

No. 16-1102

IN THE
Supreme Court of the United States

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG
ELECTRONICS AMERICA, INC., AND SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC,
Petitioners,

v.

APPLE INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly held on the record in this case that Samsung failed to prove by clear and convincing evidence that two of Apple's patents were obvious as a matter of law.

2. Whether the court of appeals correctly directed entry of a narrowly tailored injunction against infringement by a direct competitor after determining that Apple had established that each of the four traditional equitable factors favored injunctive relief.

3. Whether the court of appeals correctly held that the jury's verdict of infringement of a now-expired patent was supported by substantial evidence.

CORPORATE DISCLOSURE STATEMENT

Respondent Apple Inc. has no parent corporation. No publicly held corporation owns 10% or more of Apple's stock.

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BRIEF IN OPPOSITION

INTRODUCTION

Samsung's petition challenges two Federal Circuit decisions, neither of which implicates any broad or disputed question of substantive patent law.

In the first decision, a Federal Circuit panel initially overturned a judgment rejecting Samsung's invalidity defenses and holding Samsung liable for infringing three Apple patents. The panel reached that result by relying on extra-record sources and substituting its own assessment of the evidence for the jury's. The *en banc* Federal Circuit granted rehearing for the sole

purpose of affirming its “understanding of the appellate function,” including the importance of reviewing factual findings deferentially and not considering materials outside the record. Pet. App. 4a. Under the correct standard of appellate review—and with its review limited to the trial record—the *en banc* court held that substantial evidence supported the key factual findings underlying the jury’s verdict. The *en banc* court’s intervention under these circumstances was entirely appropriate, and its application of settled patent law to the record in this case does not warrant this Court’s review.

Indeed, the *en banc* Federal Circuit did not alter—or even purport to address—any broader issue of substantive patent law. Even the dissenting judges made that clear. Judge Reyna stated that the appeal presented only “extremely narrow questions” concerning “[the] application of existing law” to the record in this case. Pet. App. 104a. Chief Judge Prost echoed those sentiments. *Id.* 56a (“There was no need to take this case *en banc*.”). And Judge Dyk conceded that, even in his view, the *en banc* court at least “purport[ed] to apply established circuit law.” *Id.* 80a. Thus, although the three members of the original panel (and only those members) disagreed with the outcome, they all agreed that the *en banc* decision relied on the application of settled law to the record of this particular case.

Samsung has not identified any novel or important legal principle implicated by the *en banc* decision. Samsung repeatedly contends that the *en banc* court improperly treated obviousness as a question of fact, but it cannot dispute that the court analyzed the ultimate *legal* question of obviousness for the challenged patents. And although Samsung suggests the *en banc* court created “new rules” about the relevance of prior

art and secondary considerations in the obviousness analysis, both the *en banc* opinion and subsequent Federal Circuit cases belie that contention. As the *en banc* court explained, it did nothing more than “appl[y] existing obviousness law to the facts of this case” (Pet. App. 5a)—including principles that Samsung itself has strongly endorsed when they suited its purposes.

Samsung’s other challenge to the *en banc* decision—the third question presented—is also uncertworthy, and is likely included only to press *some* challenge to the patent that accounted for over 80% of the damages awarded. Samsung asks the Court to decide whether the *en banc* court correctly upheld the jury’s factual finding that Samsung infringed that now-expired Apple patent. Neither Samsung nor its amici contend that the issue independently deserves review. In any event, the argument rests on a mischaracterization of the Federal Circuit’s infringement analysis, which was correct and amply supported by the record.

In the other decision Samsung challenges, the Federal Circuit vacated the district court’s denial of Apple’s request for a narrowly tailored permanent injunction against Samsung’s infringement. This Court has already denied one Samsung petition seeking review of that decision. That prior petition challenging the exact same judgment raises serious questions as to the Court’s jurisdiction to consider this second one, and Samsung’s intervening admission that it “long ago” designed around Apple’s unexpired patents establishes that the decision has had no meaningful impact on Samsung. This case would thus be a poor vehicle to address any questions about injunctions in patent cases.

Besides, Samsung shows no legal error in the Federal Circuit’s injunction analysis, let alone one im-

portant enough to warrant review. The Federal Circuit explicitly required Apple to demonstrate a causal connection between its irreparable injuries and Samsung’s infringement. Apple and Samsung thus agree as to the operative legal principles; they only disagree about the correctness of the Federal Circuit’s application of those principles to this record. The Federal Circuit applied the traditional test set out in *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006), and found that all four factors favored issuing the injunction. That is unsurprising: Samsung and Apple are direct competitors, Apple produced abundant evidence showing that consumers value the patented features, and (as Samsung’s own amici acknowledge) the injunction is appropriately narrow, requiring only that Samsung excise specific infringing features that it had represented could be easily replaced.

The petition should be denied.

STATEMENT

A. Apple’s Revolutionary iPhone And The Patents-In-Suit

Ten years ago, the iPhone revolutionized the smartphone market. Pet. App. 161a. The development of that groundbreaking product required years of research and development by hundreds of Apple engineers. *Id.*; A10424-10426, A10444 (14-1802).¹ The iPhone enjoyed tremendous commercial success and garnered immediate, widespread industry praise. Pet. App. 162a-163a.

¹ “A” refers to the court of appeals appendix. Because the petition concerns two separate Federal Circuit appeals, a parenthetical after each record citation indicates the case number of the cited appendix.

Apple obtained numerous patents to protect its innovative work. Pet. App. 162a. Three of those patents are relevant here: U.S. Patent Nos. 5,946,647 (“the ’647 patent”), 8,046,721 (“the ’721 patent”), and 8,074,172 (“the ’172 patent”).

The ’647 patent claims a “quick links” feature that “detects ‘data structures’ within text” (such as phone numbers or email addresses) and “generates links to specific actions that can be performed for each type of detected structure.” Pet. App. 162a; A597, A10830-10835 (15-1171). For example, if a user receives an email containing a phone number, a smartphone using the ’647 patent’s invention can detect the phone number and create a link that gives the user the option to dial the number or store it in an address book. Pet. App. 162a. The ’647 patent expired in February 2016. A354 (14-1802).

The ’721 patent claims Apple’s iconic slide-to-unlock feature. Prior to the invention claimed in that patent, touchscreen devices were susceptible to accidental activation (“pocket dialing”). A10600-10602 (15-1171). The ’721 patent’s invention solved that problem with a touchscreen device that unlocks only when the user makes contact with an “unlock image” and continuously moves that image to a second, predefined location. Pet. App. 162a; *see* A685 (15-1171). The slide-to-unlock invention was a key feature of the original iPhone—so much so that Apple showcased its operation at the beginning of the very first iPhone advertisement. Pet. App. 162a.

The ’172 patent claims a method of automatically correcting spelling errors on a touchscreen device. Pet. App. 162a. Unlike alternative “autocorrect” features, which users had described as “jarring,” the ’172 patent

provides a user-friendly way to type more efficiently and accurately on a touchscreen device. A707-708 (15-1171); A10693-10707 (14-1802).

B. Samsung's Infringement

Consistent with its admitted reputation as a “fast follower,” rather than an innovator (A11703-11704 (14-1802)), Samsung chose to compete with Apple by copying the iPhone. As Samsung's internal documents make clear, “Samsung ‘paid close attention to, and tried to incorporate’ some of Apple's patented technology.” Pet. App. 162a-163a.

Samsung's documents show that Samsung studied the particular slide-to-unlock feature of the '721 patent through side-by-side comparisons with the iPhone. Pet. App. 172a; *see* A20197, A20274, A20347 (14-1802). Samsung similarly looked to the iPhone when incorporating the “quick links” feature of the '647 patent into its products. Pet. App. 172a. An internal report included a figure showing the “quick links” feature on the iPhone screen, and concluded that Samsung “[n]eed[ed] to improve usability by providing Links.” *Id.* (quoting A20584 (14-1802)). Samsung's internal design documents also copied a figure illustrating the '647 patent's invention from a paper authored by one of the patent's inventors. *Id.* (citing A20063 (14-1802)). And another internal document showed a customer request for a more user-friendly autocorrect feature like the one claimed in the '172 patent. A51488 (15-1171).

Samsung's strategy of copying succeeded. Its infringing products gained a significant share of the smartphone market. Pet. App. 168a-169a.

C. District Court Proceedings

1. In February 2012, Apple filed this lawsuit to halt Samsung's widespread, deliberate infringement of Apple's patents. The district court granted Apple's motion for summary judgment that Samsung infringed the '172 patent. Pet. App. 3a. The remaining claims proceeded to trial.

On the last day of trial, the Federal Circuit issued a decision in a separate case that construed the '647 patent. *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1304 (Fed. Cir. 2014). The district court extended the trial by a day to permit the parties' experts to address whether Samsung's products infringed the '647 patent under that new construction. Pet. App. 8a-9a, 222a-223a. The court then instructed the jury to apply the *Motorola* construction. *Id.* 223a.

The jury found that Samsung infringed Apple's '647 and '721 patents. Pet. App. 3a. The jury also rejected Samsung's invalidity defenses with respect to each of Apple's asserted patents. *Id.*; A40874 (15-1171).² The jury awarded \$119,625,000 in damages resulting from Samsung's sale of over 35 million infringing smartphones. Pet. App. 163a.³

2. After trial, Apple sought a narrowly tailored permanent injunction against Samsung's infringement.

² The jury separately determined that Samsung did not infringe two additional Apple patents and that Apple infringed one of two Samsung patents on which Samsung had counterclaimed. Pet. App. 113a-114a. Those findings are not before this Court.

³ The now-expired '647 patent accounted for over \$98 million of the damages award. A40876 (15-1171). The first two questions presented in Samsung's petition for certiorari have no effect on that portion of the judgment.

Apple did not seek to enjoin Samsung's devices in their entirety, but rather only Samsung's use of the *specific* features that infringed Apple's patents. A2696-2698 (14-1802). Apple also proposed a 30-day sunset period to permit Samsung to remove the infringing features. *Id.* Samsung had represented at trial that it had already developed alternatives to the infringing features, which it could implement in a matter of days. Pet. App. 163a-164a, 344a-345a.

Under the "four-part showing" required for injunctive relief, Pet. App. 299a-300a (citing *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)), the district court found that Apple had met its burden in several respects. The balance of hardships favored Apple: Apple would suffer "a substantial hardship" if forced to continue competing against its own technology in Samsung's infringing products, and Samsung would "face[] no hardship" from Apple's proposed injunction based on the ease with which it stated that it could remove the infringing features from its phones. *Id.* 348a-349a. The court also concluded that the public interest favored injunctive relief, which would "encourag[e] investment in innovation" while imposing "minimal" burdens on the public. *Id.* 349a-351a.

The district court further recognized that Apple's undisputed loss of market share and downstream sales due to direct competition from Samsung's infringing products "weigh[ed] in favor of finding irreparable harm." Pet. App. 322a. The district court also found that the harm from those lost sales "would be difficult to calculate and remedy," thus establishing the inadequacy of money damages. *Id.* 338a. Nevertheless, the court concluded that Apple had failed to demonstrate a sufficient "causal nexus" between Apple's irreparable

harm and Samsung's infringement. *Id.* 320a-331a, 335a-336a. According to the district court, Apple was required to show that the specific features claimed in the patents “[drove] consumer demand for Samsung’s infringing products.” *Id.* 327a. Applying that rigid rule, the court denied injunctive relief.

3. As relevant here, Samsung moved for judgment as a matter of law of noninfringement and invalidity of the '647, '721, and '172 patents. Pet. App. 219a-251a, 256a-259a. The district court denied those motions, finding substantial evidence to support the factual findings underlying the jury’s verdict of infringement and nonobviousness. *Id.*

D. The Federal Circuit’s Injunction Decision And Samsung’s Unsuccessful Petition For Certiorari

1. Apple appealed the district court’s denial of a permanent injunction. The Federal Circuit vacated the decision and remanded for entry of injunctive relief. Pet. App. 159a-183a.

The Federal Circuit rejected the district court’s impermissibly rigid interpretation of the “causal nexus” requirement. Pet. App. 168a-172a. It held that a patent owner need not show that the infringing features were “the *sole* cause of [its] lost downstream sales” or “the *exclusive or predominant* reason why consumers bought [the infringing] products.” *Id.* 170a-171a (emphases added). That rule would contravene this Court’s decision in *eBay* by effectively precluding injunctions for “entire industries of patentees”—namely, those with multi-feature products. *Id.*; *see also id.* 182a. The proper inquiry, the court held, is whether a patent owner can “show ‘some connection’ between the pa-

tented features and the demand for the infringing products.” *Id.* 170a.

The Federal Circuit then ruled that Apple had established a causal nexus between Samsung’s infringement and Apple’s lost sales and market share. Pet. App. 172a-176a. Apple had produced ample evidence demonstrating that Samsung had deliberately copied the patented features; that those features “influence consumers’ perceptions of and desire for” Samsung’s infringing products; that Samsung’s users had “criticized” noninfringing alternative features; and that consumers “were willing to pay considerably more for a phone that contained” the patented features. *Id.* That evidence was more than sufficient to prove that Samsung’s infringement had caused Apple’s lost sales.

The Federal Circuit concluded that all four equitable factors favored an injunction. Pet. App. 177a-178a. Under the correct causation standard, Apple had established irreparable harm that money damages could not adequately compensate. *Id.* And the Federal Circuit adopted the district court’s analysis for the balance of hardships and public interest factors, recognizing that both factors “strongly” favored an injunction on this record. *Id.* 178a-182a. Because the district court had abused its discretion by refusing to enjoin Samsung’s infringement, the court of appeals vacated the district court’s decision and remanded for further proceedings. *Id.* 182a.

Judge Reyna concurred separately to explain that Apple had also demonstrated irreparable injury to its reputation for innovation. Pet. App. 184a-202a. Chief Judge Prost dissented, arguing that the district court’s findings regarding lack of irreparable harm were supported by the record. *Id.* 203a-217a.

2. Samsung petitioned for panel rehearing and rehearing *en banc*. The panel granted rehearing to clarify a single aspect of its decision. As amended, the decision makes clear that Apple had shown the patented features were among the “several features that cause consumers to make their purchasing decisions.” Pet. App. 358a (quoting *Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d 1352, 1364 (Fed. Cir. 2013)). The Federal Circuit denied rehearing *en banc* without dissent. *Id.* 356a.

The case returned to the district court, which permanently enjoined Samsung’s use of the features that infringed the ’647, ’721, and ’172 patents. Dist. Ct. Dkts. 2157, 2158. The injunction included a 30-day window enabling Samsung to remove the infringing features from its products. Dist. Ct. Dkt. 2158 at 3. Samsung did not appeal the district court’s decision.

3. Samsung filed a petition for certiorari with respect to the Federal Circuit’s injunction decision. Rather than challenge the substance of the injunction decision, however, Samsung argued simply that the injunction was moot. Pet. i, *Samsung Elecs. Co. v. Apple Inc.*, No. 15-1386 (U.S. May 13, 2016). Samsung had separately appealed the liability judgment, and before the period for Samsung to file a petition for certiorari with respect to the injunction decision expired, a separate Federal Circuit panel had reversed the district court’s judgment on the merits of the infringement and invalidity issues. *See infra* p. 12. Samsung’s petition argued the injunction should be vacated as moot in light of that panel’s decision. In response, Apple pointed out that, because Apple had petitioned for rehearing of the liability decision, the injunction was not moot—a point Samsung then conceded in its reply. Reply Br. 1, No. 15-1386, *Samsung Elecs. Co. v. Apple Inc.* (U.S. June 6,

2016). This Court denied review. *Samsung Elecs. Co. v. Apple Inc.*, 136 S. Ct. 2522 (2016).

E. The Federal Circuit’s Merits Decision

1. As noted, Samsung separately appealed the liability judgment while Apple’s injunction appeal was pending. A panel of the Federal Circuit issued an opinion reversing the liability verdict with respect to the ’647, ’721, and ’172 patents.

Although Samsung had not appealed any claim construction issue regarding the ’647 patent, the panel consulted a variety of extra-record materials to interpret the ’647 patent, as well as to define the operation of Samsung’s infringing products. Pet. App. 118a-122a & n.5. None of those materials had been cited by the parties at trial or on appeal. The panel nonetheless reversed the jury’s infringement verdict as to the ’647 patent on an issue Samsung had never raised and based on a record of the panel’s own creation, not the record considered by the jury and the district court.

The panel also reversed the judgment that Apple’s ’721 and ’172 patents were not invalid. For both patents, the panel concluded that there was a “strong” case of obviousness merely because it believed the individual claim elements were separately known in the prior art. Pet. App. 130a, 136a, 147a. The panel also discounted Apple’s evidence of objective indicia of non-obviousness. *Id.* 135a-140a, 145a-147a.

2. The Federal Circuit granted Apple’s petition for rehearing *en banc* and, by an 8-3 majority, reinstated the liability judgment against Samsung. Only the judges on the original panel dissented from the *en banc* ruling.

The *en banc* court first explained its reasons for granting rehearing. The purpose was not to decide any novel or unsettled legal question, but rather “to affirm [its] understanding of the appellate function as limited to deciding the issues raised on appeal by the parties, deciding these issues only on the basis of the record made below, and as requiring appropriate deference be applied to the review of fact findings.” Pet. App. 4a. The court saw no need to solicit additional briefing or argument on those questions, because the panel’s missteps were readily apparent: it had “rel[ied] on extra-record ... evidence in the first instance,” “revers[ed] fact findings that were not appealed,” and failed to review the fact findings that *were* appealed under the deferential substantial evidence standard. *Id.* 5a.

The *en banc* court then considered whether the judgment of infringement for the ’647 patent was supported by the trial record. On that record, which included testimony from Apple’s expert demonstrating how the source code in Samsung’s accused products corresponded to claim 9 of the ’647 patent, the court upheld the jury’s infringement verdict. Pet. App. 16a, 20a-21a.

On the issue of obviousness for the ’721 and ’172 patents, the *en banc* court began by setting forth the framework for evaluating obviousness articulated by this Court in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), and *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). Pet. App. 22a. The court then evaluated the record evidence and resolved the ultimate legal issue of obviousness with respect to each patent. *Id.* 23a-53a.

For the ’721 patent, the court concluded that a jury could have reasonably found that a person of ordinary

skill would not have been motivated to apply the teachings of a wall-mounted touchscreen to the problem of smartphone pocket dialing. Pet. App. 30a-32a. The court also concluded that the record contained sufficient evidence of several objective indicia of nonobviousness, including industry praise, copying, commercial success, and long-felt need, which confirmed the nonobviousness of the '721 patent's invention. *Id.* 33a-45a. On this record, the court "agree[d] with the district court on the ultimate legal determination that Samsung failed to establish by clear and convincing evidence that claim 8 of the '721 patent would have been obvious." *Id.* 45a.

For the '172 patent, the court held that a jury evaluating the scope and content of the prior art under *Graham* could have reasonably found that the asserted references failed to disclose all limitations of the asserted claim. Pet. App. 52a. The court also noted that Samsung had not contested on appeal the evidence of several objective indicia of nonobviousness, including commercial success and industry praise. *Id.* 51a-52a. The court accordingly concluded that Samsung had not established obviousness by clear and convincing evidence. *Id.* 53a.

The three judges who had joined the now-vacated panel opinion dissented. Chief Judge Prost's dissent argued that there was "no need to take this case en banc," and expressed disagreement with the majority's application of the substantial evidence standard to the jury's factual findings. *Id.* 56a-57a; *see also id.* 63a-64a, 70a-74a.

Judge Dyk acknowledged that the majority did not "explicitly" alter any governing legal principle, but suggested that the decision would change the law of

obviousness by “inviting fact-finding to dominate the obviousness determination.” Pet. App. 81a.

Judge Reyna, like Chief Judge Prost, believed that “[t]he court should not have granted *en Banc* review in this case.” Pet. App. 103a. The *en banc* decision, he noted, “neither resolves a disagreement among the court’s decisions nor answers any exceptionally important question”; it is merely an “application of existing law to the facts of this case.” *Id.* 103a-104a.

3. Samsung petitioned for further rehearing *en banc*, arguing principally that the case did not raise any question of exceptional importance and was not worthy of *en banc* review in the first place. C.A. Dkt. 101 at 2 (15-1171). The *en banc* decision, Samsung argued, represented a “mere disagreement with the result the panel had reached.” *Id.* The Federal Circuit denied the petition for further rehearing without dissent. Pet. App. 354a.

REASONS FOR DENYING THE PETITION

I. THE FEDERAL CIRCUIT’S FACTBOUND OBVIOUSNESS DECISION DOES NOT WARRANT REVIEW

A. The Federal Circuit Applied Correctly-Stated And Well-Settled Law To The Facts Of The Case

Samsung challenges the Federal Circuit’s conclusion that Samsung failed to prove two of Apple’s patents obvious by clear and convincing evidence. The petition makes three arguments for its proposition that the court of appeals changed the law of obviousness, but all three either mischaracterize the decision below or misapprehend the governing law, or both. Properly understood, the *en banc* decision did not break new ground. Indeed, the court expressly stated that it “ap-

plied existing obviousness law to the facts of this case.” Pet. App. 5; *see also id.* 103a-104a (Reyna, J., dissenting). Samsung’s factbound challenge to the application of settled law does not warrant this Court’s review.

1. The petition first contends that the *en banc* court converted “the supposedly legal question of obviousness” into “one of fact.” Pet. 23. But Samsung does not and cannot dispute that the court properly recognized that “[o]bviousness is a question of law based on underlying facts.” Pet. App. 21a; *see KSR*, 550 U.S. at 427 (“[t]he ultimate judgment of obviousness is a legal determination” that turns on “certain questions of fact”); *Graham*, 383 U.S. at 17 (“the ultimate question of patent validity is one of law,” but obviousness “lends itself to several basic factual inquiries”). A court reviewing a jury verdict defers to the jury’s subsidiary factual determinations—whether explicit or implicit—as long as they are supported by substantial evidence, and then analyzes *de novo* the ultimate legal question of obviousness. Pet. App. 21a-22a; *Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1356-1357 (Fed. Cir. 2012).⁴ That is exactly what the Federal Circuit did here. It reviewed whether substantial evidence supported the factual findings underlying the jury’s verdict and then “examine[d] the legal conclusion

⁴ Other circuits likewise review the implicit factual findings underlying a jury verdict deferentially. *See Teutscher v. Woodson*, 835 F.3d 936, 944 (9th Cir. 2016); *Jennings v. Jones*, 499 F.3d 2, 7 (1st Cir. 2007); *Smith v. Diffie Ford-Lincoln-Mercury, Inc.*, 298 F.3d 955, 966 (10th Cir. 2002); *Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 925-926 n.3 (11th Cir. 2000); *Posr v. Doherty*, 944 F.2d 91, 95-96 (2d Cir. 1991). Samsung does not directly challenge that principle, which in any event is fully consistent with the well-established requirement that an appellate court view the evidence in the light most favorable to the verdict. *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 770 (2011).

de novo in light of those facts.” Pet. App. 22a; *id.* 43a-45a ('721 patent); *id.* 48a-53a ('172 patent).

Samsung’s real objection is to the court’s treatment of certain subsidiary determinations as factual rather than legal, including whether the prior art disclosed all elements of the claim and whether a skilled artisan would have been motivated to combine prior art references. Pet. 22-23. But such questions have long been treated as factual and subject to deferential review on appeal. Indeed, Samsung itself has argued that both questions—“what a reference teaches and whether a person of ordinary skill in the art would have been motivated to combine the teachings of separate references”—“are questions of fact that should be given great deference on appeal.” Samsung Appellant Br. 18, *Samsung Elecs. Corp. v. CCP Sys. AG*, No. 14-1401 (Fed. Cir. June 20, 2014).

Nor is treating those issues as factual inconsistent with *KSR* or *Graham*. *Graham* expressly described “the scope and content of the prior art” as an issue for the factfinder. 383 U.S. at 17; *see also KSR*, 550 U.S. at 427. And the question whether a skilled artisan would have been motivated to combine two prior art references is likewise a factual question based on the “scope and content” of those references and “the level of ordinary skill in the pertinent art,” which are likewise factual. *Graham*, 383 U.S. at 17; *see also* Pet. App. 29a-30a (collecting cases). “*KSR* did not change this rule.” *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1239 (Fed. Cir. 2010) (Dyk, J.). It merely “establish[ed] that the question of motivation to combine may nonetheless be addressed on summary judgment or JMOL in appropriate circumstances,” *id.*—namely, where the relevant facts “are not in material dispute,” *KSR*, 550 U.S. at 427.

Beyond these two particular issues, Samsung vaguely suggests that the Federal Circuit routinely takes “varying approaches” to the resolution of other factual questions in post-*KSR* obviousness cases, promising “dozens” of examples but citing only two cases from seven years ago. Pet. 21-22. Samsung’s two cited cases do not reveal any difference in approach, but rather the unremarkable fact that different records in different cases involving different patent claims can produce different outcomes. Neither of the cases Samsung cites produced any dissents from the judges on the panel or a single vote for rehearing *en banc*. Nor does Samsung identify any Federal Circuit judge who has suggested that the court’s jurisprudence is characterized by “dozens” of cases taking “varying approaches” to obviousness. *Id.* 21.

2. Samsung next asserts (at 24) that the decision below “created a new rule whereby a jury can disregard prior art if it is embodied in a different device.” Again, the Federal Circuit did no such thing. It held only that substantial evidence supported the jury’s finding that a skilled artisan would not have been motivated to combine *the two specific references* asserted by Samsung in this case.

Samsung’s invalidity theory for the ’721 patent relied on Neonode, a touchscreen phone that could be unlocked by a sweeping motion, and Plaisant, a publication that disclosed a variety of mechanisms for unlocking a wall-mounted touchscreen controller for air conditioning units. As Samsung acknowledged, Neonode did not disclose the elements of Apple’s patent claim requiring an unlock image that a user would move continuously from one location to another. A11976-11977 (15-1171). The question for the jury was whether a skilled artisan would have been motivated by something other

than hindsight to take that feature from Plaisant and incorporate it into Neonode.

The Federal Circuit held that the jury could reasonably have found that the differences between the two references were such that a skilled artisan would not have combined Plaisant with a smartphone. Plaisant would not and could not address the principal problem created by touchscreen smartphone devices: “pocket dialing.” Pet. App. 31a-32a; *id.* 42a & n.18 (citing A10600-10601 (15-1171)). Samsung challenged the jury’s finding on appeal by citing its expert’s conclusory testimony that “persons of skill in the art would look to other touch-based systems, such as Plaisant.” Samsung C.A. Reply Br. 20. The jury was, of course, entitled to reject that testimony. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150-151 (2000) (on motion for judgment as a matter of law, court “must disregard all evidence favorable to the moving party that the jury is not required to believe”).

Contrary to Samsung’s suggestion (at 24), the Federal Circuit nowhere suggested that Plaisant was categorically irrelevant just because it disclosed a device other than a smartphone. If there were any doubt on the point, it would be dispelled by the fact that, in other cases—including after the *en banc* decision in this case—the Federal Circuit has not hesitated to affirm findings of a motivation to combine teachings from different devices. *See, e.g., In re Ethicon, Inc.*, 844 F.3d 1344, 1350 (Fed. Cir. 2017) (affirming decision invalidating as obvious patent claims relating to stents, even though patent owner argued that a principal prior art reference was “directed to medical devices other than stents”); *Scientific Plastic Prods., Inc. v. Biotage AB*, 766 F.3d 1355, 1360 (Fed. Cir. 2014) (affirming decision that patents claiming resealable chromatography car-

tridges were obvious, despite patent owner’s argument that “chemists in laboratories would not look to ‘soda-pop’ bottle caps to solve problems with flash chromatography cartridges”).

3. Samsung also argues (at 25) that the Federal Circuit “created new law ... by elevating secondary considerations like commercial success and industry praise into a principal role.” Here, too, there is nothing new about the Federal Circuit’s decision, because this Court has long directed that secondary considerations may play a pivotal role in the obviousness analysis. This Court expressly “invited courts, where appropriate, to look at any secondary considerations that would prove instructive.” *KSR*, 550 U.S. at 415. Those considerations include evidence that the invention was a “commercial success,” evidence that it fulfilled “long felt but unresolved needs,” and evidence that others had failed to develop the patented invention. *Graham*, 383 U.S. at 17-18. These objective considerations enable courts to “guard against slipping into use of hindsight” and “resist the temptation to read into the prior art the teachings of the invention in issue.” *Id.* at 36; *see also KSR*, 550 U.S. at 421 (reiterating the need to avoid “the distortion caused by hindsight bias”).

Consistent with that precedent, the Federal Circuit has long held that courts *must* take secondary considerations into account whenever there is evidence to support them. Pet. App. 22a-23a. Although Samsung now suggests that, as a blanket matter, “secondary considerations should be given little weight” (Pet. 26), it never made such an argument below, and the point is therefore waived. Moreover, no member of the original panel in this case disputed the court’s obligation to consider secondary considerations. Pet. App. 125a (panel noting that “[s]econdary considerations ... must be con-

sidered”). And Samsung itself, citing *KSR*, has elsewhere conceded that courts “must consider secondary indicia of obviousness.” Samsung Opp. to Wistron Corp. Mot. for Summ. Adjudication of Invalidity 9, *Wistron Corp. v. Samsung Elecs. Co.*, No. 07-4748, Dkt. 208 (N.D. Cal. Nov. 20, 2008) (“Samsung *Wistron* Opp.”) (citing *KSR*, 550 U.S. at 406). Indeed, notwithstanding its present position that treating secondary considerations as “always relevant and often the most important evidence” contradicts this Court’s precedent (Pet. 26), Samsung has elsewhere forcefully argued that secondary considerations “may be the most pertinent and probative evidence on the issue of obviousness” (Samsung *Wistron* Opp. 9). “Under certain circumstances,” Samsung argued, “the evidence of secondary considerations may be particularly strong and entitled to such weight that it may be decisive.” *Id.* (quoting *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 306 (Fed. Cir. 1985)). Contrary to Samsung’s newfound assertion, made for the first time to this Court, the Federal Circuit’s decision to consider all relevant evidence, including evidence of secondary considerations, adheres to this Court’s precedent.

Samsung next suggests that the Federal Circuit departed from existing law by deferring to the jury’s findings on “the *strength* of secondary considerations.” Pet. 26-27 (emphasis added). That again mischaracterizes the Federal Circuit’s decision. The court found substantial evidence to support the jury’s finding that Apple established objective indicia of nonobviousness. Pet. App. 33a-43a. It then concluded, as a legal matter, that those objective indicia—combined with the prior art and the remaining *Graham* factors—weighed in favor of nonobviousness. Pet. App. 45a; *see also id.* 53a. The court never suggested that secondary considera-

tions, standing alone, could establish nonobviousness if all the other *Graham* factors pointed strongly in the opposite direction.

Finally, Samsung is wrong to suggest (at 27) that the Federal Circuit failed to require a nexus between secondary considerations and the inventive aspect of the claim. On the contrary, the court ruled, for example, that Apple had presented substantial evidence of “industry praise *specifically for Apple’s slide to unlock invention,*” including internal Samsung documents recommending that Samsung’s unlocking feature “always shows guide text or arrow *like the iPhone.*” Pet. App. 34a-35a (emphases added). The court likewise identified substantial evidence to support “the jury’s fact-finding that Apple established a nexus between commercial success and the invention in claim 8.” *Id.* 37a. There is thus no danger that courts going forward will allow secondary considerations to render claims nonobvious “without any showing that the success or need was due to the particular patented improvement over the prior art.” Pet. 27-28. Once again, intervening decisions prove the point: the Federal Circuit just recently reiterated that “a nexus must exist ‘between the [secondary considerations] evidence and the merits of the claimed invention.’” *Novartis AG v. Torrent Pharm. Ltd.*, 853 F.3d 1316, 1330 (Fed. Cir. 2017). The *en banc* decision thus did not alter the legal standards under which secondary considerations are evaluated.

4. Unable to point to any important legal issue implicated by the court of appeals’ obviousness analysis, Samsung claims that review is warranted because the *en banc* Federal Circuit issued its decision without requiring further briefing or argument. Pet. 2; *see also id.* 18-20. But the procedure the Federal Circuit followed shows precisely that the *en banc* court did noth-

ing more than apply well-settled principles that did not need further elucidation—as the court itself explained (Pet. App. 4a-5a)—which only reinforces that the case is *unworthy* of this Court’s review. Rather, it was the vacated *panel* decision—not the *en banc* decision—that departed significantly from this Court’s guidance regarding the proper role of an appellate court. *See Teva Pharm., Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015) (appellate court must review subsidiary factual findings with deference); *Reeves*, 530 U.S. at 150 (court must decide whether to grant judgment as a matter of law based on “all of the evidence *in the record*” (emphasis added)); *Amadeo v. Zant*, 486 U.S. 214, 228 (1988) (appellate court cannot “engage in impermissible appellate factfinding”). The *en banc* court simply corrected course and applied settled law to the actual trial record, something the panel decision had failed to do. The *en banc* court was within its authority to determine that the panel’s case-specific errors could be corrected based on the already ample written submissions of record.

B. The Federal Circuit’s Decision That The Patents Are Not Obvious Was Correct

Even if Samsung’s obviousness arguments were anything other than a request for factbound error correction, there is no error to correct. Samsung had the burden to demonstrate obviousness by clear and convincing evidence, and it failed to carry it. *See Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. 91, 102-103 (2011).

1. This Court has emphasized that a patent “is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR*, 550 U.S. at 418. To demonstrate obviousness, “it can be important to identify a reason that would have prompted a person of ordinary skill in the

relevant field to combine the elements in the way the claimed new invention does.” *Id.* Samsung failed to make that showing as to the prior art references it contended rendered the ’721 patent obvious.

The Federal Circuit correctly held that substantial evidence supported the key factual findings underlying the jury’s verdict. Pet. App. 44a-45a. A skilled artisan would not have been motivated to combine the Plaisant and Neonode references. *Supra* pp. 13-14. And the jury could also reasonably have found a nexus between the patented slide-to-unlock feature and several secondary considerations, including industry praise, copying, commercial success, and long-felt need. *Supra* p. 14. On this record, the court properly concluded that Samsung had failed to demonstrate that the ’721 patent was obvious.

2. The autocorrect feature claimed in the ’172 patent recites a user interface that includes two separate areas: a “first area” that displays the text as input by the user, and a “second area” that displays both the current text and a suggested replacement. Pet. App. 46a. Samsung challenged the validity of the ’172 patent based on the combination of two references: a patent that describes a text correction system (Robinson), and a publication that describes a text *completion* system (Xrgomics). *Id.* 48a-49a.

The Federal Circuit correctly held that a jury could reasonably conclude that Robinson and Xrgomics, even taken together, did not disclose all the elements of Apple’s ’172 patent. Apple’s expert testified that Robinson did not disclose several claim limitations, including the display of the current text in the first area and the replacement of the current text in the first area when the user presses the space bar or selects a suggested

replacement. A12914-12916, A50935 (15-1171). A jury could also reasonably conclude that Xrgomics did not fill those gaps. Among other things, Xrgomics teaches that the *opposite* result occurs if the user presses the space bar—*i.e.*, the original text is kept, not replaced. A12917-12918, A21025, A50936 (15-1171). Apple also introduced substantial evidence of objective indicia of nonobviousness related to the patented autocorrect feature, *supra* p. 14, and Samsung did not meaningfully challenge that evidence on appeal. Pet. App. 51a-52a (noting that a footnote in Samsung’s brief was “hardly enough to constitute a meaningful dispute” regarding secondary considerations). Samsung therefore failed to carry its burden with respect to the ’172 patent.

* * *

Samsung points to no question of obviousness law warranting review of the Federal Circuit’s judgment, which simply applies settled standards of appellate review to a record that amply demonstrates that Apple’s ’721 and ’172 patents represented material advances over the prior art. Samsung’s first question presented accordingly does not deserve review.

II. THE FEDERAL CIRCUIT’S CASE-SPECIFIC INJUNCTION DECISION DOES NOT WARRANT REVIEW

A. This Case Is A Poor Vehicle

Samsung’s second question presented, regarding the standard for issuing injunctions, fares no better. Even if the question were worthy of review (which it is not), this is an inappropriate case in which to address it.

1. As explained above (at 11-12), this is Samsung’s second petition for certiorari regarding the Federal Circuit’s injunction decision. In its first petition, Samsung chose not to challenge the correctness of the

injunction decision, instead seeking only vacatur for mootness. This Court denied that petition, and Samsung's attempt to file a second petition on the same decision raises serious jurisdictional questions that this Court would need to confront before reaching the question presented.

Samsung's instant petition comes over a year after the Federal Circuit's judgment in the injunction appeal. The petition is therefore untimely because it was filed more than "90 days after entry of the judgment" in the injunction appeal. *See* S. Ct. R. 13.1; 28 U.S.C. § 2101(c). Samsung had already filed a timely petition challenging the Federal Circuit's injunction decision; nothing precluded Samsung from raising the arguments it now raises in that petition. Samsung cannot now belatedly challenge the injunction decision on grounds it could have raised in its earlier, timely petition but did not.

Samsung argues (at 4) that the "interlocutory decision on the injunction appeal is properly raised for certiorari now on final judgment." But the permanent injunction decision in this case is not the kind of interlocutory decision on which this Court has traditionally allowed multiple petitions. In cases like *Major League Baseball Players Association v. Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam opinion); *Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916); and *Mercer v. Theriot*, 377 U.S. 152, 153 (1964) (per curiam opinion), the interlocutory decisions led to further proceedings from which the petitioner appealed. Here, by contrast, the permanent injunction decision proceeded independently from the Federal Circuit's liability decision. As a result, Samsung is now challenging the *same Federal Circuit judgment* (dated December 16, 2015) as it did in its last petition. Certio-

rari jurisdiction is far from clear in this context, and this Court should not stretch to decide the question, which is highly unusual and arises only because of Samsung's own strategic decision not to raise its present arguments in its prior petition.

2. There is another reason this case is a poor vehicle: the injunction has had no meaningful impact on Samsung. The '647 patent expired in February 2016, so Samsung was never enjoined from using the "quick links" technology. Samsung represented at trial that it could design around the remaining two patents "quickly and easily" (Pet. App. 164a), and Samsung has since stated that it "long ago designed around [those] patents" (Dist. Ct. Dkt. 2009 at 15). The injunction has thus had no practical impact on Samsung, and vacating it would not materially alter Samsung's position.

Samsung's ongoing compliance with the injunction also imposes no burden on Samsung. Although Samsung attempts (at 17) to portray the injunction as one that covers the entire product, it in fact only barred Samsung's use of *specific features* that were found to infringe Apple's patents-in-suit. *Supra* p. 11. As Samsung's own amici admit, "a narrowly tailored injunction aimed at excising the infringing feature from the infringing product (a characteristic that is true for Apple's request here)" may be appropriate, especially "when there are close substitutes for the patented feature." Professors Br. 7. This is just such a case.

3. Finally, Samsung's concern about the broader effects of the decision are unfounded. Not every patentee will be able to show (as Apple did) that it suffered irreparable harm, especially in cases where the infringer is not a direct competitor of the patentee (for instance, in the "patent troll" litigation invoked by

Samsung’s amici (HLF Br. 12)). Of those patentees that can establish that they suffered some irreparable harm, even fewer will be able to show that their injuries were caused by the defendant’s infringement (as Apple demonstrated here).⁵

Thus, even if Samsung had identified some legal error in the Federal Circuit’s analysis (which it did not), this Court should await a case that meaningfully turns on the issue and where there is no concern about this Court’s jurisdiction. If, as recent experience suggests, no such case is forthcoming, that will only confirm that the question did not merit the Court’s review.

B. The Federal Circuit’s Injunction Decision Correctly Applied Settled Law

Apart from this case’s unsuitability as a vehicle, the issue Samsung presents is itself unworthy of review. The Federal Circuit’s approval of a narrowly tailored injunction in this case faithfully applied this Court’s injunction precedent, including *eBay*.

Samsung argues (at 29) that an injunction requires proof of “harm *caused* by the legal violation that is the basis for an injunction.” But the Federal Circuit held exactly that: “[T]he patentee must show that it is irreparably harmed by the infringement,” which “re-

⁵ See, e.g., *Genband US LLC v. Metaswitch Networks Ltd.*, 211 F. Supp. 3d 858, 895 (E.D. Tex. 2016) (denying permanent injunction where plaintiff’s “presentation of evidence does not satisfy its burden to show causal nexus”), *appeal docketed* No. 17-1148 (Fed. Cir. Nov. 2, 2016); *Integra Lifesciences Corp. v. Hyperbranch Med. Tech., Inc.*, 2016 WL 4770244, at *24 (D. Del. Aug. 12, 2016) (recommending denial of preliminary injunction because plaintiffs did not make “a strong showing of a nexus between any harm they face and the patented features of the Accused Products”).

quires proof that a ‘causal nexus relates the alleged harm to the alleged infringement.’” Pet. App. 165a-166a (quoting *Apple Inc. v. Samsung Elecs. Co.*, 695 F.3d 1370, 1374 (Fed. Cir. 2012)). Although Samsung (at 8-9, 30) invokes Chief Judge Prost’s dissent, the dissent’s “central problem” with the majority’s opinion was not with its statement of the law, but with its understanding of the record and application of the law to the facts of this case (Pet. App. 208a-209a).

Consistent with *eBay* and *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), the Federal Circuit ruled that Apple’s irreparable harm was caused by Samsung’s infringement: “Apple loses sales because Samsung products contain Apple’s patented features.” Pet. App. 176a (emphasis added); see also *id.* (“Apple did, however, show that ‘a patented feature is one of several features that cause consumers to make their purchasing decisions.’” (emphasis added)). In so ruling, the Federal Circuit recognized that “[t]he purpose of the causal nexus requirement is to establish the link between the infringement and the harm, to ensure that there is ‘some connection’ between the harm alleged and the infringing acts.” *Id.* 168a.

That conclusion is amply supported. Not only did the evidence establish that “Samsung was Apple’s biggest rival” and “fiercest competitor,” but also, as the Federal Circuit observed (Pet. App. 176a):

Apple established that customers wanted, preferred, and would pay extra for [the infringing] features. Apple established that Samsung believed these features were important and copied them. The evidence establishes that Samsung’s carriers and users wanted these features on phones. The

evidence establishes that Apple believed these features were important to customer demand.

Samsung (at 29-30) latches on to the words “some connection” in the court’s opinion. But Samsung itself has employed that locution, agreeing in previous briefing that “[t]o prove a causal nexus between infringement and harm where the harm is tied to lost sales, a patentee must show ‘some connection between the patented feature and demand for [the accused] products.’” C.A. Dkt. 110 at 2 (14-1802) (citation omitted).⁶

Nor would anything in the Federal Circuit’s opinion “give rise to an injunction in virtually any case involving a competitor’s infringement of a patented feature.” Pet. 30. Rather, the Federal Circuit rejected the district court’s rigid rule that would have automatically *precluded* an injunction in cases involving products with multiple components, by requiring patentees “to prove that the infringement was the sole cause of the lost downstream sales.” Pet. App. 170a; *see also id.* 171a (“The district court thus erred when it required Apple to prove that the infringing features were the exclusive or predominant reason why consumers bought Samsung’s products to find irreparable harm.”). The Federal Circuit explained that “[t]hrough the fact that the infringing features are not the only cause of

⁶ Previous Federal Circuit decisions used the “some connection” language that Samsung now claims is unsupported by any case law. *Apple*, 735 F.3d at 1364, 1368 (“Apple *must show some connection* between the patented feature and demand for Samsung’s products.” (emphasis added)); *Apple Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1324 (Fed. Cir. 2012) (“[T]he district court was correct to require a showing of *some causal nexus* between Samsung’s infringement and the alleged harm to Apple.” (emphasis added)). Those cases did not prompt a flood of unwarranted injunctions; neither will this one.

the lost sales may well lessen the weight of any alleged irreparable harm, it does not eliminate it entirely,” and “[t]o say otherwise would import a categorical rule into this analysis.” *Id.* 170a-171a; *see also id.* 170a (explaining that the “causal nexus requirement ... is a flexible analysis, as befits the discretionary nature of the four-factor test for injunctive relief”).

Samsung also takes issue (at 30) with the Federal Circuit’s mention of the patentee’s “right to exclude.” But this Court has never suggested that the “right to exclude” could not be considered. *eBay*, 547 U.S. at 391-394. Indeed, the Chief Justice expressly noted the relevance of the statutory right to exclude in *eBay*: “the difficulty of protecting a right to *exclude* through monetary remedies ... often implicates the first two factors of the traditional four-factor test.” *Id.* at 395 (Roberts, C.J., concurring).

Finally, Samsung argues that “the panel majority created a ... patent-only sub-rule by holding that the public interest ‘generally’ favors injunctions in ‘every case,’ and that it ‘nearly always’ favors injunctions in patent cases.” Pet. 30 (citing Pet. App. 181a). That mischaracterizes the Federal Circuit’s decision, which clearly cited *eBay* as requiring “the patentee to show that ‘the public interest would not be disserved by a permanent injunction.’” Pet. App. 180a (quoting *eBay*, 547 U.S. at 391). The Federal Circuit relied on not just the “public interest in protecting patent rights,” but also “the nature of the technology at issue” and “the limited nature of the injunction” in correctly concluding

that the public interest factor strongly weighed in Apple's favor. *Id.* 182a.⁷

Ultimately, Samsung's petition does no more than reargue the Federal Circuit's application of the correctly-stated *eBay* factors to the particular record in this case. Such a case-specific argument is unworthy of certiorari.

III. SAMSUNG'S THIRD QUESTION PRESENTED SEEKS FACTBOUND ERROR CORRECTION REGARDING INFRINGEMENT OF AN EXPIRED PATENT, WHICH DOES NOT MERIT THIS COURT'S REVIEW

Samsung's third question presented is a factbound attack on the Federal Circuit's affirmance of a judgment that Samsung infringed the now-expired '647 patent. Even Samsung does not argue that the issue is a novel or important legal question independently worthy of certiorari. Pet. 31.

1. Even if Samsung's contentions on the third question were supported by the record (which they are not, *see infra* p. 34), the question would not warrant review. At most, Samsung asks this Court to correct an alleged error that has no consequence in any other

⁷ Samsung's reliance on comments made at oral argument (Pet. 2-3) are both unfair to the court below and beside the point. Although Judge Moore said that she disagreed with the result in *eBay*, she immediately acknowledged that she was of course bound by it and that there is a "body of precedent now that *requires a causal nexus.*" Oral Argument at 8:40-8:50, *Apple Inc. v. Samsung Elecs. Co.*, No. 14-1802 (Fed. Cir. Mar. 4, 2015) (emphasis added), *available at* <http://oralarguments.cafc.uscourts.gov/default.aspx?fl=2014-1802.mp3>. Moreover, this Court is concerned not with one judge's comments at oral argument, but with the Federal Circuit's *opinion*, which faithfully accepted and applied *eBay*.

case—and no consequence even for Samsung going forward, as the '647 patent is now expired. That alone is reason to deny review on this question.

Samsung purports (at 34) to compare its question presented with those at issue in *Limelight Networks, Inc. v. Akamai Technologies, Inc.*, 134 S. Ct. 2111 (2014), and *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 520 U.S. 17 (1997), but the comparison is inapt. Both of those cases presented *legal* disputes regarding when a defendant (in *any* case) could be held liable for infringement; Samsung's petition presents no such question.

Specifically, in *Limelight*, this Court considered and rejected the Federal Circuit's conclusion that a defendant could be liable for inducing infringement if it "carries out some steps constituting a method patent and encourages others to carry out the remaining steps—even if no one would be liable as a direct infringer." 134 S. Ct. at 2116. The question whether and under what circumstances a defendant could be liable for inducing infringement of method claims presented an important legal question with applicability to many other cases. Similarly, *Warner-Jenkinson* decided the continuing vitality and scope of the doctrine of equivalents, with broad application to other cases. 520 U.S. at 21.

Here, the Federal Circuit neither relied upon nor declared any novel doctrine or legal rule regarding infringement. It did not need to. The *en banc* court simply ruled that the record supported the jury's factual finding that Samsung infringed claim 9 of the now-expired '647 patent—a straightforward and correct conclusion with no consequence for any other case. Pet. App. 7a.

2. Samsung’s argument is also factually inaccurate. Samsung disputed whether substantial evidence showed that it employed “an analyzer server for detecting structures in the data, and for linking actions to the detected structures.” Pet. App. 7a; Pet. 32. That “analyzer server” limitation was construed to mean “a server routine separate from a client that receives data having structures from the client.” Pet. App. 9a. The parties presented evidence at trial directly addressing the question of Samsung’s infringement under that claim construction. *Id.* 8a. The jury was instructed to apply that construction, and neither party challenged that claim construction on appeal. *Id.* 9a.

Samsung now alleges that the *en banc* Federal Circuit failed to consider two elements of the claim: “whether there was a ‘server’ routine and whether the accused routine ‘receives data.’” Pet. 32. That argument is meritless. The Federal Circuit’s *en banc* opinion twice stated that the relevant “issue on appeal” was whether Samsung infringed the “analyzer server” limitation of the ’647 patent, which was construed to mean “a server routine separate from a client that receive[d] data having structures from the client.” Pet. App. 9a (emphases added); *id.* 14a (same). That is, the Federal Circuit twice recited the very definition of “analyzer server” that Samsung now complains was overlooked. The court’s opinion includes a comprehensive, multi-page discussion of the argument and evidence regarding this limitation. *Id.* 9a-17a.

There is no doubt that the Federal Circuit considered and rejected Samsung’s contentions; Samsung pointed them out in its petition for further rehearing, which was denied without *any* dissent. Pet. App. 354a. Samsung’s complaint, at bottom, is that the Federal Circuit should have written a longer opinion, address-

ing each of Samsung's factbound challenges in all of their granular glory. Pet. 32 n.10. Samsung cites no case from this Court or any circuit imposing such a rule, which has nothing to commend it.

CONCLUSION

The petition should be denied.

Respectfully submitted.

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