

**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.

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NO. 2:17-CV-00140-WCB-RSP

**DEFENDANTS SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG  
ELECTRONICS AMERICA, INC.’S MOTION FOR PROTECTIVE ORDER  
REGARDING THE DEPOSITION OF DONG JIN KOH**

Defendants Samsung Electronics Co., Ltd. (“SEC”) and Samsung Electronics America, Inc. (“SEA”) (collectively, “Samsung”) respectfully move, pursuant to Federal Rules of Civil Procedure 26 and 45, for a protective order prohibiting Plaintiff CyWee Group Ltd. (“CyWee”) from taking the deposition of Dong Jin Koh.

Mr. Koh is a President and a Chief Executive Officer (“CEO”) of SEC. Given Mr. Koh’s responsibilities, CyWee’s proposed deposition would impose an undue burden on Mr. Koh and a significant disruption to SEC’s business.

CyWee has not shown any basis for imposing this burden. Instead, CyWee argues that Mr. Koh’s deposition is necessary because Mr. Koh previously served as the Head of SEC’s Mobile Communications Business and therefore purportedly has information regarding Samsung’s decision to add sensor fusion technology to the accused products and Samsung’s licensing decisions as of the alleged date of first infringement. Contrary to CyWee’s representations, Mr. Koh has no unique personal knowledge of these facts that could not be obtained through other means. Indeed, CyWee already requested detailed information regarding Samsung’s decision to add sensor fusion

technology to the accused products in an interrogatory it served a day before noticing Mr. Koh's deposition. CyWee also noticed a 30(b)(6) witness on this topic in April, and Samsung has designated a witness on that topic. Similarly, CyWee's argument that it needs to depose Mr. Koh on Samsung's licensing-related decisions is equally flawed. Samsung is already making three senior members of its licensing team available for deposition. CyWee has not shown why it cannot obtain the information it seeks from these less burdensome means. Samsung thus respectfully requests a protective order against CyWee's premature and overreaching deposition request.

## I. BACKGROUND

On April 20, 2018, CyWee served Plaintiff's Notice of Deposition of Samsung Electronics Co., Ltd., identifying sixty-five topics. Declaration of Elizabeth L. Brann ("Brann Decl.") ¶ 2.

Topic No. 4 of CyWee's notice requests that Samsung designate a witness to testify on "all facts Related To the earliest decision to add Motion Sensor Fusion Technology to SEC products, including the Accused Instrumentalities." *Id.* On June 18th, Samsung designated six witnesses to testify regarding various topics in CyWee's 30(b)(6) notice, including Topic No. 4. *Id.* ¶ 8. CyWee has not yet taken any of these depositions.

On June 13, CyWee served its Second Set of Interrogatories to Samsung. Interrogatory No. 32 requests that Samsung:

Describe in detail the process(es) through which Samsung made the decision to include Sensor Fusion Technology in the Accused Products. Among other things, Your answer shall (a) identify the top three individuals responsible for the final decision to include Sensor Fusion Technology in each Accused Product; (b) state the date(s) the decision(s) to include Sensor Fusion Technology in each Accused Product were made; (c) describe the reasons for including Sensor Fusion Technology in each Accused Product; (d) describe how the decision to include Sensor Fusion Technology in each Accused Product was communicated among Samsung's personnel; (e) identify the person(s) who communicated the decision to include Sensor Fusion Technology in each Accused Product within Samsung; (f) identify the person(s) within Samsung to whom the decision to include Sensor Fusion Technology in the Accused Products was first

communicated; and (g) identify any Documents related to or referencing Samsung's decisions to include Sensor Fusion Technology in the Accused Products.

*Id.* ¶¶ 3–4. Samsung's responses are due on July 13, 2018.

On June 14, CyWee noticed the deposition of Dong Jin Koh. *Id.* ¶ 5. Mr. Koh is a President and CEO of SEC. *Id.* ¶ 6. CyWee asserted that its proposed deposition was justified because of Mr. Koh's position from 2007–2011 as the Head of SEC's Mobile Communications Business and because CyWee needed information on “events that occurred during that period”—specifically the decision-making process used by Samsung to add sensor fusion technology to the accused products. *Id.* ¶ 7.

On June 20, Samsung informed CyWee that its deposition request was both unreasonably burdensome and duplicative given CyWee's 30(b)(6) notice and interrogatory on the same subject. *Id.* ¶ 10. In an effort to compromise with CyWee, Samsung offered to reconsider CyWee's request to depose Mr. Koh after CyWee finished deposing Samsung's 30(b)(6) witness on this topic. *Id.*

On June 20, CyWee refused Samsung's compromise, stating that the issue of Mr. Koh's deposition would need to be “teed up for the Court” on a hotline call. *Id.* ¶ 11. On June 22, Samsung responded that CyWee still had not provided any reason why the information it was attempting to obtain from Mr. Koh could not be obtained using less burdensome means and that a hotline call was premature. In an attempt to resolve the dispute without Court intervention, Samsung requested dates and times when CyWee's counsel would be available to meet and confer. *Id.* ¶ 12.

On June 25, CyWee declined to provide its availability, raising for the first time that it intended to ask Mr. Koh about Samsung's licensing-related decisions. Rather than provide additional information in a meet and confer, CyWee requested that Samsung file a Motion for Protective Order with the Court. *Id.* ¶ 13. On the same day, in an effort to comply with the Local Rules of this

District, Samsung requested that CyWee confirm that it was refusing to meet and confer on the issue of Mr. Koh's deposition. *Id.* ¶ 14. CyWee responded that the parties had "conferenced already twice" and that Samsung should move for a protective order. *Id.* ¶ 15. Accordingly, Samsung was left with no recourse but to file the instant motion.

## II. ARGUMENT

CyWee has not provided and cannot provide any sufficient basis why it needs to depose Dong Jin Koh, one of SEC's Presidents and CEOs. A party seeking to depose a high-level corporate executive must demonstrate that the executive has unique, personal knowledge which cannot be obtained using less intrusive means. *See Motion Games, LLC v. Nintendo Co.*, No. 6:12-cv-878-JDL, 2015 U.S. Dist. LEXIS 179771, at \*11 (E.D. Tex. Mar. 18, 2015); *see also Gauthier v. Union Pac. R.R. Co.*, No. 1:07-CV-12 (TH/KFG), 2008 U.S. Dist. LEXIS 47199, at \*10–11 (E.D. Tex. June 18, 2008); *Comput. Acceleration Corp. v. Microsoft Corp.*, No. 9:06-CV-140, 2007 U.S. Dist. LEXIS 103806, at \*3 (E.D. Tex. June 15, 2007).

In *Motion Games*, the court denied plaintiff's motion to compel the deposition of Nintendo's CEO when there was no indication that the CEO had unique, personal knowledge of the information sought by plaintiff. 2015 U.S. Dist. LEXIS 179771, at \*11. Centrally, the court found that plaintiff had not even attempted to seek the information through a less burdensome means of discovery, such as a Rule 30(b)(6) deposition. *Id.*

Similarly, in *Computer Acceleration*, the court granted Microsoft's motion for a protective order quashing plaintiff's deposition of Bill Gates where there was no indication that Mr. Gates had personal, unique knowledge of the facts. 2007 U.S. Dist. LEXIS 103806, at \*3–4. Again, the court noted plaintiff had not shown that the information requested from Mr. Gates could not be obtained from lower-level Microsoft employees, especially given that plaintiff had already noticed comprehensive 30(b)(6) depositions on Microsoft. *Id.* at \*4.

Here, the only purportedly unique information CyWee argues is in Mr. Koh's possession is Samsung's decision to add sensor fusion technology to the accused products and licensing-related decisions. CyWee concludes that Mr. Koh has this information by virtue of his former position as the Head of SEC's Mobile Communications Business. However, CyWee has not shown and cannot show why this information would be unique to Mr. Koh. In fact, Mr. Koh was not directly involved in the decision to add sensor fusion technology to the accused products in this case. Declaration of Seongsig Kang ("Kang Decl.") ¶ 6. Any information Mr. Koh has regarding the decision to add sensor fusion technology would have been provided to him by others. *Id.* ¶ 7.

In addition, like the plaintiffs in *Motion Games* and *Computer Acceleration*, CyWee also cannot establish that the information it seeks cannot be obtained through other, less burdensome means. CyWee already requested the information regarding Samsung's decision to add sensor fusion technology to the accused products through an interrogatory and included the topic in its 30(b)(6) notice to Samsung. Samsung has not yet had the opportunity to respond to CyWee's interrogatory on this topic. Moreover, CyWee has not yet taken any 30(b)(6) depositions of Samsung.

Similarly, CyWee's argument that it needs to depose Mr. Koh on Samsung's licensing-related decisions is equally flawed. Samsung has already offered the depositions of three senior members of its licensing team: Mr. Injung Lee, a Senior Vice President and the Head of Licensing; Mr. Indong Kang, a Principal Legal Counsel; and Mr. Jong Pil Hong, a Vice President. CyWee has not demonstrated and cannot demonstrate it needs to ask Samsung's President and CEO the same questions that it could ask these witnesses.

As such, it is premature for CyWee to claim this information cannot be obtained through other means. CyWee has provided no reason why—in addition to its 30(b)(6) deposition of Samsung, interrogatory, and the depositions of three senior members of Samsung's licensing team—it must *also* depose Mr. Koh to obtain the *same* information. At the very least, CyWee's Notice of

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