IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ANCORA TECHNOLOGIES, INC., Plaintiff, v. LG ELECTRONICS INC. and LG ELECTRONICS U.S.A., INC., Defendants.	CIVIL ACTION NO. 1:20-CV-00034-ADA JURY TRIAL DEMANDED
ANCORA TECHNOLOGIES, INC., . Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD., and SAMSUNG ELECTRONICS AMERICA, INC., Defendants.	CIVIL ACTION NO. 1:20-CV-00034-ADA JURY TRIAL DEMANDED

PUBLIC VERSION

ANCORA'S ABBREVIATED REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO SAMSUNG'S DEFENSE OF LICENSING

Ancora's Motion for Partial Summary Judgment on Samsung's "licensing" affirmative defense should be granted for at least three reasons:

First, Samsung does not dispute that Ancora never granted it a license to practice the '941 Patent. Instead, its theory is based solely on a 2009 agreement between Ancora and Microsoft Corporation (the "Microsoft Settlement"), which—remarkably—Samsung admits [redacted]. Samsung claims the opposite: that the Microsoft Settlement does not apply "to actions taken by Samsung." Resp. at 4; Samsung MSJ at 45.

Second, contrary to what it previously argued, Samsung now relies on a never-before-disclosed "exhaustion" defense [redacted]. Whatever the label, Samsung's defense fails because Samsung cannot show [redacted]

Third, under either theory ("license" or "exhaustion"), Samsung bears the burden to support its affirmative defense by identifying the specific "activities" that it asserts were licensed or exhausted. *Jazz Photo Corp. v. ITC* (*Jazz Photo I*), 264 F.3d 1094, 1101–02 (Fed. Cir. 2001) (holding alleged infringer has burden to prove which products or actions fell within defense of license or exhaustion);[1] *Jazz Photo Corp. v. United States* (*Jazz Photo II*), 439 F.3d 1344 (Fed. Cir. 2006) (same). [redacted]

[1] *Abrogated on other grounds by Impression Prod., Inc. v. Lexmark Int'l, Inc.*, 137 S. Ct. 1523. (2017). All emphases added by Ancora unless otherwise stated.

[redacted].

For these reasons, the Court should grant Ancora's motion for partial summary judgment.

I. RESPONSE TO SAMSUNG'S ALLEGED UNDISPUTED MATERIAL FACTS

Samsung admits Ancora's first 19 statements of undisputed material facts ("UMF"), *see* Resp. at 2, including that Samsung [redacted]. That ends the inquiry. [redacted]

Ancora further responds to Samsung's asserted facts as set forth below[3]:

	Ancora's Response to Samsung's Statement of Material Facts
21.	Disputed. [redacted]. Samsung's attempt to contradict Mr. Lee's testimony is a textbook sham-affidavit maneuver that cannot defeat summary judgment.
22.	Disputed. [redacted]

[redacted] Samsung's response is insufficient to create a triable issue for the reasons explained below.

[3] Samsung also asserts that the accused hardware involved in practicing the '941 Patent belong to end-users, [redacted]. But as Ancora explained, these arguments are immaterial because (1) end-users do not perform any method steps and (2) Samsung directs, controls, or forms a joint enterprise with each of the hardware owners Samsung identified. *See* Ancora MSJ Opp. at 19-42. [redacted]

	Ancora's Response to Samsung's Statement of Material Facts
	[redacted]
23.	Undisputed insofar as Dr. Martin opined [redacted]
24.	Disputed insofar as Dr. Martin's opinion is that Samsung performs the step of "using an agent to set up a verification structure" [redacted]
25.	Disputed for the same reasons stated above in response to SSOF 24. *See, e.g.*, D.I. 151-3 (Martin Phone Rpt.) ¶¶ 13-15, 21-22, 51-94; D.I. 151-4 (Martin TV Rpt.) ¶¶ 8, 12, 31-47; D.I. 149-4 (Garten Decl., Ex. 23, Martin 1/14 Tr. at 88).
26.	Undisputed that Samsung identified [redacted].
27.	Undisputed that Ancora did not serve a subpoena on [redacted]

II. ARGUMENT

Ancora first addresses the effect of Samsung's disclaimer of both its prior licensing defense and its entitlement to any license defense. Given Samsung's clear-cut failure to satisfy its ultimate burden of proof by identifying (or even quantifying) the specific conduct allegedly licensed or exhausted, Ancora then addresses the consequences of that flaw before also addressing the legal deficiencies in Samsung theory as a whole.

A. Samsung Concedes That It Is Not a Released or Licensed Party.

It is undisputed that Samsung [redacted] That is dispositive. Absent any licensing right, Samsung could not have been licensed.

Moreover, Samsung's concession confirms that Samsung has abandoned the only "license" defense actually disclosed during discovery. Contradicting Samsung's attempt to characterize Ancora's motion as "challenging a straw man of its own devise," Resp. at 1, Ancora served an interrogatory directed to this very issue, asking Samsung to "[d]escribe the complete factual basis for each of [Samsung's] affirmative defenses." *See* 2d Seigel Decl. Ex. 2 at 52 (Interrogatory No. 10). Samsung stated: [redacted]

This demonstrates that Ancora's argument is not the strawman Samsung pretends. Rather, it appears that Samsung realizes that it cannot support the defense that it actually asserted and is trying to assert a new defense. [redacted], the Court should hold that Samsung cannot argue to the jury that it had purported rights to practice the '941 Patent.

B. Samsung's "License" Defense Fails Because Samsung Has No Proof of Any Licensed Updates.

As noted, Samsung now is relying (improperly) on a new theory—claiming to rely not on a license to Samsung but solely [redacted]. But even if Samsung could rely on this untimely theory, Samsung cannot identify a single product or activity that falls within any right [redacted]

As to mobile phone updates, Samsung does not point to any specific update (or even any

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