

**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.

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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.

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

JURY TRIAL DEMANDED

**SAMSUNG DEFENDANTS' MOTION TO PRECLUDE
THE OPINIONS AND TESTIMONY OF PLAINTIFF'S TECHNICAL EXPERT
BENEDICT OCCHIOGROSSO**



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I. INTRODUCTION

Pursuant to Federal Rule of Evidence 702, Defendants Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”) move to exclude the opinions and testimony of Plaintiff Gesture Technology Partners, LLC’s (“GTP”) technical expert, Mr. Benedict Occhiogrosso. In his expert report on purported infringement, Mr. Occhiogrosso did not provide any opinion on infringement of the asserted method claims, infringement of certain features that have been disputed by the parties since the inception of the case, and infringement relating to unspecified documents and source code. Any testimony by Mr. Occhiogrosso at trial on these issues should be precluded. Further, Mr. Occhiogrosso’s report presented new infringement theories that were never disclosed in GTP’s infringement contentions. Because GTP failed to timely disclose these theories, Mr. Occhiogrosso’s expert report on these theories should be stricken and testimony in support of such theories should be precluded. Finally, Mr. Occhiogrosso presented infringement theories that ignored the Court’s *Markman* Order and failed to take claim language into consideration. These opinions too should be stricken and the related testimony precluded.

II. THE OCCHIOGROSSO REPORT AND RELATED BACKGROUND

GTP accuses specified Samsung smartphones and tablets of infringing various claims of U.S. Patent Nos. 7,933,431 (“’431 Patent”), 8,553,079 (“’079 Patent”), 8,194,924 (“’924 Patent”) and 8,878,949 (“’949 Patent”) (collectively, “Patents-in-Suit”). No. 2:21-cv-00040-JRG, Dkt. No. 1, 1-1, 1-2, 1-3, 1-4. Both in its infringement contentions and its technical expert’s opening report on infringement (“Occhiogrosso Report”), GTP alleged that a total of 32 Samsung smartphones and tablets (“Accused Products”) infringe the Patents-in-Suit. Ex. 8, pp. 2-13 (September 20, 2021 Disclosure of Asserted Claims and Supplemental Amended Infringement Contentions, hereafter

[REDACTED]

“Final Infringement Contentions); Ex. 1, ¶ 42 (Occhiogrosso Report).¹ Further, Mr. Occhiogrosso alleged that Samsung infringes method claims “through its use of” seven features found on the Accused Products.² See, e.g., Ex. 1, Ex. SAMSUNG-431 at 7. Mr. Occhiogrosso’s report alleges that Samsung directly infringed 33 method claims, but presented no evidence that Samsung actually “used” the Accused Products.³ Ex. 1, ¶ 219. Mr. Occhiogrosso also presented no theory of infringement for any Asserted Claim relating to the Contested Applications. Mr. Occhiogrosso made reference to a voluminous collection of document and source code, but does not anywhere in his report discuss or apply most of them. Ex. 1, Ex. A - Materials Considered, V and VI. Mr. Occhiogrosso presented new infringement theories for eight claims of the Patents-in-Suit that GTP did not disclose in its infringement contentions.

III. LEGAL STANDARD

District courts are charged with a “gatekeeping role” to ensure that expert testimony admitted into evidence is both “reliable and relevant.” *Sundance, Inc. v. DeMonte Fabricating, Ltd.*, 550 F.3d 1356, 1360 (Fed. Cir. 2008); see also Fed. R. Evid. 702. “Expert infringement reports may not introduce theories not previously set forth in infringement contentions.” *ROY-G-BIV Corp. v. ABB, Ltd.*, 63 F. Supp. 3d 690, 699 (E.D. Tex. 2014); see also *Opal Run LLC v. C &*

¹ Unless otherwise stated, all exhibits referenced herein are attached to the Declaration of Radhesh Devendran in Support of Defendants’ Motion to Preclude Expert Testimony and Opinions of Plaintiff’s Technical Expert Mr. Benedict Occhiogrosso.

² Early in the litigation, GTP alleged infringement by Samsung’s accused smartphones and tablets in conjunction with a total of 24 features. No. 2:21-cv-00040-JRG, Dkt. No. 1, ¶¶ 24-25; Dkt. No. 51-6 (June 16, 2021 Disclosure of Asserted Claims and Amended Infringement Contentions), pp. 2-18; e.g., Ex. A to *id.*, p. 2. Samsung moved to dismiss GTP’s complaint, strike GTP’s infringement contentions, and sought a protective order from discovery regarding all but seven of the features in view of GTP’s failure to properly identify and provide required disclosure as to its infringement theories for the other features (“the Contested Applications”). Dkt. Nos. 23, 51, 84. Those motions remain pending.

³ The asserted method claims are: Claims 1-3, 6, 14-22, 25-28 and 30 of the ’431 Patent, and Claims 1-6, 8-9, 21-25, 28, and 30 of the ’079 Patent (collectively “the Asserted Method Claims”).

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