IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GESTURE TECHNOLOGY PARTNERS, LLC,	§ § § §	
Plaintiff	§	
v.	§ §	CASE NO. 2:21-cv-00040-JRG (Lead Case)
HUAWEI DEVICE CO., LTD., HUAWEI DEVICE USA, INC.,	§ § §	JURY TRIAL DEMANDED
Defendants.	§ § §	

GESTURE TECHNOLOGY PARTNERS, LLC,	§ § §	
Plaintiff	§ §	
v.	§ §	CASE NO. 2:21-cv-00041-JRG (Member Case)
SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG ELECTRONICS AMERICA, INC.,	§ § § §	JURY TRIAL DEMANDED
Defendants.	§ §	

JOINT MOTION FOR ENTRY OF DISPUTED E-DISCOVERY ORDER

Defendants Huawei Device Co., LtD., Huawei Device USA, Inc. (together "Huawei"),

Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc. (together "Samsung")

(collectively "Defendants") and Plaintiff Gesture Technology Partners, LLC ("Plaintiff" or

"GTP") (collectively "the Parties") submit the Proposed Disputed E-Discovery Order attached as

Exhibit A (the Parties' respective proposals with respect to disputed provisions being indicated

with Plaintiff's Proposal and Defendants' Proposal). Through their meet and confer efforts, the

Parties were able to reach agreement on almost all provisions of the E-Discovery Order, but were

unable to reach agreement and are at an impasse regarding provisions for (1) identifying proper

custodians within Section 7; and (2) limits for email discovery within Section 9. The Parties'

competing proposals and arguments are presented below:

I.   **PLAINTIFF'S POSITION**

      A.   **Identifying Proper Custodians ¶ 7**

Generally, "[p]arties may obtain discovery regarding any nonprivileged matter that is

relevant to any party's claim or defense and proportional to the needs of the case, considering the

importance of the issues at stake in the action, the amount in controversy, the parties' relative

access to relevant information, the parties' resources, the importance of the discovery in resolving

the issues, and whether the burden or expense of the proposed discovery outweighs its likely

benefit." Fed. R. Civ. P. 26(b)(2)(A). "The burden is on the party resisting discovery to establish

the discovery is not proportional." *Kaist IP US LLC v. Samsung Elecs. Co.*, No. 2:16-CV-01314-

JRG-RSP, 2017 U.S. Dist. LEXIS 221766, at *4-5 (E.D. Tex. Dec. 21, 2017); *see also Samsung*

Elecs. Am. Inc. v. Yang Kun "Michael" Chung, No. 3:15-CV-4108-D, 325 F.R.D. 578, 2017 U.S.

Dist. LEXIS 31662, 2017 WL 896897, at *11 (N.D. Tex. Mar. 7, 2017) ("a party seeking to resist

discovery on these grounds still bears the burden of making a specific objection and showing that

the discovery fails the proportionality calculation mandated by [Fed. R. Civ. P. 26(b)]")

GTP believes that Defendants' proposal would impose unreasonable restrictions on GTP's

ability to conduct discovery. Defendants have not shown a compelling reason to deviate from the

Court's Model Order Regarding E-Discovery in Patent Cases (the "Model Order"). The burden is

on Defendants to demonstrated that "a specific identification of the fifteen most significant listed

e-mail custodians" and "tak[ing] one deposition per producing party" is not proportional to the

needs of this case. In fact, it is quite the opposite. Defendants are large corporations with teams

of individuals working on different portions of the accused phones and tablets. For GTP to

properly discover the scope of Defendants' infringement, GTP cannot agree to limit its discovery

efforts preemptively.   "Generally, the party seeking to limit discovery bears the burden of showing good cause." *Smartflash LLC v. Apple Inc.*, No. 6:13cv447, 2014 U.S. Dist. LEXIS 185186, at *18 (E.D. Tex. May 12, 2014) citing *GeoTag v. Frontier Commn's Corp., et al.*, No. 10-cv-00570, 2013 U.S. Dist. LEXIS 25774, *2 (E.D. Tex. Jan. 8, 2013). Defendants have offered no reason why the burden should be shifted to GTP, nor have they shown good cause.

B.   Limits for Email Discovery ¶ 9

For the same reasons discussed above, Defendants have not demonstrated why there is a need to limit the search hits to 2,000 hits per custodian. The Model Order does not place any such restrictions, nor is one necessary. A limit on the number of hits, as proposed by Defendants, would hamper GTP's ability to obtain relevant discovery and would arbitrarily allow Defendants to dictate the number of relevant documents. GTP has accused numerous phones, and tablets produced and manufactured by the Defendants and believes that any predetermined limit will hamper GTP's discovery efforts.

II.   DEFENDANTS' POSITION

A.   Identifying Proper Custodians ¶ 7

Defendants respectfully request that the Court (1) not require a party deposition merely to identify e-mail custodians, (2) limit the required identification of e-mail custodians to "up to" 15 custodians; and (3) require an accompanying translation for any search terms that require it.

GTP has failed to explain how additional "discovery about discovery" will assist the Parties in identifying how to efficiently proceed with e-mail collection. The Parties have already agreed on up to five written requests to identify custodians and search terms. GTP accuses 18 Accused Features across 33 Accused Products for the Samsung Defendants and a comparable number of features and products for the Huawei Defendants. These products and features are likely to involve a number of different custodians, and no single deponent (or even a very limited set of deponents)

would possess the requisite personal knowledge or other information to provide fact testimony regarding all of the potential custodians, except as told to the deponent by Defendants' attorneys following appropriate investigation. As a result, a deposition to identify e-mail custodians would be nothing more than a memory exercise having very little if any practical usefulness to GTP despite imposing a disproportionately high burden on Defendants. Such a deposition would be a gross misuse of resources in the particular circumstances of this case. Accordingly, Defendants respectfully request that the Court approve Defendants' Proposal and not require a deposition to identify e-mail custodians.

Further, Defendants respectfully request that the Court limit the required identification of e-mail custodians to "up to" 15 custodians. Defendants request this modification in the event any Party is unable to identify a total of 15 relevant custodians for e-mail discovery. The Parties have already committed to identifying up to 15 of the most relevant e-mail custodians. Defendants' proposed modification is intended to streamline e-mail discovery by avoiding potential disputes over whether there are, in fact, 15 relevant e-mail custodians or some fewer number. Although GTP has identified numerous "Accused Features," GTP has repeatedly stated in motion papers and otherwise that it "has not accused the features of infringement" (2:21-cv-00041 Dkt. 57 at 1), acknowledging that the numerosity of "Accused Features" does not warrant a large number of e-mail custodians. In the particular circumstances of this case, there is simply no need to require the identification of 15 e-mail custodians if a fewer number is appropriate. Accordingly, Defendants respectfully request that the Court adopt Defendants' Proposal and limit the required identification of e-mail custodians to "up to" 15 custodians.

Lastly, Defendants respectfully request that the Court require an accompanying translation for any search terms that require it. Defendants include international companies with employees

speaking different languages. If GTP proposes search terms that requires a translation, Defendants request that GTP be required to provide an accompanying translation of those search terms.

B.   Limits for Email Discovery ¶ 9

The Parties have agreed that each Party may select up to a total of 8 custodians per producing party and request a total of 10 search terms per custodian. Defendants respectfully request that the Court impose an additional limit that if any 10 search terms yield combined results of greater than 2,000 hits for a single custodian, the parties will then meet and confer to narrow the scope of the search terms to yield fewer than 2,000 hits.

The value of e-mail discovery in this case is especially limited because there is no allegation that Defendants had pre-suit knowledge of the Asserted Patents, such that e-mail might be relevant to Defendants' pre-suit interactions with Plaintiff or predecessors or Defendants' states of mind with respect to the Asserted Patents. The burden imposed on Defendants to collect, review, store, and produce e-mail from 8 custodians per producing party and 10 search terms per custodian would be significant, whereas there is likely to be very little if any practical usefulness to GTP from such e-mail discovery. The 2,000 hits per custodian limit provides an equitable way to mitigate the burden on Defendants while allowing for streamlined discovery appropriate to the needs of the case. Accordingly, Defendants respectfully request that the Court limit the total hits per custodian to no greater than 2,000.

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