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

CYWEE GROUP LTD.,	CASE NO. 2:17-cv-00140-RWS-RSP
Plaintiff,	
v.	JURY TRIAL DEMANDED
SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG ELECTRONICS AMERICA, INC.	
Defendants.	

**PLAINTIFF'S REPLY IN SUPPORT OF ITS
MOTION TO COMPEL DEFENDANTS TO REPLEAD
THEIR ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

Samsung's responses are improper and will require CyWee (and this Court) to spend time, effort and money to discovery and prove facts that may not be in dispute. The Court should grant CyWee's motion and require Samsung to answer CyWee's complaint in accordance with Rule 8(b).

I. ARGUMENT

A. Samsung's responses do not put CyWee on notice of the allegation in dispute.

All of Samsung's 220 responses at issue here are identical to the one shown below:

| CyWee's Allegation	Samsung's Response
39. The Samsung Galaxy S6 includes a processor that is capable of processing data associated with measurement from a 3-axis accelerometer.[1]	39. To the extent that the allegation of Paragraph 39 sets forth a legal conclusion, no response is required. Samsung denies all remaining allegations of Paragraph 39.[2]

Samsung claims the first sentence "addresses any claim construction issues" and the

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[1] Dkt. 9 at ¶ 39.
[2] Dkt. 15 at ¶ 39.

"second sentence addresses any factual basis for the paragraph."[3] But neither this response nor its 219 identical brethren[4] put CyWee on notice of what specific language Samsung claims is a legal conclusion and what language is a factual allegation that Samsung denies.

To place Samsung's game in context, the Court should understand that these allegations were carefully created. For example, Samsung's published specification for its S6 phone states that the S6 contains both a processor and an accelerometer:[5]
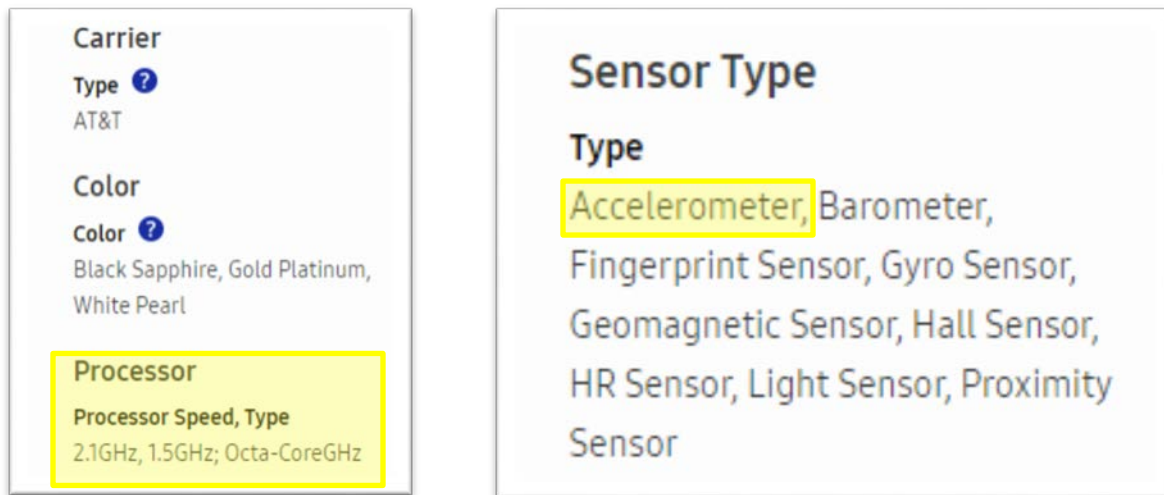
So what exactly is Samsung denying? Is Samsung denying that the processor in its S6 "is capable of processing data associated with measurement from a 3-axis accelerometer"? Is Samsung denying the S6 has a processor at all? Is Samsung denying that the S6 has a 3-axis accelerometer? Is Samsung taking the position that certain terms in paragraph 39 require construction? If so, which ones?

Samsung's use of the impermissible qualifying phrase "[t]o the extent"[6] is improper.

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[3] Dkt. 25 at 2.
[4] *See* Dkt. 24-1.
[5] *See* http://www.samsung.com/us/support/owners/product/galaxy-s6-at-t.
[6] *Valley Forge Ins. Co. v. Hartford Iron & Metal, Inc.*, No. 114CV00006RLMSLC, 2017 WL 1101096, at *3 (N.D. Ind. Mar. 21, 2017) ("Valley Forge's incorporation of the phrase

Rule 8 requires an admission, denial, or a specific partial admission and denial[7] Samsung's

response leaves CyWee with no way of determining what portion of each allegation, if any,

that Samsung is refusing to provide an admission or denial.

A proper response that narrows the issues for discovery and trial looks like this:

> Samsung admits the Samsung Galaxy S6 includes a processor
> capable of processing data associated with measurement from a
> 3-axis accelerometer.

Or, if Samsung cannot understand what "3-axis accelerometer" means absent claims

construction:

> Samsung admits the Samsung Galaxy S6 includes a processor.
> Samsung cannot admit or deny that the processor in the Galaxy
> S6 is capable processing data associated with measurement
> from a 3-axis accelerometer because Samsung believes the term
> "3-axis accelerometer" must be construed by the Court and that
> under a proper construction the S6 device may not contain a
> "3-axis accelerometer."[8]

As this Court has previously noted, "the theory behind Federal Rule of Civil Procedure

8(b) addressing a defendant's admissions and/or denials to a plaintiff's complaint is that 'a

defendant's pleading should apprise the opponent of those allegations in the complaint that

stand admitted and will not be in issue at trial and those that are contested and will require

proof to be established to enable the plaintiff to prevail.'"[9] So Rule 8 is intended to avoid

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'to the extent that further response may be required' is akin to an impermissible qualified
denial.").
[7] FED. R. CIV. P. 8(b).
[8] Such a response would be improper if it cannot be disputed that Samsung's S6 device
contains a 3-axis accelerometer under the claim construction that Samsung believes is correct.
[9] *See Padre Nterprises, Inc. v. Rhea*, No. 4:11CV674, 2013 WL 394811, at *2 (E.D. Tex. Jan.
31, 2013) (Bush, M.J.) (citing 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and
Procedure § 1261 (3d ed.2011)).

"needless time and effort … having to prove undisputed matters."[10] Samsung's responses defeat this purpose.

Further, the importance of Rule 8(b) has only increased considering the recent proportional discovery limitations added to Federal Rule 26(b)(1). CyWee should not be required to pursue discovery to obtain proof regarding issues that are not and cannot credibly be contested. Samsung should be required to replead to clearly and unambiguously admit or deny each of CyWee's allegations or state precisely why an admission or denial is not possible. Each denial must be warranted by the evidence or reasonably based on Samsung's belief or lack of information as required by Rule 11.[11]

B. Samsung has failed to cite a single case that supports its interpretation of Rule 8.

None of the three cases cited by Samsung demonstrate that Samsung's responses meet the requirements of Rule 8.

First, the allegations at issue in *Barnes v. AT&T Benefit Plan* were quite different from those at issue here. *Barnes* involved only four responses (shown in Exhibit A) that "neither admitted or denied because the allegation was a legal conclusion."[12] The allegations the *Barnes* defendant was responding to were verbatim recitations, or paraphrased references to federal statutes; not detailed descriptions of defendant's own products, like the allegations at issue here.[13] Here Samsung is attempting to avoid specifically answering 220 factual allegations that allege the existence of very specific physical components in Samsung's

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[10] *Bruce v. Anthem Ins. Companies, Inc.*, No. 3:15-CV-0353-D, 2015 WL 1860002, at *3 (N.D. Tex. Apr. 23, 2015).

[11] FED. R. CIV. P. 11(b)(4).

[12] Ex. C at 10 ("In response to the Complaint, Defendant has explicitly stated that it 'neither admits or denies the allegations' because the paragraph consists of 'a legal assertion or legal contention or a legal conclusion.' E.g., Ans. ¶¶ 129, 130, 142; *see also id.* ¶¶93.").

[13] Ex. H; s*ee also* Ex. A at ¶¶ 93, 129, 130, 142; *and* Ex. B at ¶¶ 93, 129, 130, 142.

accused products.

Similarly, in *Guifu Li v. A Perfect Day Franchise, Inc.* the defendants responded to most allegations by admitting or denying them.[14] The allegations that defendants responded to by stating that they "amount to legal conclusions to which no answer is required" again quoted or paraphrased sections of statutes and did not involve facts regarding defendant's products, several examples of which are shown in Exhibit B.[15]

Finally, Samsung's claim that the court in *Genetic Technologies Ltd. v. Agilent Technologies* found "[s]imilar responses … to be sufficient" has no basis.[16] In that case, the Court found that "no salutary purpose would be served by requiring minor wording changes to remove what is at most only theoretical ambiguity."[17] The ambiguity here is real. Does the Samsung S6 include a processor? Does the Samsung S6 include a 3-axis accelerometer? Can the processor process data from the 3-axis accelerometer? Samsung has not answered these questions.

II. CONCLUSION

Rule 8(b) is intended to streamline cases by requiring Defendants to identify undisputed issues. Samsung must properly admit or deny the existence, functionality, and purpose of the components contained in the accused phones, components that were meticulously identified in claim charts provided to Samsung with the Complaint. Samsung has not provided a credible reason, factually or legally, for its failure to properly admit or deny Cywee's allegations. The Court should compel Samsung to replead to comply with Rule 8.

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[14] Ex. E.

[15] Ex. I; *see also* Ex. D at ¶¶ 25 & 52; *and* Ex. E at ¶¶ 25 & 52.

[16] Dkt. 25 at 4.

[17] *Genetic Techs. Ltd. v. Agilent Techs., Inc.*, No. CV 12-01616 RS, 2014 WL 3908192, at *1 (N.D. Cal. Aug. 11, 2014); *See also* Ex. F; *and* Ex. G.

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