

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

CYWEE GROUP LTD.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD. AND
SAMSUNG ELECTRONICS AMERICA, INC.,

Defendants.

CASE NO. 2:17-cv-00140-WCB-RSP

JURY TRIAL DEMANDED

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STAY PENDING
INTER PARTES REVIEW PROCEEDINGS**

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I. INTRODUCTION

Staying this case will not simplify the dispute between CyWee and Samsung¹ for several reasons:

First, the claims at issue in the Google IPRs and the present suit are not co-extensive. This suit includes claims that will not be addressed in the Google IPRs.

Second, although Samsung originally identified the key reference at issue in the Google IPRs (U.S. Patent No. 7,089,148, “*Bachmann*”) in this case, it later ***dropped the reference entirely*** from its invalidity contentions, and it did so after the Google IPRs were filed. And Samsung has ***never*** relied on either of the other two Google IPR references in this lawsuit. Thus, the IPRs will have no impact whatsoever on the invalidity defenses Samsung plans to raise at trial.

Third, the Google IPRs have not even been finally instituted.²

Fourth, the timing of Samsung’s motion is grossly unfair and yet another example of Samsung’s gamesmanship. Samsung did not ask for a stay as soon as the Google IPRs were initially instituted, nor did it seek a stay during any reasonable period of time thereafter. Rather, Samsung litigated this case for ***seven months*** after the IPRs were filed, and it continued to aggressively litigate for over a month after the institution decision, rushing to take ***six depositions*** of CyWee’s experts prior to the close of expert discovery, and actively engaging in motion practice before the Court. It was not until the Court set this case for trial that Samsung suddenly asked to grind the case to a halt to avoid dispositive motions from CyWee that Samsung knew were coming. Samsung’s requested relief is obviously not driven by concerns about judicial economy or a desire to conserve resources—it is

¹ “Samsung” refers collectively to Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.

² CyWee has filed Requests for Rehearing on the Decision to Institute. The PTAB has not issued any rulings on these requests.

instead motivated by Samsung's realization that trial is now imminent, and by its fear of the inevitable result a trial will bring.

The Court should refuse to stay this case.

II. BACKGROUND

A. The Background and Status of the Lawsuit.

CyWee is not, as Samsung suggests, a non-practicing entity that stands to suffer no prejudice if the trial of this case is delayed. Quite the contrary, CyWee was formed by the named inventors as a startup of the Industrial Technology Research Institute of Taiwan ("ITRI") in cooperation with Softbank China. CyWee is in the business of developing and providing cutting-edge motion sensing technologies for handheld devices such as video game controllers and smartphones. CyWee co-developed the JIL Phone, which was an early prototype gaming smartphone that incorporated CyWee's proprietary sensor fusion technologies, and predated similar technologies currently used by Samsung and other manufacturers. CyWee licenses its Sensor Fusion Hub solution, which practices the patents-in-suit³ and includes CyWee's proprietary software for performing sensor fusion. Thus, CyWee directly competes with companies such as Samsung that use either their own infringing sensor fusion solutions or those offered by third-parties, such as Qualcomm.⁴

CyWee filed this lawsuit on February 17, 2017, accusing Samsung of infringing certain claims of the patents-in-suit, including claims 10 and 12 of the '978 patent and claims 14-17 and 19 of the '438 patent.⁵ Since that time, the parties have completed fact discovery, the Court has issued its

³ The patents-in-suit are U.S. Patent Nos. 8,441,438 (the "'438 patent") and 8,552,978 (the "'978 patent").

⁴ See, e.g., <https://www.prnewswire.com/news-releases/cyweemotions-sensor-fusion-hub-software-now-available-on-cadence-tensilica-fusion-dsp-300192855.html>

⁵ Prior to filing this lawsuit, CyWee sued Apple in the Northern District of California for infringement of the same claims of the patents-in-suit. *CyWee Group Ltd. v. Apple Inc.*, Case. No.

Markman Order⁶ (and has heard and denied various requests by Samsung to reconsider that Order, one of which was based on the pending Google IPRs⁷), Samsung has already filed (and lost) one motion for summary judgment⁸, and the parties have substantially completed expert discovery.⁹ The following is only some examples of the amount of activity that has taken place in this case: The parties have exchanged a total of 205,701 pages of documents in discovery; the parties have taken twenty-two depositions in this case at locations in the U.S. and abroad; the parties have filed a combined total of ninety-three contested motions, responses, replies, and sur-replies;¹⁰ the Court has conducted at least five hearings in this case including the *Markman* hearing and a number of contested discovery hearings; and CyWee has been met with an extraordinary amount of resistance from Samsung and third-parties throughout discovery, which has caused undue burden to CyWee and resulted in the need to seek Court intervention on an excessive number of issues.¹¹

Despite the foregoing litany of activity spanning almost two years, Samsung contends that “[s]ignificant case milestones lie ahead.”¹² Yet it can point to no such milestones save for the obvious ones—dispositive motions, pre-trial matters, and trial. The parties have invested a

3:14-01853 HSG (N.D. Cal). Like Samsung, Apple never attempted to file IPRs as to any asserted claims. That case eventually settled.

⁶ Dkt. 117.

⁷ Dkt. 153; Dkt. 242.

⁸ Dkt. 249.

⁹ Samsung has taken depositions of six of CyWee’s experts in the last month after the Google IPRs were originally instituted. *See* Declaration of William Ellerman (“Ellerman Decl.”) ¶ 2; *see also* Ex. 1. CyWee’s damages expert, Walter Bratic, was unavailable for deposition prior to the deadline due to having numerous other depositions, a trial, and an arbitration on his schedule. *See* Ex. 2. The parties have thus agreed that Mr. Bratic’s deposition will occur on February 20, 2018. *Id.*; Ellerman Decl. ¶ 2. CyWee has informed Samsung that one of the three listed authors of its conjoint survey report, Dr. Arvind Raghu, is unable to appear for a deposition due to conflicts that have arisen with his current employer. Ellerman Decl. ¶ 2. Dr. Raghu does not need to be deposed in this case because CyWee has agreed it will not call him to testify at trial if he is not deposed. *Id.*

¹⁰ *Id.* ¶ 3.

¹¹ *See* Dkt. 49; Dkt. 93; Dkt. 110; Dkt. 126; Dkt. 130; Dkt. 137; Dkt. 157; Dkt. 164; Dkt. 168; Dkt. 176; Dkt. 251; Dkt. 270.

¹² Dkt. 291 at 2.

Dr. Arvind Raghu's Opposition to Defendant Samsung's Motion to Stay Deposition

monumental amount of time, expense, and effort in moving this case through fact and expert discovery. The case is now at the precipice of dispositive motions (that CyWee expects to win) and, for all intents and purposes, on the eve of trial.

B. Related Cases and the IPRs.

After the case against Apple settled, and after this lawsuit was filed, CyWee filed suits against six other parties in various jurisdictions, asserting the same claims of the patents-in-suit: Huawei (Case No. 2:17-cv-00495, E.D. Tex), HTC (Case No. 17-cv-00932, W.D. Wa), LG (Case No. 3-17-cv-01102, S.D. Cal.); Motorola (Case No. 1-17-cv-00780, D. Del); ZTE (Case No. 3-17-cv-02130, S.D. Cal); and Google (Case No. 1:18-cv-00571, D. Del). None of those cases have progressed nearly as far as the instant case. *Markman* orders have been entered in only two of the cases (*Huawei* and *Motorola*).¹³ Discovery has not been completed in any of those cases—no party or fact witness depositions have been taken, no expert reports have been served and, except for a deposition related solely to claim construction (*Huawei*), no expert depositions have been taken.¹⁴ All of those cases are significantly behind the present case in terms of readiness for trial.¹⁵

On June 14, 2018, Google filed two IPR petitions as to Claims 1 and 3-5 of the '438 patent¹⁶ and Claims 10 and 12 of the '978 patent.¹⁷ The IPRs do *not* challenge Claims 14-17 and 19 of the '438 patent, which are asserted by CyWee against Samsung in this case. The IPRs rely wholly on *Bachmann* in combination with either U.S. Patent Publication 2004/00953317 (“*Zhang*”) or U.S. Patent 7,158,118 (“*Liberty*”). On December 11, 2018, the PTAB instituted the two IPRs. On

¹³ *CyWee Group Ltd. v. Mobility LLC*, Case No. 2:17-cv-00495 (E.D. Tex), Dkt. 55; *CyWee Group Ltd. v. Huawei Device Co. Ltd. et al*, Case No. 1-17-cv-00780 (D. Del), Dkt. 113.

¹⁴ Ellerman Decl. ¶ 4.

¹⁵ *See, e.g.*, Exs. 2 & 3.

¹⁶ IPR2018-01258.

¹⁷ IPR2018-01257.

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