

2012-1018

**UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT**

BRILLIANT INSTRUMENTS, INC.

Plaintiff-Appellee,

v.

GUIDETECH, LLC,

Defendant-Appellant.

Appeal From the United States District Court for the
Northern District of California in Case No. 09-CV-5517,
Judge Claudia Wilken

**REPLY IN SUPPORT
OF BRILLIANT INSTRUMENTS, INC.'S
MOTION FOR SUMMARY AFFIRMANCE**

The argument section in the opening appeal brief of defendant-appellant GuideTech, LLC ("GuideTech") is a "copy and paste" of two narrow and meritless arguments GuideTech presented to the district court at the rehearing stage. In response to the summary affirmance motion of plaintiff-appellee Brilliant Instruments, Inc. ("Brilliant"), GuideTech has submitted the same arguments again. Because there is no substantial question regarding the outcome of this appeal, this case

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is suitable for summary disposition. *See Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994).

GuideTech's opposition to summary affirmance warrants just four brief comments:

First, GuideTech's opposition includes numerous statements that are false.¹ GuideTech's false statements, however, do nothing to show its appeal has any merit. To the contrary, GuideTech's false statements provide another reason for this Court to put a prompt end to this appeal.

¹ To pick a few examples: GuideTech asserts "there is no other way (that GuideTech is aware of) to perform TIA measurements but through using GuideTech's patented technology." Opp'n 3-4 (emphasis added). But all three of GuideTech's asserted patents refer to "conventional devices, including time interval analyzers" Appellant's Add. 34, 54, 75. Similarly, GuideTech asserts that its "revenues dropped from approximately \$5M in 2006 to \$185,000 in 2011" after "most of GuideTech's customers switched to buy the cheaper Brilliant's [sic] products." Opp'n 6. GuideTech, however, was not formed until 2008 when it purchased "the patent portfolio and customer base" from Guide Technology, Inc. ("GTI") for only \$500,000—a price that reflected a decision by GTI's Board of Directors to shut the company down after two of GTI's major customers stopped buying its flagship product. Also, GuideTech asserts that "Brilliant is selling TIA products for approximately \$1M per year," Opp'n 6. But Brilliant's actual annual revenues are about \$300,000, Mot. for Summ. Affirmance ("Mot.") 3.

Second, GuideTech's opposition suggests that Brilliant is somehow seeking to deny GuideTech the "right" to a "full" appeal. *See, e.g.*, Opp'n 1-3, 8, 9, 14. GuideTech, of course, may appeal and has done so. This Court does not, however, devote the time, effort, and resources of a full scale appeal if there is no substantial doubt about the outcome. *See Joshua*, 17 F.3d at 380; *see also* Handbook of Practice and Internal Procedures United States Court of Appeals for the D.C. Circuit, at 28.

Third, GuideTech's opposition confirms that it waived all but two arguments. GuideTech agrees that the two issues it raised on appeal "were the same issues GuideTech raised in its motion for leave to file a motion for reconsideration" with the district court. *See* Opp'n 8. By electing to focus only on these two issues, GuideTech has waived all other issues on appeal. *See* Mot. 9-11.

Fourth, GuideTech's opposition confirms that there is no substantial question about the outcome of this appeal. As Brilliant's motion explained, (i) Brilliant's products have only one measurement circuit within each channel and thus cannot fall within the limitation of U.S. patent no. 6,226,231 (the '231 patent) for a time interval analyzer with "a plurality of measurement circuits defined within a signal

channel,” Add. 15 (quotations omitted), and (ii) the capacitor in Brilliant’s products is part of the first current circuit and thus cannot meet the limitations of U.S. patent nos. 6,091,671 (the ’671 patent) and 6,181,649 (the ’649 patent) requiring the capacitor to be “operatively disposed in parallel with respect to [the] first current circuit,” Add. 17-18 (quotations omitted). *See* Mot. 11-16.

GuideTech’s appeal brief argues only that the trial court “overlooked evidence in the record”—portions of Dr. Burnell G. West’s report and the BI200 datasheet—in rendering its ruling. *See* Appellant’s Br. 10, 15; Opp’n 10, 12. But, as Brilliant set out in its motion (at 11–16), the district court issued a reconsideration order explaining that nothing was “overlooked”: “The portions of Dr. Burnell G. West’s report and the BI200 Datasheet cited by [GuideTech in its motion for leave to file a motion for reconsideration] *were considered by the Court* when it ruled on Brilliant’s motion for summary judgment.” *See* Add. 30 (emphasis added). GuideTech’s appeal brief does not address the district court’s reconsideration ruling (because it is a copy and paste of the arguments presented to the district court on reconsideration).

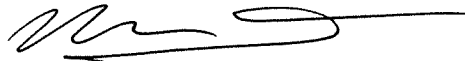
GuideTech's opposition to summary affirmance is yet another "copy and paste" version of the arguments presented on reconsideration. The district court's explanation that it considered the West report and BI200 Datasheet remains uncontested by GuideTech. The appeal is meritless.

CONCLUSION

For the reasons stated in Brilliant's motion for summary affirmance and above, the judgment of the district court should be summarily affirmed and this appeal should be dismissed.

Dated: March 22, 2012

Respectfully submitted,



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CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4, counsel of record for Appellee Brilliant Instruments, Inc., certifies the following:

1. The full name of the party represented by counsel of record is Brilliant Instruments, Inc.
2. The Entity identified above is the real party in interest.
3. No parent corporation or any publicly held company owns 10 percent or more of the stock of Brilliant.
4. The names of all law firms and the partners and associates that appeared for appellees in the trial court or are expected to appear in this Court are:

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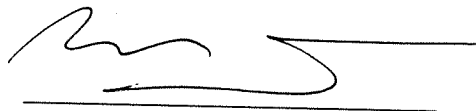
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 22nd day of March, 2012, two bound copies of the foregoing Appellee's Reply in Support of its Motion for Summary Affirmance were served by FedEx to the following:

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