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

CYWEE GROUP LTD.,

Plaintiff

v.

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

SAMSUNG ELECTRONICS CO. LTD.

AND SAMSUNG ELECTRONICS

AMERICA, INC.,

Defendants.

<u>DEFENDANTS' SUR-REPLY TO PLAINTIFF'S MOTION FOR LEAVE TO</u> <u>SUPPLEMENT EXPERT REPORTS TO INCLUDE THIRD PARTY DISCOVERY</u>

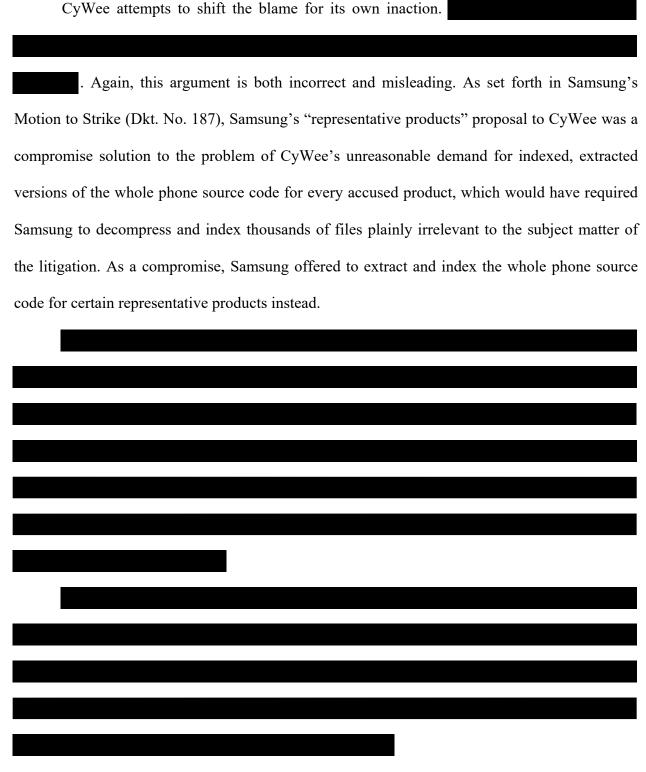


CyWee's reply fails to explain its lack of diligence in supplementing its infringement
theories, fails to acknowledge the substantial prejudice that would be imposed on Samsung if
leave were allowed, and ultimately fails to demonstrate good cause for this supplementation.
There
is also no dispute that CyWee was required to supplement its infringement contentions by late
August. CyWee has not provided sufficient justification for why it did not do so.
Instead, CyWee's reply relies on mischaracterizations to distract from and attempt to
excuse its unjustified delays.
Moreover, CyWee's belated
attempt to inject an entirely new theory of infringement at this late stage of the case would
impose substantial prejudice on Samsung. As CyWee has not established good cause for this
supplementation, its motion for leave should be denied.
I. SAMSUNG HAS NEVER BEEN IN A BETTER POSITION THAN CYWEE TO OBTAIN SOURCE CODE
CyWee argues that Samsung was in a better position than CyWee to obtain
source code. That is incorrect.
CyWee's argument is further misleading. Regardless of which party was arguably in a
better position to obtain source code in the first place, CyWee received access to



CyWee has still not (and cannot) ad	dequately explain why it did not supplement
its infringement contentions by late August as the C	Court's schedule required. CyWee places the
blame on Samsung, but any blame rests squarely on	CyWee.
II. CYWEE DID NOT REVIEW	SOURCE CODE UNTIL OCTOBER

CyWee simply failed to approach the source code discovery process with diligence.



III. CYWEE CANNOT REMEDY THE SUBSTANTIAL PREJUDICE TO SAMSUNG

CyWee cannot reasonably dispute the substantial prejudice to Samsung if the proposed supplementation were allowed. CyWee's reply argues that Samsung is not prejudiced because it



allegedly has "always enjoyed access to code." As Samsung has explained multiple times, however, that claim is demonstrably incorrect.

It is also misleading. Indeed, CyWee does not dispute that its proposed supplementation would assert a fundamentally different theory of infringement than set forth in its original claim charts

In addition, CyWee cannot provide any solution for the significant time that Samsung has already lost developing its non-infringement positions based on CyWee's original infringement theory. Samsung still has not seen the new infringement theory that CyWee would advance if the proposed supplementation is allowed. CyWee does not explain why it should, as the result of its inexcusable delay, have the significant benefit of Samsung's already-served invalidity report to use to fine tune CyWee's infringement allegations, while Samsung is left guessing at the precise contours of CyWee's new theory.

A fourth extension in this case (however short) is not warranted and would not remedy the substantial prejudice that would be imposed on Samsung.

IV. CONCLUSION

CyWee's reply fails to adequately explain its lack of diligence.

, yet CyWee declined to perform an adequate review of that code until October. CyWee likewise cannot provide a solution to remedy the substantial prejudice its inexcusable delay would impose on Samsung. Accordingly, CyWee has failed to demonstrate the requisite good cause and its Motion should be denied.



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