

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

CYWEE GROUP LTD.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD. AND
SAMSUNG ELECTRONICS AMERICA, INC.

Defendants.

CASE NO. 2:17-cv-00140-RWS-RSP

JURY TRIAL DEMANDED

**PLAINTIFF’S MOTION TO LIMIT DEFENDANTS’ INVALIDITY ARGUMENTS AND
PRIOR ART REFERENCES**

In this infringement case, Plaintiff CyWee Group Ltd. (“CyWee”) has asserted only *two* patents and *eleven* claims against Defendants Samsung Electronics Co. Ltd and Samsung Electronics America, Inc. (collectively, “Samsung”). Despite CyWee’s narrow and targeted claims, Samsung’s invalidity contentions span over *4,000 pages* and assert *eighty-three* prior art references. The immense size and scope of Samsung’s invalidity contentions creates a needle in a haystack scenario, wherein CyWee is forced to dig, sift, and sort through an impossibly voluminous amount of materials in order to even hazard a guess as to what fraction of prior art theories and references Samsung actually intends to rely on in its invalidity case. By burying its core invalidity arguments and key prior art references within a multitude of contentions, Samsung not only unduly prejudices CyWee in its trial preparation, but also fails to provide CyWee with adequate notice of its invalidity theories in contravention of the Local Patent Rules and their intended goals. Accordingly, CyWee requests that the Court require Samsung to clearly identify and articulate its primary three invalidity arguments, and to reduce its unwieldy number of prior art references to no more than three for each asserted claim.

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I. FACTUAL BACKGROUND

On February 2, 2017, CyWee sued Samsung for infringement of U.S. Patent No. 8,441,438 (the “’438 patent”) and U.S. Patent No. 8,552,978 (the “’978 patent”). The ’978 patent is a continuation-in-part of the ’438 patent. In July 2017, CyWee served its infringement contentions, asserting only eleven claims across both patents – nine claims for the ’438 patent and two for the ’978 patent. *See* Dkt. 41-2.

Samsung’s invalidity contentions, on the other hand, span over 4,000 pages and identify eighty-three separate prior art references that allegedly anticipate or render the asserted patents obvious. Declaration of Ari Rafilson (“Rafilson Decl.”) ¶ 2. Samsung asserts that the identified combinations are “not intended to be exhaustive,” “exemplary,” and do “not exclude other combinations,” without disclosing such actual combinations. Samsung further contends that “it would have been obvious to one of ordinary skill in the art to combine *any of these references* to arrive at the claimed invention.” Rafilson Decl. ¶ 2. (emphasis added).

On April 17, 2018, the Court held the *Markman* hearing in this case. Pursuant to the current Docket Control Order, July 31, 2018 is the deadline to complete fact discovery and September 28, 2018 is the deadline to complete expert discovery. Dkt. 96. To address Samsung’s overbroad and unwieldy invalidity contentions, the parties met and conferred on April 18, 2018 and April 26, 2018. But Samsung refused to reduce its invalidity arguments and prior art references unless CyWee limited its asserted claims, which have been narrowly tailored since the inception of this case. CyWee is thus forced to seek relief from the Court. Rafilson Decl. ¶ 3.

II. ARGUMENT & AUTHORITIES

The Court has inherent authority to limit the parties’ claims and defenses where appropriate. *See, e.g., Acantha LLC v. DePuy Orthopaedics Inc.*, 2017 WL 5186376 at *4 (E.D.

Wisc. Nov. 8, 2017); *Certusview Techs., LLC v. S & N Locating Servs., LLC*, 2014 WL 4930803 at *6 (E.D. Va. Oct. 1, 2014); *MyMedical Records, Inc. v. Walgreen Co.*, 2014 WL 2931695 at *1 (C.D. Cal. June 27, 2014). Just as the Court has the inherent authority to limit the patent claims that a plaintiff may assert, the Court also has the authority to limit the number of invalidity arguments and prior art references that defendants may assert.” *Acantha LLC*, 2017 WL 5186376 at *4 (quoting *Certusview Techs., LLC*, 2014 WL 4930803 at *6). “Requiring the limitation of asserted claims-and, it follows, prior art references-is permissible so long as the court permits assertion of additional claims (or prior art) upon a showing of good cause or need.” *MyMedical Records, Inc.*, 2014 WL 2931695 at *1 (citing *In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1310-12 (Fed. Cir. 2011)).

A. This Court Routinely Limits Invalidity Arguments and Prior Art References.

This Court has repeatedly recognized the benefits of limiting prior art references for invalidity defenses to a manageable number. *See, e.g., Keranos, LLC v. Silicon Storage Tech., Inc.*, No. 2:13-CV-17, 2013 WL 5763738, at *4 (E.D. Tex. Aug. 5, 2013), *vacated in part*, 797 F.3d 1025 (Fed. Cir. 2015) (limiting prior art references and acknowledging that “[t]he Court routinely limits Defendants to two or three prior art references”); *Glob. Sessions LP v. Travelocity.com LP*, No. 6:10CV671 LED-JDL, 2012 WL 9491750 (E.D. Tex. Dec. 4, 2012) (limiting the prior art to three references per claim); *Gemalto S.A. v. HTC Corp.*, Case No. 6:10-cv-00561, Dkt. 293 at 1-2 (E.D. Tex. Oct. 23, 2012) (ordering defendants to reduce the number of prior art references and combinations thereof to two to three per asserted claim); *MOSAID Techs. Inc. v. Freescale Semiconductor*, Case No. 6:11-cv-00173, Dkt. 182 at 1-2 (E.D. Tex. Aug. 28, 2012) (ordering defendants to limit invalidity references to four total references per claim, single references, or combinations thereof); *Unified Messaging Sols. LLC v. Facebook*,

Inc., No. 6:11CV120, 2012 WL 11606516, at *1 (E.D. Tex. July 12, 2012) (ordering defendants to reduce invalidity bases to no more than four per asserted claim prior to the *Markman* hearing).¹

Samsung has asserted numerous invalidity arguments and an inordinate amount of prior art references. Although in the early stages of a case, parties often make “broad generalizations regarding the ‘appropriate’ number of claims and references to be asserted,” *Glob. Sessions LP*, 2012 WL 9491750, at *1, courts have often limited prior art references after claim construction has been completed or when discovery has been substantially completed, *see e.g. Keranos, LLC*, 2013 WL 5763738, at *4 (limiting prior art references after discovery had “substantially completed”); *see also Certusview Techs., LLC*, 2014 WL 4930803, at *5 (stating that the case had reached a sufficient stage in the discovery process to allow parties to make an informed decision about which claims and defenses to pursue).

Here, claim construction briefing and argument has been completed, and the deadline for fact discovery is fast approaching. Samsung has undoubtedly determined its trial theories at this point in the case, and it has not provided any justification for why more than **4,000 pages** of invalidity contentions are reasonably necessary for its case or otherwise supported by good cause. As this Court has recognized, “[a]bsent extraordinary circumstances, a manageable number per claim is no more than 2 -3 references.” *Gemalto*, Case No. 6:10-cv-00561, Dkt. 293 at 1-2. Moreover, limiting prior art references “reduce[s] the overall cost of the litigation by

¹ Other courts also regularly limit asserted invalidity theories and prior art references. *See e.g. Certusview Techs., LLC v. S & N Locating Servs., LLC*, No. 2:13CV346, 2014 WL 4930803, at *7 (E.D. Va. Oct. 1, 2014) (limiting the number of prior art references to twenty-five); *Digital Reg of Tex., LLC v. Adobe Sys.*, No. C 12-1971 CW, 2014 WL 4090550, at *9 (N.D. Cal. Aug. 19, 2014) (discussing limitation of prior art to three references or combinations per claim); *Thought, Inc. v. Oracle Corp.*, No. 12-CV-05601-WHO, 2013 WL 5587559, at *4 (N.D. Cal. Oct. 10, 2013) (limiting prior references to nine per patent and no more than twenty-five total).

eliminating needless discovery regarding issues that will likely be dropped prior to trial and allow[s] the Court to dedicate its resources to truly dispositive and meritorious issues.” *Unified Messaging*, 2012 WL 11606516, at *1. Accordingly, in the interest of the efficient resolution of this case, Samsung should be required to assert only those theories and supporting prior art references that are reasonably necessary for this case.

B. Samsung’s Voluminous Invalidity Contentions Contravene the Local Patent Rules.

The Local Patent Rules “exist to further the goal of full, timely discovery and provide all parties with adequate notice and information with which to litigate their cases.” *Computer Acceleration Corp. v. Microsoft Corp.*, 503 F.Supp.2d 819, 822 (E.D. Tex.2007). Applying the Local Patent Rules in the context of invalidity contentions, this Court has held that excessive invalidity contentions “do not put the plaintiffs on real or useful notice” and amount to “an attempt to end run the rules.” *Saffran v. Johnson & Johnson*, 2009 WL 8491495 at * 1 (E.D. Tex. Feb. 24, 2009).

Samsung’s voluminous invalidity contentions hide the ball and deprive CyWee of any reasonable notice of Samsung’s actual defenses and the evidence it anticipates using at trial. If Samsung is permitted to maintain excessive prior art references when discovery will soon close and expert reports will be due, CyWee will be unfairly prejudiced in its ability to prepare its validity expert reports. As it stands, CyWee’s experts will have to study and analyze each and every reference and opine on their potential applicability, while Samsung continues to hold an unfair advantage by knowing exactly which invalidity theories and prior art references it really intends to use for dispositive motions or at trial. Such gamesmanship is precisely the kind of tactic that the Local Patent Rules are intended to prevent, and Samsung should not be permitted to circumvent the rules by asserting excessive invalidity contentions.

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