

RESTRICTED – ATTORNEYS’ EYES ONLY

**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

FILED UNDER SEAL

**DEFENDANTS SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG
ELECTRONICS AMERICA, INC.’S OPPOSITION TO PLAINTIFF’S MOTION TO
DE-DESIGNATE CONFIDENTIAL MATERIALS**

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CyWee’s motion challenging the confidentiality designations of deposition testimony and documents produced by Samsung relies on a defective reading of the Protective Order and a strained analysis of statements made by Samsung’s witnesses at deposition. In particular, CyWee improperly relies on Samsung’s witnesses’ deposition testimony to argue that Samsung believes sensor fusion technology lacks “value.” According to CyWee, Samsung’s sensor fusion technology does not qualify as a trade secret and cannot be designated “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED - CONFIDENTIAL SOURCE CODE” under the Protective Order. This argument has two primary deficiencies.

First, CyWee misinterprets the Protective Order. Contrary to CyWee’s arguments, the Protective Order plainly permits designation of “confidential *or* proprietary information *or* trade secrets” as “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED - CONFIDENTIAL SOURCE CODE.” Nowhere does the Protective Order require that a party seeking to designate a document establish that information in the document meets the statutory definition of a trade secret.

Second, Samsung’s witnesses’ testimony shows that public disclosure of the information in disputed materials would in fact adversely impact Samsung. Samsung has a reasonable basis for maintaining the confidentiality of the disputed materials: Public disclosure of those materials would benefit Samsung’s competitors by giving them access to previously undisclosed information that can be used to Samsung’s detriment. Regardless of Samsung’s witnesses’ views of the “value” of sensor fusion technology, Samsung would be adversely impacted because it would lose the competitive edge held by maintaining the secrecy of the disputed information.

RESTRICTED – ATTORNEYS’ EYES ONLY**I. ARGUMENT****A. CyWee Ignores the Protective Order’s Plain Language**

Under the Protective Order, “[a] Party shall designate documents, information or material as “CONFIDENTIAL” only upon a good faith belief that the documents, information or material contains *confidential or proprietary information or trade secrets of the Party . . .*” Dkt. No. 39 ¶ 6 (emphasis added). The Protective Order does not otherwise define “CONFIDENTIAL,” and it does not set forth any other requirements that must be met for materials to be appropriately designated “CONFIDENTIAL.” To the extent a party believes certain “CONFIDENTIAL” material “is so sensitive that its dissemination deserves even further limitation,” the Protective Order permits the party to designate that material “RESTRICTED - ATTORNEYS’ EYES ONLY” or “RESTRICTED - CONFIDENTIAL SOURCE CODE.” *Id.* ¶ 8.

CyWee states that, based on the Uniform Trade Secrets Act and Texas law, a “trade secret” must have “independent economic value” and must also “present[] an opportunity to obtain an advantage over competitors who do not know or use it.” Dkt. No. 262 at 8. The Protective Order, however, does not mention either of those requirements. CyWee nonetheless concludes, based solely on the “trade secret” prong, that the disputed materials cannot be designated “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED - CONFIDENTIAL SOURCE CODE” under the Protective Order because they do not contain information meeting those requirements. *See* Dkt. No. 262 at 7–9.

However, in addition to trade secrets, the Protective Order expressly contemplates designation of “confidential or proprietary information.” Dkt. No. 39 ¶ 6. Without having addressed the confidential or proprietary information prongs—under either of which documents may also be appropriately designated “RESTRICTED - ATTORNEYS’ EYES ONLY” or “RESTRICTED - CONFIDENTIAL SOURCE CODE,” CyWee posits that “Samsung cannot

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meet its burden of establishing that the Designated Materials are entitled to protection under any level of confidentiality.” Dkt. No. 262 at 8.

CyWee has not established that the materials in dispute do not merit their “RESTRICTED - ATTORNEYS’ EYES ONLY” or “RESTRICTED - CONFIDENTIAL SOURCE CODE” designations. To the contrary, as discussed in the following section, Samsung has a reasonable basis for maintaining the current designations assigned to the materials CyWee seeks to de-designate.

B. The Relevant Materials Deserve Their Current Designation

The information CyWee seeks to de-designate resulted from Samsung’s efforts and is intended only for Samsung’s use. It is not public information, and Samsung’s witnesses did not agree that Samsung would be willing to freely share its views, let alone technical details, about its sensor fusion source code with third parties.¹ Declaration of Gongbo Moon (“Moon Decl.”) ¶¶ 4–5; Declaration of Guy Waitley (“Waitley Decl.”) ¶¶ 4–5. Therefore, the materials deserve to be covered by the Protective Order.

Regardless of the “value” (or lack thereof) ascribed by Samsung witnesses to sensor fusion technology, Samsung still has a reasonable basis for maintaining witness testimony regarding sensor fusion technology as confidential. Specifically, public dissemination of Samsung’s opinions regarding the impact of sensor fusion technology on the competitiveness of its devices in the marketplace would unfairly allow Samsung’s competitors access to Samsung’s internal business information. Using that information, competitors could adjust their own business strategies. By keeping this information highly confidential, Samsung maintains its

¹ Indeed, Samsung only shared the information in the disputed materials with CyWee in view of its understanding that the materials would be designated “RESTRICTED - ATTORNEYS’ EYES ONLY” or “RESTRICTED - CONFIDENTIAL SOURCE CODE” under the Protective Order.

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competitive advantage by preventing competitors from free-loading off of its proprietary business knowledge.

Likewise, public dissemination of technical details and source code related to Samsung’s internally-developed sensor fusion algorithm would unfairly allow Samsung’s competitors to refine their own sensor fusion algorithms using Samsung’s efforts. Regardless of whether Samsung views the functionalities enabled by sensor fusion to have “value,” Samsung benefits in maintaining technical information regarding its approach to sensor fusion highly confidential by forcing competitors to divert resources to develop their own approaches to sensor fusion.

CyWee only relies on one case—*Constellation v. Avis*—in which materials were found improperly designated as confidential. *Constellation, LLC v. Avis Budget Group, Inc.*, No. 5:07-CV-38, 2007 WL 7658921, at *3 (E.D. Tex. Oct. 30, 2007). In that case, the court found the plaintiff’s infringement contentions to be improperly designated confidential in part because the plaintiff failed to show any particular harm that would result from their de-designation. *See id.* The court also based its decision on its finding that the defendant had demonstrated that designation of the materials hindered its ability to defend itself against the asserted claims and to challenge the asserted patent in reexamination proceedings. *Id.* Here, Samsung has identified specific harm that would result from de-designation of the disputed materials, and CyWee has not provided any reason for why it requests de-designation of the materials in dispute.

CyWee misses the mark with its attempt to rely on Samsung’s witnesses’ deposition testimony to show that Samsung believes sensor fusion technology has no “value.” In particular, even if the statements relied upon by CyWee were to demonstrate that Samsung’s sensor fusion technology has no “value” in the sense of a trade secret, those statements do not indicate that Samsung does not view its knowledge of such as non-confidential or non-proprietary

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