

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

CYWEE GROUP LTD.,

Plaintiff,

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

Defendants.

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

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

1. Plaintiff CyWee Group Ltd. (“Plaintiff” or “CyWee”), by and through its undersigned counsel, files this Complaint against Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. as follows:

THE PARTIES

2. CyWee is a corporation existing under the laws of the British Virgin Islands with a principal place of business at 3F, No.28, Lane 128, Jing Ye 1st Road, Taipei, Taiwan 10462.

3. CyWee is a world-leading technology company that focuses on building products and providing services for consumers and businesses. CyWee has one of the most significant patent portfolios in the industry, and is a market leader in its core development areas of motion processing, wireless high definition video delivery, and facial tracking technology.

4. On information and belief, Defendant Samsung Electronics Company, Ltd. (“Samsung Electronics”) is a South Korean entity with its principal place of business at 1320-10, Seocho 2-Dong, Seocho-Gu, Seoul 137-857, South Korea. Samsung Electronics manufactures and provides to the United States a wide variety of products and services, including consumer electronics such as mobile phones and tablets.

5. On information and belief, Defendant Samsung Electronics America, Inc. (“SEA”) is a New York entity with its principal place of business at 85 Challenger Road, Ridgefield Park, New Jersey 07660. SEA may be served through its registered agent, CT Corporation System, located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201. Upon information and belief, SEA is a wholly-owned subsidiary of Samsung Electronics. SEA is Samsung Electronics’ North American business with respect to mobile phones and tablets.

6. On information and belief, SEA maintains an office in Richardson, Texas. On information and belief, Samsung Telecommunications America, LLC (“STA”)—formerly a limited liability company organized and existing under the laws of Delaware with a principal place of business at 1301 East Lookout Drive, Richardson, Texas 75082—merged into SEA on January 1, 2015. *Lexington Luminance LLC v. Samsung Electronics Co.*, No. 2-16-cv-00169-JRG, Dkt. No. 8 ¶¶ 2(a)-(b) (E.D. Tex.). After that merger, a court in this district held: “*STA serves as a sales division* for SEC mobile devices in the United States. *It imports and sells SEC mobile devices, tablets*, and network infrastructure.” *Ziilabs Inc., Ltd. v. Samsung Elecs. Co.*, No. 2:14-CV-203-JRG-RSP, 2015 WL 5278744, at *1 (E.D. Tex. Sept. 9, 2015) (emphases added). On information and belief, SEA is STA’s “successor-in-interest for the purpose of the alleged liability, discovery, and damages relating to this lawsuit.” *See Lexington*, No. 2-16-cv-00169-JRG, Dkt. No. 8 ¶ 2(c).

7. Defendants Samsung Electronics and SEA are collectively referred to as “Defendants” or “Samsung.” Samsung is doing business in the United States and, more particularly, in the State of Texas and the Eastern District of Texas, by designing, marketing, making, using, selling, importing, and/or offering for sale products that infringe the patent claims involved in this action or by transacting other business in this District.

JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over each Defendant. Each Defendant has conducted and does conduct business within the State of Texas. Each Defendant has purposefully and voluntarily availed itself of the privileges of conducting business in the United States, State of Texas, and in the Eastern District of Texas by continuously and systematically placing goods into the stream of commerce through an established distribution channel with the expectation that they will be purchased by consumers in the Eastern District of Texas. Samsung Electronics and SEA previously admitted that this Court has personal jurisdiction over them based on, at least, their development, manufacture, and supply of smartphones and tablets. *TIVO, Inc., v. Samsung Elecs. Co.*, No. 15-cv-01503, Dkt. No. 25 ¶¶ 14, 32 (E.D. Tex.). Plaintiff's cause of action arises directly from Defendants' business contacts and other activities in the State of Texas and the Eastern District of Texas.

10. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391(b) and 1400(b), in that, each Defendant is subject to personal jurisdiction in this district, and therefore is deemed to reside in this District for purposes of venue. Upon information and belief, each Defendant has committed acts of infringement in this District giving rise to this action and does business in this District, including making sales and/or providing service and support for their respective customers in this District. Defendants purposefully and voluntarily sold one or more of their infringing products with the expectation that they will be purchased by consumers in this District. These infringing products have been and continue to be purchased by consumers in this District. Defendants have committed acts of patent infringement within the United States

and, state of Texas, and the Eastern District of Texas. In a recent case, Samsung Electronics and SEA did not dispute that the Eastern District of Texas is a proper venue for a patent infringement lawsuit against them. *Ziilabs*, 2015 WL 5278744, at *3.

BACKGROUND

11. ITRI is a Taiwanese government and industry funded research and development center. In 2007, CyWee, a startup of ITRI, was formed. Its goal was to provide innovative motion-sensing technologies, such as those claimed in the patents-in-suit. Dr. Shun-Nan Liu and Chin-Lung Li, two of the inventors of the Patents, came to CyWee from ITRI. The third inventor, Zhou “Joe” Ye joined CyWee as its President and CEO from private industry.

12. The inventors, Zhou Ye, Chin-Lung Li, and Shun-Nan Liou conceived of the claims of the patents-in-suit—U.S. Patent No. 8,441,438 (the “’438 Patent”) and U.S. Patent No. 8,552,978 (the “’978 Patent”)—at CyWee Group Ltd., located at 3F, No. 28, Lane 128, Jing Ye Road, Taipei.

13. Several claims of the patents-in-suit are entitled to a priority date of at least January 6, 2010 based on U.S. Provisional Application Serial No. 61/292,558, filed January 6, 2010 (“Provisional Application”).

14. Before May 22, 2009, CyWee began working on the “JIL Game Phone Project” or “JIL Phone.” Before July 29, 2009, CyWee developed a solution for the JIL Phone that practiced several claims of the ’438 Patent. Those claims were diligently and constructively reduced to practice thereafter through the filing of the Provisional Application, and were diligently and actually reduced to practice as discussed below. Accordingly, CyWee is entitled to a priority date of at least July 29, 2009 for several claims of the ’438 Patent.

15. The JIL Phone was reduced to practice by at least September 25, 2009. The JIL

Phone practiced several claims of both patents-in-suit. Accordingly, CyWee is entitled to a priority date of at least September 25, 2009 for several claims of the patents-in-suit.

WILLFUL INFRINGEMENT

16. Samsung's infringement of the patents-in-suit has been and continues to be willful. Samsung has had knowledge of and notice of both patents-in-suit and its infringement of those patents since at least as early as June 2016 as a result of confidential pre-suit licensing discussions. In June 2016 CyWee disclosed the patents-in-suit and information related to Samsung's infringement to Samsung. Samsung also has knowledge and notice of its infringement of the patents-in-suit as a result of the complaints filed in this case. Samsung's infringement of the patents-in-suit has been and continues to be willful and deliberate.

PATENT INFRINGEMENT OF U.S. PATENT NO. 8,441,438

17. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1-16 as though fully set forth herein.

18. The '438 Patent, titled "3D Pointing Device and Method for Compensating Movement Thereof," was duly and legally issued by the United States Patent and Trademark Office on May 14, 2013 to CyWee Group Limited, as assignee of named inventors Zhou Ye, Chin-Lung Li, and Shun-Nan Liou.

19. CyWee is the owner of all right, title, and interest in and to the '438 Patent with full right to bring suit to enforce the patent, including the right to recover for past infringement damages.

20. Each and every claim of the '438 Patent is valid and enforceable and each enjoys a statutory presumption of validity separate, apart, and in addition to the statutory presumption of validity enjoyed by every other of its claims. 35 U.S.C. § 282.

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