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

DEFENDANTS SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG ELECTRONICS AMERICA, INC.'S SUR-REPLY IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL CORPORATE REPRESENTATIVE DEPOSITION ON THE SUBJECT OF IMPORTATION AND SALES TO SAMSUNG SUBSIDIARIES

CyWee's Reply confirms that its Motion to Compel Corporate Representative Deposition on the Subject of Importation and Sales is based on the flawed premise that Samsung hid the existence of subsidiary importers of the Accused Products. To the contrary, [redacted] Accordingly, CyWee's Motion should be denied.

I. SAMSUNG DID NOT HIDE THE EXISTENCE OF ADDITIONAL IMPORTING SUBSIDIARIES

CyWee argues that it is entitled to this deposition after the close of fact discovery because it believes SEC and Samsung Electronics America, Inc. ("SEA") (collectively, "Samsung") are hiding the existence of additional importers. This theory is flawed for a number of reasons.

First, Samsung is not hiding importers. [redacted] That was disclosed ***voluntarily*** in response to a letter sent by CyWee after the close of fact discovery requesting this information. [redacted]

Second, CyWee apparently believes Samsung is hiding additional importers based on its incorrect theory that Samsung "failed to disclose" this information "in its disclosures mandated by the Local Rules." Dkt. No. 198 at 2. CyWee, however, provides no legal support for its claim that importation information for entities not named in this case is relevant to its claims of direct infringement. CyWee likewise provides no legal support for its claim that the information is relevant since "CyWee accuses SEC of inducing its subsidiaries to infringe." Dkt. No. 198 at 1–2. Although CyWee's complaint included boilerplate language regarding induced infringement,

CyWee's infringement contentions omit this theory. Dkt. No. 9 ¶ 25; Supplemental Declaration of Elizabeth L. Brann ¶ 2, Ex. 7. "The Local Patent Rules directed to infringement contentions are designed to ensure that defendants are given full and timely notice of the allegations against them." *Sycamore IP Holdings LLC v. AT&T Corp.*, No. 2:16-CV-588-WCB, 2017 WL 4517953, at *5 (E.D. Tex. Oct. 10, 2017). CyWee's contentions cannot have provided any such notice of induced infringement because they entirely omit this theory. Further, since the theory was not in the contentions, Samsung reasonably believed (and continues to believe) it is not properly asserted. *Nike, Inc. v. Adidas Am. Inc.*, 479 F. Supp. 2d 664, 670 (E.D. Tex. 2007) ("Based on the brief statements in the July 2006 contentions, followed by the October 2006 contentions in which there was no mention of the doctrine of equivalents, it was reasonable for [Defendant] to assume that the doctrine of equivalents was not being pursued."). Regardless, Samsung has already disclosed the allegedly relevant information.

Further, if CyWee's theory were true—*i.e.*, that Samsung hid the existence of importers contrary to the Local Rules—it does not make sense that Samsung would [redacted] in response to a letter served by CyWee after the close of fact discovery. Samsung's forthcoming disclosures rebut CyWee's conspiracy theory.

Third, CyWee's only other alleged support that Samsung hid the existence [redacted] is the testimony of Sean Diaz. CyWee's reply, however, confirms that Mr. Diaz only [redacted] CyWee claims that since "[t]hat testimony was false . . . [f]or that reason alone, CyWee seeks a Samsung corporate representative to testify under oath in a deposition whether any additional SEC subsidiaries exist that import Accused Products." *Id.* at 3–4. Since CyWee's statement that Mr. Diaz's "testimony was false" (*Id.* at 3) is demonstrably

incorrect, however, and since this incorrectly labeled "false testimony" is by CyWee's admission the basis for its Motion, the Motion should be denied.

Finally, CyWee provides no legal support for the claim that its paranoia constitutes good cause for this belated deposition. The record shows that Samsung has been very forthcoming in the disclosure of importers, despite the questionable relevance of these requests.

II. THE DEPOSITION IS NOT PROPORTIONAL TO THE NEEDS OF THE CASE

Samsung has already disclosed the importers of the Accused Products, as well as [redacted]

[redacted] Since there appears to be no additional information to be obtained from this deposition, and the requested topics have questionable relevance in any event, this request is not proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). The burden and expense of producing a witness for deposition far outweighs the benefit of any information CyWee might hope to obtain from the deposition. Specifically, CyWee has produced no evidence that any additional importers exist, and Samsung has already disclosed the importers it located. Dkt. No. 157-5 at 2. Therefore, CyWee's Motion essentially demands that a Samsung witness prepare for and attend a deposition that will amount to little more than a fishing expedition.

III. CYWEE'S CONDUCT IN THIS CASE ILLUSTRATES WHY A DECLARATION WOULD NOT BE SUFFICIENT

CyWee claims that "[a] simple and direct way" to avoid this deposition is for Samsung to provide a declaration stating "that no SEC subsidiary [redacted] acts as an importer of record of any Accused Products into the United States." CyWee's approach in this case, however, suggests strongly that such a declaration would be anything but "a simple way" to avoid additional discovery disputes.

For example, Samsung voluntarily produced material cost files in this case, yet CyWee is currently demanding a deposition to obtain this exact data. Dkt. No. 180 at 8–9. Additionally, CyWee's reply to this Motion twists Samsung's cooperation in [redacted], which specifically was crafted in order to minimize discovery and disputes, into support for a deposition on importation, stating [redacted] Despite CyWee's claims, it has rarely taken Samsung's discovery cooperation at face value. Given this pattern, Samsung sees no reason why such a declaration would be useful. That said, if the Court is inclined to order further discovery, Samsung requests the opportunity to discuss with the Court the option of providing a declaration in lieu of a deposition.

IV. CYWEE'S FOUR ADDITIONAL REQUESTS FOR RELIEF ARE IMPROPER

CyWee lists four additional requests for supplemental disclosures related to operations of other Samsung subsidiaries, additional alleged importation and sales, and terms of those sales. Dkt. No. 198 at 5. CyWee cannot dispute, however, that the parties have not met and conferred on these issues. Dkt. No. 194 at 6. Further, some of the requests demand discovery from [redacted] Thus, these requests appear to be an attempt to circumvent those agreements. These additional requests should be denied.

V. SANCTIONS AGAINST CYWEE ARE APPROPRIATE

CyWee's reply doubles down on its numerous prior mischaracterizations. The record is clear that Samsung did not hide the existence of additional subsidiary importers through Mr. Diaz's testimony or otherwise. CyWee also continues to make unsupported, inflammatory accusations against Samsung. Dkt. No. 198 at 4. Again, CyWee does not explain how it came to

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