collision, it participated “in a ‘design wins’ [sic] competition with Samsung’s own in-house team (and other chip manufacturers) to develop cellular receiver software for use in Samsung’s cellular products.” Appx2063. A “design-win competition” is a term this Court has used to describe competitions among suppliers to provide components to original equipment manufacturers like Samsung for a new generation of a product. *Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1336 (Fed. Cir. 2013) (*Emulex*). Collision claimed that Samsung’s refusal to enter into a joint-development project with Collision in 2014 caused Collision to lose the supposed design-win competition to Samsung itself. Based on this alleged sequence of events, Collision asserted that “Samsung’s infringement has thus *caused* Collision competitive injury,” and that “Samsung’s infringement *deprived* Collision of the competitive benefits that come from a design win.” Appx2063-2064 (emphases added).

Even crediting that story in full, it describes only past harm. Nowhere did Collision even allege, much less establish, that it will engage in any design-win competitions relating to cellular technology in the future or any other activity in the

development or design markets. Indeed, it admitted (as it does on appeal) that it long ago completed its “exit from the market altogether,” Appx2063, when it laid off all its employees eight years ago, and it conceded at the injunction hearing that it has no plans to reenter the market, Appx2170.

Collision’s showing on future harm to the public interest was equally deficient. Collision relied solely on a blanket argument that all patent infringement harms the public interest. Appx2065-2066. Collision made no argument specific to this case and the ’492 patent. That was a glaring omission given that Collision seeks an injunction that would prevent tens of millions of existing Samsung customers from obtaining repairs from Samsung or replacing or upgrading their devices. Appx1477, Appx2179, Appx2183.

Accordingly, the district court did not commit clear error in finding that Collision had failed to bring forward evidence that it would suffer specific future harm absent an injunction or that an injunction would not disserve the public interest.

2. The District Court’s Finding Of No Specific Future Harm Forecloses Injunctive Relief

Because Collision had the burden of establishing entitlement to injunctive relief, the district court’s finding that Collision had failed to present evidence that an injunction would avert future irreparable harm requires affirmance, particularly given the abuse-of-discretion standard.

a. It is axiomatic that to warrant injunctive relief, the plaintiff’s irreparable harm must be redressable by an injunction. The plaintiff must show that it will suffer irreparable harm “absent an injunction.” *Apple Inc. v. Samsung Elecs. Co. Ltd.*, 695 F.3d 1370, 1374 (Fed. Cir. 2012). Because an injunction “cannot conceivably remedy any past wrong,” *Stringer v. Whitley*, 942 F.3d 715, 720 (5th Cir. 2019) (quotations omitted), “a plaintiff seeking injunctive relief must show a real and immediate threat of future or continuing injury *apart from any past injury*,” *Aransas Project v. Shaw*, 775 F.3d 641, 663 (5th Cir. 2014) (citation omitted) (emphasis added) (reversing permanent injunction).

The Supreme Court has thus explained over and over again that “a showing of irreparable injury . . . cannot be met where there is no showing of any real or immediate threat that the plaintiff will be wronged again.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). As the Court recently reaffirmed, “[t]o obtain forward-looking relief, the plaintiffs must establish a substantial risk of future injury.” *Murthy v. Missouri*, 603 U.S. 43, 59 (2024); *see TransUnion LLC v. Ramirez*, 594 U.S. 413, 435-36 (2021).

To be sure, as *Murthy* noted, proof of past irreparable harm may be relevant *evidence* to establish a substantial risk of future irreparable harm. 603 U.S. at 70. But under Fifth Circuit law (following unambiguous Supreme Court precedent), “[a]lthough past wrongs may help establish the threat of a future injury, they are

alone insufficient.” *Aransas*, 775 F.3d at 663 (citation omitted).¹ And where it is indisputable that the future injury could not occur—for example, where the injury involves loss of market share but the plaintiff has gone out of business with no plans to return—no amount of past harm could demonstrate a risk of future injury. *See, e.g., JSLG, Inc. v. City of Waco*, 504 F. App’x 312, 315 (5th Cir. 2012); *Litton Sys., Inc. v. Am. Tel. & Tel. Co.*, 525 F. Supp. 154, 155 (S.D.N.Y. 1981).

b. That clear Supreme Court and Fifth Circuit precedent is consistent with this Court’s decisions. As the Court reaffirmed earlier this year, a plaintiff must demonstrate that “it would suffer irreparable harm in the absence of injunctive relief.” *Ridge Corp.*, 181 F.4th at 1234 (preliminary injunction); *see Insulet Corp. v. EOFlow, Co.*, 104 F.4th 873, 883 (Fed. Cir. 2024) (applying First Circuit law); *see also US Inventor, Inc. v. Squires*, --- F.4th ---, No. 2024-2378, 2026 WL 2450313, at *3 (Fed. Cir. Aug. 21, 2026).

In *i4i Limited Partnership v. Microsoft Corp.*, 598 F.3d 831 (Fed. Cir. 2010), this Court likewise explained that “injunctions are tools for prospective relief designed to alleviate future harm.” *Id.* at 862. At the same time, the Court recognized that “[i]t was proper for the district court to consider evidence of past

¹ As *Aransas* makes clear, this is true of injunctive relief generally, whether preliminary or permanent. *See also, e.g., Monsanto*, 561 U.S. at 157 (citing the preliminary-injunction case *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 31-33 (2008)).

harm to [the plaintiff]” in evaluating irreparable harm and the inadequacy of monetary damages. *Id.* at 861-62. That made sense on the facts of the case, where the plaintiff was a direct competitor of the defendant and was suffering a “continuing loss of market share,” goodwill, and brand recognition due to the infringement. *i4i Ltd. P’ship v. Microsoft Corp.*, 670 F. Supp. 2d 568, 600 (E.D. Tex. 2009), *aff’d*, 598 F.3d 831 (Fed. Cir. 2010).

This Court’s “design-win” cases—even assuming they apply here (*but see infra* § II.A.1)—are also consistent with the principle that an injunction may issue only to remedy future irreparable harm. The plaintiff in both key decisions was Broadcom, a major multinational producer of chipsets used in cell phones. *Emulex*, 732 F.3d at 1335-39; *Broadcom Corp. v. Qualcomm, Inc.*, 543 F.3d 683, 701-04 (Fed. Cir. 2008) (*Qualcomm*). In each case, the Court upheld a permanent injunction because the defendant’s success in a design-win competition caused Broadcom ongoing irreparable harm in the form of diminished market share going forward and a disadvantage in future design-win competitions. *See Emulex*, 732 F.3d at 1336; *Qualcomm*, 543 F.3d at 702-703.

As *Emulex* explained, “suppliers who prevail in design-win competitions enjoy two benefits *beyond merely making sales.*” 732 F.3d at 1336 (emphasis added). “First, a design-win effectively locks the [original equipment manufacturer] into using the winner’s component part and thus temporarily immunizes the winner

from competition.” *Id.* “Second, winners enjoy an ‘incumbency effect’ making them more likely to win subsequent design competitions because the [original equipment manufacturer’s] familiarity with the winning supplier creates goodwill.” *Id.* It was these two effects “beyond merely making sales” that amounted to irreparable harm not compensable through damages.

Critically, both effects would have continued to harm Broadcom in the future without an injunction. The *Emulex* district court, for example, found that “exclusion from design wins” was a hardship that “Broadcom *will sustain* without an injunction.” *Broadcom Corp. v. Emulex Corp.*, 2012 WL 13036855, at *6 (C.D. Cal. Mar. 16, 2012) (emphasis added). For that reason, the court had not enjoined the sale of existing products; “Emulex had already ‘won’ these products, so immediately enjoining their sale would have penalized the [original equipment manufacturers] and disrupted the supply to servers [for data centers] with no corresponding benefit to Broadcom.” *Emulex*, 732 F.3d at 1336.

Neither of the irreparable harms that *Emulex* and *Qualcomm* identified as flowing from losses in design-win competitions could arise where, as here, the plaintiff has ceased participating in the purported design-win market and has no plans to return. That holds true whether or not infringement drove the plaintiff from the market. At least where an injunction would not enable the plaintiff to reenter the

market—and there was no such allegation, evidence, or finding here—the injunction would not forestall any future irreparable harm.

c. Under these blackletter principles, the district court did not abuse its discretion in denying injunctive relief after properly finding that “Collision makes no effort to identify any particular or specific hardship it would face if an injunction were not to issue.” Appx38. Contrary to Collision’s assertion (Br. 24), there is no sense in which Samsung is *currently* “denying Collision the competitive benefits that come from a design win.” Collision long ago left the design and development market, and any harm it suffered lies in the past.

Of course, even without competitive harm or other irreparable injury, Collision is still entitled to a remedy for any infringement of the ’492 patent through its expiration in 2028. But as Collision’s own authority makes clear, “the grant of a royalty-bearing license instead of imposing an injunction” is often appropriate where, as here, “the patentee would experience no competitive injury.” *Edwards Lifesciences AG v. CoreValve, Inc.*, 699 F.3d 1305, 1315 (Fed. Cir. 2012). In contrast, “[c]ourts awarding permanent injunctions typically do so under circumstances where [the] plaintiff practices its invention and is a direct market competitor.” *Id.* (quoting *Advanced Cardiovascular Sys. v. Medtronic Vascular, Inc.*, 579 F. Supp. 2d 554, 558 (D. Del. 2008)).

Accordingly, at least where a non-practicing plaintiff has no commercial plans beyond licensing its patents, injunctive relief is often not warranted. *E.g.*, *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312, 1338 (Fed. Cir. 2012). Here, Collision could have sought a lump-sum royalty at trial covering the life of the patent, *see, e.g.*, *Innogenetics, N.V. v. Abbott Lab'ys*, 512 F.3d 1363, 1380 (Fed. Cir. 2008), or after trial it could have asked the district court for “an ongoing royalty for patent infringement in lieu of an injunction,” *Paice LLC v. Toyota Motor Corp.*, 504 F.3d 1293, 1314 (Fed. Cir. 2007). But it failed to seek either remedy.

d. Although Collision’s total failure to present evidence of future irreparable harm that an injunction could prevent is more than sufficient to affirm under the abuse-of-discretion standard (or any standard), Collision’s showing on the public interest was similarly nonexistent and thus legally insufficient. *See* Appx40-42.

Under this Court’s precedent, “[i]f a plaintiff fails to show ‘that the public interest would not be disserved by a permanent injunction,’ then the district court may not issue an injunction.” *Amgen Inc. v. Sanofi*, 872 F.3d 1367, 1381 (Fed. Cir. 2017) (quoting *eBay*, 547 U.S. at 391). For example, in *ActiveVideo Networks*, this Court held that “[a]lthough enforcing the right to exclude serves the public interest, the public interest factor *requires* consideration of other aspects of the public interest.” 694 F.3d at 1341 (emphasis added). The Court quoted the Chisum treatise

for the proposition that “the proper question on the public interest should be: will an injunction harm a *specific public interest* that outweighs the public’s interest in a robust patent system?”” *Id.* (quoting 7 Donald A. Chisum, CHISUM ON PATENTS § 20.04[2][c][vii] (2009)).

Here, however, Collision failed to offer any argument or evidence about whether an injunction will harm the public interest. Collision now concedes (Br. 35-36) that there may be countervailing considerations. But it suggests, contrary to *eBay*, that it is Samsung’s burden to identify them. Although Collision cites this Court’s statement that “the public interest nearly always weighs in favor of protecting property rights in the absence of countervailing factors,” that observation was descriptive, not prescriptive, and it holds in cases where “the patentee practices his inventions” and the defendant “can effect the removal of the patented features without recalling any products or disrupting customer use of its products.” *Apple Inc. v. Samsung Elecs. Co.*, 809 F.3d 633, 647 (Fed. Cir. 2015). This case diverges in both respects.

Moreover, there were obvious grounds to doubt that the requested injunction would serve the public interest. Collision sought an injunction barring Samsung from importing any of its 4G and 5G cell phones and tablets—over 70% of its United States products—and from repairing the 270 million devices already sold to United States customers. As the district court noted, Collision had “assert[ed] at trial that

there were no noninfringing alternatives” (en route to a half-billion dollar damages award) Appx39 n.2, and the undisputed trial testimony indicates that removing the relevant functionality would prevent Samsung devices from connecting to carrier networks, Appx1611. Yet at the injunction stage, Collision relied only on the “bare assertion that the injunction is narrowly tailored.” Appx39 n.2. Such unsupported assertions simply are not good enough to meet the *eBay* standard.

3. Collision Misreads The District Court’s Opinion

a. Collision’s principal claim on appeal (Br. 22) is that “the district court itself” found that “[t]he record here makes overwhelmingly clear that Collision will face significant hardship absent a permanent injunction.” *See also* Br. 1, 13, 17, 18, 21, 24, 29. But the district court found just the opposite: that Collision had “fail[ed] to identify any particular hardship it would face if the injunction were to be denied.” Appx39. Collision does not even argue clear error in that assessment of the evidence—thus forfeiting that argument.

Instead, Collision claims (Br. 22) that the district court contradicted itself by supposedly finding in its analysis of the first two *eBay* factors that “Collision was facing and would continue to face substantial hardship in the absence of an injunction,” only to commit the “inexplicable and reversible” error of reaching the opposite conclusion in analyzing the balance of the hardships.

That misreads the district court’s opinion. Nowhere in its analysis of the first two factors did the district court find that Collision would suffer *future* irreparable harm that could be remedied by an injunction. Rather, the district court deemed Collision’s “loss of the design-win competition” in the mid-2010s, in combination with Samsung’s asserted ongoing infringement of the ’492 patent, to be sufficient to establish that “Collision has established that it *has suffered* irreparable harm.” Appx33-34 (emphasis added). The district court’s use of the present-perfect tense makes clear—consistent with the fact that the design-win competition occurred over a decade ago and Collision has been out of business for eight years—that the court found only past irreparable harm. It certainly never found, as Collision suggests with no quotation from the opinion, that an injunction would avert future harm. It found precisely the opposite. Appx38-39.

To be sure, under a proper understanding of *eBay*, the first two factors should focus on future irreparable harm that cannot be remedied through legal relief, not past harm, although past harm can be relevant evidence in appropriate cases. *Supra* pp.20-21. But the district court’s approach was understandable: *eBay* itself uses the present-perfect tense in describing the irreparable-harm requirement, 547 U.S. at 391, and this Court has stated that “by its terms the first *eBay* factor looks, in part, at what has already occurred,” *i4i*, 598 F.3d at 862. What ultimately matters is that the district court correctly denied injunctive relief based on Collision’s failure to

proffer any evidence of future irreparable harm that an injunction would prevent. Where the court placed that decisive consideration in its opinion is immaterial.

The district court also attached some relevance to the expectation that Samsung would continue to infringe the patent. A substantial risk of future violations is of course a prerequisite to injunctive relief, so that is always relevant. But to the extent that Collision interprets the district court's reference to ongoing infringement to mean that the court found a likelihood of future irreparable *harm* preventable by an injunction, that could not be right. The court expressly found the opposite. Appx38-39. And the court correctly acknowledged that under this Court's precedent, the mere expectation of ongoing infringement does not suffice to show future irreparable harm. Appx30. Combining ongoing infringement with past irreparable harm does not add up to future irreparable harm. There is no reason to read the district court's opinion to have implicitly embraced such an indefensible position given its express findings of no evidence of future irreparable harm.

b. Aside from the district court's supposed internal inconsistency, Collision offers no cogent explanation of how it will suffer future irreparable harm that an injunction would prevent. Although Collision spends several pages recounting the evidence of its "design-win" theory—which is flawed on its own terms, *see infra* § II.A.1—it never addresses its concession below that it is no longer in the market

for design wins and has no plan to return. Appx2170. Even if the district court’s opinion were internally inconsistent, therefore, the order should be affirmed.

Collision states (Br. 23) that “[a]bsent a permanent injunction Collision will continue to suffer the *effects* of th[e] harm” caused by its supposed design-win loss—*i.e.*, “the lock-in effect, the incumbency effect, and goodwill as the winning supplier” (quoting Appx33) (emphasis added).² But even assuming *arguendo* that Collision is experiencing some ongoing “effects” of the design-win loss insofar as the loss forced it out of the market, an injunction could not ameliorate those effects because Collision has no intent to rejoin the market if Samsung were enjoined.

Collision also asserts (Br. 23) that Samsung “will continue to enjoy all of the benefits” of infringing the ’492 patent. That is both irrelevant and wrong. It is irrelevant because an injunction is not an unjust-enrichment remedy; the focus is the plaintiff’s future irreparable harm, not the defendant’s gain. And it is wrong because if Collision believes that Samsung’s sales through 2028 involve products that are “essentially the same” as the Accused Products, it may invoke issue preclusion to seek damages (subject to any defenses Samsung may raise). *See Wisconsin Alumni Rsch. Found. v. Apple Inc.*, 112 F.4th 1364, 1379 (Fed. Cir. 2024).

² Collision twice quotes the district court’s opinion here as if it were a finding, but the district court was just quoting Collision’s arguments. *See* Appx33.

Finally, Collision claims (Br. 23) that it will lose “veto-power control” over the patented technology (quoting the district court’s summary of its arguments as if it were a finding, Appx34). And it argues (Br. 25) that patents can be difficult to value. But those are just different ways of saying that ongoing infringement alone is sufficient to establish future irreparable harm, which violates *eBay* and this Court’s precedent.

c. Collision’s response (Br. 33-37) to the district court’s finding on the public-interest factor is deficient for largely the same reasons. Collision essentially argues that the burden was on Samsung to establish that the public interest disfavored an injunction, but that conflicts with *eBay*, which puts the burden on the plaintiff on each factor. None of the precedents Collision cites supports that view.

At any rate, even if Collision were correct that in some cases the public interest would favor an injunction with no further showing, it does not address the elephant in the room here: Its injunction poses an obvious threat to the public interest by barring American consumers from purchasing one of the most popular families of cell phones and tablets and by preventing existing users from obtaining repairs from Samsung. And it would validate a brazen holdout strategy of waiting years to bring suit after a feature has been integrated into a multi-featured product in order to extract the sort of outsized settlement that Collision no doubt anticipates.

Collision claims (Br. 36) that it “design[ed] the proposed injunction to mitigate public harm to the greatest extent possible, by limiting the injunction to the features that the jury found to be infringing and by providing for a one-month grace period to ensure that Samsung would have adequate time to comply.” But those limitations are meaningless: Of course the injunction could not extend to non-infringing features, and a one-month grace period does little when Collision itself presented evidence that there are no non-infringing alternatives. Appx1446.

B. The Court Should Reject Collision’s Request To Overturn Settled Precedent

Before the district court, Collision relied almost exclusively on the theory that prevailing plaintiffs in patent-infringement cases automatically satisfy the first three *eBay* factors whenever there is ongoing infringement. On appeal, Collision relegates that argument to the secondary position and limits it to the first two factors. But it is still barred by this Court’s precedent; it is still foreclosed by *eBay*; and it is still wrong as an historical matter.

1. Collision’s Argument Conflicts With This Court’s Precedent And The Precedent Of Other Circuits

Collision contends (Br. 39-44) that ongoing infringement triggers an irrebuttable presumption of irreparable harm and the inadequacy of legal remedies. But five years after *eBay*, this Court “confirm[ed] that *eBay* jettisoned the presumption of irreparable harm as it applies to determining the appropriateness of

injunctive relief,” and it rejected the use of any other “presumptions or . . . short-cuts to support a request for a permanent injunction.” *Robert Bosch*, 659 F.3d at 1148-49. Contrary to Collision’s suggestion (Br. 50), *Robert Bosch* did not merely reject “judge-made presumptions.” Rather, it concluded that presumptions with respect to the *eBay* factors are inconsistent with “traditional principles of equity.” 659 F.3d at 1148-49. Nor was that holding “dictum” (Br. 50 n.2); it was part of the framework the Court went on to apply.

In the fifteen years since *Robert Bosch*, this Court has recognized that *Robert Bosch* is “our precedent establishing that there is no presumption of irreparable harm upon a finding of patent infringement.” *Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d 1352, 1359 (Fed. Cir. 2013); see *Fleet Eng’rs, Inc. v. Mudguard Techs., LLC*, 2023 WL 5219773, at *9 (Fed. Cir. Aug. 15, 2023) (per curiam). On that basis, a recent panel of this Court summarily rejected the same argument that Collision makes here as “clearly” inconsistent with *Robert Bosch* and *eBay*. See *VidStream LLC v. Twitter, Inc.*, 2024-2256, 2024 WL 4820802, at *1 (Fed. Cir. Nov. 19, 2024). And just last month, this Court reaffirmed *Robert Bosch* in a precedential opinion vacating the grant of a preliminary injunction, concluding that a presumption of irreparable harm “cannot be justified after *eBay*,” as *Robert Bosch* “confirmed[.]” *Socket Sols.*, 185 F.4th at 1157.

Every other circuit that has answered the question in the copyright or trademark context agrees with this Court: *eBay* precludes a presumption of irreparable harm. *See Salinger v. Colting*, 607 F.3d 68, 80 (2d Cir. 2010); *TD Bank N.A. v. Hill*, 928 F.3d 259, 279 (3d Cir. 2019); *Ferring Pharms., Inc. v. Watson Pharms., Inc.*, 765 F.3d 205, 216 (3d Cir. 2014); *Flava Works, Inc. v. Gunter*, 689 F.3d 754, 755 (7th Cir. 2012); *Herb Reed Enters., LLC v. Fla. Ent. Mgmt., Inc.*, 736 F.3d 1239, 1249-50 (9th Cir. 2013); *Perfect 10, Inc. v. Google, Inc.*, 653 F.3d 976, 980-81 (9th Cir. 2011); *Trial Laws. Coll. v. Gerry Spence Trial Laws. Coll. at Thunderhead Ranch*, 23 F.4th 1262, 1270 (10th Cir. 2022).

Collision defies this mountain of precedent. Not only would Collision exhume the presumptions rejected in *Robert Bosch*; it would go further by making them irrefutable as a matter of law. Collision has identified no basis to depart from circuit precedent.

2. This Court Has Correctly Interpreted And Applied *eBay*

Even if a panel of this Court could reconsider circuit precedent, *Robert Bosch* and later cases correctly interpreted *eBay* to foreclose a presumption that any part of the four-part test is satisfied by ongoing infringement. *eBay* unanimously held that under “traditional principles of equity,” “a plaintiff must demonstrate” that each of the four factors is met in patent cases, just as in other cases. 547 U.S. at 391, 394. The Court explained that a presumption in favor of injunctive relief could not be

justified by the fact that patents have the attributes of personal property, such as the right to exclude, because “the creation of a right is distinct from the provision of remedies for violations of that right.” *Id.* at 392.

eBay accordingly rejected this Court’s prior “rule . . . that a permanent injunction will issue once infringement and validity have been adjudged” except in “exceptional circumstances” and “rare instances . . . to protect the public interest.” *eBay*, 547 U.S. at 393-94 (quoting *MercExchange, LLC v. eBay, Inc.*, 401 F.3d 1323, 1338 (Fed. Cir. 2005)). *eBay* instead placed the burden on the plaintiff to make case-specific showings on each factor.

eBay’s holding and reasoning foreclose Collision’s argument here. Particularly given that no party in *eBay* challenged the district court’s finding of ongoing infringement in either the court of appeals or the Supreme Court, *see MercExchange, L.L.C. v. eBay, Inc.*, 275 F. Supp. 2d 695, 711 (E.D. Va. 2003), the opinion of the Court would make no sense if the first two factors are satisfied merely by ongoing infringement. In fact, the plaintiff in *eBay* raised a virtually identical position in defense of the judgment: “Once a patent has been found to be valid and infringed,” it argued, “the plaintiff will, in most cases, have irrefutably shown that it lacks an adequate remedy at law, and that denial of injunctive relief will cause it irreparable harm.” Brief for Respondent, at 28, *eBay, Inc. v. MercExchange, L.L.C.*,

547 U.S. 388 (2006) (No. 05-130), 2006 WL 622506, at *28. The Supreme Court disagreed.

Just two years ago, moreover, the Supreme Court made clear that Collision’s revisionist take on *eBay* is wrong. In *Starbucks Corp. v. McKinney*, 602 U.S. 339 (2024), the Court reaffirmed *eBay*’s premise that “absent a clear command from Congress, courts must adhere to the traditional four-factor test” for injunctive relief. *Id.* at 346. As an example of such a command, the Court pointed to the Lanham Act, which provides that “plaintiffs alleging trademark violations are entitled to ‘a rebuttable presumption of irreparable harm . . . upon a finding of likelihood of success on the merits.’” *Id.* at 348 (citation omitted). That confirms that, absent legislative modification, *eBay*’s four-factor test does not permit such a presumption. Likewise, in *Monsanto, supra* p.15, the Supreme Court rejected the argument “that an injunction is the proper remedy for a [particular statutory] violation except in unusual circumstances” because “[n]o such thumb on the scales is warranted . . . under the traditional four-factor test.” 561 U.S. at 157-58.

Collision argues (Br. 40-41) that when *eBay* said “courts must exercise their discretion to grant permanent injunctions in patent cases ‘consistent with traditional principles of equity,’” it thereby “require[d] courts to consider whether a permanent injunction would have issued under comparable circumstances” in 1789. That is not correct. Rather, *eBay* explained that “well-established principles of equity” require

courts to place the burden on plaintiffs to satisfy the four-factor test without categorical rules. 547 U.S. at 391. The Court did not suggest that it was still open to lower courts to hold that traditional principles of equity require categorical rules, such as irrebuttable presumptions, in the patent context.

Collision also claims (Br. 39-40) that the Supreme Court’s recent decision in *Trump v. CASA*, 606 U.S. 831 (2025), has some bearing here. It does not. *CASA* relied on traditional principles of equity for a different proposition entirely: that an injunction should be no broader than necessary to provide the plaintiff with complete relief. *Id.* at 841-47. That has nothing to do with the question here.

Collision notes (Br. 49) that the Supreme Court treats certain other harms, such as impingements on First Amendment freedoms, as irreparable as a matter of law, but that only confirms Collision’s misreading of *eBay*. The Supreme Court knows how to speak clearly when it intends to hold that certain harms are always irreparable. It said the opposite in *eBay*.

3. Collision’s Analysis Of Traditional Equitable Principles Is Wrong

Even were this Court considering the question afresh, Collision’s position is wrong as an historical matter.

a. Section 283 of the Patent Act states that federal courts “may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent.” Collision contends (Br. 39) the phrase “in accordance

with the principles of equity” demands that courts examine patent cases decided by the Eighteenth Century English Court of Chancery and grant injunctions in similar circumstances.

That is wrong. In *Romag Fasteners, Inc. v. Fossil, Inc.*, 590 U.S. 212 (2020), the Supreme Court rejected the view that the phrase “principles of equity” in a provision of the Lanham Act should be construed to encompass a trademark-specific *mens rea* rule applied by historical courts of equity. *Id.* at 219. The Court explained that “treatises and handbooks on the ‘principles of equity’ generally contain transsubstantive guidance on broad and fundamental questions about matters like parties, modes of proof, defenses, and remedies,” and that the Court’s “precedent, too, has used the term ‘principles of equity’ to refer to just such transsubstantive topics,” *Id.* at 217 (citing *eBay*, 547 U.S. at 391). Even if Collision were correct about the historical patent cases, therefore, they would not inform the meaning of “principles of equity” in Section 283.

The only principle that Collision invokes (Br. 42-44) that is facially transsubstantive is what Collision calls the “continuing violations doctrine,” which supposedly provides that “remedies at law are by definition inadequate to address ongoing or repeated violations of a plaintiff’s rights.” But that cannot possibly be correct. A substantial risk of ongoing violations is always a prerequisite to injunctive relief; if the unlawful activity will not recur, there is nothing to enjoin. If ongoing

violations by themselves established entitlement to an injunction, therefore, the traditional four-factor test would do no work at all.

It is thus little surprise that Collision has identified no support for its “continuing violations doctrine.” That phrase ordinarily connotes a set of principles about accrual and statutes of limitations that have no relevance here. *See Texas v. United States*, 891 F.3d 553, 561-64 (5th Cir. 2018). Collision’s reimagining of the doctrine as a principle about presumptive entitlement to injunctions is cobbled together through incomplete quotations from disparate cases.

For example, Collision cites (Br. 42) precedents stating only that ongoing violations are necessary for injunctive relief, not sufficient. *See Rondeau v. Mosinee Paper Corp.*, 422 U.S. 49, 59 (1975); *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953). Indeed, *Rondeau* makes clear that even after establishing an ongoing violation, a plaintiff must still “show[] irreparable harm and other usual prerequisites for injunctive relief.” 422 U.S. at 64-65.

Collision also cites (Br. 42) *Donovan v. Pennsylvania Co.*, 199 U.S. 279 (1905), where the Court held that injunctive relief was appropriate to prevent a large group of cab drivers from incessantly harassing railway passengers—“an unusual emergency” involving an “almost hourly occurrence” that an endless “multiplicity of suits” for damages could never meaningfully address. *Id.* at 304-05. In reaching that holding, the Court relied on the Illinois Supreme Court’s decision in *Chicago*

General Railway Co. v. Chicago, B. & Q.R. Co., 54 N.E. 1026 (1899), which upheld the denial of an injunction based on the principle that “[t]o warrant interference upon the ground of a multiplicity of suits, there must be different persons assailing the same rights, and not a mere repetition of the same trespass by the same person[.]” *Id.* at 1029. That differs markedly from the typical patent case, including this one.

Collision points to *City of Walla Walla v. Walla Walla Water Co.*, 172 U.S. 1 (1898), where the Supreme Court held that injunctive relief was appropriate to prevent a city from breaching its contract with a water company. The Court, however, relied on the threat of harm to “the value of the plaintiff’s plant,” which “would be exceedingly difficult of ascertainment” insofar as it would depend on the effect of “the competition [sic] of the city”—in other words, classic irreparable harm. *Id.* at 12. Although the Court observed that “[w]here irreparable injury . . . is such as, from its continuance, to occasion a constantly recurring grievance,” remedies at law will not foreclose an injunction, *id.*, that passage did not define all continuing injuries as irreparable.

Collision also relies on a recent Fifth Circuit decision applying the principle that “where a tort claim seeks to stop a ‘continuing trespass to land,’ . . . irreparable injury exists, and injunctive relief is appropriate.” *Texas v. United States Dep’t of Homeland Sec.*, 123 F.4th 186, 212 (5th Cir. 2024) (applying Texas property law). Whatever the validity of such a real-property-specific rule, it does not state a

transsubstantive principle of equity. And there is no reason to think that jurists at the time of the Founding would have considered doctrines relating to real property to automatically apply to patent rights. To the contrary, “there was widespread consensus at the time of the Founding that patent rights and traditional property rights are fundamentally different.” Paul Clement, *Patent Rights v. Property: The Framers’ Understanding of Patents* (2019), at 3-4.³ For that reason, “[t]he rhetoric employed in some quarters today—describing patents as sacred rights of property on a par with natural or common law rights—would have been immediately dismissed by the Framers as profoundly mistaken.” *Id.* at 4.

Although Collision notes (Br. 42) that before this Court’s creation, two circuits applied this property-law analogy to patent infringement, those decisions provided no historical analysis, and one of them emphasized that the plaintiffs “do not grant licenses, but manufacture and sell the machines.” *Allington & Curtis Mfg. Co. v. Booth*, 78 F. 878, 879 (2d Cir. 1897); see *Stearns-Roger Mfg. Co. v. Brown*, 114 F. 939, 945 (8th Cir. 1902).

b. Even if patent-specific historical rules had relevance, Collision cites no historical support for its irrebuttable presumption. Collision asserts that injunctions “ordinarily” issued after a finding of infringement in the Eighteenth Century Court

³ Available at <https://perma.cc/HBH6-NZR5>.

of Chancery. Assuming that is true, it reveals little about how modern courts confronting licensing-only entities should exercise their discretion. This is because, by all available evidence, Founding-era patent plaintiffs exploited the patented invention for commercial gain, and the cases did not involve modern devices with thousands of features, where a single plaintiff could extract outsized settlements through an injunction relating to only one functionality. As the four-Justice concurrence in *eBay* explained, “[t]o the extent earlier cases establish a pattern of granting an injunction against patent infringers almost as a matter of course, this pattern simply illustrates the result of the four-factor test in the contexts then prevalent.” 547 U.S. at 396 (Kennedy, J., concurring).

As this Court well knows, times have changed: “An industry has developed in which firms use patents not as a basis for producing and selling goods but, instead, primarily for obtaining licensing fees.” 547 U.S. at 396 (Kennedy, J., concurring). In many cases—as here—such entities hold patents covering “but a small component of the product the [defendant] seek[s] to produce,” and “the threat of an injunction is employed simply for undue leverage in negotiations.” *Id.* That requires courts to confront questions that do not appear to have arisen in the 1700s, such as whether an entity that seeks only licensing fees suffers irreparable harm from infringement of its patents, and whether effectively enjoining the sale of a product containing thousands of features because one feature infringes a patent disserves the public

interest. Nothing in very different cases a quarter-millennium ago answers those questions.

Indeed, Collision cites a grand total of two cases from the Court of Chancery concerning technology patents. *See Liardet v. Johnson* (1780) 62 Eng. Rep. 1000, 1004; *Horton v. Maltby* (1789) LI Misc MS 112, p.10 (Ch.) (indecipherable analysis); *see also Univs. of Oxford & Cambridge v. Richardson* (1802) 31 Eng. Rep. 1260, 1267, 1271 (publication patent akin to copyright); *Donaldson v. Becket* (H.L. 1774), *printed in 17 The Parliamentary History of England from the Earliest Period to the Year 1803*, at 952, 989 (William Cobbett ed., 1813) (same). Neither applied an irrebuttable presumption or defined infringement of a patent itself as irreparable harm. Nor are such principles endorsed in the Twentieth Century treatises that Collision cites. *See* 1 J. Story & A.E. Randall, COMMENTARIES ON EQUITY JURISPRUDENCE §§ 929-934, at 379-80 (3d ed. 1920); 4 John Norton Pomeroy, EQUITY JURISPRUDENCE AND EQUITABLE REMEDIES § 1347 (3d ed. 1905) (including “infringement of patent rights” among the “kind of torts for which the legal remedy is *generally* inadequate” (emphasis added)). And Collision’s cited law-review articles show at most that injunctions were common in cases brought by practicing entities 250 years ago.

In its briefing below, Collision claimed to have found an example, involving patents for early steam engines, in which the Court of Chancery awarded injunctions

to non-practicing entities. Appx2053. But that turned out to be wrong: Collision’s own source stated that the patentees were offering licenses to use certain real-life embodiments, not licenses solely to practice the patent. Appx2174-2175 (citing Sean Bottomley, THE BRITISH PATENT SYSTEM DURING THE INDUSTRIAL REVOLUTION, 1700-1852, at 117, 251-55 (2014)). On appeal, Collision abandons its claim that any Founding-era cases involved pure licensing entities.

c. Collision also discounts another critical difference between Eighteenth Century cases and modern patent litigation. Courts now have the power to award monetary relief for future infringement—both in the form of a jury-calculated lump sum for the life of the patent and a post-verdict award of an ongoing royalty, *Paice*, 504 F.3d at 1314-15. Collision argues that *Paice* does not reflect a new remedy enacted by Congress. But this Court has no power to fashion new equitable remedies, *see CASA*, 606 U.S. at 841, 845, and the *Paice* remedy is explicitly an application of Section 283, *see Paice*, 504 F.3d at 1314.

Collision also argues (Br. 52) that because ongoing royalties are equitable in nature, they do not show that “remedies available at law” are adequate, *eBay*, 547 U.S. at 391. Even if that were true, however, the availability of monetary relief demonstrates that the mere deprivation of future licensing fees is not irreparable, because those fees are recoverable.

Finally, Collision asserts (Br. 54) that ongoing royalties are always a lesser

and incomplete remedy as compared to a prohibitory injunction. That categorical rule conflicts with *Paice*. And at least in cases such as this, where the plaintiff will remain non-practicing through the life of the patent and seeks only licensing fees, an award of ongoing royalties provides complete relief.

II. THE RECORD PROVIDES ALTERNATIVE GROUNDS TO AFFIRM THE DENIAL OF A PERMANENT INJUNCTION

“An appellate court can affirm a decision of the trial court upon any ground supported by the record.” *Orion Tech., Inc. v. United States*, 704 F.3d 1344, 1350 (Fed. Cir. 2013). The record here provides two independent grounds to affirm the denial of the injunction: The district court’s analysis of the *eBay* factors contained material errors, and the jury’s verdict of infringement was not supported by substantial evidence.

A. The District Court’s Analysis Of The *eBay* Factors Contained Fundamental Errors

The district court’s analysis of the *eBay* factors, while reaching the right outcome based on Collision’s complete failure of proof of future irreparable harm, conflicted with this Court’s precedent in key respects.

1. Collision’s “Design-Win” Theory Is Legally Erroneous

Although Collision’s “design-win” theory failed to show future harm given Collision’s exit from the market eight years ago, *see supra* pp.27-29, there are two further problems with that theory.

First, Collision never engaged in a “design-win competition” as this Court has used that term. A design-win market exists where suppliers compete to persuade original equipment manufacturers to use their technology for new generations of products, which can give rise to irreparable harm in the form of lost future market share and incumbency advantages in future design-win competitions. *Emulex*, 732 F.3d at 1336. But here, Samsung itself is an original equipment manufacturer, not a supplier that competed with Collision for Samsung’s business. Nor did Collision allege that Samsung had caused Collision to lose any customers other than Samsung itself. Indeed, there is no evidence that Collision ever competed against *anyone* in an actual design-win competition.

Collision claims (Br. 5) that it participated in a design-win competition merely by trying to “convince companies interested in licensing Collision’s patented technology to work with Collision to incorporate that technology into their base stations.” But that would expand a narrow set of precedents to encompass all failed licensing negotiations. And this Court has rejected a design-win theory on far closer facts than these, where the parties agreed “that they competed in the same market” but the plaintiff “failed to prove that this competition was meaningful.” *Nichia Corp. v. Everlight Ams., Inc.*, 855 F.3d 1328, 1342 (Fed. Cir. 2017).

Second, although it is well-settled that “[t]here must be proof that the infringement causes the harm that the patentee alleges is irreparable,” *Genband US*

LLC v. Metaswitch Networks Corp., 861 F.3d 1378, 1383 (Fed. Cir. 2017) (citation omitted), Collision’s own evidence severs any causal link between Samsung’s decision not to license its patents in 2014 and Collision’s exit from the market in 2018. For one thing, the timing makes no sense. Samsung rejected Collision’s proposed partnership in March 2014—one year before Samsung’s alleged infringement began in April 2015. Appx1071, Appx1442, Appx1473.

That problem aside, Samsung’s alleged infringement cannot have caused Collision to lose the purported design-win competition because the two occurred in different markets. When Collision “lost” to Samsung—and later when it went out of business—Collision was trying to enter the market for base stations. Appx1059, Appx1087, Appx1107, Appx1109. But the Accused Products are cell phones and tablets.

Finally, according to Collision’s own trial evidence, it was Collision’s break-up with Nokia in 2018 that caused Collision to fail, not Samsung’s refusal to deal four years earlier. Appx945, Appx1078. Collision’s Chief Operating Officer testified that Nokia’s decision to withdraw funding “devastated” Collision and forced it to “shut down our research and development operations.” Appx1078. In the court below, Collision speculated that if only Samsung had taken a license, Collision might have had enough money to survive. Appx2072-2074. But such

conjecture is not the sort of “credible evidence” of causation that a plaintiff must marshal. *Ridge Corp.*, 181 F.4th at 1234.

2. The District Court Overlooked Samsung’s Considerable Evidence Of The Harm That An Injunction Would Cause

Contrary to the district court’s conclusion, Samsung presented the sort of evidence under the third and fourth *eBay* factors that this Court has determined disfavor injunctive relief.

a. As an initial matter, Collision’s appellate arguments misunderstand the permanent-injunction posture. Collision states (Br. 18) that Samsung offered only “attorney argument” below because it did not present factual declarations as it might in a preliminary-injunction hearing. But the district court had observed an entire trial, and Samsung cited the trial record over twenty times. *See* D.Ct.Dkts.357, 379. Samsung also relied on secondary sources describing undisputed features of the market. *See* D.Ct.Dkt.357 at 17-19.

In reality, the facts relevant to the harm that Samsung would suffer from an injunction and the harm to the public interest were either undisputed or conceded:

- (i) the accused feature is found in over 270 million phones and tablets that Samsung has imported into the United States since 2017, accounting for 75% of Samsung’s American product line, Appx1983, Appx2184;
- (ii) Samsung accounts for 30% of the United States smartphone market, D.Ct.Dkt.357 at 19;

- (iii) non-infringing alternatives do not exist, Appx1446;
- (iv) eliminating the infringing feature would render the devices unable to connect with United States cellular networks, Appx1609-1611;
- (v) the injunction would make it impossible for customers to obtain repairs from Samsung for the devices already on the market, Appx1477; and
- (vi) Samsung has 20,000 United States employees, Appx1562.

The district court did not cast doubt on these underlying facts. Nor did Collision seriously dispute any of them except the existence of non-infringing alternatives. But that objection directly contradicted its trial position and lacked support beyond conclusory assertions, Appx39, Appx1208, Appx1446-1448, so the district court properly rejected Collision's about-face, Appx39; *see also Interactive Gift Exp., Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1345 (Fed. Cir. 2001). Even on appeal, Collision does not point to a non-infringing alternative, arguing only that Samsung could abandon the infringing feature altogether. But deactivating a feature required for the devices to work with cellular networks would leave Samsung consumers who purchase replacement or upgraded devices unable to use them. Appx1447-1448.

Further, because the technology at issue lives in the devices' chipsets, making any changes would be a massive undertaking, requiring far longer than a one-month grace period. In particular, it would require the participation of third-party chipset suppliers such as MediaTek and Qualcomm. Appx1144-1146, Appx2178-2179.

The district court rejected Collision’s contrary suggestion that Samsung could easily avoid infringement by broadcasting a software update, and Collision does not claim clear error in that finding. Appx39. Although Collision says (Br. 28) that it was “uncontested” that Samsung could “simply issu[e] a software update for its products” to eliminate the infringing functionality, Samsung did contest it, *see* D.Ct.Dkt.379 at 8, and Collision offered only a conclusory declaration in support of its claim, which the district court was not required to credit.

b. Under this Court’s precedents, the district court’s finding that Collision failed to show a non-infringing alternative, combined with the undisputed facts about Samsung’s business and the market, demonstrates that an injunction would cause substantial harm to Samsung and the public interest. As Collision’s cited authority explains, when an injunction would shut down the defendant’s core product lines and no non-infringing alternatives exist, the defendant faces a significant hardship. *Bio-Rad Lab’ys, Inc. v. 10X Genomics Inc.*, 967 F.3d 1353, 1379 (Fed. Cir. 2020) (partially reversing injunction).

The district court, however, concluded that Samsung’s argument was equivalent to claiming that Samsung is “too big to be enjoined.” Appx38. But Samsung’s size is not the point. Rather, Samsung would be harmed by an injunction that would bar the vast majority of its product line from the United States market—

a self-evident proposition that would be equally true if Samsung were a small start-up.

The district court also claimed that the obvious harm to Samsung’s customers, contract partners, and 20,000 United States employees was irrelevant to Samsung’s harm “as an entity.” Appx38 (emphasis removed). That blinks reality. It is common sense that a massive disruption in a company’s product line would harm its relationships with customers, distributors, retailers, and employees. *See Amazon.com Servs., LLC v. Perplexity AI, Inc.*, 184 F.4th 1083, 1093 (9th Cir. 2026); *Monsanto Chem. Co. v. Perfect Fit Prods. Mfg. Co.*, 349 F.2d 389, 395 (2d Cir. 1965).

At any rate, those far-reaching harms undisputedly implicate the public-interest factor. It is true that given Samsung’s size, an injunction of the overwhelming majority of its United States product line would impose greater harm on the public interest than an injunction of a smaller company. But that is inherent in the nature of the *eBay* standard. Where large swaths of the public—customers, business partners, employees—are stakeholders in a successful company, sweeping injunctions against the vast majority of the company’s products will harm more people.

3. Collision's Ten-Year Delay In Seeking Injunctive Relief Disfavors A Permanent Injunction

Finally, the district court appeared to give no weight to Collision's extraordinary delay in seeking injunctive relief. Collision waited eight years after it became aware of the basis for its infringement case in 2015—when Samsung began selling the Accused Products—to bring suit. But even then, Collision sought neither preliminary injunctive relief nor an expedited proceeding. And even after prevailing at trial two years later, Collision waited two months to seek a permanent injunction and did not request expedited consideration. Indeed, Collision did not even bother to file its brief early in this appeal, despite burdening the Court with motions practice seeking a shorter briefing schedule. As a result, almost the entire term of the '492 patent has run.

That extraordinary delay disfavors a permanent injunction. As this Court has held, a “delay in bringing an infringement action and seeking a preliminary injunction are factors that could suggest that the patentee is not irreparably harmed by the infringement.” *Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1325 (Fed. Cir. 2012). Even a far shorter period of delay—17 months—“militates against the issuance of a preliminary injunction.” *High Tech Med. Instrumentation, Inc. v. New Image Indus., Inc.*, 49 F.3d 1551, 1557 (Fed. Cir. 1995). At minimum, were this Court to remand for further consideration, the district court would have an obligation to consider Collision's extraordinary delay. *Genband*, 861 F.3d at 1385.

Collision claimed below that it received notice of Samsung's alleged infringement not in 2015 when Samsung's products were sold publicly but in 2023 through a document issued by another company. But that document indicates only that Samsung was using algorithms from the 10th or 11th release of the LTE standard. Appx1313-1317. The same information was evident from Samsung's public LTE releases in 2015. Appx1146. Moreover, Collision admitted at trial that the real reason it did not bring suit earlier was that it "want[ed] to partner with [Samsung]." Appx1039-1040.

The short remaining term of the '492 patent—about 20 months—also blunts the severity of any irreparable harm. In *Electra-Med Corp. v. United States*, 791 F. App'x 179 (Fed. Cir. 2019), for example, this Court affirmed the denial of a permanent injunction based in part on "the brevity of the remaining term" in the contract at issue. *Id.* at 182. Here, Collision's delay not only undermines its claim of irreparable harm, but also tips the public interest further in Samsung's favor, because an injunction would cause substantial disruption in exchange for only a brief period of exclusion.

B. The Trial Record Does Not Contain Substantial Evidence Of Infringement

It goes almost without saying that "[t]here can be no injunctive relief without a corresponding prevailing claim." *Obsidian Sols. Grp, LLC, v. United States*, 54 F.4th 1371, 1376-77 (Fed. Cir. 2022). Here, Collision did not present substantial

evidence of infringement of claim 1 of the '492 patent. That provides an independent ground to affirm the order denying the injunction. *See, e.g., Dell Fed. Sys., L.P. v. United States*, 906 F.3d 982, 999 (Fed. Cir. 2018).

From the start, Collision's infringement case was plagued by a basic problem: Although all four of the asserted patents arose out of BAE Systems' work on *multiuser* detection, or "MUD," the accused functionalities involved a *single* user device receiving multiple data signals from a *single* base station. As Samsung detailed in the post-judgment motions currently pending in the district court, that basic problem led to numerous inconsistencies and impossibilities in Collision's infringement case and left its technical expert, Dr. Kowalski, to rely on conclusory assertions without any support in source code or other evidence.

A number of such errors and omissions permeated Dr. Kowalski's exceedingly brief direct testimony on infringement of the '492 patent. Appx1189-1193; D.Ct.Dkt.347 (Samsung's Rule 50(b) motion preserving arguments). For that reason alone, no injunction should issue. But because the district court has not yet resolved the post-judgment motions, were this Court to identify error in the district court's evaluation of the *eBay* factors and remand for reconsideration, it would have discretion to decline to reach infringement in this appeal. *See Rutila v. Dep't of Transp.*, 12 F.4th 509, 511 n.3 (5th Cir. 2021). But if the Court were otherwise inclined to direct the district court to enter an injunction, it should affirm the denial

on the ground that Samsung is entitled to judgment on infringement of the '492 patent.

1. Dr. Kowalski Did Not Testify That The Accused Products Perform The Claimed Function

Dr. Kowalski offered no testimony that the Accused Products perform the function of claim 1's means-plus-function element. The district court construed the element "multi-user detector decision unit using decision criteria to determine a selected multi-user detector" to require the function of "using decision criteria to determine a selected multi-user detector." Appx209-210. Yet Dr. Kowalski limited his analysis at trial to the *structure*, ignoring the function. Appx1190-1193. He identified algorithms (structure), Appx1191, but failed to explain how the function is met—not even telling the jury what function was required, let alone testifying how the corresponding structures in the Accused Products perform the function. He did not even mention the key term "decision criteria."

Such testimony is insufficient as a matter of law. This Court has been clear that "[f]unctional identity and either structural identity or equivalence are *both* necessary" for infringement of a means-plus-function claim. *Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1267 (Fed. Cir. 1999). A complete absence of evidence on function thus fails to meet the substantial-evidence standard. *See Genuine Enabling Tech. LLC v. Sony Grp. Corp.*, 167 F.4th 1196, 1202 (Fed. Cir. 2026) (Section 112(f)'s requirement of linking structure to a specific function is a

necessary price to avoid unbounded function claiming); *Pelican Int'l, Inc. v. Hobie Cat Co.*, 655 F. Supp. 3d 1002, 1022 (S.D. Cal. 2023) (striking expert's means-plus-function analysis because it failed to "utilize the precise function").

In its filings below, Collision pointed to Dr. Kowalski's testimony that the algorithms "deci[de] [] which [multi-user detector] to use" based on certain characteristics of the data (the "number of symbols" and "computational complexity"). D.Ct.Dkt.358 at 26 (citing Appx1190-1191). But that brief, opaque testimony never explains how the symbols or computational complexity are evaluated as "decision criteria," nor how those criteria are used to select a multi-user detector (*i.e.*, the required function). *See* Appx1191-1192.

The reason Dr. Kowalski failed to provide that explanation is no mystery. Attempting to do so would have exposed the basic mismatch between patents focused on multi-user detection and an accused functionality focused on single-user signals. Had Dr. Kowalski explained the "decision criteria" that the Accused Products use, it would have been immediately apparent to the jury that the accused decision unit never chooses between multiple users. Instead, it is the *base station*, not the accused handsets, that is in charge of structuring the MIMO transmissions to the phones. Appx897, Appx1629-1630, Appx1640-1642. As a result, even if, as Collision claimed at trial, the MIMO transmissions sent from a single base station to a single user device qualify as multiple users, any decision unit is located in the base

station, not the user device. Appx949-950. That means that the only products accused at trial do not infringe.

2. Dr. Kowalski's Testimony On The '492 Patent Was Entirely Conclusory

Dr. Kowalski's trial testimony on the other claim limitations was also entirely conclusory, offering only bare assertions that the Accused Products meet those limitations without explanation or citation to documentary evidence, such as source code, which would have undermined his testimony:

- **“A hybrid Multi-User Detector System for processing received signals”** Dr. Kowalski did little more than answer affirmatively when asked if this limitation was met and identify the algorithms he claimed to be the detectors. Appx1189-1190. He cited no source code or other evidence supporting his assertions.
- **“a parameter estimator coupled to said received signals providing received data information”** Dr. Kowalski stated only that the claimed parameter estimator is the “channel estimator that we've been speaking of” without explaining how a channel estimator meets the limitation or how it is coupled to the “received signals providing received data information.” Appx1190.
- **“a multi-user detector decision unit coupled to said parameter estimator and said received signals”** Dr. Kowalski did not address whether the claimed multi-user detector decision unit is “coupled to” the parameter estimator and received signals. Appx1190-1193.

- **“at least two multi-user detectors coupled to said parameter estimator and said multi-user detector decision unit, said multi-user detector decision unit using decision criteria to determine a selected multi-user detector, wherein said selected multi-user detector outputs a plurality of information streams, one stream corresponding to each of said received signals”** Collision’s attorney simply asked Dr. Kowalski whether certain phrases in this limitation other than the means-plus-function element were met and Dr. Kowalski answered “Yes” almost every time with no explanation or evidence. Appx1190-1193. Further, the examining attorney did not even ask about whether the “at least two multi-user detectors” are “coupled to . . . said multi-user detector decision unit,” and Dr. Kowalski provided no testimony about that requirement. Appx1190-1193. Moreover, Dr. Kowalski cited no source code or other evidence showing that the algorithms in the Accused Products use the number of symbols or computational complexity to decide which multi-user detector to employ.
- **“a bank of decoders coupled to said plurality of information streams, wherein said decoders output a plurality of improved information streams”** Dr. Kowalski stated that this limitation is met for the same reasons as the corresponding limitation in a different asserted patent, Appx1193, but his testimony regarding the other patent never explained how any “bank of decoders”

is “coupled to said plurality of information streams” or how the “decoders output a plurality of improved information streams,” Appx1187-1189.

Dr. Kowalski’s check-the-box exercise was not good enough for legal sufficiency. When a plaintiff’s expert “offer[s] conclusory testimony” without “support[ing] th[at] determination with any examinations or tests of the actual accused products,” judgment as a matter of law is warranted. *Kim v. ConAgra Foods, Inc.*, 465 F.3d 1312, 1320 (Fed. Cir. 2006); *see, e.g., Finesse Wireless LLC v. AT&T Mobility LLC*, 156 F.4th 1221, 1230 (Fed. Cir. 2025) (reversing denial of Rule 50(b) motion where plaintiff’s expert failed to identify where defendant’s technical documentation showed the claim limitation). This Court has not hesitated to direct entry of judgment for a defendant where the plaintiff’s infringement case rested on such “conclusory” testimony, because “just saying that something is so does not make it true.” *Dominion Energy, Inc. v. Alstom Grid LLC*, 725 F. App’x 980, 986 (Fed. Cir. 2018).

In its briefing below, Collision attempted to rehabilitate Dr. Kowalski’s testimony by citing various documents and other testimony in the record. D.Ct.Dkt.358 at 8-9. But Dr. Kowalski did not point to that evidence in providing his opinion on infringement of the ’492 patent. *See Finesse Wireless*, 156 F.4th at 1230.

Again, there is a reason that Dr. Kowalski offered no real explanation for his infringement conclusions. Collision's strategy was to run through the technical analysis so quickly that the jury would overlook the difference between multi-user detection and single-user systems and focus instead on Collision's allegations that Samsung stole Collision's idea during the failed base-station negotiations. *See, e.g.*, Appx2012-2022 (Collision's summation). But legal-sufficiency review exists to ensure that the legal requirements for infringement are met, regardless of the plaintiff's narrative at trial.

Dr. Kowalski's opinion also had a separate problem. A subset of the Accused Products contained chipsets produced by Qualcomm and MediaTek rather than Samsung. Appx2178. Dr. Kowalski's testimony for those products merely declared that the Qualcomm and MediaTek chipset code was similar to Samsung's and that the differences did not change his opinion. Appx1145-1146. He performed no limitation-by-limitation analysis for the Qualcomm and MediaTek chipsets and cited no evidence supporting his unexplained assertion that they were materially similar to Samsung's chipsets. Again, Dr. Kowalski's bare say-so is insufficient.

3. Dr. Kowalski's Testimony On Infringement And Marking Was Logically Inconsistent

Finally, Dr. Kowalski's testimony on infringement and marking was logically inconsistent and therefore insufficient to support an infringement finding.

By way of background, the Samsung technology uses two different kinds of

signals depending on whether the device is connected to a 4G LTE network or a 5G network. Cell-specific reference signals, or “CRS,” are reference signals used in 4G LTE. Appx1610. Demodulation reference signals, or “DMRS,” are reference signals used in 5G. Appx1268. Importantly, it is undisputed that both sets of products use signals that do not interfere with each other even when sent on the same channel (often denoted with the acronym OFDM or OFDMA). Appx1622.

In offering his opinions about why both the 4G LTE and 5G Accused Products infringe the asserted patents, Dr. Kowalski claimed that DMRS helps satisfy the patents’ claim elements. Appx1265-1267. But at a different point in his testimony, when addressing the base-station products that the companies Nokia and Ericsson sell, he claimed that those products do not map onto the patents because they use DMRS signals:

Q. Do the Nokia and Ericsson base station products receive CRS signals?

A. No.

Q. Do they use something called DMRS?

A. Yes, they do.

Q. How does DMRS handle colliding DMRS signals?

A. Well, there’s two basic ways. First of all, they transmit them in such a way that they don’t interfere with each other, or -- well, actually -- yes, they don’t interfere with each other, or they structure them so that any interference is completely minimized.

Q. So if the Nokia and Ericsson base stations are able to use that, what does that tell you about whether or not they use the patents at issue in this case?

A. They certainly wouldn't be using them.

Appx1205-1206 (emphasis added).

That glaring inconsistency reflected a strategy to maximize Collision's damages. By claiming in his infringement opinion that DMRS signals infringe, Dr. Kowalski aimed to ensure that all Accused Products would be included in the royalty base—as they ultimately were. But because the Nokia and Ericsson base-station products that Collision had licensed were not marked, Dr. Kowalski had to exclude those from his marking opinion. Otherwise, Collision would not be entitled to damages before Samsung received actual notice of infringement when Collision filed suit in December 2023. *See* 35 U.S.C. § 287(a).

As a result, Dr. Kowalski told the jury that the same technology meets the claim limitations for purposes of infringement but not marking. That cannot be correct. *Cf. Sterner Lighting, Inc. v. Allied Elec. Supply, Inc.*, 431 F.2d 539, 544 (5th Cir. 1970) (“A patent may not, like a ‘nose of wax,’ be twisted one way to avoid anticipation and another to find infringement.” (quoting *White v. Dunbar*, 119 U.S. 47, 51 (1886))). Such directly contradictory testimony involving issues on which Collision bears the burden—infringement and marking—renders it impossible to sustain any infringement finding. *Finesse Wireless*, 156 F.4th at 1227 (“This sort of confusing change of course is not sufficient to support the jury verdict.”).

In its filings below, Collision argued that Dr. Kowalski distinguished the

Nokia and Ericsson products on the ground that they schedule the DMRS signals to avoid collisions and thus do not need to use the patented technologies. D.Ct.Dkt.359 at 51-52. That is not what he said. He said that Nokia and Ericsson base-station products do not practice the patented technologies because they do not “receive CRS signals” and use DMRS signals instead. Appx1205. In the testimony cited by Collision, Dr. Kowalski does not mention “scheduling”—a *post hoc* invention of Collision’s counsel. Appx1205-1206.

CONCLUSION

Samsung respectfully requests that this Court affirm.

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Respectfully submitted,

/s/ John F. Bash

Sean S. Pak
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
(415) 875-6600
seanpak@quinnemanuel.com

John F. Bash
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
300 West 6th Street, Suite 2010
Austin, TX 78701
(737) 221-7006
johnbash@quinnemanuel.com

Victoria F. Maroulis
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
(650) 801-5000
victoriamaroulis@quinnemanuel.com

Kevin Hardy
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
555 13th Street NW, Suite 600
Washington, DC 20004
(202) 538-8240
kevinhardy@quinnemanuel.com

John Thomas McKee
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
295 5th Avenue
New York, NY 10016
(212) 849-7000
johnmckee@quinnemanuel.com

Arian J. Koochesfahani
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
(213) 443-3000
ariankoochesfahani@quinnemanuel.com

*Counsel for Appellees Samsung
Electronics Co., Ltd., and Samsung
Electronics America, Inc.*

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Circuit Rule 32(b)(1) because it contains 13,799 words, excluding the parts of the brief exempted by Federal Circuit Rule 32(b)(2).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because the brief has been prepared in a proportionally spaced typeface in 14-point Times New Roman font.

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/s/ John F. Bash

John F. Bash

*Counsel for Appellees Samsung
Electronics Co., Ltd., and Samsung
Electronics America, Inc.*