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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

RADIAN MEMORY SYSTEMS LLC, *Plaintiff*, v. SAMSUNG ELECTRONICS CO., LTD., AND SAMSUNG ELECTRONICS AMERICA, INC. *Defendants*.	Civil Action No. 2:24-cv-1073 JURY TRIAL DEMANDED

SAMSUNG'S OPPOSITION TO RADIAN'S
MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Radian Memory Systems, Inc. ("Legacy Radian"), a California-based company founded in 2010, claims that it developed novel technology for use in memory products and that its technology was adopted, without Legacy Radian's consent, by the standard-setting organization called NVM Express ("NVMe") in the late 2010s. The alleged adoption of Legacy Radian's technology into an NVMe standard known as Zoned Namespaces ("ZNS")—years before the asserted patents issued or Samsung sold a single accused product—[redacted]

Finally, in mid-2022, the patents-in-suit began to issue. [redacted] But, unbeknownst to Radian, Samsung has effectively moved on from the technology at issue here, which made Samsung [redacted] at most.[1] The upshot is that the Court has ironclad bases to deny the instant motion.

[1] Samsung disputes that it has ever infringed Radian's patents. *See infra* at II.B.1.

First, Radian lacks Article III standing to seek injunctive relief. The Constitution does not permit Radian to seek injunctive relief unless Radian can establish a substantial likelihood of future injury. But Radian cannot do so, because the market is moving on from the technology at issue and Samsung has not sold products incorporating it for over two years. As a result, the Court should deny Radian's motion without reaching the merits.

Second, Radian's motion fares no better on the merits because Radian fails to carry its burden of satisfying any of the four criteria that must be met to grant a preliminary injunction. Most glaringly, Radian fails to establish a likelihood of irreparable harm. Apart from the standing defect noted above that shows the absence of any cognizable harm, Radian's argument is self-refuting because it turns on conduct by ***NVMe*** that occurred ***before*** Radian's patents issued and on harms that belong to a ***different*** entity. The crux of Radian's complaint is that NVMe's adoption of the ZNS standard pushed its namesake from the market before its patents could issue. As a result, there is no evidence of the requisite causal link between the nosedive taken by the legacy company (between 2017 and 2021) and any subsequent infringement by Samsung post mid-2022. Moreover, any commercial injuries that persist would not belong to this plaintiff; they would belong to the original operating entity that still exists. These fundamental issues doom Radian's argument. But the Court has ample additional grounds to reject it, including because Radian delayed several years before seeking relief and intends to monetize its patents going forward.

Radian virtually confesses that only a new legal precedent could allow it to satisfy the criterion of irreparable harm here—namely, a new rule under which ongoing infringement is, as a matter of law, irreparable harm. But this proposal runs into a wall of precedent erected by the Supreme Court and Federal Circuit. Indeed, the conflict is so clear that Federal Circuit has rejected Radian's ***exact*** argument via summary affirmance. As that decision implies, it would depart from

stare decisis to accept Radian's argument here—especially in this preliminary posture where the question is one of likely success and Radian is particularly unlikely to succeed.

Radian also fails to show a likelihood of success on the merits. The infringement opinion of Radian's expert is fatally flawed because it relies on a general comparison between the NVMe specification that Radian believes embodies its technology and public documentation describing Samsung products. By contrast, Samsung's expert relies on information provided by Samsung's principal engineer to show that the accused products do not infringe the patents at issue. Moreover, even at this early stage, there are substantial doubts as to the validity of Radian's patents.

Finally, the remaining equitable factors favor denial of the motion. The balance of harms is at best neutral because a grant of a preliminary injunction would have no real-world effect. But the public interest favors Samsung because Radian seeks to depart from long-settled precedent in a preliminary posture. [redacted] This wrongful attempt at self-help further tips the scales of equity in Samsung's favor.

Samsung respectfully requests that the Court deny Radian's motion.

BACKGROUND

A. Factual Background

As relevant here, Plaintiff Radian Memory Systems LLC ("Radian") alleges (Mot. 1-2) that Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, "Samsung") infringe two patents—U.S. Patent Nos. 11,544,183 and 11,347,656, issued in January 2023 and May 2022, respectively—related to cooperative flash management technology for solid-

state drives (SSDs).[2] Radian claims that it pioneered a new paradigm for flash-storage media and that Samsung, as a member of the NVMe organization that developed the Zoned Namespaces ("ZNS") specification, incorporated Radian's patented technology into that specification and used it in its products. [redacted] Radian refers (Mot. 5) to alleged Samsung product lines PM1731a, PM1733, PM1735, PM9731a, and PB SSD, and alleges that these products infringe the first claim of the '183 and '656 patents, respectively.

Radian's allegations begin with a different company formed in 2010 in California bearing the same name (hereinafter, "Legacy Radian"). [redacted] Between 2010 and 2019, Legacy Radian allegedly created "symphonic" cooperative flash-management technology, leading to product lines embodying this technology. [redacted] In 2017, Microsoft allegedly encouraged the industry to adopt technology similar to Legacy Radian's. Dkt. 43-13 (Declaration of Mike Jadon ("Jadon Decl.")) ¶ 21. In response, the standard-setting body NVMe purportedly began to develop a corresponding technical specification. *Id.* [redacted] Legacy Radian refused because it did not wish to comply with NVMe's rule that its members offer royalty-free licenses to one another. Jadon Decl. ¶ 23. Legacy Radian's business "dropped off a cliff" shortly thereafter. *Id.* at ¶ 23. [redacted]

[2] Radian asserts only these two patents for purposes of its motion for a preliminary injunction.

[redacted] In the interim, in June 2020, NVMe released the ZNS specification. [redacted] Approximately one year later, in May 2022, Legacy Radian obtained the first patent at issue. Dkt. 43-14 (Declaration of Mark Jones ("Jones Decl.")) ¶ 23. Two years passed. [redacted] The Texas entity is the plaintiff here. [redacted]

According to Samsung's Principal Engineer, the market is moving on from the ZNS specification and Samsung has not sold products implementing that specification [redacted]. Declaration of Junseok Park ("Park Decl.") ¶¶ 5-12. The PM1731a product line [redacted] for a total of [redacted]. *Id.* at ¶ 4. The PM1733 line does not support ZNS. *Id.* at ¶ 5. The PM1733a and PM1735a product lines theoretically could support ZNS but would need special firmware that no customer has ever requested. *Id.* at ¶¶ 6-8. The PM9731a product line does not exist. *Id.* at ¶ 9. The portion of the BM1733a product line that included ZNS firmware was sold to [redacted] for a total of [redacted]. *Id.* at ¶ 11. [redacted]. *Id.* at ¶ 10.

Regarding the technical aspects of infringement, Radian's expert, Dr. Jones, contends that the accused products practice each limitation of the first claims of the patents at issue. Jones Decl. ¶ 53. He primarily relies on Samsung's marketing documents and the terms of the ZNS

specification. *See generally id*. Samsung's expert, Dr. Swanson, explains that Samsung's products do not practice all the necessary limitations of the patents at issue. Declaration of Steven Swanson ("Swanson Decl.") ¶¶ 22-55. He primarily relies on the ZNS specification and information provided by Samsung's Principal Engineer.

B. Procedural History

Radian filed its complaint on December 24, 2024. Dkt. 1 ("Complaint"). Samsung answered on April 7, 2025. Dkt. 26. On April 18, 2025, Radian moved for a preliminary injunction and submitted a brief of 45 pages. Dkt. 38. On April 25, 2025, Samsung sought an extension to respond and an equal page limit. Dkt. 40. On May 1, 2025, the Court struck Radian's motion, authorized briefs of up to 25 pages, and imposed the default briefing schedule. Dkt. 42. Radian refiled five days later. Dkt. 43. Samsung has since deposed Radian's fact and expert witnesses.

ARGUMENT

I. RADIAN LACKS STANDING TO OBTAIN A PRELIMINARY INJUNCTION

It is black letter that "plaintiffs may lack standing to seek prospective relief even though they have standing to sue for damages." *Soc'y of Separationists, Inc. v. Herman*, 959 F.2d 1283, 1285 (5th Cir. 1992) (en banc) (citing *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983)). The fundamental predicate for seeking injunctive relief is a likelihood of future injury. "[C]ourts will not issue a preliminary injunction 'simply to prevent the possibility of some remote future injury.'" *Texas v. United States*, 86 F. Supp. 3d 591, 672 (S.D. Tex. 2015) (quoting 11A Charles Alan Wright et al., Federal Practice and Procedure § 2948.3 (3d ed. 2014)). Rather, "[t]o obtain forward-looking relief, the plaintiffs must establish a substantial risk of future injury that is traceable" to the defendants "and likely to be redressed by an injunction against them." *Murthy v. Missouri*, 603 U.S. 43, 45 (2024).

Here, there is no likelihood of future injury, and thus no standing to seek preliminary injunctive relief, for a simple reason: Samsung has not sold any products with ZNS functionality [redacted]. Park Decl. ¶¶ 4-12; *see Roper Corp. v. Litton Sys., Inc.*, 757 F.2d 1266, 1273 (Fed. Cir. 1985) ("[t]he record discloses that Litton does not presently make, and has no immediate plans to make, the accused oven."). Moreover, this situation is not likely to change. Due to shortcomings in ZNS technology, the market is moving to a different memory-management standard. Park Decl. ¶ 12. Accordingly, the Court must deny the motion for lack of Article III standing. *Murthy*, 603 U.S. at 56.

II. RADIAN FAILS TO SATISFY ANY OF THE FOUR PRELIMINARY-INJUNCTION FACTORS

Setting aside Radian's fundamental Article III standing problem, Radian also fails to satisfy any of the four preliminary-injunction factors. Because preliminary injunctions are "not unique to patent law," the Fifth Circuit provides the legal standard. *Tinnus Enters., LLC v. Telebrands Corp.*, 846 F.3d 1190, 1202-03 (Fed. Cir. 2017) (internal citation omitted). Accordingly, Radian must "clearly carr[y] the burden of persuasion by showing that: (1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm without an injunction, (3) the balance of equities tips in its favor, and (4) an injunction is in the public interest." *United States v. Abbott*, 110 F.4th 700, 706 (5th Cir. 2024) (cleaned up). In applying these factors to the record evidence, the Court looks to the law of the Federal Circuit because, in a patent-infringement case, these factors "reflect[] considerations specific to patent issues." *Tinnus Enters.*, 846 F.3d at 1202-03 (cleaned up). Radian's motion fails under this longstanding rubric.

A. Radian Fails To Show A Likelihood Of Irreparable Harm

1. Under Current Precedent, Radian Fails To Show Any Harm, Much Less Irreparable Harm

Any assessment of irreparable harm is fact-intensive. *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312, 1337-38 (Fed. Cir. 2012). The Court never presumes its existence, *Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1149 (Fed. Cir. 2011), and the violation of a patentee's right to exclude does not suffice to show it, *Reebok Int'l Ltd. v. J. Baker, Inc.*, 32 F.3d 1552, 1558 (Fed. Cir. 1994). "Price erosion, loss of goodwill, damage to reputation, and loss of business opportunities are examples of possible grounds for finding irreparable harm," *SmartSky Networks, LLC v. Gogo Bus. Aviation, LLC*, 2024 WL 358136, at *3 (Fed. Cir. Jan. 31, 2024), because they "tend to evidence irreparable harm" to the extent they are lost irretrievably or difficult to quantify. *TEK Glob., S.R.L. v. Sealant Sys. Int'l, Inc.*, 920 F.3d 777, 793 (Fed. Cir. 2019). But each case presents its own considerations. *E.g.*, *Nutrition 21 v. United States*, 930 F.2d 867, 871-72 (Fed. Cir. 1991) (regarding "losses in market share," "there is no *presumption* that money damages will be inadequate . . . [s]ome evidence and reasoned analysis for that inadequacy should be proffered."); *Bright Data Ltd. v. Teso LT, UAB*, 584 F. Supp. 3d 193, 197 (E.D. Tex. 2022) (Gilstrap, J.) ("several unique factors, present in this case, weigh against Bright Data's reliance on Oxylabs's status as a competitor"). For example, a delay in bringing suit tends to undercut any claim of irreparable harm. *Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1325 (Fed. Cir. 2012).

Where, as here, "the accused product includes many features of which only one (or a small minority) [allegedly] infringe . . . the patentee must also establish that the harm is sufficiently related to the infringement." *Apple Inc. v. Samsung Elecs. Co.*, 695 F.3d 1370, 1374 (Fed. Cir. 2012). That is, it must show that the infringing feature "impact[s] consumers' decisions to

purchase the accused devices." *Apple Inc. v. Samsung Elecs. Co.*, 809 F.3d 633, 642 (Fed. Cir. 2015).

Radian fails to show a likelihood of irreparable harm here, for multiple reasons. First, Radian's claim of irreparable harm stumbles out of the gate because Radian waited ***three years*** to seek preliminary relief. *See T.J. Smith & Nephew Ltd. v. Consol. Med. Equip., Inc.*, 821 F.2d 646, 648 (Fed. Cir. 1987) (denying preliminary injunctive relief due to "15 month" delay); *ZapIp LLC v. FlyDive Inc.*, 2017 WL 8292394, at *5 (C.D. Cal. Oct. 19, 2017) (same vis-à-vis "fourteen-month" delay); *Wireless Agents, L.L.C. v. T-Mobile, USA, Inc.*, 2006 WL 1540587, at *5 (N.D. Tex. June 6, 2006) (same vis-à-vis "one year" delay). The earliest patent at issue was granted in May 2022. Yet Radian, [redacted], waited until now to seek preliminary injunctive relief. "Absent a good explanation . . . a substantial period of delay . . . militates against the issuance of a preliminary injunction by demonstrating that there is no apparent urgency to the request." *High Tech Med. Instrumentation, Inc. v. New Image Indus., Inc.*, 49 F.3d 1551, 1557 (Fed. Cir. 1995). Radian's explanation for its three-year delay is not persuasive. Radian claims (Mot. 17) that it spent three years "diligently engaged" in efforts to "restructure" and "recapitalize" so as to "withstand" this litigation with Samsung. But Radian fails to explain why this took three years and thus fails to provide a satisfying justification for its extraordinary delay. *Cf. Straumann USA, LLC v. TruAbutment Inc.*, 2019 WL 6887172, at *5 (C.D. Cal. Oct. 1, 2019) (denying preliminary injunctive relief due to unexplained delay).[3]

Second, Radian alleges (Mot. 16-21) losses in market share and good will, but fails to show how Samsung's alleged infringement caused Radian to suffer these harms. *See Apple*, 695 F.3d at

[3] [redacted] Yet Radian never even took the low-cost step of writing to Samsung to request that it cease any alleged infringement.

1374 (stating that a showing of causation is required); *Koninklijke Philips N.V. v. Thales DIS AIS USA LLC*, 39 F.4th 1377, 1380 (Fed. Cir. 2022) (actionable harm must occur "because of" defendant's conduct). Radian's failure of proof is threefold: it has a timing problem, a defendant problem, and a plaintiff problem.

Start with the timing problem. "It is axiomatic that there can be no infringement of a patent prior to its issuance," *Cohen v. United States*, 487 F.2d 525, 527 (Ct. Cl. 1973), and thus "no liability for infringement of a pending patent application," *Nat'l Presto Indus., Inc. v. W. Bend Co.*, 76 F.3d 1185, 1196 (Fed. Cir. 1996); *see, e.g.*, *Resh, Inc. v. Skimlite Mfg. Inc.*, 666 F. Supp. 3d 1054, 1060-61 (N.D. Cal. 2023) (dismissing complaint that failed to allege infringement during the patent term). This means that Samsung's pre-patent conduct is irrelevant. But the gist of Radian's story is that Samsung and NVMe froze Radian out of the industry (between 2017 and 2021) ***before Radian's patents issued***. [redacted] So Radian must explain how ***after*** its patents issued (in mid-2022 and early 2023), Samsung somehow engaged in infringing conduct that caused Radian to the lose market share and reputation that was already gone.[4] This cannot be done.

Consider the clearest factual support for Radian's claim (Mot. 19) that its business came "crashing down" because of Samsung's infringement: Radian's CEO states that "after Samsung's infringement, our largest customer decided not to consummate an agreement with us to purchase products embodying our patented inventions, and neither did any of our prospective customers." Jadon Decl. ¶ 50. This statement conspicuously omits the timing of the alleged infringement and

[4] If anything, Radian's prospects "dropp[ing] off a cliff shortly after it became clear" in 2019 "that [Radian was] not willing to join the NVMe consortium" shows that turning down NVMe membership negatively impacts good will, independent of any infringement. Jadon Decl. ¶ 23.

does not explain how the alleged infringement caused Radian harm. *See LaLonde v. Sec'y of Health & Hum. Servs.*, 746 F.3d 1334, 1341 (Fed. Cir. 2014) ("[A] temporal correlation alone is not enough to demonstrate causation."). [redacted] So those harms could not have been caused by any alleged infringement of the asserted patents.

Next the defendant problem: Radian's gripe appears to be with NVMe more than with Samsung. Radian claims (Mot. 19) that it was threatened by NVMe members and that NVMe's supposed inclusion of Radian's patent-pending technology in its ZNS specification that led to "the market wrongly treating Radian's patented inventions as fair game to be freely used." Radian attempts (Mot. 20) to blame Samsung for this by alleging that Samsung "influenced" this outcome by being part of the specifications working group and being a sponsor of the project. [redacted] But this does not even meet the pleading standard for inducement. *See DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1304-07 (Fed. Cir. 2006) (en banc) (reaffirming the *mens rea* requirement of specific intent to cause infringement); [redacted]

And now the plaintiff problem: Radian is alleging commercial harms that belong to Legacy Radian. Although it bears the burden of proving irreparable harm, Radian elides this critical

[5] Radian's "follow-the-leader" theory (Mot. 20) that "[h]ad Samsung not infringed Radian's patents, the rest of the industry" never would have, is pure speculation.

distinction. Legacy Radian is the original entity formed in California in 2011. Legacy Radian is not a plaintiff here Radian never explains how it is that the harms suffered by Legacy Radian may be lawfully attributed to Radian. Moreover, any legal argument purporting to solve this problem is waived.

Third, Radian fails to show that its technology is influencing consumer demand for the accused products. *See Apple*, 695 F.3d at 1374; *Apple*, 809 F.3d at 642. Radian speculates (Mot. 21-22) that Samsung is selling SSDs that incorporate ZNS and that Microsoft is buying them because they incorporate ZNS. As a result, even if the mere loss of the patent term could constitute irreparable harm (though it cannot, *see Reebok*, 32 F.3d at 1558-59), causation still would be lacking.

Fourth, Radian's status as a non-practicing entity further undercuts its claim of irreparable harm. A non-practicing entity is more likely to expect "that the compensation for his invention will come in the form of some kind of royalty from the manufacturer to whom he licenses the invention," in which case "monetary relief provides full compensation for the inventor." *Bianco v. Globus Med., Inc.*, 2014 WL 1049067, at *5 (E.D. Tex. Mar. 17, 2014) (Bryson, J.) (citing *ActiveVideo*, 694 F.3d at 1338). Radian fails to show that it should be treated differently.

[redacted] The upshot is that Radian is materially indistinguishable from the plaintiff in *Bianco*, in which this Court denied a preliminary injunction. *Bianco v. Globus Med., Inc.*, 2012 WL 5611054, at *4 (E.D. Tex. Nov. 15, 2012) (Gilstrap, J.). Just as Bianco did, Radian points to its right to exclude and attempts to blame Samsung for "precluding [Radian] from ever successfully commercializing [its] ideas," even though Radian "is not affiliated with an operating entity and it is clear that [Radian] and [Samsung] are not competitors in the marketplace." *Id.* at *2-3. This was not sufficient in *Bianco* and is not sufficient here.

In a tacit admission that prevailing precedent dooms its motion, Radian accuses (Mot. 22-23) precedent of "discriminating" against non-practicing entities. Even if such a diagnosis were correct, it would not justify departing from precedent. *See Strickland v. United States*, 423 F.3d 1335, 1338 n.3 (Fed. Cir. 2005). But there is no discrimination, since the status of a non-practicing entity pertains to the adequacy of monetary relief. Contrary to Radian's claims, *Continental Paper* does not hold otherwise. *See Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U.S. 405, 430 (1908) ("[W]e do not decide" whether a non-practicing entity should always be granted or denied an injunction). In *Continental Paper*, the Supreme Court "rejected" a categorical rule "that a court of equity has no jurisdiction to grant injunctive relief to a patent holder who has unreasonably declined to use the patent." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 393 (2006) (construing *Continental Paper*). Thus, the Supreme Court held that "equity does not require that patents be practiced." *Hynix Semiconductor Inc. v. Rambus Inc.*, 609 F. Supp. 2d 951, 968 (N.D. Cal. 2009 (capitalization removed)). It did not hold that non-use is *irrelevant*, as Radian purports. In any event, *Continental Paper* was decided in 1908 and is several layers beneath

prevailing precedent, which properly accounts for *Continental Paper*. *See, e.g.*, *Broadcom Corp. v. Qualcomm Inc.*, 543 F.3d 683, 703 (Fed. Cir. 2008) (citing *Continental Paper* to uphold injunction granted to non-practicing entity). Radian thus fails to show a likelihood of irreparable harm under current precedent.

2. Radian's Attempt To Rewrite Precedent Confirms That It Is Unlikely To Succeed

Because its motion fails under current precedent, Radian chiefly argues that the Court should disregard precedent and apply Radian's version of the 18th century law of equity. Specifically, Radian claims (Mot. 7) that "under traditional principles of equity, the likelihood of ongoing violations, once proven, renders damages inadequate." Radian asserts (*id.*) that "[t]he Supreme Court has said so, as has the Fifth Circuit." But these claims are incorrect. Nor could they justify a federal district court's departure from precedent.

Far from supporting Radian's position, the Supreme Court's decision in *eBay Inc. v. MercExchange, L.L.C.* refutes it. 547 U.S. 388 (2006). *eBay* held that *per se* rules have no place in the decision to award injunctive relief. *Id.* at 393. Thereby, *eBay* overturned the Federal Circuit's "general rule" of awarding injunctive relief as a corollary to the "right to exclude." *Id.* at 392-94. Radian's position is indistinguishable from this "general rule" that the Supreme Court rejected because it purports to derive a right to injunctive relief from the patentee's right to exclude. Radian argues otherwise (Mot. 9-10) on the ground that its version of the rule derives from the 18th century courts of chancery. But *eBay* itself refutes this. What Radian deems a *per se* rule is, in actuality, a "historical practice" that "does not *entitle* a patentee to a permanent injunction or justify a *general rule* that such injunctions should issue." *eBay*, 547 U.S. at 395 (Roberts, C.J., concurring). The historical practice merely "illustrates the result of the four-factor test in the contexts then prevalent." *Id.* at 396 (Kennedy, J., concurring). In today's world, "the patent being

enforced and the economic function of the patent holder present considerations quite unlike earlier cases." *Id.* As a result, history is informative but cannot replace the factual analysis that attends "[t]he equitable discretion over injunctions[] granted by the Patent Act." *Id.* at 397.

Radian's position also contradicts the Federal Circuit's decision in *Robert Bosch LLC v. Pylon Manufacturing Corp*, 659 F.3d 1142 (Fed. Cir. 2011). In *Robert Bosch*, the Federal Circuit "[took] this opportunity to put the question to rest and confirm that *eBay* jettisoned the presumption of irreparable harm as it applies to determining the appropriateness of injunctive relief." 659 F.3d at 1149. Radian openly defies this holding because it exhumes the presumption jettisoned in *Robert Bosch* and makes it irrebuttable. The conflict is so clear that Radian resorts (Mot. 14) to calling *Robert Bosch*'s holding "dicta." But *Robert Bosch* clearly 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).

Because Radian cannot help but recognize that it is in conflict with *Robert Bosch*, Radian tries and fails to distinguish it. Specifically, Radian purports to distinguish (Mot. 14) between a presumption of future harm based on *past* infringement (which *Robert Bosch* purportedly rejected) and a presumption of future harm based on *ongoing* infringement (which purportedly was left open). But Radian's premise is incorrect. The now-rejected presumption of irreparable harm did require "ongoing infringement." *Robert Bosch* 659 F.3d at 1159 (Bryson, J., dissenting in part); *see id.* at 1155 ("[t]here is no reason to believe that Pylon will stop infringing"); *Reebok Int'l Ltd. v. J. Baker, Inc.*, 32 F.3d 1552, 1556 (Fed. Cir. 1994) ("continuing infringement" is necessary to "raise[] a presumption of irreparable harm to the patentee."). When it was operative pre-*Bosch*, the presumption put the burden on the defendant to show that it would *stop* infringing. *See Roper Corp. v. Litton Sys., Inc.*, 757 F.2d 1266, 1272 (Fed. Cir. 1985) ("When, as here, infringement is

neither actually occurring nor is reasonably likely, the basis and need for the presumption crumbles."). Any presumption of irreparable harm based ***solely*** on past infringement, like Radian posits, would have conflicted with the standing requirement of Article III, which requires a plaintiff seeking a preliminary injunction to show a substantial likelihood of future harm. As shown above, Radian flunks that standing requirement here because any infringement by Samsung lies far in the past. *See supra* at II.A.1. As a result, the only presumption that could apply here would be the one based on past infringement that even Radian believes was rejected.

Just six months ago, Radian's counsel made the same "18th century" argument to the Federal Circuit and lost. In *Vidstream*, a non-practicing plaintiff (represented by Radian's counsel) sought a preliminary injunction and argued that "a likelihood of irreparable harm is established where Plaintiff has established that it is likely to succeed on the merits and also because the Defendant's infringement is ongoing." *VidStream, LLC v. Twitter, Inc.*, 2024 WL 3504544, at *1-2 (N.D. Tex. July 22, 2024) (cleaned up). The plaintiff, like Radian, relied on "the practices of the Eighteenth Century English Court of Chancery." *Id.* at *1. The district court rejected this argument as "unsubstantiated" and precluded by precedent. *Id.* at *2 (Godbey, C.J.). On appeal, the plaintiff-appellant argued that "the principles administered by the Court of Chancery" establish that "the likelihood of ongoing infringement itself constitute[s] irreparable injury." *VidStream LLC v. Twitter, Inc.*, No. 2024-2265, 2024 WL 4820802, at *1 (Fed. Cir. Nov. 19, 2024). But the Federal Circuit stated that this argument "clearly runs afoul" of *eBay* and *Robert Bosch*. *Id.* It summarily affirmed. *Id.* at *2.

Radian has no response other than to note (Mot. 15 n.5) that *Vidstream* is terse and non-precedential. But *Vidstream*, like most summary affirmances, is terse and non-precedential ***because*** Radian's argument clearly departs from controlling precedent. *See VidStream*, 2024 WL

4820802, at *1. Of course, "a trial court may not disregard its reviewing court's precedent" unless it is "expressly overruled by statute or by a subsequent Supreme Court decision." *Strickland v. United States*, 423 F.3d 1335, 1338 n.3 (Fed. Cir. 2005). But Radian inverts *stare decisis* by asking the Court to supplant current precedent with Radian's interpretation of ***earlier*** precedent that the Federal Circuit already has interpreted for itself in a manner directly contrary to Radian's view.

Seeking to evade the Federal Circuit precedent that dooms its position, Radian argues that the law of the Fifth Circuit should apply. This is erroneous and would not support Radian's position regardless. Radian makes two claims about Fifth Circuit law, each of which is necessary to Radian's position: (1) that Fifth Circuit law governs the irreparable-harm analysis and (2) that it considers ongoing infringement irreparable *per se*. Both claims are false. Federal Circuit law governs whether patent infringement inflicts irreparable harm because that question involves patent-specific issues. *See Tinnus Enters.*, 846 F.3d at 1207-08; *see also, e.g.*, *Natera, Inc. v. NeoGenomics Lab'ys, Inc.*, 106 F.4th 1369, 1379 (Fed. Cir. 2024); *Yang v. Does 1-89*, 2024 WL 5190362, at *4 (E.D. Tex. Dec. 20, 2024) (slip op.); *Bright Data Ltd. v. Teso LT, UAB*, 584 F. Supp. 3d 193, 196 (E.D. Tex. 2022) (Gilstrap, J.).[6] And the Fifth Circuit—which has not heard a patent appeal since 1982—rejects Radian's equation of ongoing infringement with irreparable harm in the context of copyright infringement, *Plains Cotton Co-op. Ass'n of Lubbock, Texas v.*

[6] Radian misinterprets (Mot. 4) the Federal Circuit's statement in *ABC Corp. I* that the non-merits factors "are governed by the law of the regional circuit." *ABC Corp. I v. P'ship & Unincorporated Associations Identified on Schedule "A"*, 52 F.4th 934, 941 (Fed. Cir. 2022). That three-judge panel did not purport to silently overrule the principle that Federal Circuit law governs the patent-specific issues of irreparable harm. *See id.* (citing *Koninklijke Philips N.V. v. Thales DIS AIS USA LLC*, 39 F.4th 1377, 1380 (Fed. Cir. 2022) (applying Federal Circuit law)). To the contrary, it was noting the fact that Federal Circuit law is so vital to the merits of patent infringement that it trumps regional circuit law even as to the standard for proving likely success on the merits. *See id.* (citing *Revision Mil., Inc. v. Balboa Mfg. Co.*, 700 F.3d 524, 526 (Fed. Cir. 2012) (rejecting the Second Circuit's "substantial likelihood" standard)).

Goodpasture Computer Serv., Inc., 807 F.2d 1256, 1261 (5th Cir. 1987), even though copyrights, just like patents, confer the "right to exclude," *Fox Film Corp. v. Doyal*, 286 U.S. 123, 127 (1932); *see also id.* at 127-128 ("A copyright, like a patent, is at once the equivalent given by the public for benefits bestowed by the genius and meditations and skill of individuals and the incentive to further efforts for the same important objects" (internal quotation marks omitted)). Radian fails to cite a single Fifth Circuit case supporting its position. The upshot is that, because Radian cannot possibly show a likelihood of irreparable harm, its motion necessarily fails. *BoxCast Inc. v. Resi Media LLC*, 2022 WL 884261, at *2 (E.D. Tex. Mar. 24, 2022) (Gilstrap, J.).

B. Radian Fails To Show A Likelihood Of Success On The Merits

For purposes of a preliminary injunction, there is no likelihood of success on the merits unless Radian shows that the accused products likely infringe at least one claim. *See ABC Corp. I v. P'ship & Unincorporated Associations Identified on Schedule "A"*, 52 F.4th 934, 943-44 (Fed. Cir. 2022). Further, while patents are presumed to be valid, a preliminary injunction should not issue if there are "substantial questions" about their validity. *See Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1377-80 (Fed. Cir. 2009). Here, Radian fails to make the requisite showing of infringement and Samsung raises substantial questions regarding the validity of the asserted patents.

1. Samsung Does Not Infringe The '183 and '656 Patents

(a) Using ZNS Does Not Make Infringement Likely

Radian relies solely on Dr. Jones in claiming (Mot. 5) that the accused products likely infringe the first claims of the patents at issue merely because the accused products allegedly comply with the ZNS specification. *See, e.g.*, Hardy Decl. Ex. B (Mark Jones Deposition Transcript ("Jones Tr.")) 29:2-3 ("I can tell you my analysis is based on ZNS. I haven't done any other analysis."). Dr. Jones has no idea how the accused products work. *See id.* at 34:2-6.

In fact, merely complying with the ZNS specification does not make infringement likely, because this specification lacks claim elements that are necessary for infringement. For example, claim 1 of the '183 patent requires "logic to receive an erasure request from the host." Dr. Jones does not identify any evidence of an erasure request in the ZNS specification. Instead, he points to a "Reset Zone" command. Jones Decl. ¶¶ 75-78. But a Reset Zone command is not an erasure request. Swanson Decl. ¶ 30. Rather, it releases blocks from a zone so that they can be allocated a to different zone. *Id*. Hence, a Reset Zone command indicates, at most, that the released memory locations are ready for erasure. Jones Tr. 51:20-23. But being ready for erasure is not the same as being erased. Indeed, a Reset Zone command does not necessarily result in the memory unit being erased. For example, if the unit is not used again, it will not be erased. *Id.* at 52:4-9. And the accused products have "no way" of knowing if the memory unit will be used—and hence erased—ever again. *Id.*

Claim 1 of the '183 patent also requires that the accused products, "in connection with the erasure," "detect a defect in one of the erase blocks. . . ." But Dr. Jones fails to point to any evidence in the ZNS specification that defects are detected during erasures of memory units or in connection with the accused Reset Zone commands. Jones Decl. ¶¶ 79-80.

As for the '656 patent, its first claim requires "us[ing] a division operation to identify a logical erase unit within the addressed segment." But Dr. Jones fails to point to evidence that shows the ZNS specification requires a logical erase unit, much less one that is identified by a division operation. Jones Tr. 86:20-24 ("Q. So just to be clear, this isn't telling you that there would be a division operation associated with the Bad Block features discussed here in G and 0, correct? A. Correct."); Swanson Decl. ¶¶ 51-55.

Hence, mere compliance with the ZNS specification does not show that infringement is likely, Swanson Decl. ¶ 27, and this refutes Radian's attempt to show a likelihood of infringement. *See Ploy-Wal Int'l, Inc. v. Metro Home Isulation, Inc.*, 1997 WL 563174, at *4 (D. Minn. Jan. 6, 1997) ("In light of the strong showing needed for the extraordinary remedy of a preliminary injunction, unsupported conclusions of an expert . . . fail to provide sufficient evidence of Plaintiff's likelihood of success at trial" on a patent-infringement claim).

(b) Samsung's Implementation of ZNS Does Not Infringe

An actual analysis of the accused products that have ZNS capability confirms that none infringe. Several of the accused products do not have ZNS capability and thus do not infringe. *See* Park Decl. ¶¶ 4-12. Others have ZNS capability only when specific ZNS firmware is installed, and this firmware was installed only on a small number of products. *Id.* at ¶¶ 8-11. Even this subset of accused products ("ZNS-compliant products") does not infringe.

Regarding the '183 patent, for example, the ZNS-compliant products [redacted] *See* Park Decl. ¶ 18; Swanson Decl. ¶¶ 30-34. [redacted] *See* Park Decl. ¶ 19; Swanson Decl. ¶¶ 36-37. [redacted] Park Decl. ¶ 20. As Dr. Jones admits, the evidence he cites discusses what is done ***after*** a defect is detected (*e.g.*, during a write operation), not how the defect is detected in the first place. Jones Tr. 54:8-11 ("Q. In response to detecting those defects, that's when you take certain actions that you're citing here in Bad Block Management and Error Correcting Code, correct? A. Yes.").

Regarding the '656 patent, the ZNS-compliant products [redacted] *See* Park Decl. ¶ 27; Swanson Decl. ¶ 48. [redacted] Park Decl. ¶¶ 24-25, 30.

[redacted] *See* Park Decl. ¶¶ 30-31; Swanson Decl. ¶ 48. [redacted] Park Decl. ¶¶ 35-36. [redacted] *Id*. at ¶¶ 27, 30, 34; Swanson Decl. ¶ 48. According to Dr. Jones, logical and physical "erase unit[s] indicate[] the smallest member unit to which an erase can be applied." Jones Tr. 82:8-11. [redacted] Park Decl. ¶¶ 25, 32. [redacted] Park Decl. ¶¶ 26, 33; Swanson Decl. ¶ 48. [redacted]

2. Substantial Doubt Exists Regarding Validity

While patents are presumed valid, there is substantial doubt that the '183 and '656 patents are valid. Radian claims that its cooperative flash management technology was revolutionary because it "abstracted some of the lower-level flash attributes for the host and provided for a redistribution of host and SSD responsibilities." Complaint ¶¶ 11, 227. But many inventors before Radian had proposed, and even patented, memory architectures that cooperatively redistribute functions between the host and SSD. For example, Samsung Electronics Co., Ltd. has a patent titled "Cooperate Memory Management" filed in 2007 that discloses: "A ***cooperative memory card system*** includes a memory card device, and a host in signal communication with the memory card device***, where the host assumes at least one memory management function for the memory card device***; and a corresponding method of ***cooperative memory management between a host and a memory card device includes selecting at least one of several memory management functions to be performed by the host for the device***." Hardy Decl. Ex. C (Abstract) (emphasis added). Indeed, before Radian came along, it was already known that a "host system . . . ***can***

operate any of the modules and functions of the memory controller." Hardy Decl. Ex. D (U.S. Patent No. 9,239,781) (4:58-65) (emphasis added).

The claimed techniques in the '183 and '656 patents disclose nothing more than obvious, known techniques related to host and controller memory management. For example, claim 1 of the '183 patent relates, in part, to the well-known idea of a memory controller that "tracks[s] information indicating extent of page utilization" of "subdivisions" of flash memory and updates that information under certain conditions. Hardy Decl. Ex. E (Claim 1). For example, U.S. Pat. No. 9,239,781 teaches a memory controller that tracks page utilization data ("valid-page count") for "superblocks" of flash memory and updates that data following host operation. *Id.* Ex. D (11:58-12:2 ("valid-page count 512 is defined as a numerical value indicating a number of pages that are valid in each of the super blocks"), 20:11-20 (updating valid-page count)). U.S. Pat. App. No. 2012/0096217 also teaches tracking page utilization ("free page count, valid page count, invalid page count" and "a next page indicator") for "superblocks" of flash memory and updating that data after host write and erase requests. *Id.* Ex. F ([0039], [0065], [0070]-[0074], [0080] ("the SSD module instructs the SSD controller to erase the source superblock" and "updates management data structures to reflect the erasure of the source superblock"), [0050] ("update . . . valid page count . . . to reflect that the page associated with the PLBA will be written with valid data")).

As for the '656 patent, Radian claims it "is related to improvements in memory addressing to provide flexibility and less latency." Complaint ¶ 1218. Radian alleges that the ZNS specification infringes this claim because ZNS specifies zone-based addressing. Complaint ¶¶ 327, 1225, 1239, 1242, 1246, 1248. But zone-based addressing is in the prior art. The precursor to ZNS—Zoned Block Commands for the SCSI standard—already discloses zoned-based

addressing. *See* Hardy Decl. Ex. G (SCSI Zoned Block Commands (Section 4.2.1)). Further, NVMe routinely translates SCSI specifications to the NVMe standard for interoperability. *Id.* Ex. H ("NVM Express: SCSI Translation Reference" Rev. 1.3); Ex. I ("NVM Express: SCSI Translation Reference" Rev. 1.2); Ex. J ("NVM Express: SCSI Translation Reference" Rev. 1.0b). In addition, Claim 1 of the '656 patent is partially directed to the well-known idea of a memory controller "us[ing] a division operation to identify a logical erase unit" from incoming "address information." *Id.* Ex. K (Claim 1). For example, U.S. Pat. No. 8,301,861 teaches a flash controller that identifies a logical erase unit ("logical block number") "by dividing [the logical sector number] by a number of sectors per block of flash media," where the logical sector number is a translation of the incoming logical block address. *Id.* Ex. L (1:56-57, 9:5-9).

Discovery has only recently begun and Samsung continues to investigate invalidity, but these prior art references already raise substantial doubts that the '183 and '656 patents are valid.

C. The Balance Of Hardships Favors Samsung

The balance of harms is at best neutral because a grant of a preliminary injunction would not help Radian. As shown above, Radian has failed to demonstrate any harm caused by Samsung, much less any harm redressable by prospective relief. Radian's attempt (Mot. 24) to portray itself as a David to Samsung's Goliath is unavailing. It is true that Samsung could weather an injunction against the sale of ZNS products, because it does not sell any. But Radian, whether its business is large and diversified or dedicated to ZNS, has not shown that its proposed injunction would address any of its alleged harms.[7]

[7] Radian states that it is able to post a bond of $10 million. This amount is acceptable to Samsung if the Court grants a preliminary injunction over Samsung's objections.

D. The Public Interest Favors Samsung

A grant of a preliminary injunction would not serve the public interest. Enjoining Samsung would not effectuate the patent system's goal of fostering innovation because Samsung is not infringing and, even if it was, Radian has not shown that its injuries are insusceptible to money damages.[8] To the contrary, the equities weigh against Radian because it has unclean hands. *See Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814-15 (1945) (explaining the importance of unclean hands to the public interest in the patent context); *e.g.*, *Staton Techiya, LLC v. Samsung Elecs. Co., Ltd.*, 742 F.Supp.3d 602, 646, 658 (E.D. Tex. 2024) (Gilstrap, J.) (barring patent claims due to plaintiff's unclean hands). [redacted] Hardy Decl. Exs. M-R; [redacted] In other words, for its own commercial advantage, Radian has appropriated the benefits of NVMe membership—including access to the technology of NVMe members and use of NVMe intellectual property—without accepting any of the corresponding obligations. Such wrongful conduct further bars the doors of equity to Radian.

Finally, Radian recycles (Mot. 25) its argument for returning to a supposed "traditional practice" of granting equitable relief. But it is not in the public interest to grant extraordinary preliminary relief where the plaintiff is attempting to overturn precedent. *Stare decisis* serves the

[8] Radian also claims (Mot. 25) that an injunction would provide an "incentive to mediate or settle," but the risk of financial liability already does that. Indeed, Radian appears to be seeking a disproportionate amount of leverage unrelated to the value of its patents.

public interest by (*inter alia*) "reduc[ing] incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015); *see United States v. Texas*, 719 F. Supp. 3d 640, 671 n. 17 (W.D. Tex. 2024) ("Preliminary relief is granted to maintain the status quo" but "[a] change in precedent, by definition, cannot serve to maintain the status quo."). The public interest would thus be better served by denying Radian's motion.

III. RADIAN'S REQUESTED INJUNCTION IS OVERBROAD

If the Court grants a preliminary injunction, it should reject the sweeping injunction proposed by Radian and instead issue a tailored one. An injunction "should be no broader than necessary." *Westchester Media v. PRL USA Holdings, Inc.*, 214 F.3d 658, 671 (5th Cir. 2000); *cf. M-I LLC v. FPUSA, LLC*, 626 F. App'x 995, 999 (Fed. Cir. 2015) ("the preliminary injunction is overbroad"). But Radian's proposed injunction is overbroad for two reasons. First, it restricts products that are merely "capable" of ZNS functionality, even though an injunction should restrict only products that have ZNS functionality. *See* Dkt. 43-36. Second, Radian's proposed injunction creates a presumption of infringement for products that Radian believes have "ZNS-substitute functionality" and imposes an elaborate series of mini-proceedings for Samsung to obtain permission to sell such vaguely defined products. *Id.* This is an improper attempt to enjoin future products not at issue. *See M-I LLC*, 626 F. App'x at 999; *TiVo Inc. v. EchoStar Corp.*, 646 F.3d 869, 883 (Fed. Cir. 2011) (whether a design-around violates an injunction is a question of fact for contempt proceedings). Finally, any injunction should apply only to the two patents at issue in Radian's motion, not to all the patents asserted in its Complaint.

CONCLUSION

Samsung respectfully requests that the Court deny Radian's motion.

Dated: May 20, 2025 By: */s/ Lance Yang*

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that, on May 20, 2025, all counsel of record who have appeared in this action are being served with a copy of the foregoing via the Court's CM/ECF system and via electronic mail on the date this document is filed.

Dated: May 20, 2025

/s/ Melissa R. Smith
Melissa R. Smith

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

The undersigned hereby certifies that the foregoing document is authorized to be filed under seal pursuant to the Protective Order submitted in this case and Local Rule CV-5.

Dated: May 20, 2025

/s/ Lance Yang
Lance Yang