



CyWee has no explanation for its failure to adequately analyze and investigate Qualcomm's sensor fusion source code. It certainly cannot justify leave to supplement its infringement contentions and expert report. Despite having more than two months to analyze Qualcomm's source code and deposing a Qualcomm witness specifically regarding that source code, CyWee inexplicably failed to properly develop support for its infringement theory relating to Claim 10 of the '978 Patent. Though CyWee now attempts to take another bite at the apple by blaming Samsung and Qualcomm for its failure, CyWee has only itself to blame. Samsung respectfully requests that CyWee's motion for leave be denied.

**I. BACKGROUND**

**A. The Relevant Qualcomm Sensor Fusion Source Code**

Although Qualcomm's sensor fusion algorithm is made up of multiple independent source code files, the source code file relevant to CyWee's motion for leave [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As shown in [REDACTED]

[REDACTED]

**B. CyWee's Review of the Qualcomm Sensor Fusion Source Code**

Qualcomm made its sensor fusion source code available for inspection by CyWee on July 25, 2018. Dkt. No. 250 at 4. After CyWee's expert, Dr. Nicholas Gans, reviewed the Qualcomm source code on August 6 and 7, CyWee advised Qualcomm on August 10 that Dr. Gans [REDACTED]

[REDACTED]

[REDACTED] Notably, CyWee did not allege that it lacked source code related to [REDACTED]

[REDACTED]

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<sup>1</sup> In particular, CyWee stated: [REDACTED]

[REDACTED]

**C. CyWee’s Deposition of Qualcomm’s Source Code Witness and First Motion for Leave to Belatedly Supplement Its Infringement Contentions to Address Qualcomm’s Source Code**

CyWee deposed Mr. Lnu, Qualcomm’s designated deponent regarding its sensor fusion algorithm on October 2, 2018. During that deposition, Mr. Lnu responded to CyWee’s questions,

[REDACTED]

[REDACTED]. Dkt. No. 270-1 ¶ 2. Of particular relevance to CyWee’s current (second) motion for leave, CyWee explicitly questioned Mr. Lnu [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Mr. Lnu did not decline to answer—nor was he unable to answer—any of the questions posed by CyWee related to the Qualcomm source code’s [REDACTED]

[REDACTED]

The same day it deposed Mr. Lnu (October 2, 2018), CyWee moved for leave to amend its infringement contentions, arguing that it had not been afforded an adequate opportunity to develop its infringement positions directed to accused products that use Qualcomm’s sensor fusion algorithm. Dkt. No. 176. The Court granted that motion, allowing CyWee to amend its infringement contentions and expert reports to address its infringement positions for the devices that use Qualcomm’s sensor fusion algorithm. Dkt. No. 177.

**D. Dr. Brown’s Analysis of Qualcomm’s Sensor Fusion Source Code**

On October 22, 2018 CyWee served the expert report of Dr. Richard Brown regarding alleged infringement of the asserted patents. In that report, Dr. Brown opines that the accused devices that implement Qualcomm’s sensor fusion code (“the Qualcomm Code Devices”) infringe Claim 10 of the ’978 Patent.

To support his opinion that the Qualcomm Code Devices infringe the “obtaining” limitation of Claim 10 of the ’978 Patent, Dr. Brown concludes that “[REDACTED]

[REDACTED] 2. He further states that [REDACTED]  
[REDACTED]  
[REDACTED] and that

[REDACTED]  
[REDACTED]  
[REDACTED] Dr. Brown does not allege that [REDACTED]  
[REDACTED]

**E. Dr. Mercer’s Analysis of the Accused Products That Implement Qualcomm’s Source Code**

On December 3, 2018, Samsung served the expert report of Dr. Ray Mercer regarding non-infringement of the asserted patents. To confirm the accuracy of his analysis of Qualcomm’s sensor fusion algorithm, Dr. Mercer conferred with Qualcomm’s witness, Mr. Lnu, on November 30, 2018. During that discussion, Mr. Lnu was asked about [REDACTED]

[REDACTED] Mr. Lnu confirmed to Dr. Mercer that [REDACTED]  
[REDACTED]

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