

**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-RWS-RSP

**DEFENDANTS SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG
ELECTRONICS AMERICA, INC.'S REPLY IN SUPPORT OF MOTION TO STRIKE
PLAINTIFF'S UNTIMELY SUPPLEMENTAL INFRINGEMENT CHARTS**

CyWee failed to timely supplement its infringement contention charts. It now blames Samsung for the delay by attempting to manufacture a false narrative that Samsung withheld source code and related information that would have allowed for timely supplementation. To the contrary, Samsung offered to make relevant source code available for inspection on March 23, 2018 and identified the sensor fusion algorithm used by each accused product that same day. Indeed, the source code CyWee cites in the supplemental charts at issue in this motion has been available to CyWee since March 23, 2018. Because CyWee cannot provide any tenable excuse for its delay in attempting to supplement, Samsung respectfully submits that its motion to strike should be granted.

I. CYWEE'S SUPPLEMENTATION WAS NOT TIMELY

Samsung has consistently been forthcoming about its products' operation. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Further, CyWee cannot and does not dispute that each and every source code citation in its supplemental charts is from code produced to CyWee in hard copy form on May 11, 2018. The deadline for CyWee to supplement its infringement contentions to include that code was thus June 11, 2018. Dkt. No. 35 at 2.

CyWee claims that the clock did not start until Samsung made fully-searchable source code available for inspection. [REDACTED]

[REDACTED] Brann
Decl. (Dkt. No. 187-1), Ex. 14. Therefore, even under CyWee's view of the world, the deadline

for CyWee to supplement its infringement contentions to include that code was August 29 at the latest. CyWee did not meet that deadline either.

CyWee attempts to explain away its failure to timely comply with the disclosure deadline by falsely alleging that Samsung withheld relevant information during pre-suit negotiations, failed to timely produce relevant source code during the fact discovery period, and offered an unprepared witness to testify regarding [REDACTED] None of these excuses has any merit.

CyWee first complains that Samsung failed to provide details regarding the sensor fusion source code used in each of the accused products during pre-suit negotiations, and alleges that [REDACTED]
[REDACTED] CyWee does not explain how negotiations that took place over a year and a half ago relate to its failure to timely supplement its infringement theories in view of information it obtained during the discovery period.

Next, CyWee misleadingly argues that Samsung's production of source code printouts and other information in March and May 2018 did not provide CyWee adequate information to supplement its infringement theories. However, the code CyWee cites in its supplemental charts is the same code Samsung made available for inspection on March 23 and produced in printed form on May 11.

Further, despite knowing the specific version of sensor fusion source code used by each accused product and having a printed version of [REDACTED] sensor fusion source code for months

[REDACTED]

before the depositions of Samsung's corporate witnesses, CyWee again tries to point the finger at Samsung for its own delay in supplementing its infringement contentions by falsely alleging that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Notwithstanding its attempts to shift blame to Samsung for its own failure to supplement its infringement contentions, CyWee cannot obscure the fact that it had information and access to source code adequate to supplement its infringement contentions by March 23 yet still failed to attempt to supplement until September 10. CyWee cannot credibly argue that it timely supplemented its infringement contentions.

II. CYWEE LACKS GOOD CAUSE TO SUPPLEMENT

CyWee does not have good cause to supplement, as required under Patent L.R. 3-6. To the contrary, none of CyWee's arguments addressing the four factors considered by Fifth Circuit Courts have merit.

First, CyWee cannot justify its delay in supplementing. Instead, CyWee offers nothing more than unsupported excuses. As detailed in the preceding section, CyWee attempts to justify its own lack of diligence by blaming Samsung, but the facts do not support its excuses. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Second, although the information to be supplemented is important to this case, CyWee states that that "[t]he supplements do not fundamentally alter CyWee's damages or infringement theories, and . . . are based upon information that Samsung has had in its sole possession

throughout this case and even earlier during pre-Litigation negotiations that began in June of 2016.” Dkt. 206 at 14. To the contrary, CyWee’s infringement theories have changed, as seen clearly in its expert report served just last week. Supp. Brann Decl., Ex. 23.

Third, Samsung has been prejudiced by the delay. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, given that CyWee’s supplemental charts set forth a new, fundamentally different infringement theory, Samsung will suffer significant unfair prejudice unless CyWee’s supplemental charts are struck.

Fourth, no continuance would cure the unfair prejudice to Samsung. CyWee states that a continuance would not be necessary because a trial date for the case has not yet been set and expert discovery has just begun. However, that ignores the fact that Samsung is already deep into the process of preparing its rebuttal expert reports based on the new infringement theory CyWee only just disclosed. Further, this case has already been delayed by CyWee on multiple occasions and Samsung is eager to bring it to a close. A continuance would only compound the unfair prejudice to Samsung.

In light of the applicable factors, CyWee cannot demonstrate good cause to supplement and its supplement charts should be stricken.

III. CONCLUSION

Despite its numerous excuses, CyWee failed to timely supplement its infringement contentions and has not demonstrated good cause to supplement now. Indeed, Samsung would suffer considerable unfair prejudice if supplementation were permitted, given that CyWee’s

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