

**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”).<sup>1</sup>

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.

---

<sup>1</sup> 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