

GTP recently served interrogatories and deposition topics on Samsung seeking discovery on “*every* Application” that can detect, process, interpret, respond to, or be controlled by Gestures.¹ *See, e.g.*, Exhibit A at 2. These discovery requests came after GTP repeatedly represented to Samsung and the Court that its claims “are about devices, not applications” Dkt. No. 54 at 9. *See also* Dkt. No. 57 at 1 (“GTP has repeatedly informed Samsung that the [Applications] . . . *are not part of GTP’s infringement theories.*”) (emphasis added). Thus, GTP’s litigation positions demonstrate that its requests seeking discovery on “*every* Application” relating to Gestures have negligible if any relevance to its infringement theories and the case as a whole. In contrast, Samsung would incur substantial undue burden and expense responding to the full scope of GTP’s discovery requests, making them disproportionate to the needs of the case.

Samsung respectfully requests that the Court issue a protective order limiting the scope of GTP’s discovery requests to the *seven* Applications for which GTP at least provided identifying information (*i.e.*, a website or other publicly available information) and some cursory explanation of its theory of infringement, which was arguably sufficient to satisfy its obligations under P.R. 3-1(c) and fairly put the seven Applications at issue. In light of GTP’s unequivocal representations, discovery as to “*every* Application” does not fall within the permissible scope of discovery under Rule 26(b)(1), and GTP has effectively waived any right to such discovery. Particularly in light of the substantial undue burden and expense it would impose on Samsung, a protective order shielding Samsung from such discovery is warranted in these circumstances.

I. LEGAL STANDARD

A court “may, for good cause,” protect a party from “undue burden or expense” by issuing an order limiting the scope of disclosure or discovery. Fed. R. Civ. P. 26(c)(1). To prevail on a

¹ GTP defined “Gestures” to mean “movement, position, or state of a body part, including, but not limited to, the whole body, any part thereof, and facial expressions.” Exhibit A at 1.

motion for protective order, a party must show that the requested discovery does not fall within Rule 26(b)(1)'s scope of discovery, or that a discovery request would impose an undue burden or expense. *McLeod, Alexander, Powel & Appfel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990). Further, “[a] district court has broad discretion in all discovery matters.” *Weatherford Tech. Holdings LLC v. Tesco Corp.*, No. 2:17-cv-00456-JRG, 2018 WL 4620634, at *1 (E.D. Tex. Apr. 27, 2018) (citation omitted). Failure to raise arguments relating to a party’s patent rights “should ordinarily result in waiver of the arguments.” *Music Choice v. Stingray Digital Grp. Inc.*, No. 2:16-cv-00586, 2019 WL 8110069, at *3 (E.D. Tex. Nov. 19, 2019) (citation omitted).

II. BACKGROUND

The Accused Products are Samsung phones and tablets that run software Applications with widely varying functionalities.² For example, one Application creates an animated version of the user in response to the user’s head movement (“AR Emoji”).³ Information regarding Applications is publicly available. GTP filed its Complaint with citations to publicly available information for six Applications: “Iris Scan Unlock” (§ 27 n.1); “Face ID Unlock” and “Intelligent Scan Unlock” (§ 28 n.2); “Gesture Detection” (§ 29 n.3);⁴ and “Smart Stay” (§ 30 n.4). Then, in its preliminary

² In its Complaint, GTP referred to these Applications as “Features.” No. 2:21-cv-00041, Dkt. No. 1 ¶¶ 25–26; *id.* ¶ 71 (“[G]estures are used by the Features.”). Similarly, in its infringement contentions, GTP referred to these Applications as “Features.” Fox Decl. ¶ 3 (“The gestures detected . . . are associated with . . . the following features of the Accused Products: Gesture Detection . . .”). In its Response to Samsung’s motion to compel, GTP began referring to “Features” as “Applications.” *See, e.g.*, Dkt. No. 54 at 8 (“GTP listed applications on the Accused Products that use gestures”). During the parties’ September 24, 2021 meet and confer, counsel for GTP refused to discuss whether or how “Features” and Applications” differed in meaning or scope. Fox Decl. ¶ 4. For the avoidance of doubt and to simplify matters for the Court, Samsung will refer to “Features” and “Applications” interchangeably.

³ *What is AR (Augmented Reality) Emoji And How Do I Use It?*, SAMSUNG.COM (last visited Sept. 25, 2021), available at: <https://www.samsung.com/uk/support/mobile-devices/what-is-ar-augmented-reality-emoji-and-how-do-i-use-it/>.

⁴ GTP has continued to refer to “Gesture Detection” as an Application. However, the websites GTP cited for “Gesture Detection” actually disclose two Applications: (1) Air Gestures and (2) Palm Gesture for Selfie. Samsung has agreed to provide discovery on each.

infringement contentions, GTP listed a total of 25 Applications and again cited publicly available information for the above six Applications, plus a seventh: “AR Emoji.” GTP’s contentions failed to provide any identifying information for the other 18 Applications beyond their supposed names (many of which were incorrect or ambiguous) and failed to explain GTP’s theory of infringement for these 18 Applications as required under P.R. 3-1(c).

Samsung notified GTP that its failure to provide sufficient notice regarding the other 18 Applications left Samsung “unable to . . . provide discovery” on those Applications. Fox Decl. ¶ 6. After a meet and confer, GTP amended its contentions, decreasing the total number of identified Applications from 25 to 20.⁵ The amended infringement contentions once again cited to publicly available information about the seven Applications (*e.g.*, AR Emoji), but still failed to provide any information about the remaining 13 Applications, except for their supposed names, and failed to provide the required explanation of GTP’s theory of infringement for these 13 Applications.

Samsung notified GTP yet again, stating that “failure to provide documentation or other identifying information for each Accused Feature continues to significantly hamper Samsung’s ability to identify and provide discovery.” Fox Decl. ¶ 7. GTP disagreed and refused to further amend its contentions to provide additional information on the other 13 Applications. Further meet and confers between the parties did not resolve or narrow the parties’ dispute.

With the parties at an impasse, Samsung filed a motion to compel and/or strike GTP’s amended infringement contentions as to the 13 Applications in dispute, reiterating its concern that GTP’s refusal to provide *any* meaningful information about these 13 Applications “significantly

⁵ Samsung’s May 7 letter referenced the “24” Applications that GTP accused. Samsung’s counsel has since learned that “Gesture Detection” encompasses two separate Applications (*i.e.*, Air Gestures and Palm Gesture for Selfie). Also, Samsung’s motion to compel and/or strike referred to a total of 18 Applications, not counting “Gesture Detection” as two separate Applications, and not accounting for “Control Exposure Based on Location.” Fox Decl. ¶ 8.

hampers Samsung's ability to identify and provide discovery." Dkt. No. 51 at 2. In response, GTP represented that it already provided website links to generally "explain how gestures are used by the Accused Products within the cited applications," Dkt. No. 54 at 8, and that "GTP does not need to provide additional documentation on the [applications] because the [applications] themselves *are not part of GTP's infringement theories.*" Dkt. No. 57 at 1 (emphasis added). Samsung's motion to compel and/or strike is currently pending before the Court.⁶

GTP served its first set of interrogatories and its notice of Rule 30(b)(6) deposition to Samsung on September 8 and September 14, 2021 respectively. The specific discovery requests for which Samsung seeks a protective order are Interrogatory No. 3, Deposition Topic No. 3, and other requests that depend therefrom (collectively, "Discovery Requests").

Interrogatory No. 3 requests:

For the Accused Products and/or Devices identified in response to Interrogatory No. 1, identify *every* Application, that can detect, process, interpret, respond to, or be controlled by Gestures, that is (1) preloaded on the Accused Products and/or Devices or (2) available for download on the Accused Products using the table below.

Fox Decl. ¶ 3 (emphasis added). In addition, at least Interrogatory Nos. 10, 11, 12, and 17 seek further information about the Applications responsive to Interrogatory No. 3.

Deposition Topic No. 3 similarly requests that a Samsung representative testify regarding "[t]he identity and description of *every* Application, that can detect, process, interpret, respond to, or be controlled by Gestures." Exhibit A at 2–3 (emphasis added). In addition, Deposition Topic No. 3 requests that, for each such Application, Samsung provide testimony about: (a) the name of the Application; (b) whether the Application was preloaded on the Accused Products and/or Devices or available for download on the Accused Products or Devices; (c) the Accused Products

⁶ Also pending with the Court is Samsung's motion to dismiss under Rule 12(b)(6) focused in part on GTP's failure to sufficiently plead its direct infringement allegations as to the Applications at issue here. Dkt. No. 23.

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