

**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' SUR-REPLY TO PLAINTIFF'S MOTION FOR LEAVE TO
SUPPLEMENT EXPERT REPORTS TO INCLUDE THIRD PARTY DISCOVERY**

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.

[REDACTED] 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. [REDACTED]

[REDACTED] 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 [REDACTED] SOURCE CODE

CyWee argues that Samsung was in a better position than CyWee to obtain [REDACTED] source code. That is incorrect. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CyWee's argument is further misleading. Regardless of which party was arguably in a better position to obtain [REDACTED] source code in the first place, CyWee received access to

[REDACTED]

[REDACTED] CyWee has still not (and cannot) adequately explain why it did not supplement its infringement contentions by late August as the Court's schedule required. CyWee places the blame on Samsung, but any blame rests squarely on CyWee.

II. CYWEE DID NOT REVIEW [REDACTED] SOURCE CODE UNTIL OCTOBER

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

CyWee attempts to shift the blame for its own inaction. [REDACTED]

[REDACTED]. Again, this argument is both incorrect and misleading. As set forth in Samsung’s Motion to Strike (Dkt. No. 187), Samsung’s “representative products” proposal to CyWee was a compromise solution to the problem of CyWee’s unreasonable demand for indexed, extracted versions of the whole phone source code for every accused product, which would have required Samsung to decompress and index thousands of files plainly irrelevant to the subject matter of the litigation. As a compromise, Samsung offered to extract and index the whole phone source code for certain representative products instead.

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 [REDACTED] 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 [REDACTED]

[REDACTED]

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. [REDACTED]
[REDACTED], 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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