

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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

**Plaintiff,**

**v.**

**SAMSUNG TELECOMMUNICATIONS  
AMERICA, LLC,**

**Defendant.**

**Civil Action No. 12-cv-02824-JPM-tmp**

**JURY TRIAL DEMANDED**

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

**Plaintiff,**

**v.**

**SAMSUNG ELECTRONICS AMERICA  
INC.,**

**Defendant.**

**Civil Action No. 12-cv-02825-JPM-tmp**

**JURY TRIAL DEMANDED**

**SAMSUNG’S MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF SAMSUNG’S  
MOTION TO COMPEL SUPPLEMENTAL INFRINGEMENT CONTENTIONS**

Pursuant to Local Rule 7.2(c), defendants Samsung Telecommunications America, LLC (“STA”) and Samsung Electronics America, Inc. (“SEA”) (collectively, “Samsung”) respectfully move for the entry of an Order granting leave to file a reply, not exceeding 10 pages in length, in support of Samsung’s pending motion to compel supplemental infringement contentions that comply with LPR 3.1, and relieve defendants of certain responsive discovery obligations pending service of compliant contentions. In support, Samsung respectfully submits the following:

1. These actions were commenced on September 21, 2012 (STA D.E. 1; SEA D.E. 1).<sup>1</sup> Samsung timely responded to the complaint on December 31, 2012 (STA D.E. 22; SEA D.E. 26). On January 7, 2013, Plaintiff B.E. Technology, L.L.C. (“Plaintiff”) served more than 10,000 pages of Infringement Contentions (“ICs”) on both SEA and STA. On July 23, 2013, after this Court lifted the stay in these actions, Samsung filed a motion and supporting documents seeking to compel Plaintiff to serve supplemental infringement contentions so that Samsung could meet its obligations under LPR 3.3 and 3.4 (STA D.E. 46; SEA D.E. 50). Plaintiff filed a response opposing Samsung’s motion on August 9, 2013 (STA D.E. 53; SEA D.E. 57).

2. At the July 26, 2013 initial case management conference, the Court referenced its Order in *Multilayer Stretch Cling Film Holdings, Inc. v. MSC Mktg. & Tech., Inc.*, No. 2:12-cv-2112-JPM-tmp (W.D. Tenn. July 23, 2013), denying a defendant’s motion to compel supplemental infringement contentions. The Court’s Order in *Multilayer* was issued the same day as, and became publicly available after, Samsung filed its motion to compel, and thus was not available to Samsung at the time it filed its motion, but was available to and cited by Plaintiff in its opposition (STA D.E. 53 at 3-4; SEA D.E. 57 at 3-4). In its reply, Samsung would seek to (a) demonstrate that Plaintiff’s ICs fail to meet the standards set forth in *Multilayer*, and (b) distinguish *Multilayer* from the present facts.

3. To Samsung’s knowledge, resolution of the present motion would be only the second opportunity (after *Multilayer*) that this Court has had to address a plaintiff’s obligations under Local Patent Rule 3.1. The Court’s resolution of Samsung’s motion will not only resolve the present dispute, but may serve as an important guidepost for future patent litigations in this District.

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<sup>1</sup> All citations to “STA D.E.” refer to the docket entries in *B.E. v. STA*, Case No. 2:12-cv-2824. All citations to “SEA D.E.” refer to the docket entries in *B.E. v. SEA*, Case No. 2:12-cv-2825.

4. As the moving party, Samsung bears the burden on the underlying motion. Allowing Samsung an opportunity for rebuttal, through a reply, comports with fair application of that burden.

5. Plaintiff's opposition to Samsung's motion includes arguments that were not predictable as certain or requiring pre-emptive or hypothetical argument in Samsung's opening motion papers, and contains factual assertions which were not previously ascertainable by Samsung, to which Samsung should be given an opportunity to respond. For example, Plaintiff, for the first time, provides an explanation of the purported connection in its infringement contentions between screenshots and certain limitations of the '290 Patent with respect to a different product than the one addressed by Samsung in its original motion. In its reply, Samsung would seek to demonstrate (1) why Plaintiff's attempt to effectively supplement its contentions by way of its new explanation confirms, rather than contradicts, its failure to comply with LPR 3.1; and (2) why, even if its new explanations could be treated as a supplement, Plaintiff's infringement contentions are still deficient and fail to provide enough information to enable Samsung to provide responsive noninfringement contentions or document production under LPR 3.3 and 3.4. The Court would benefit from hearing Samsung's full argument on these issues.

6. Plaintiff's opposition includes its own cross-motion for relief, requesting that the Court order Samsung to agree to a "representative products stipulation" (STA D.E. 53 at 18-19; SEA D.E. 57 at 18-19). Samsung respectfully requests the opportunity to respond to Plaintiff's cross-motion, and thereby demonstrate to the Court that it cannot agree to a representative products stipulation without first knowing what functionality Plaintiff accuses of infringement

and the basis for such accusation. Plaintiff's deficient infringement contentions thus preclude the relief it seeks by way of its cross-motion.

7. These actions are at an early stage. The Scheduling Orders for these actions have only recently been entered on July 30, 2013 (STA D.E. 52; SEA D.E. 56). The issues to be decided on this motion – the sufficiency of Plaintiff's infringement contentions and the timeframe for Samsung to provide its response – would not materially affect other deadlines set forth in these Scheduling Orders, including deadlines for invalidity contentions, validity contentions, or claim construction related disclosures and briefing. The proposed Order on this motion would require defendants to file their reply memorandum within just 5 days from the grant of leave. Allowing these few additional days before the motion is fully briefed will not materially impede the progress of these actions.

8. Briefing must address a number of issues and circumstances. While Samsung is committed to its reply being as concise as possible, coverage of the issues meriting a reply appears likely to require more than the 5 pages normally permitted by Local Rule 7.2(e). This motion respectfully requests authorization to use up to 10 pages for such purpose.

**DATE: August 13, 2013**

Respectfully submitted,

/s/ Jonathan E. Nelson

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