

**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' REPLY IN SUPPORT OF THEIR MOTION TO
PRECLUDE THE OPINIONS AND TESTIMONY OF PLAINTIFF'S
TECHNICAL EXPERT BENEDICT OCCHIOGROSSO**

[REDACTED]

Asserted Method Claims Opinions — GTP’s Opposition offers no substantive rebuttal and fails to identify any evidence of use by Samsung in the United States. Dkt, 161, pp. 1-2. GTP points to Mr. Occhiogrosso’s statement generally averring that Samsung infringes “by using” the Accused Products. *Id.*, p. 2. But that statement merely references infringement charts, which also fail to identify any basis for alleging actual use by Samsung let alone use in the United States. *See, e.g., id.*, Ex. A, ¶219. It remains unrebutted that GTP’s expert failed to identify *any* evidence that Samsung has performed any of the Asserted Method Claims.

Samsung has filed a motion for summary judgment that it does not infringe the Asserted Method Claims because there is no evidence in the record (from Mr. Occhiogrosso or otherwise) that Samsung uses any of the Accused Products in the United States. Dkt. 140, 140, pp. 6-8. The present motion, however, seeks only to preclude Mr. Occhiogrosso from testifying at trial about Samsung’s alleged use because his opinions in his report are not based on *any* competent evidence, rendering his proposed testimony unreliable and highly prejudicial. *Elder v. Tanner*, 205 F.R.D. 190, 193, 194 (E.D. Tex. 2001). The relief requested is self-evident—to prevent GTP’s expert from offering to the jury his unsupportable opinions regarding alleged infringement of the Asserted Method Claims. Dkt. 137, p. 5 (“Mr. Occhiogrosso’s opinions . . . are unreliable and he should be precluded from testifying as to any such alleged infringement.”).

The Contested Applications — GTP presents no practical reason why Mr. Occhiogrosso could not have provided in his report opinions on whether the Contested Applications infringe, despite the pending motions regarding discovery as to the Contested Applications. Dkt. 161, pp. 2-3. Samsung produced source code for the Contested Applications during the discovery period. Further, public information was available about the Contested Applications, which GTP liberally relied on throughout the discovery period. Dkt. 137, p. 8. Mr. Occhiogrosso’s deliberate decision

[REDACTED]

to not review *any* of the produced source code, ignore *all* publicly available information about the Contested Applications, and not provide *any* opinions in his report about alleged infringement as to the Contested Applications warrants precluding his testimony about them.

Evidence Identified in the Report — The present motion does not seek to preclude Mr. Occhiogrosso from relying on or testifying further about his CV or his deposition testimony, but simply to preclude him from testifying about Samsung’s source code and technical documents not discussed in the body of his report. Dkt, 161, p. 3. This Court has firmly established that an expert is not permitted to testify about matters beyond the four corners of his report. *See RMail Limited v. Amazon.com, Inc.*, 2019 WL 10375642 at *5. Although Samsung produced the source code base for multiple Accused Products, which included millions of lines of code, Mr. Occhiogrosso *never cited any of it* in his report and admitted that he *never even reviewed it*. He should therefore be precluded from discussing or referring to source code in his trial testimony. Given that Mr. Occhiogrosso’s report provides no disclosure whatsoever as to his proposed trial testimony as to source code, Samsung would be unfairly prejudiced by having to prepare for cross-examination of Mr. Occhiogrosso on such an expansive corpus of evidence. While Samsung produced 150,000 documents, only a fraction were technical documents, which Mr. Occhiogrosso could have readily located and identified. Fairness dictates that Mr. Occhiogrosso was required to apprise Samsung of those specific documents on which he based his opinions and would rely at trial.

431 Patent, Claim 7 — The “means for controlling” in claim element 7[d] is a specific limitation that appears once in Claim 7. Dkt. 161, pp. 4-5. Thus, GTP’s alleged disclosure in its infringement contentions of Air Gestures, Palm Solution, and AR Emoji for claim elements 7[b] (“camera means”) and 7[c] (“computer means”) is irrelevant. Elements 7[b] and 7[c] are separate and distinct from element 7[d]. The alleged disclosure of those three features for elements 7[b]

[REDACTED]

and 7[c] does not inform the reader that the functionality of those features relates in any way to the “means for controlling” in element 7[d]. GTP’s reliance on the code listing for claim element 7[d] is further unavailing, because Mr. Occhiogrosso *never reviewed the code* and does not rely on it in his report for any of his opinions, including for element 7[d]. Nothing in the record supports the notion that the vaguely-described features in the code listing of the infringement contentions, *e.g.*, “Easy One Hand Feature,” related to Air Gestures, Palm Solution, and AR Emoji.

’431 Patent, Claims 19, 27, 28 — GTP argues that because its infringement contentions for independent Claim 14 identified AR Emoji and Palm Solution (along with 17 other features, Dkt. 137, Ex. 8, p. 71), it necessarily identified AR Emoji for dependent Claims 19 and 27, and Palm Solution for dependent Claim 28. Dkt. 161, p. 5-8. It is axiomatic, however, that a method that infringes a broader, independent claim does not necessarily infringe a narrower, dependent claim. Indeed, reciting a narrower claim scope is a primary purpose of a dependent claim. GTP’s identification of AR Emoji and Palm Solution as allegedly infringing Claim 14 therefore did not implicitly inform the reader that GTP further alleged AR Emoji (and 17 other features identified for Claim 14) infringed dependent Claims 19 and 27, or that Palm Solution infringed dependent Claim 28. GTP explicitly identified by website only one feature in its infringement contentions for Claim 19—Face ID Unlock *but not* AR Emoji, identified *no* feature for Claim 27 after dropping Google’s Motion Sense, and identified *no* feature for Claim 28.¹

’924 Patent, Claims 10 and 12 — GTP does not deny that Mr. Occhiogrosso’s report offered opinions that Claims 10 and 12 are infringed by “functionality for recognizing objects

¹ GTP’s vague citation to “[REDACTED]” —source code Mr. Occhiogrosso never even reviewed—likewise does not properly identify AR Emoji as accused. Dkt. 161, p. 6 (emphasis added). Similarly, GTP’s source code listing for Claim 28 (which makes no distinction between and conflates the supposed evidence of infringement for Claims 28 and 30, *see* Ex. 8, pp. 41-42) makes no reference to Palm Solution.

[REDACTED]

based on the rear-facing camera, such as faces” and that this position was not disclosed in GTP’s infringement contentions. Dkt. 161, p. 8-11. GTP points to Mr. Occhiogrosso’s description of Face ID Unlock, Air Gestures, and Palm Solution and his opinions that these features purportedly perform the object detection of Claim 10 and the reference frame limitation of Claim 12. No part of GTP’s argument, however, explains why Mr. Occhiogrosso should be permitted to testify that “functionality for recognizing objects based on the rear-facing camera” infringes Claims 10 and 12 when he provided *no such disclosure* in his report and, further, his report admittedly includes opinions only for specific features.

’079 Patent, Claim 30 — GTP argues that because the [REDACTED]

[REDACTED]

[REDACTED] Dkt. 161, p. 11. This is a naked admission that GTP’s infringement contentions *did not* clearly identify the buttons as the purported “keypad” recited in the claim. The Accused Products have hundreds if not thousands of physical components, such that a general averment to the device as a whole provides no meaningful disclosure whatsoever. Mr. Occhiogrosso’s reference to the analysis of claim element 9[a] of his infringement report fails to identify physical buttons as the claimed keypad in the contentions.

’949 Patent, Claim 13 — GTP argues that its reference to “Cameras and/or Sensors” in the cover pleading of its infringement contentions disclosed a theory under which the same digital camera is used both to detect the alleged gesture and to capture an image, because [REDACTED]

[REDACTED] Dkt. 161, p. 12. This is nothing more than a claim construction argument with respect to the term “electro-optical sensor,” not an explicit disclosure of an infringement theory.

“Gestures” — GTP admits that [REDACTED]

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