

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

SOLAS OLED LTD.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 2:19-CV-00152-JRG
	§	
SAMSUNG DISPLAY CO., LTD.,	§	
SAMSUNG ELECTRONICS CO., LTD.,	§	
SAMSUNG ELECTRONICS AMERICA,	§	
INC.,	§	
	§	
<i>Defendants.</i>	§	

ORDER ON PRETRIAL MOTIONS AND MOTIONS *IN LIMINE*

The Court held two Pretrial Conferences in the above-captioned matter on Tuesday, September 8, 2020 (the “First Pretrial Conference”), and Wednesday, September 9, 2020 (the “Second Pretrial Conference”), regarding motions *in limine* (“MILs”) and other pending pretrial motions filed by Plaintiff Solas OLED Ltd. (“Solas”) and Defendants Samsung Display Co., Ltd., Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc. (together, “Samsung”) (collectively, “the Parties”). (Dkt. Nos. 142, 143, 137, 140, 139, 141, 117, 138, 135, 250, 251, 136, 225, 224, 226). This Order memorializes the Court’s rulings on the aforementioned MILs and motions as announced into the record, including additional instructions that were given to the Parties. While this Order summarizes the Court’s rulings as announced into the record during the pretrial hearing, this Order in no way limits or constrains such rulings from the bench and as reflected in the record. Accordingly, it is hereby **ORDERED** as follows:

MOTIONS IN LIMINE

It is **ORDERED** that the Parties, their witnesses, and counsel shall not raise, discuss, or argue the following before the venire panel or the jury without prior leave of the Court:

1. Agreed Motions *in Limine* (Dkt. No. 225)

The following MILs are **GRANTED-BY-AGREEMENT OF THE PARTIES**.

- Agreed MIL No. 1: Solas shall not introduce any testimony or argument concerning the unaccused i7110 product. Solas shall also withdraw any trial exhibits from its exhibit list that pertain specifically to the i7110 product.
- Agreed MIL No. 2: The parties shall not introduce any argument or evidence emphasizing the nationality or place of residence of any party or witness.
- Agreed MIL No. 3: The parties shall not introduce any argument or evidence regarding a witness's choice to testify in his or her native language.
- Agreed MIL No. 4: The parties shall not make any reference to, attempt to read, or show to the jury any nonrelevant exchanges between counsel during depositions, including attorney objections.
- Agreed MIL No. 5: Solas shall not analogize the burdens of proof in this case to situations arising in the context of family law or criminal law.
- Agreed MIL No. 6: Solas shall not introduce any evidence or argument concerning the overall capitalization, overall revenues, or overall profits of any of the Defendants.

2. Plaintiff Solas's Opposed Motions *in Limine* (Dkt. No. 226)

- Solas MIL No. 1: Evidence of no-longer-asserted claims, products, and/or non-asserted infringement theories.

This MIL was **GRANTED**. (Dkt. No. 265 at 49:14-18). Defendants may present those non-infringing alternatives that are no longer asserted products, however, Defendants may not characterize non-infringing alternatives as previously asserted and now dropped products. (*Id.* at 49:19-50:3). With regard to willfulness, the Court will exercise its gatekeeping authority and require prior leave of Court before the assertion of previously asserted but now dropped claims is raised before the jury. (*Id.* at 50:4-8).

- Solas MIL No. 2: Evidence of “background” prior art not properly disclosed in invalidity contentions.

This MIL was **DENIED**. (Dkt. No. 265 at 57:11-16). However, Plaintiff may object to improper obviousness references. (*Id.* at 57:17-58:14).

- Solas MIL No. 3: Evidence and argument based on Defendants’ patents and patent applications.

This MIL was **GRANTED**. (Dkt. No. 265 at 67:4-6). However, Samsung must seek leave to introduce such evidence as it relates to willfulness. (*Id.* at 67:7-9).

- Solas MIL No. 4: Evidence and argument regarding trial counsel’s involvement in Solas’s acquisition of the patents-in-suit as well as any purported contingent fee arrangement.

This MIL was **GRANTED-AS-AGREED**. (Dkt. No. 265 at 68:6-7). The Parties agreed that Defendants will not present evidence or argument regarding Russ August & Kabat’s involvement in Solas’s acquisition of the patents-in-suit, including any contingent fee agreement, possible role as buyer, or ownership interest. (*Id.* at 67:20-24). Defendants may present evidence and argument that Solas was represented by experienced patent counsel in the patent acquisition process. (*Id.* at 67:25-68:2).

- Solas MIL No. 5: Evidence and argument regarding purported backing or financing of Solas by a “hedge fund” or related investment vehicle.

This MIL was **GRANTED-AS-AGREED**. (Dkt. No. 265 at 68:22-24). The Parties agreed that Defendants will not introduce evidence or argument calling Magnetar Capital or any entity involved with Solas a hedge fund or similar investment vehicle, e.g., private equity or investor fund. (*Id.* at 68:11-14). References of this type will be redacted from pre-admitted documents and deposition designations. (*Id.* at 68:15-16). Defendants are not precluded from introducing evidence that Solas has investors and/or partners generally. (*Id.* at 68:16-18).

- Solas MIL No. 6: Dr. Sierros’s “clarification” errata, which rewrites his testimony.

This MIL was **WITHDRAWN**. (Dkt. No. 265 at 68:25-69:3).

- Solas MIL No. 7: Evidence or argument referring to Solas as litigious or its business model being focused on filing lawsuits.

This MIL was **GRANTED-AS-AGREED**. (Dkt. No. 265 at 69:18-20). The Parties agreed that Defendants will not use the terms “troll,” “pirate,” “NPE,” “non-practicing entity,” or “patent assertion entity” to refer to Solas. (*Id.* at 69:7-10). Defendants may raise argument, evidence, or testimony that Solas does not manufacture or sell products and also may disclose Solas’s business model. (*Id.* at 69:10-14).

- Solas MIL No. 8: Evidence of non-comparable licenses.

This MIL was **GRANTED-AS-AGREED**. (Dkt. No. 265 at 70:18-20). The lump-sum amounts contained in the licenses will be redacted and Solas will not insinuate that those lump-sum amounts were large, but the licenses will come in to show that they were lump-sum licenses. (*Id.* at 70:2-5, 15-17).

- Solas MIL No. 9: Late-produced, manufactured component cost document.

This MIL was **GRANTED-AS-AGREED**. (Dkt. No. 265 at 70:21-71:5). The Parties agreed that the MIL should be granted based on the Court's earlier rulings on dispositive motions. (*Id.*).

- Solas MIL No. 10: Evidence related to unavailable non-infringing alternatives.

This MIL was **WITHDRAWN**. Solas withdrew this MIL from consideration. (Dkt. No. 265 at 71:6-9).

- Solas MIL No. 11: Evidence and argument regarding Defendants' equitable defenses.

This MIL was **GRANTED-AS-AGREED**. (Dkt. No. 265 at 72:1-2). Defendants will not present evidence or testimony before the jury related solely to any of their equitable defenses. (*Id.* at 71:19-22).

3. Defendants' Opposed Motions *in Limine* (Dkt. No. 224)

- Samsung MIL No. 1: Expert testimony by Mr. Credelle or related evidence or argument concerning non-infringing alternatives.

This MIL was **DENIED**. (Dkt. No. 265 at 77:22-23). Expert witnesses on both sides are constrained by the contents of their expert reports in testifying before the jury. (*Id.* at 77:23-78-1).

- Samsung MIL No. 2: Expert testimony by Mr. Credelle or related evidence or argument that the accused products include a holding transistor which holds a voltage between the gate and source of the driving transistor in a light emission period.

This MIL was **WITHDRAWN**. Samsung withdrew this MIL from consideration. (Dkt. No. 265 at 78:4-6).

- Samsung MIL No. 3: Evidence or argument regarding secondary considerations of non-obviousness.

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