

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

Despite CyWee’s mischaracterization of Samsung’s witnesses’ testimony and its similarly flawed arguments directed to Dr. Itamar Simonson’s expert report, Samsung has demonstrated that the disputed materials merit their designations under the Protective Order. If the materials were to be de-designated, Samsung would lose the competitive edge it holds by maintaining the disputed information confidential. CyWee ignores Samsung’s rationale for the disputed materials’ designations, instead reiterating its argument that the information in the disputed materials lacks “value.” But that argument only relates to whether the information qualifies as a trade secret, and the Protective Order applies to both trade secrets *and* “confidential or proprietary information.” Thus, the disputed materials merit their current designations, and CyWee has not shown otherwise.

I. CyWee Fails to Rebut Samsung’s Showing that the Disputed Materials Merit Their Current Designations

CyWee does not address either reason for why the information in the disputed materials qualifies as “confidential or proprietary information,” which merits a “RESTRICTED – ATTORNEYS’ EYES ONLY” or “RESTRICTED – CONFIDENTIAL SOURCE CODE” designation under the Protective Order. Dkt. No. 39 ¶ 8. Rather, CyWee re-packages its baseless argument that Samsung cannot show that information in the disputed materials deserves protection against public disclosure because that information lacks the “value” required for information to constitute a trade secret.

Contrary to CyWee’s representations, Samsung has always treated [REDACTED] [REDACTED] the disputed materials as highly sensitive “confidential or proprietary information.” Dkt. No. 271 at 3–5; Dkt. No. 271-1 ¶¶ 4–5; Dkt. No. 271-2 ¶¶ 4–5. And, in view of Samsung’s identification of specific harms that would result from public disclosure of that information, Dkt. No. 271 at 3–5, Samsung has made the

“particular and specific demonstration of fact” required to support its rationale for assigning the disputed materials their current designations under Federal Rule of Civil Procedure 26(c).

In particular, contrary to CyWee’s argument that Samsung has not justified its designations of the disputed materials, Samsung adequately explained why the disputed materials are properly considered confidential and also why public disclosure of the information in those materials would harm Samsung:

- First, Samsung should not be unjustly stripped of the tactical advantage of keeping confidential its business analyses related to the technology at issue in this case. [REDACTED], Samsung’s competitors could use that proprietary business knowledge to adjust their own business strategies and unfairly benefit from Samsung’s efforts. Dkt. No. 271 at 3–4.
- Second, public disclosure of [REDACTED] would allow Samsung’s competitors to wrongfully take advantage of Samsung’s research and development efforts by [REDACTED] those competitors would save resources without having to fairly compensate Samsung for their savings. Dkt. No. 271 at 4.

II. CyWee Mischaracterizes Samsung’s Witnesses’ Deposition Testimony and Dr. Simonson’s Expert Report

Aside from CyWee’s failure to address Samsung’s reasons for the designations of the disputed materials, none of the evidence CyWee relies upon supports its arguments. CyWee

falsely argues that “[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CyWee’s arguments regarding Dr. Simonson’s expert report suffer a similar flaw. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

III. CONCLUSION

Samsung has a reasonable basis to maintain the current designations of all disputed materials, and CyWee has not shown otherwise. Thus, Samsung respectfully requests that CyWee’s motion be denied.

DATED: January 2, 2019

Respectfully submitted,

By: /s/ Christopher W. Kennerly

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