

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

B.E. TECHNOLOGY, L.L.C.,

Plaintiff,

v.

SAMSUNG
TELECOMMUNICATIONS
AMERICA, LLC,

Defendant.

Case No. 2:12-cv-02824 JPM tmp

JURY DEMAND

B.E. TECHNOLOGY, L.L.C.,

Plaintiff,

v.

SAMSUNG ELECTRONICS
AMERICA, INC.,

Defendant.

Case No. 2:12-cv-02825 JPM tmp

JURY DEMAND

PLAINTIFF B.E. TECHNOLOGY L.L.C.'S MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION FOR EXTENSION OF TIME

Dated: August 12, 2013

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Plaintiff B.E. Technology, L.L.C. (“B.E.”) respectfully responds to defendants Samsung Telecommunications America, LLC’s (“STA”) and Samsung Electronics America, Inc.’s (“SEA”) (together “the defendants”) motion for extension of time. The defendants seek additional time to meet their Local Patent Rules (“LPR”) 3.3 and 3.4 obligations pending the Court’s resolution of the defendants’ motion to compel supplemental infringement contentions and stay certain discovery obligations. *See* SEA D.E. 50.¹ There is no basis for the requested extension of time.

The defendants seek modification of the recently agreed upon deadline for providing non-infringement contentions and accompanying document production. *See* SEA D.E. 51. The defendants made their request five days after the parties submitted the agreed upon schedule to the Court. *See* SEA D.E. 56. The defendants agreed to the case schedule knowing full well that B.E. contends its infringement contentions are sufficient under the LPR and do not require supplementation. *See* SEA D.E. 57-3. There is no basis for agreeing to a case schedule, which was adopted by the Court, *see* SEA D.E. 56, and immediately seeking modifications of that schedule.

The defendants request a twenty-eight (28) day extension of time to comply with the LPR after B.E. serves supplemental infringement contentions if their motion to compel is granted or a twenty-one (21) day extension if their motion to compel is denied. There is no basis for such a win-win. If the defendants’ motion is denied, they will have already had the time it takes the Court to decide the motion to compel plus the more than seven months since B.E. served its initial infringement contention to formulate their non-infringement contentions. An additional twenty-one day extension is excessive and undeserved. Presumably, by filing this motion for

¹ Where the documents filed in STA and SEA are identical, B.E. will refer to the document entry number on SEA’s docket.

extension of time, the defendants do not intend to satisfy their obligations under LPR 3.3 and 3.4 in accordance with the case schedule. *See* SEA D.E. 56. Regardless of the outcome of the defendants' motion to compel, the defendants apparently have maneuvered into a position to simply take an extension of time despite the requirements of the case schedule.

As discussed in detail in B.E.'s memorandum in opposition to the defendants' motion to compel, B.E.'s initial infringement contentions are adequate under the LPR. *See* SEA D.E. 57. B.E.'s initial infringement contentions provide "reasonable notice to the defendant why [B.E.] believes it has a reasonable chance of proving infringement and raise a reasonable inference that all accused products infringe." SEA D.E. 57-6. The defendants demonstrated at the initial case management conference a deep understanding of the asserted patent and their initial thinking on why their products do not infringe. The defendants know how their own products work and they have been in possession of B.E.'s contentions for more than seven months. The defendants do not require more information from B.E. or additional time to provide their initial non-infringement contentions. Moreover, as noted in B.E.'s opposition brief, the defendants do not cite to any authority supporting a stay of non-infringement contentions pending the resolution of a motion to compel supplemental infringement contentions. SEA D.E. 57 at 19-20. Thus, the defendants should be required to comply with their agreement to the current case schedule. *See* SEA D.E. 56.

The defendants' requested extension is not brief and is prejudicial to B.E. The defendants claim that the requested extension would "ensure that the Court has adequate time to consider the merits of Samsung's Motion to Compel without forcing Samsung to respond *twice* to over 10,000 pages" of B.E.'s initial infringement contentions. *See* SEA D.E. 51 at 2. (emphasis in original). The length of B.E.'s initial infringement contentions is not grounds for

granting an extension of time or delaying compliance with the case schedule. *Id.* The defendants have had B.E.'s contentions for more than seven months. There has been more than enough time to understand and prepare non-infringement contentions. B.E. will be prejudiced by delay because B.E. will have less time to analyze the defendants' non-infringement contentions, whenever those contentions are provided, before having to make substantive decisions with respect to upcoming deadlines in the case schedule, including, amending pleadings and identifying terms for construction. *See* SEA D.E. 56. Moreover, these deadlines may pass before or arrive shortly after the Court rules on the defendants' motion to compel. Contrary to the defendants' assertion, it is probable that granting the defendants' requested extension will result in the delay of other deadlines in the case schedule, which was adopted in all of the pending B.E. cases to keep them moving forward together. This case has already been delayed and the defendants' request will only add more delay. *See* STA D.E. 33; SEA D.E. 37 (stay pending order on motions to transfer).

For the foregoing reasons, B.E. respectfully requests that the Court deny the defendants' request for an extension of time for the defendants to comply with their obligations under the LPR 3.3 and 3.4 pending the resolution of the defendants' motion to compel.

Dated: August 12, 2013

Respectfully submitted,

/s/Daniel Weinberg

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