

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

_____	)	
Motorola Mobility LLC,	)	No. 14-8003
Plaintiff-Appellant,	)	
	)	On Appeal from an Order of the
v.	)	United States District Court for the
	)	Northern District of Illinois
AU Optronics Corporation, et al.,	)	
	)	Case No. 09-cv-6610
Defendants-Appellees.	)	The Honorable Joan B. Gottschall
_____	)	

**APPELLEES’ OPPOSITION TO MOTION FOR LEAVE TO FILE REPLY**

Motorola has requested leave to file a “reply brief” in support of its petition for rehearing en banc. Federal Rule of Appellate Procedure 35 provides a streamlined mechanism to determine whether a case can overcome the high bar to en banc review. *See generally Fry v. Exelon Corp. Cash Balance Pension Plan*, 576 F.3d 723, 725 (7th Cir. 2009) (Easterbrook, J., in chambers). It permits parties to submit 15-page petitions for rehearing en banc, but allows responses only if ordered by the Court, and contains no provision at all for further submissions. Accordingly, no reply should be permitted absent extraordinary circumstances. Those circumstances are not present here.

Motorola asks for leave to respond to defendants’ arguments that Motorola waived a number of its arguments in the courts below, and to respond to the amicus brief of the Korea Fair Trade Commission. But Motorola’s proposed 8-page reply addresses the KFTC brief in a single paragraph that says nothing about the merits of KFTC’s arguments, but instead seeks to impugn the motives of a sovereign nation (Reply 3). It likewise addresses waiver in a single paragraph plus two footnotes (*id.* at 2 n.2, 7 & n.6) that (i) do not dispute that Motorola neither presented nor factually supported an argument based on lost sales of cellphones in the summary judgment

proceedings below, and (ii) do not explain how Motorola was excused from presenting all available arguments in opposition to defendants' summary judgment papers. *See Keene Corp. v. Int'l Fidelity*, 736 F.2d 388, 393 (7th Cir. 1984) (arguments "not presented before the district court in opposing [a] summary judgment motion . . . cannot be presented . . . on appeal").

The remainder of Motorola's proposed submission essentially repackages its prior arguments for en banc rehearing, and adds additional misstatements to those made in its previous submissions. *See, e.g.*, Reply Br. 1 (asserting that the "United States government agrees that all of the panel's holdings are erroneous," even though the government has taken no position on the merits of the Panel's "give rise to" holding, and has endorsed the Panel's reasoning in another case. *See* Br. for United States as Amici Curiae at 12-13, *Lotes Co. v. Hon Hai Precision Indus.*, No. 13-2280 (2d Cir. Oct. 10, 2013)).

Motorola and its amici have already submitted 46 pages of briefing supporting the rehearing petition. Those amici include (i) AAI, an organization that receives funding from Motorola's counsel and that includes one of Motorola's lawyers in this action on its board of directors,<sup>1</sup> and (ii) a group of professors, one of whom was retained by Motorola as a potential testifying expert witness in this litigation.<sup>2</sup> Further briefing is not warranted.

The motion for leave to file a reply brief should be denied.

---

<sup>1</sup> *See* AAI Br. 1 n.1 (Kenneth Adams is a member of AAI's Advisory Board); <http://antitrustinstitute.org/events/7th-annual-private-enforcement-conference> (Adams Holcomb LLP listed as "District Sponsor").

<sup>2</sup> Dr. Ariel Pakes was disclosed by Motorola as a potential testifying expert in this matter and is one of the sponsors of the "Economists and Professors" amicus brief.

May 28, 2014

Respectfully submitted,

By: /s/ Robert D. Wick

COVINGTON & BURLING LLP  
Robert D. Wick (counsel of record)  
Robert A. Long  
Derek Ludwin  
Jeffrey M. Davidson  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004  
Telephone: (202) 662-6000  
Facsimile: (202) 662-6291  
Email: rwick@cov.com  
rlong@cov.com  
dludwin@cov.com  
j davidson@cov.com

*Counsel for Respondents Samsung Electronics Co.,  
Ltd.; Samsung Electronics America, Inc.; and Samsung  
Semiconductor, Inc.*

By: /s/ Kenneth A. Gallo

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP

Kenneth A. Gallo (counsel of record)

Joseph J. Simons

Craig A. Benson

2001 K Street, NW

Washington, DC 20006

Telephone: (202) 223-7300

Facsimile: (202) 223-7420

Email: kgallo@paulweiss.com

jsimons@paulweiss.com

cbenson@paulweiss.com

BUTLER RUBIN SALTARELLI &  
BOYD LLP

James A. Morsch

70 West Madison Street, Suite 1800

Chicago, IL 60602

Telephone: (312) 444-9660

Facsimile: (312) 444-9287

Email: jmorsch@butlerrubin.com

*Counsel for Respondents Sharp Corporation and Sharp  
Electronics Corporation*

By: /s/ Kirk Christopher Jenkins

NOSSAMAN LLP  
Christopher A. Nedeau  
Carl L. Blumenstein  
Farschad Farzan  
50 California Street, 34th Floor  
San Francisco, CA 94111  
Telephone: (415) 398-3600  
Facsimile: (415) 398-2438  
Email: cnedeau@nossaman.com  
cblumenstein@nossaman.com  
ffarzan@nossaman.com

SEDGWICK, DETERT, MORAN &  
ARNOLD LLP  
Kirk Christopher Jenkins (counsel of record)  
One N. Wacker Dr., #4200  
Chicago, IL 60606  
Telephone: (312) 641-9050  
Facsimile: (312) 641-9530  
Email: kirk.jenkins@sdma.com

*Counsel for Respondents AU Optronics Corporation  
and AU Optronics Corporation America*

By: /s/ Terence H. Campbell

FARMER BROWNSTEIN JAEGER LLP

David Brownstein

William Farmer

Jacob Alpern

235 Pine Street, Suite 1300

San Francisco, CA 94104

Telephone: (415) 962-2873

Facsimile: (415) 520-5678

Email: [dbrownstein@fbj-law.com](mailto:dbrownstein@fbj-law.com)

[wfarmer@fbj-law.com](mailto:wfarmer@fbj-law.com)

[jalpren@fbj-law.com](mailto:jalpren@fbj-law.com)

COTSIRILOS, TIGHE, STREICKER, POULOS, &  
CAMPBELL, LTD.

James R. Streicker

Terence H. Campbell (counsel of record)

33 North Dearborn Street, Suite 600

Chicago, IL 60602

Telephone: (312) 263-0345

Facsimile: (312) 263-4670

Email: [jstreicker@cotsiriloslaw.com](mailto:jstreicker@cotsiriloslaw.com)

[tcampbell@cotsiriloslaw.com](mailto:tcampbell@cotsiriloslaw.com)

*Counsel for Respondent Chunghwa Picture Tubes, Ltd.*

By: /s/ Eugene Edward Murphy, Jr.

MURPHY & HOURIHANE LLC  
Eugene Edward Murphy, Jr. (counsel of record)  
161 N. Clark Street, Suite 2550  
Chicago, IL 60601  
Telephone: (312) 202-3200  
Facsimile: (312) 202-3201  
Email: gmurphy@mhlitigation.com

SIMPSON THACHER &  
BARTLETT LLP  
James G. Kreissman  
Harrison J. Frahn IV  
Jason M. Bussey  
Elizabeth A. Gillen  
Melissa D. Schmidt  
2475 Hanover Street  
Palo Alto, CA 94034  
Telephone: (650) 251-5000  
Facsimile: (650) 251-5002  
Email: jkreissman@stblaw.com  
hfrahn@stblaw.com  
jbussey@stblaw.com  
egillen@stblaw.com  
melissa.schmidt@stblaw.com

*Counsel for Respondent HannStar Display Corporation*

By: /s/ Nathan P. Eimer

EIMER STAHL LLP  
Nathan P. Eimer (counsel of record)  
Scott C. Solberg  
Sarah Elizabeth Hargadon  
224 S. Michigan Ave., Suite 1100  
Chicago, IL 60604  
Telephone: (312) 660-7600  
Facsimile: (312) 692-1718  
Email: neimer@eimerstahl.com  
ssolberg@eimerstahl.com  
shargadon@eimerstahl.com

CLEARY GOTTLIEB STEEN & HAMILTON LLP  
Michael R. Lazerwitz  
One Liberty Plaza  
New York, NY 10006  
Telephone: (212) 225-2000  
Facsimile: (212) 225-3999  
Email: mlazerwitz@cgsh.com

*Counsel for Respondents LG Display Co., Ltd. and LG Display America, Inc.*

By: /s/ James L. McGinnis

SHEPPARD MULLIN RICHTER & HAMPTON LLP  
Gary L. Halling  
James L. McGinnis (counsel of record)  
Michael W. Scarborough  
Dylan I. Ballard  
4 Embarcadero Center, 17th Floor  
San Francisco, CA 94111  
Telephone: (415) 434-9100  
Facsimile: (415) 434-3947  
Email: halling@sheppardmullin.com  
jmcginnis@sheppardmullin.com  
scarborough@sheppardmullin.com  
dballard@sheppardmullin.com

*Counsel for Respondents Samsung SDI Co., Ltd. and Samsung SDI America, Inc.*



By: /s/ Allison A. Davis

DAVIS WRIGHT TREMAINE LLP  
Allison A. Davis (counsel of record)  
Sanjay Nangia  
505 Montgomery Street, Suite 800  
San Francisco, CA 94111  
Telephone: (415) 276-6500  
Facsimile: (415) 276-6599  
Email: allisondavis@dwt.com  
sanjaynangia@dwt.com

DAVIS WRIGHT TREMAINE LLP  
Nick S. Verwolf  
777 – 108th Ave. N.E., Suite 2300  
Bellevue, WA 98004  
Telephone: (425) 646-6125  
Facsimile: (425) 646-6199  
Email: nickverwolf@dwt.com

LEWIS BRISBOIS BISGAARD & SMITH LLP  
William Yu  
550 West Adams Street, Suite 300  
Chicago, IL 60601  
Telephone: (312) 463-3470  
Facsimile: (312) 345-1778  
Email: William.Yu@lewisbrisbois.com

*Counsel for Respondent Sanyo Consumer Electronics  
Co., Ltd.*

By: /s/ Christopher M. Curran

WHITE & CASE LLP  
Christopher M. Curran (counsel of record)  
Kristen J. McAhren  
701 Thirteenth Street, NW  
Washington, DC 20005  
Telephone: (202) 626-3706  
Facsimile: (202) 639-9355  
Email: ccurran@whitecase.com  
kmcahren@whitecase.com

WHITE & CASE LLP  
Martin M. Toto  
John H. Chung  
1155 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 819-8200  
Facsimile: (212) 354-8113  
Email: mtoto@whitecase.com  
jchung@whitecase.com

ROTHSCHILD, BARRY & MYERS LLP  
Daniel Cummings  
Alan S. Madans  
150 S. Wacker Drive, Suite 3025  
Chicago, IL 60606  
Telephone: (312) 372-2345  
Facsimile: (312) 372-2350  
Email: cummings@rbmchicago.com  
madans@rbmchicago.com

*Counsel for Respondents Toshiba Corporation; Toshiba  
America Electronic Components, Inc.; and Toshiba  
Mobile Display Co., Ltd.*

**CERTIFICATE OF SERVICE**

I, Robert D. Wick, an attorney, do hereby certify that I caused a copy of the foregoing response to be electronically filed with the Court and served on all parties on May 28, 2014 using the Court's electronic case filing system.

By: /s/ Robert D. Wick

Robert D. Wick