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

DEFENDANTS SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG ELECTRONICS AMERICA, INC.'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)

GTP's Response to Defendants' Motion to Dismiss does nothing to resolve GTP's failure to plead facts sufficient to provide fair notice of GTP's claims and the grounds on which they rest. Instead, GTP relies on an incorrect reading of case law to justify identifying 24 Accused Features but failing to provide notice as to how any, much less all, allegedly meet the claims of the Asserted Patents. Moreover, even taking all inferences in a light most favorable to GTP, no facts exist to allege Samsung's knowledge of the Asserted Patents ***before*** they expired, and none have been pleaded. Samsung requests that the Court dismiss GTP's claims for patent infringement.

I. GTP FAILS TO STATE A CLAIM FOR DIRECT INFRINGEMENT

GTP's Complaint is so vague that Samsung does not have fair notice of the accused instrumentalities and cannot reasonably prepare an answer much less its defenses. GTP does no more than provide a bare bones recitation of the exemplary patent claim while generally averring to the Accused Products and Features. GTP only generally identifies 24 Accused Features in its Complaint. Some of these identified features, such as Adjust Blur, Smile Shot, and Active Shape Connect, are so vague that Samsung is unsure what the Accused Feature is, let alone how it might infringe. The four screenshots GTP does include do not identify how each illustrated feature allegedly meets the text of the exemplary claim nor even ***which feature*** each screenshot allegedly illustrates. Both this Court's holding in *Chapterhouse, LLC v. Shopify, Inc.*, No. 2:18-CV-00300-JRG, 2018 WL 6981828 (E.D. Tex. Dec. 10, 2018) and the cases cited in GTP's Response support the conclusion that GTP's factual allegations fail to provide Samsung with fair notice of the grounds on which GTP's direct infringement claim rests. The Court should dismiss GTP's allegations of direct infringement under § 271(a).

As an initial matter, GTP misreads this Court's reasoning and holding in *Chapterhouse*. GTP argues that because Samsung has not alleged a single entity theory for a patent with a system claim that "*Chapterhouse* is easily distinguished from this case." Response at 9. While it is true

that in *Chapterhouse* the Court dismissed the allegations of direct infringement for ***one*** of the four asserted patents on this basis, GTP ignores that the Court further dismissed direct infringement allegations for ***all four*** patents because—as in this case—plaintiff failed to provide a sufficient factual basis to establish a plausible allegation of patent infringement. *Compare Chapterhouse*, 2018 WL 6981828, at *2 ("Plaintiff must further allege how the screenshots meet the text of the exemplary claim . . . . Accordingly, as to direct infringement of the '087, '989, '356, and '698 Patents, the Court GRANTS the Motion.") *with id.* at *4 ("[T]here is no allegation that one entity performs every step . . . . Accordingly, the Court GRANTS the Motion as to the '356 Patent."). GTP also argues that Samsung fails to identify any case law requiring the Complaint to "explain how the Accused Instrumentalities infringe the Asserted Patents," appearing to suggest that GTP has no obligation to plead such allegations. Response at 8. GTP again ignores this Court's holding in *Chapterhouse* that the "Plaintiff must further allege ***how*** the screenshots meet the text of the exemplary claim . . . ." *Chapterhouse*, 2018 WL 6981828, at *2 (emphasis added). *Chapterhouse* is directly on point because, as in *Chapterhouse*, GTP failed to link its screen shots to the exemplary claim elements for even one Accused Feature, let alone all 24 Accused Features.

This conclusion is further supported by the other cases cited in GTP's Response. First, in those cases, the plaintiffs supplied a greater level of factual detail than GTP's Complaint and did not merely rely on screen shots to loosely couple a supposedly infringing product or function to an asserted patent. *See Iron Oak Techs., LLC v. Acer Am. Corp.*, No. 6:17-cv-00143-RP-JCM, 2017 U.S. Dist. LEXIS 221346, at *9–10 (W.D. Tex. Nov. 28, 2017) (finding the complaint sufficient because it identified the process "that allegedly infringe[d]," "compare[d] the process[] to the [asserted patent], and then gives specific examples of Acer product lines that allegedly directly infringe . . ."); *Uniloc USA, Inc. v. Avaya Inc.*, No. 6:15-cv-1168-JRG, 2016 U.S. Dist.

LEXIS 181826, at *17 (E.D. Tex. May 13, 2016) (finding the complaint sufficient in part because the plaintiff "described the accused functionality within these products, and provided descriptive illustrations of these products and the accused functionality"). Unlike the cases GTP cites, GTP does not compare the Accused Features to the Asserted Patents nor explain how any feature allegedly infringes. Instead, GTP generally identifies 24 Accused Features, provides screenshots for only an unspecified four of them, and fails to provide any further information tying the features to the Asserted Patents.

Second, many of the cases GTP cites only involved a single accused product, without multiple accused features. *See Raytheon Co. v. Cray, Inc.*, No. 2:16-CV-00423-JRG-RSP, 2017 U.S. Dist. LEXIS 56729, at *10 (E.D. Tex. Mar. 12, 2017) (asserting four patents – identifying one product and no accused features); *Parity Networks, LLC v. Cisco Sys.*, No. 6:19-CV-00207-ADA, 2019 U.S. Dist. LEXIS 144094, at *4 (W.D. Tex. July 26, 2019) (asserting four patents – specifically identifying one representative system and representative product for each patent); *MAZ Encryption Techs. LLC v. BlackBerry Ltd.*, 6:15-cv-1167-RWS-JDL, 2016 U.S. Dist. LEXIS 191607, at *8–9 (asserting one patent – identifying one system with four specifically identified subcomponents). Unlike such cases with single accused products and where plaintiff specifically identified functions or subcomponents, here GTP accuses at least five different series of Samsung mobile devices, five different individual products, and 24 different camera-related features. Yet, at best, GTP attempts to link (unsuccessfully) ***only four*** of the 24 Accused Features to the asserted claims by way of screenshots. GTP says nothing about the other features, many of which are so vague that Samsung is unsure what feature is implicated, let alone how it might infringe.[1]

[1] GTP points to its infringement contentions, served on April 28, 2021, as satisfying Samsung's need to "understand more particularly how they [Samsung] infringe the Asserted Patents." Response at 8. GTP's contentions, however, are equally deficient if not more so. Samsung

Contrary to GTP's assertion that Samsung is "in effect, asking the Court to require that detailed infringement contentions be included in the Complaint," Response at 4, Samsung is merely asking to enforce the "fair notice" standard that this and other courts have repeatedly upheld. GTP's own case citations confirm this conclusion. *See Raytheon*, 2017 U.S. Dist. LEXIS 56729, at *10 ("*Lyda* appears to require factual allegations sufficient to give rise to a plausible inference that a device meets all elements of a specific claim.") (citation omitted); *Iron Oak*, 2017 U.S. Dist. LEXIS 221346, at *7 ("However, [the 'fair notice' standard] does require a showing that 'each and every limitation set forth in a claim appears in the accused product.'") (internal citation omitted). GTP has failed to plead facts sufficient to give Samsung "fair notice of what the claim is ***and the ground upon which it rests***." *Disc Disease Sols. Inc. v. VGH Sols., Inc.*, 888 F.3d 1256, 1260 (Fed. Cir. 2018) (emphasis added) (citation omitted).

II. GTP CANNOT PLEAD FACTS TO SUPPORT ITS ALLEGATION THAT SAMSUNG KNEW OF, OR WAS WILLFULLY BLIND TO, THE ASSERTED PATENTS BEFORE THE PATENTS EXPIRED

GTP's claims under §§ 271(b) and 284 should be dismissed with prejudice because GTP cannot plead facts alleging Samsung's knowledge of the Asserted Patents ***before*** they expired. Mot. at 8–12. It is black letter law that a defendant cannot infringe what the plaintiff does not own, and GTP did not own a present interest in the Asserted Patents' claimed invention when it filed the Complaint on February 4, 2021. At most, GTP held an interest in recovery for alleged ***past infringement*** of the invention. Thus, alleging Samsung had knowledge of the Asserted Patents "as of the filing of this Complaint" is irrelevant. Because GTP can only speculate that Samsung knew of the Asserted Patents before they expired, and cannot plead any facts in support of such speculation, GTP's claims for induced infringement and willful infringement must fail.

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informed GTP of these deficiencies in a letter dated May 7, 2021, five days prior to the filing of GTP's Response. GTP has not yet responded as to the substance of that letter.

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