

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

GESTURE TECHNOLOGY
PARTNERS, LLC,

Plaintiff

v.

HUAWEI DEVICE CO., LTD.,
HUAWEI DEVICE USA, INC.,

Defendants.

§
§
§
§
§
§
§
§
§
§
§

CASE NO. 2:21-cv-00040-JRG
(Lead Case)

JURY TRIAL DEMANDED

GESTURE TECHNOLOGY
PARTNERS, LLC,

Plaintiff

v.

SAMSUNG ELECTRONICS CO., LTD.
AND SAMSUNG ELECTRONICS
AMERICA, INC.,

Defendants.

§
§
§
§
§
§
§
§
§
§
§

CASE NO. 2:21-cv-00041-JRG
(Member Case)

JURY TRIAL DEMANDED

**SAMSUNG DEFENDANTS' MOTION FOR LEAVE TO FILE MOTION TO COMPEL
PRODUCTION OF SETTLEMENT NEGOTIATION DOCUMENTS**

Pursuant to Local Rule CV-7(k), Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (“Samsung”) respectfully request leave to file a motion to compel Plaintiff Gesture Technology Partners, LLC (“GTP”) to produce all draft agreements and other communications between GTP and Huawei Device Co., Ltd. and Huawei Device USA, Inc. (“Huawei”) relating to their negotiation of an agreement to resolve GTP’s claims against Huawei based on the Asserted Patents (“Huawei Agreement”).¹

Good cause exists to grant leave in light of GTP’s and Huawei’s recent Joint Motion to Stay Certain Deadlines and Notice of Partial Settlement, Dkt. 101, and GTP’s stated refusal to produce the requested settlement negotiation documents. The case law is clear that “settlement negotiations related to reasonable royalties and damage calculations are not protected by a settlement negotiation privilege.” *In re MSTG*, 675 F.3d 1337, 1348 (Fed. Cir. 2012). The Huawei Agreement will be **the only** consummated license to the Asserted Patents, and the underlying negotiations are discoverable for at least the reasons this Court announced in *Charles E. Hill & Associates, Inc. v. ABT Electronics, Inc.*, 854 F. Supp. 2d 427 (E.D. Tex. 2012) and *Clear with Computers, LLC v. Bergdorf Goodman, Inc.*, 753 F. Supp. 2d 662 (E.D. Tex. 2010).

The documents and communications sought by Samsung are relevant (potentially highly so) to a determination of appropriate damages, if any, and Samsung has been and continues to be prejudiced by GTP’s refusal to produce these documents based on its improper assertion of a “settlement negotiation privilege” that does not exist.

¹ On February 4, 2021, GTP filed separate lawsuits against Samsung and Huawei, accusing each of infringing the same four Asserted Patents: U.S. Patent Nos. 7,933,431, 8,194,924, 8,553,079, and 8,878,949. *See Gesture Technology Partners, LLC v. Huawei Device Co., Ltd. & Huawei Device USA, Inc.*, No. 2:21-cv-00040-JRG, Dkt. 1; *Gesture Technology Partners, LLC v. Samsung Elecs. Co., Ltd., et al.*, No. 2:21-cv-00041-JRG, Dkt. 1. On April 16, 2021, the Court consolidated the cases for all pretrial issues. No. 2:21-cv-00040-JRG, Dkt. 14.

DATED: November 19, 2021

Respectfully submitted,

By: /s/ Christopher W. Kennerly
Christopher W. Kennerly (TX Bar No. 00795077)
chriskennerly@paulhastings.com
Radhesh Devendran (*pro hac vice*)
radheshdevendran@paulhastings.com
Boris S. Lubarsky (*pro hac vice*)
borislubarsky@paulhastings.com
David M. Fox (*pro hac vice*)
davidfox@paulhastings.com
PAUL HASTINGS LLP
1117 S. California Avenue
Palo Alto, CA 94304
Telephone: (650) 320-1800
Facsimile: (650) 320-1900

Allan M. Soobert
allansoobert@paulhastings.com
PAUL HASTINGS LLP
2050 M Street NW
Washington, D.C. 20036
Telephone: 202-551-1700
Facsimile: 202-551-1705

Elizabeth L. Brann
elizabethbrann@paulhastings.com
PAUL HASTINGS LLP
4747 Executive Drive, 12th Floor
San Diego, CA 92121
Telephone: (858) 458-3000
Facsimile: (858) 458-3005

Robert Laurenzi
robertlaurenzi@paulhastings.com
PAUL HASTINGS LLP
200 Park Avenue
New York, NY 10166
Telephone: (212) 318-6000
Facsimile: (212) 319-4090

Melissa R. Smith (TX Bar No. 24001351)
GILLAM & SMITH, LLP
303 S. Washington Ave.
Marshall, TX 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257

melissa@gillamsmithlaw.com

*Attorneys for Defendants Samsung Electronics
Co., Ltd and Samsung Electronics America, Inc.*

CERTIFICATE OF CONFERENCE

Pursuant to Local Rules CV-7(h) and (i), counsel for Samsung has met and conferred with counsel for GTP. On October 25, Samsung requested that GTP produce all documents and communications reflecting or relating to the Huawei settlement, including those that “reflect or relate to the parties’ negotiations leading to the settlement.” Ex. 1. In this correspondence, Samsung requested GTP’s availability to meet and confer. Having heard no response, Samsung requested the documents and communications again on October 28. Ex. 2. Samsung articulated that it is prejudiced by delayed disclosure of these documents and communications, especially in light of the impending deadline for its rebuttal expert report on damages. Samsung also again requested GTP’s availability to meet and confer. On October 29, GTP responded by email stating its refusal to produce “[a]ny correspondence leading up to the executed license agreement.” *Id.* That same day, GTP’s lead counsel called Samsung’s local counsel to confirm that GTP will not produce negotiation documents leading to the Huawei Agreement. The parties are thus at an impasse. No agreement could be reached after good faith attempts to resolve the matters raised by this motion, leaving an open issue for the Court to resolve.

/s/ Christopher W. Kennerly
Christopher W. Kennerly

CERTIFICATE OF AUTHORIZATION TO SEAL

I hereby certify that under Local Rule CV-5(a)(7), the foregoing document is filed under seal pursuant to the Court's Protective Order entered in this matter.

/s/ Christopher W. Kennerly
Christopher W. Kennerly

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on November 19, 2021. As of this date, all counsel of record had consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A) and by email.

/s/ Christopher W. Kennerly
Christopher W. Kennerly