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Jonathan E. Nelson
PHONE: (901) 543-5988
FAX: (877) 521-2817
E-MAIL: jenelson@bassberry.com

The Tower at Peabody Place
100 Peabody Place, Suite 900
Memphis, TN 38103-3672
(901) 543-5900

January 18, 2013

Craig R. Kaufman
Freitas Tseng & Kaufman LLP
100 Marine Parkway, Suite 200
Redwood Shores, CA 94065

Re: *B.E. Tech., LLC v. Samsung*, Civ Nos. 12-cv-2824, 12-cv-2825

Dear Craig:

We have reviewed B.E. Technology's Initial Infringement Contentions dated January 7, 2013. For the reasons discussed below, the contentions fail to satisfy the requirements of Local Patent Rule 3.1.

Rule 3.1 requires that B.E. Technology's Initial Infringement Contentions contain a chart identifying "specifically where each limitation of each asserted claim is found within each Accused Instrumentality." However, for several of the elements of the asserted claims, B.E. Technology failed to do that for each and every Accused Instrumentality. Specifically, for virtually every limitation, B.E. Technology included a series of "screen shots" without any further explanation as to where each limitation is found. For example, and without limitation, the chart comparing claim 2 of the '290 to the Samsung Acclaim smartphones is deficient for at least the following reasons:

- For element (a) of claim 2, the chart merely states in conclusory fashion that "[t]he Samsung Acclaim smartphone includes a non-volatile data storage device," followed by a series of screen shots of a Samsung phone. The screen shots fail to identify what it is about the phone that constitutes a non-volatile data storage device.
- For element (c) of claim 2, while the chart identifies several alleged programs followed once again by a series of screen shots, it fails to identify, without limitation, "a number of user-selectable items displayed in [the graphical user interface]," "a link to an information resource accessible via the network," and how each program "is operable upon execution and in response to selection by a user of one of said items to access the associated information resource over the network."
- For element (d), the chart fails to identify, without limitation, the programs being operable "to display a user-selectable item for user links contained within the user profile" and "in response to selection by a user of one of the user links to access the file

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associated with the selected user link from the user library associated with the received user profile.” The series of screen shots included in the chart are wholly insufficient.

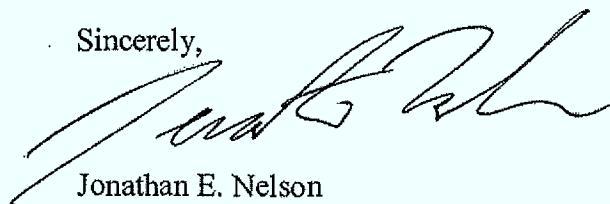
In addition, we object to B.E. Technology’s assertions relating to the doctrine of equivalents. For virtually every claim element, B.E. Technology included an alternative boilerplate argument that the element is met under the doctrine of equivalents. B.E. Technology’s assertions of infringement under the doctrine of equivalents are improper for at least two reasons. First, it is improper to assert the doctrine of equivalents as an alternative position since an element can only appear in an accused device either literally or under the doctrine of equivalents. It is clear that B.E. Technology is attempting to preserve a doctrine of equivalents argument in the event it fails to establish literal infringement. However, such an argument cannot be preserved simply by cutting and pasting a boilerplate statement into a claim chart. Second, B.E. Technology did not provide any explanation as to what feature(s) of each Accused Instrumentality constitutes an equivalent for any claim element, thereby violating Local Patent Rule 3.1 for the same reasons as discussed above.

Moreover, the contentions served by B.E. Technology identify as accused products mobile phones (and possibly other product categories) that are not sold in the United States and that cannot form the basis of a claim of infringement of a U.S. patent. These include, without limitation, the Galaxy Ace, Galaxy Fit, Galaxy Gio, Galaxy Mini, Galaxy Pocket Duos, Galaxy Pocket and Galaxy S Advance. It is possible that other products were also misidentified, but it is difficult for us to make that determination since the contentions identify product names without providing any model numbers and Samsung sells products in the U.S. that share the names as their overseas counterparts but have different model numbers. The contentions must therefore be amended to both delete products not sold in the U.S. and identify model numbers of accused products.

For at least these reasons, B.E. Technology has failed to comply with Local Patent Rule 3.1. Such failure will make it difficult to impossible for Samsung to prepare its Initial Non-infringement Contentions and produce the accompanying documents as required by Local Patent Rules 3.3 and 3.4. Therefore, we request that B.E. Technology confirm by January 23, 2013 that (a) it will be supplementing its contentions to address the issues mentioned above and otherwise comply with Rule 3.1 and (b) it has no objection to an extension of time for Samsung to comply with the requirements of Rules 3.3 and 3.4 up to and including the deadline for Samsung to serve its Invalidity and Unenforceability Contentions.

Please call us if you have any questions.

Sincerely,



Jonathan E. Nelson

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cc: BeTechFTKALL@ftklaw.com (via email)
Joshua Raskin, Esq. (via email)
Rich Pettus, Esq. (via email)
Justin MacLean, Esq. (via email)