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

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| **B.E. TECHNOLOGY, L.L.C.,**<br><br>**Plaintiff,**<br><br>**v.**<br><br>**SAMSUNG TELECOMMUNICATIONS AMERICA, LLC,**<br><br>**Defendant.** | **Civil Action No. 12-cv-02824-JPM-tmp** |
| **B.E. TECHNOLOGY, L.L.C.,**<br><br>**Plaintiff,**<br><br>**v.**<br><br>**SAMSUNG ELECTRONICS AMERICA INC.,**<br><br>**Defendant.** | **Civil Action No. 12-cv-02825-JPM-tmp** |

**THE SAMSUNG DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO COMPEL SUPPLEMENTAL INFRINGEMENT CONTENTIONS**

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Defendants Samsung Electronics America, Inc. ("SEA") and Samsung Telecommunications America, LLC ("STA") (collectively, "Samsung") hereby submit their reply in support of their motion to compel Plaintiff B.E. Technology, Inc. ("B.E." or "Plaintiff") to serve supplemental infringement contentions that comply with Local Patent Rule ("L.P.R.") 3.1.

## I. B.E. HAS NOT PROVIDED REASONABLE NOTICE OF ITS INFRINGEMENT THEORIES

### A. This Court's *Multilayer* Decision Does Not Make Unexplained Screenshots Adequate To Satisfy L.P.R. 3.1.

This Court recently held that initial infringement contentions must provide "reasonable notice to the defendant why the plaintiff believes it has a reasonable chance of proving infringement and raise a reasonable inference that all accused products infringe." *See Multilayer Stretch Cling Film Holdings, Inc. v. MSC Mktg. & Tech., Inc.*, No. 2:12-cv-02112-JPM-tmp (D.E. 90), slip op. at 1-2 (W.D. Tenn. July 23, 2013) (citing *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, No. CV 12-01971-CW (KAW), 2013 WL 633406, at *3 (N.D. Cal. Feb. 20, 2013)) (Ex. 1).[1] B.E.'s infringement contentions ("ICs") are deficient under this standard. B.E. does not dispute that its ICs include 10,000+ pages that do only two things: (1) repeat the claim language, and (2) include a series of unadorned, unexplained screenshots. These infringement contentions do not provide "reasonable notice" because they do not provide any explanation linking the screenshots, or any portions thereof, to the claim language. For example, the contentions use the *same* screenshot for *different* elements of the same claims, without any explanation. (*See, e.g.* Olaniran Decl. Ex. 6 (D.E. 53-7) at 16 and 35.) Indeed, L.P.R. 3.1

[1] Unless otherwise noted, all exhibits referenced herein are attached to the concurrently-submitted Reply Declaration of Justin A. MacLean in support of Samsung's motion to compel supplemental infringement contentions. All references to "D.E." refer to docket entries in *B.E. v. STA*, No. 2:12-cv-2824; identical motions and oppositions have been filed in *B.E. v. SEA*, No. 2:12-cv-2825.



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requires a "chart identifying specifically where each limitation of each asserted claim is found within each Accused Instrumentality." That requirement is not satisfied by unexplained screenshots: a claim chart which "parrots the language of the claim limitations, provides screen shots … and then states that [defendant's] product infringes" is insufficient. *Droplets, Inc. v. Amazon.com, Inc.*, No. C12-03733, 2013 WL 1563256 (N.D. Cal. Apr. 12, 2013) (evaluating compliance with identical language in the N.D. Cal. Patent Local Rules).

Nothing in the *Multilayer* case suggests that unexplained screenshots are sufficient to satisfy L.P.R. 3.1. Indeed, the opposite is true. By applying the law established in the Northern District of California, because the Local Patent Rules here are similar to the rules there, *Multilayer* confirms that the reasoning in cases such as *Droplets* should be applied here to find that unexplained screenshots are insufficient.

This case is also different from the *Multilayer* case because there, the defendant was able to provide initial noninfringement contentions in response to the plaintiff's infringement contentions, and had waited for over a year to file its motion to compel. (*See* Ex. 2, at 2-3.) Here, Samsung is not able to provide the type of noninfringement contentions it would normally provide due to the lack of specificity in B.E.'s ICs.[2] Moreover, Samsung filed its motion promptly after the stay in the instant litigation was lifted.

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[2] B.E.'s statement that "the defendants … made a presentation to the Court at the initial case management conference that demonstrated a deep understanding of the patent-in-suit and the defendants' belief that they do not infringe" (D.E. 53 at 19; *see also id.* at 1) is inaccurate with respect to Samsung. While some defendants in the co-pending litigations involving B.E. presented on ways that networked-computing technology generally would not infringe the patent-in-suit, Samsung's attorneys did not give this presentation, and no statement was made about how Samsung's products specifically do not meet each and every limitation of the '290 patent claims, and for good reason: Samsung did not, and still does not, understand B.E.'s contentions as to why it believes Samsung's products meet these limitations.



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