

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

SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG ELECTRONICS
AMERICA, INC.'S OPPOSITION TO PLAINTIFF'S SECOND
MOTION TO COMPEL

CyWee's second motion to compel follows the same pattern as its first. Rather than properly meeting and conferring on the issues, CyWee's counsel followed up multiple harassing e-mails with a premature and baseless motion before Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, "Samsung") had time to consider CyWee's ever-changing discovery demands. CyWee's motion appears intended solely to waste the resources of the Court and the parties.

Of the four issues CyWee raises in its second motion, two are now moot or will soon be moot. Indeed, two are identical to issues CyWee already raised in its first motion. CyWee's only remaining two demands are inappropriate, and CyWee's motion should be denied.

I. ARGUMENT

A. Samsung produced the requested SEC and SEA financials on Thursday, August 2

During a meet and confer, Samsung informed CyWee that it would produce updated SEA financials and SEC financials by August 2, 2018. Declaration of Christopher W. Kennerly ("Kennerly Decl.") ¶ 2. Samsung reiterated this the next day when it filed its opposition to CyWee's first motion to compel. Dkt. No. 129 at 1–3. As promised, Samsung produced the requested financial information on August 2, 2018. CyWee's representation that Samsung did anything otherwise is a complete fabrication. Like its first motion to compel on this exact same issue, CyWee's second motion is moot and should be denied.

B. Samsung has already agreed to produce a material cost file for each accused product model and provide a declaration authenticating these files

Contrary to CyWee's misrepresentations, Samsung provided CyWee with all of the cost information relevant to this case before CyWee had taken even a single deposition. Prior to the 30(b)(6) deposition, CyWee had only requested the bills of materials for each Accused Product and documents sufficient to show the cost of the motion sensors (including accelerometers, gyroscopes,

and magnetometers). Kennerly Decl. ¶ 3, Ex. 1.¹ Samsung produced its bills of materials in productions on September 15, 2017 and March 23, 2018. Kennerly Decl. ¶ 4. On September 15, 2017, Samsung provided SEA's financials detailing costs for the accused products in the U.S. from the second quarter of 2013 to the third quarter of 2017. Kennerly Decl. ¶ 5. On the same day, Samsung provided CyWee with the costs of specific components. *Id.* ¶ 6. Samsung provided an updated version on March 23, 2018 containing the cost of every component relevant to the accused sensor fusion features in this case (*e.g.*, gyroscope, accelerometer, magnetometer, and algorithm processing chip). *Id.* ¶ 7. On the same day Samsung provided CyWee with spreadsheets correlating the relevant components with each accused product. *Id.* ¶ 8. Given what CyWee had requested, Samsung believed its production to be complete.

Over four months later, on July 27, 2018, CyWee took the deposition of Samsung's 30(b)(6) witness, DangWon Kim, on the budget for implementing the accused sensor fusion features and Samsung's bills of materials. *Id.* ¶ 9. CyWee appeared to be unaware during the deposition that the costs for the relevant components had already been produced. Instead, CyWee tried to create an unnecessary discovery dispute by accusing Samsung of not producing material cost files outlining the costs for every single component in the accused products, an issue CyWee had never raised prior to this date. Ex. 2 at 92:9–96:14, 134:17–136:10.

On July 28, 2018 (Korea Standard Time), CyWee requested for the first time that Samsung produce the material cost files. Ex. 3. On July 29, 2018 (Korea Standard Time), Samsung responded that it had produced the material costs for the relevant components months ago and Samsung's witness had been fully prepared to discuss these costs. Ex. 4. CyWee's counsel all but confirmed that it had been unaware of the cost data Samsung produced. Ex. 5.

¹ Unless otherwise stated, all documents referenced herein are attached to the Declaration of Christopher W. Kennerly, filed concurrently herewith.

CyWee demanded once again during a July 31, 2018 meet and confer that Samsung provide it with SEC's material cost files, alleging for the first time that it needed these files for its damages case. Kennerly Decl. ¶ 14. Samsung represented that it would consider this issue. The following day, CyWee filed its second motion to compel. Dkt. No. 130.

Despite the questionable relevance of the information requested, on August 3, 2018 (Korea Standard Time), by e-mail and during an in-person meet and confer, Samsung stated that it would agree to provide CyWee with one material cost file per accused product model and a declaration authenticating the documents. Kennerly Decl. ¶ 15; Ex. 6.²

CyWee rejected Samsung's proposal immediately, stating that it needed a witness to confirm that the documents had not somehow been altered and "do not trust a declaration at this point." Ex. 7. Despite CyWee's refusal, Samsung is willing to provide a material cost file per accused product and a declaration from a witness at Samsung authenticating these documents. Given that the parties already agreed that Samsung witnesses would be deposed in Korea, however, it is not clear how CyWee justifies demanding that Samsung bring a witness to Texas to be deposed on files that CyWee did not request be produced until the close of discovery.

C. SEA's agreement with the IRS is not relevant to any issue in this case

As Samsung already stated in its opposition to CyWee's first motion to compel, SEA's agreement with the IRS demonstrates only SEA's efforts to comply with the tax laws and has nothing to do with any issue relevant to this case. Dkt. No. 129 at 3. Accordingly, CyWee's second motion to compel on this point should be denied for the same reasons as its first motion to compel.³

² Samsung also confirmed that it had produced a BOM for every accused product except the Galaxy Note 7 (which was recalled). *Id.* On the same day, Samsung produced updated SEA financials and SEC financial data including costs data. Kennerly Decl. ¶ 17.

³ CyWee also alleges in its second motion that Samsung's 30(b)(6) witness on U.S. sales and finances relating to the accused products, Sean Diaz, somehow admitted that the financial data Samsung produced was "misleading." Dkt. No. 130 at 3. The record is clear on this point. Diaz represented multiple times that the financial information provided was based on U.S. sales. *See, e.g.*, Ex. 8 at

D. Samsung has already confirmed it has no documents indicating that the introduction of sensor fusion features into Samsung's products was the result of the iPhone 4

On June 13, 2018, about six weeks before the close of discovery, CyWee served its second set of interrogatories on Samsung. Interrogatory No. 39 requests that Samsung: “[i]dentify every document in the possession of Samsung created or dated prior to the first sale of any Accused Product that mentions, refers or relates to Apple products including, offering or incorporating Sensor Fusion Technology.” Ex. 9 at 6. CyWee’s demand for every document in Samsung’s possession that either referred or related to the Apple iPhone 4 was clearly not proportional to the needs of this case, which relates to the infringement of a CyWee patent, not an Apple patent. Accordingly, on July 13, 2018 Samsung responded requesting that the parties meet and confer regarding the scope of CyWee’s interrogatory. Ex. 10 at 14. On July 16, 2018 CyWee accused Samsung of “hiding its reaction to the iPhone 4.” Ex. 11.

On July 17, 2018 Samsung’s counsel met and conferred with CyWee’s counsel. Kennerly Decl. ¶ 23. Based on this meet and confer and CyWee’s prior e-mails, Samsung understood that CyWee was seeking documents regarding the decision to incorporate sensor fusion features into Samsung’s products and whether this decision was a reaction to the iPhone 4. *Id.* In response, as set forth in Samsung’s opposition to CyWee’s first motion to compel, Samsung provided CyWee complete information relating to the decision to incorporate sensor fusion features into Samsung’s products. Dkt. No. 129 at 3–5. [REDACTED]

54:20–56:13, 57:9–25, 66:8–13, 73:17–74:12, 75:20–77:22, 151:20–152:14, 158:20–159:22, 163:8–15, 176:18–178:5. This is merely another example (among many) of CyWee falsely mischaracterizing the testimony of one of Samsung’s witnesses.

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