



**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' OMNIBUS MOTION *IN LIMINE***

## TABLE OF CONTENTS

		<b>Page</b>
I.	MIL No. 1 (Opposed): Preclude Reference To Products That Are Not Accused Of Infringement.....	1
II.	MIL No. 2 (Opposed): Preclude Reference to Any Pre-Suit Contact, Pre-Suit Knowledge, or Willfulness .....	2
III.	MIL No. 3 (Opposed): Preclude Reference to Non-Reliance on Opinion of Counsel .....	3
IV.	MIL No. 4 (Opposed): Preclude Reference to Actions of Samsung or Its Employees as “Stealing,” “Copying,” “Pirating,” or Other Improper Taking.....	4
V.	MIL No. 5 (Opposed): Preclude Reference to Any Duty of Samsung to Investigate GTP’s Patents Prior to the Litigation as Part of Its Business.....	4
VI.	MIL No. 6 (Opposed): Preclude Reference to Samsung’s Size, Wealth, Revenues, Profitability, Market Value, Market Share, or Similar Metrics .....	5
VII.	MIL No. 7 (Opposed): Preclude Any Derogatory Reference To Samsung Being Foreign, Korean, To Its Corporate Identity or Culture, or The Like .....	6
VIII.	MIL No. 8 (Opposed): Preclude Reference to the Overall or Relative Size or Location of the Parties’ Law Firm or Trial Teams .....	8
IX.	MIL No. 9 (Opposed): Preclude Any Appeal to Sympathy Based On Dr. Pryor’s Age or Military Service .....	9
X.	MIL No. 10 (Opposed): Preclude Reference To Samsung Not Respecting Intellectual Property Rights Generally.....	9
XI.	MIL No. 11 (Opposed): Preclude Reference to Unrelated Litigations, Investigations, and Negative News Coverage of Samsung and Affiliated Entities.....	10
XII.	MIL No. 12 (Opposed): Preclude Argument That Party’s Corporate Representative is Obligated to Prepare on Any Particular Topic or Is Charged with the Knowledge of Others Within the Company.....	12
XIII.	MIL No. 13 (Opposed): Preclude Reference to Absent Witnesses or Executives.....	13
XIV.	MIL No. 14 (Opposed): Preclude Argument That Past Licenses Indicate that GTP’s Patents are Valid and/or Infringed.....	14
XV.	MIL No. 15 (Opposed): Preclude Reference to Non-Asserted Patents .....	15
XVI.	MIL No. 16 (Opposed): Preclude Any Reference Bolstering the USPTO or Its Examiners .....	15

[REDACTED]

Pursuant to the Court’s Sixth Amended Docket Control Order (Dkt. 155), Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (together, “Samsung”) move the Court *in limine* to enter an order instructing Plaintiff Gesture Technology Partners, LLC (“GTP”), its counsel, its representatives, and its witnesses (whether in person or by deposition) to refrain from referring in any way, either directly or indirectly, to any matters which are the subject of this motion *in limine* without first approaching the bench outside the hearing of the jurors and obtaining a favorable ruling regarding the relevance and admissibility of the matters sought to be presented to the jury. Samsung further moves the Court *in limine* to enter an order: (1) instructing GTP’s counsel to discuss this motion *in limine* with each of its witnesses before they are presented to testify; and (2) that information regarding any matters which are the subject of this motion *in limine* be redacted from otherwise admissible documents, papers, and things offered by GTP as exhibits and/or evidence in the trial of this case.

**I. MIL No. 1 (Opposed): Preclude Reference To Products That Are Not Accused Of Infringement**

The Court should preclude GTP from introducing any evidence, testimony, or argument regarding products that are not accused of infringement (whether because they are not Samsung products, because they are products from outside the period of alleged infringement, or otherwise) with respect to its claims of infringement and/or for damages. As examples, GTP’s proposed trial exhibit list includes exhibits regarding Apple devices (PTX66–69, 72, 85), Huawei devices (PTX 65, 70, 73, 76, 78, 84, 90, 92, 95-100), Alcatel devices (PTX 71), LG devices (PTX 77, 83), and Fujitsu devices (PTX 80). *See Ex. 2.* As another example, GTP’s exhibit list includes PTX 94 titled “[REDACTED]?” even though the EX2F device is not accused of infringement. *See Ex. 1.* Further examples include products from outside the period of alleged infringement, even if they are accused of infringement during the period.

[REDACTED]

Such evidence, testimony, or argument is irrelevant to the issues at trial and is highly prejudicial to Samsung. This Court has precluded evidence as to products that are not accused of infringement on the same or similar grounds. *See* Order at 8, *SEVEN Networks, LLC v. Google LLC*, 2:17-cv-00442-JRG (E.D. Tex., Jan. 18, 2019), Dkt. No. 606 (“SEVEN should be precluded from offering evidence or argument regarding Android products that are not offered by Google and not accused in this case, including any suggestion that these products may infringe or that Google is liable for these products. This motion *in limine* is GRANTED-AS-AGREED.”); Order at 3, *Weatherford Tech. Hold. v. Tesco Corp.*, 2:17-cv-00456-JRG (E.D. Tex., Nov. 14, 2018), Dkt. No. 166 (“The Court holds that the one and only proper comparison is the language of the claims as compared to the accused products. Tesco is precluded from discussing third-party products that are not accused in this case, without prior leave of Court.”) Any probative value is substantially outweighed by the danger of unfair prejudice and jury confusion. *See* Fed. R. Evid. 401, 403.

**II. MIL No. 2 (Opposed): Preclude Reference to Any Pre-Suit Contact, Pre-Suit Knowledge, or Willfulness**

GTP admitted there was no pre-suit communication between GTP and Samsung, admitted Samsung had no pre-suit knowledge of any of the Patents-in-Suit, and stipulated to dismiss with prejudice all claims of willful infringement. The Court should preclude any evidence, testimony, or argument that there was pre-suit contact or communication between GTP and Samsung; that Samsung had pre-suit knowledge or awareness of GTP, Dr. Timothy Pryor, or the Patents-in-Suit; or that Samsung infringed willfully, intentionally, deliberately, or the like.

As the party seeking enhanced damages, GTP bears the burden of showing it is entitled to the relief sought. *Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.*, No. 2:15-cv-1202-WCB, 2017 WL 2190055, at \*1 (E.D. Tex. May 18, 2017)). GTP admitted that there were no pre-suit

[REDACTED]

communications between GTP and Samsung, and that Samsung had no pre-suit knowledge of any of the Patents-in-Suit. Ex. 2 at Response Nos. 16, 38. Thus, under Fed. R. Civ. P. 26 and 37, the Court should preclude any evidence, testimony, or argument to the effect that Samsung had any contact or communication with GTP, or any knowledge or awareness of GTP, Dr. Pryor, or the Patents-in-Suit, before August 30, 2016. *See Enova Tech. Corp. v. Initio Corp.*, C.A. No. 10-04-LPS, 2013 WL 12156023, at \*1 (D. Del. Jan 31, 2013) (precluding plaintiff from offering “improper or insufficient pre-suit knowledge” of the asserted patents); *IGT v. All. Gaming Corp.*, No. 2:04-cv-1676-RCJ-RJJ, at \*10 (D. Nev. Oct. 21, 2008) (excluding evidence on pre-suit knowledge based on plaintiff’s interrogatory responses). Further, GTP stipulated to dismiss with prejudice all claims of willful infringement. Dkt. No. 134 at 2. Thus, under Fed. R. Civ. P. 26 and 37, the Court should preclude any evidence, testimony, or argument to the effect that Samsung infringed willfully, intentionally, deliberately, or the like.

Any such evidence, testimony, or argument irrelevant to the issues at trial and is highly prejudicial to Samsung. Any probative value is substantially outweighed by the danger of unfair prejudice and jury confusion. *See* Fed. R. Evid. 401, 403.

### **III. MIL No. 3 (Opposed): Preclude Reference to Non-Reliance on Opinion of Counsel**

GTP initially asserted a claim of willful infringement. *See* 21-cv-00041, Dkt. No. 1 ¶¶ 46, 61, 76, 91. Samsung elected not to assert an advice of counsel defense against that claim. GTP has since stipulated to dismiss with prejudice all claims of willful infringement. Dkt. No. 134 at 2. Any evidence, testimony, or argument that Samsung failed to obtain or elected not rely on an opinion of counsel is irrelevant to the issues at trial and is highly prejudicial to Samsung. Any probative value is substantially outweighed by the danger of unfair prejudice and jury confusion. *See* Fed. R. Evid. 401, 403. Courts in this District regularly grant this type of motion *in limine* as agreed. *See* Order at 5–6, *Realtime Data, LLC v. Actian Corp.*, 6:15-cv-00463-RWS-JDL (E.D.

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