

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

BLACK HILLS MEDIA, LLC

Plaintiff,

v.

**SAMSUNG ELECTRONICS CO. LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.
and
SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC**

Defendants.

Civil Action No. 2:13-CV-379-JRG

JURY TRIAL DEMANDED

**BLACK HILLS MEDIA, LLC'S DISCLOSURE OF ASSERTED CLAIMS AND
PRELIMINARY INFRINGEMENT CONTENTIONS AND DOCUMENT PRODUCTION
ACCOMPANYING DISCLOSURE UNDER L.R. 3-1 AND 3-2**

Pursuant to Patent Local Rules P.R. 3-1 and 3-2 of the United States District Court for the Eastern District of Texas, Plaintiff Black Hills Media ("BHM" herein) submits its Disclosure of Asserted Claims and Preliminary Infringement Contentions and its accompanying Document Production. The contentions are based on information reasonably available to BHM at this time.

**I. DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT
CONTENTIONS (L.R. 3-1)**

BHM Asserts infringement as follows.

A. Identification of Each Claim Infringed (L.R. 3-1(a))

BHM identifies the claims of each patent infringed, along with an identification of each Accused Instrumentality, on per claim basis. The Infringed patents are 8,028,323 ('323 Patent); 8,214,873 ('873 Patent); 8,230,099 ('099 Patent); 8,045,952 ('952 Patent); 8,050,652 ('652 Patent); 7,835,689 ('689 Patent); 7,917,082 ('082 Patent); 6,618,593 ('593 Patent); 6,108,686

('686 Patent). The accused infringer(s) are defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications, America, LLC (collectively "Samsung" herein). It is believed that all parties are related Samsung entities and thus the allegations herein apply equally to all such entities.

The claims alleged to be infringed are identified in the claim charts attached hereto as Exhibits 1-9.

BHM expressly notes that the Patent Local Rules of this Court do not require it to identify separately for each asserted claim whether Defendant(s) directly infringes under 35 U.S.C. § 271(a) and/or indirectly infringes under 35 U.S.C. §§ 271(b) and/or (c) and BHM preserves its right to allege all direct and indirect theories of infringement.

BHM also reserves the right to amend its preliminary infringement contentions pursuant to the Patent Local Rules.

B. Statement of Accused Apparatus, Product or Method (Accused Instrumentality) (L.R. 3-1(b))

The claim charts attached hereto as Exhibits 1-9 provides an identification of each accused product, method and Accused Instrumentality.

C. Claim Charts (L.R. 3-1(c))

Attached are the following exhibits, which state where each element of each claim is found in the Accused Instrumentalities.

Exhibit	Substance
1	'323 Patent Claim Chart
2	'873 Patent Claim Chart
3	'099 Patent Claim Chart
4	'952 Patent Claim Chart
5	'652 Patent Claim Chart
6	'689 Patent Claim Chart
7	'082 Patent Claim Chart
8	'593 Patent Claim Chart
9	'686 Patent Claim Chart

The '323, '873, '099, '952, '652 and '593 patents are being asserted against defendants in a copending ITC investigation, and claim charts from that investigation are attached. While the ITC claim charts refer to importation, BHM does not limit its claims to importation in the present case and seeks the full range of infringement defined by 35 U.S.C. § 271.

While each accused product is not charted separately, the claim charts of Exhibits 1-9 are believed to be representative of (and applicable to) all accused products.

**D. Literal Infringement Or Infringement Under The Doctrine Of
Equivalents (L.R. 3.1.d)**

BHM contends that all of the above listed claims are at least literally infringed by each of the accused products. As demonstrated herein, the accused devices literally infringe each of the asserted claims. However, to the extent any limitation is not literally met, it is met under the doctrine of equivalents. BHM contends that a person of ordinary skill in the art, at the time of infringement, would have considered any difference between any specific claim limitation and the corresponding element or feature in the accused system, to the extent such limitation is not literally infringed, to be insubstantial or that the alternate implementation(s) employed (1) perform substantially the same function and (2) work in substantially the same way (3) to achieve substantially the same result as the requirement of the claim limitation at issue. Samsung directly infringes, contributorily infringes, and/or induces infringement of each of the asserted claim through at least the identified products or devices. For example, Samsung directly infringes by making, using, offering for sale, and selling the Samsung Devices in the U.S. and Samsung directly infringes the method claims by testing the identified products in the U.S..

E. Priority Dates Of The Asserted Patents Based on Earlier Applications (L.R. 3-1(e))

Certain asserted patents claim priority to earlier filed applications, and for such patents, BHM contends that the claims are supported by the earlier filed applications. The dates of such applications are set forth below in compliance with L.R. 3-1(e).

Patent	Priority Date of Earliest Filed Application
'323 Patent	No earlier applications
'873 Patent	May 5, 2004
'099 Patent	May 5, 2004
'952 Patent	November 8, 2000

Patent	Priority Date of Earliest Filed Application
'652 Patent	November 8, 2000
'689 Patent	May 6, 2002
'082 Patent	May 6, 2002
'593 Patent	No earlier applications
'686 Patent	No earlier applications

BHM notes that the local rules do not require an identification of conception and reduction to practice dates that predate patent filings, and reserves the right to allege earlier dates of conception and reduction to practice than the dates identified above.

F. BHM Products That Practice The Asserted Claims (L.R. 3-1(f))

BHM does not contend that any of its own products practice any of the claims of the asserted patents.

II. DOCUMENT PRODUCTION ACCOMPANYING DISCLOSURE (L.R. 3-2)

Patent L.R. 3-2 requires that BHM accompany its Disclosure of Asserted Claims and Preliminary Infringement Contentions under Patent L.R. 3-1 with documents in its possession, custody and control which relate to the following three categories:

- a. Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the claimed invention prior to the date of application for the patent in suit.

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