

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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SAMSUNG ELECTRONICS CO., LTD., *et* )  
*al.*, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
NVIDIA CORPORATION, *et al.*, )  
 )  
Defendants. )

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**Civil No. 3:14cv757 (REP)(DJN)**

**JURY TRIAL DEMANDED**

**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION IN LIMINE NO. 2 TO  
PRECLUDE SAMSUNG FROM PROVIDING CERTAIN EVIDENCE RELATED TO  
ITS FAILURE TO TIMELY DISCLOSE THE '938 PATENT TO JEDEC**

## TABLE OF AUTHORITIES

### CASES

<i>Apple, Inc. v. Motorola Mobility, Inc.</i> , 886 F. Supp. 2d 1061 (W.D. Wis. 2012)	1
<i>Hynix Semiconductor Inc. v. Rambus Inc.</i> , 645 F.3d 1336 (Fed. Cir. 2011)	1

It is undisputed that Defendants diligently sought discovery, including deposition testimony, related to Samsung's failure to timely disclose U.S. Patent No. 6,262,938 ("938 patent") to the standards setting organization JEDEC. *See, e.g.*, Ex. A, Defendants' Notice of Deposition of Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6), served Aug. 4, 2015, Exhibit A at 17-18. It is further undisputed that Samsung did not -- and represented that it could not -- provide this information in response to NVIDIA's discovery requests. *See* Ex. B, Samsung's Responses to NVIDIA's Ninth Set of Interrogatories (Nos. 21, 23-25), served Oct. 30, 2015, at 8. Thus, Samsung is precluded from providing this evidence during trial.

Samsung's failure to timely disclose the '938 patent to JEDEC provides the basis for a number of Defendants' affirmative defenses including implied waiver and breach of contract. *See, e.g., Hynix Semiconductor Inc. v. Rambus Inc.*, 645 F.3d 1336, 1347-48 (Fed. Cir. 2011); *Apple, Inc. v. Motorola Mobility, Inc.*, 886 F. Supp. 2d 1061, 1083-87 (W.D. Wis. 2012). During discovery, Defendants requested 30(b)(6) testimony on, among other things, the following topics:

- NVIDIA's 30(b)(6) Topic No. 63: "All present and past positions taken by Samsung, and the bases, justifications, and support therefor, regarding whether the Patents-in-Suit are Essential, as this term is defined in the relevant Standard Setting Organizations, and whether the Accused Products comply with any Joint Electron Device Engineering Council ("JEDEC") standard . . . ."
- NVIDIA's 30(b)(6) Topic No. 65: "Samsung's policies, practices, and processes that describe or govern when Samsung discloses or declares a patent [to] an SSO."
- NVIDIA's 30(b)(6) Topic No. 67: "The facts and circumstances surrounding Samsung's December 30, 2004 letter from Mr. Mian Quddus to Mr. John Kelly of JEDEC identifying the '938 Patent and the application for the '602 Patent."

Ex. A, Defendants' Notice of Deposition of Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6), served Aug. 4, 2015, Exhibit A at

17-18. Samsung acknowledged that its 30(b)(6) witness on these topics, Mr. Mian Quddus, was unable to provide adequate testimony on these topics. *See, e.g.*, Ex. C, Sept. 22, 2015 Nguyen Ltr. to Winter & Riopelle at 1-3; Ex. D, Sept. 29, 2015 Nguyen Ltr. to Parker at 1-2. After the parties met and conferred to determine whether Samsung could provide another witness or other information on these topics, Samsung provided an interrogatory response in which it stated, in part, that “[p]ursuant to a reasonable search and inquiry, no one at Samsung recalls how it was determined that the ’938 Patent and the application that issued as to the ’602 Patent were to be included in that December 30, 2004 disclosure letter.” Ex. B, Samsung’s Responses to NVIDIA’s Ninth Set of Interrogatories (Nos. 21, 23-25), served Oct. 30, 2015, at 8.

When the parties met and conferred regarding this motion, Samsung took the position that *neither* party should be permitted to discuss the untimely disclosure of the ’938 patent by Samsung at trial. This untimely disclosure is the basis for Defendants’ affirmative defenses including breach of contract and waiver. Defendants are therefore entitled to discuss these aspects as part of their defenses. However, Samsung’s failure to provide discovery on these topics precludes Samsung from explaining the untimely disclosure of the ’938 patent to JEDEC at trial.

Accordingly, Samsung should be precluded from presenting any evidence at trial regarding: (i) the bases and justifications for declaring any claim of the ’938 patent as essential to any JEDEC standard; (ii) Samsung’s policies, practices, and processes that describe or govern when Samsung discloses or declares a patent to JEDEC; (iii) the facts and circumstances surrounding Samsung’s disclosure of the ’938 patent to JEDEC and Samsung’s Dec. 30, 2004 letter from Mr. Mian Quddus to Mr. John Kelly of JEDEC identifying the ’938 patent to JEDEC; and (iv) most importantly, any reasons or justifications for not disclosing the ’938 patent earlier.

Defendants diligently sought this information during discovery, and Samsung was unable to produce a witness or any evidence in response to Defendants' requests. Samsung should not be permitted to produce any witness or evidence at trial.

Dated: November 10, 2015

Respectfully submitted,

By: /s/ Robert. A. Angle  
Robert A. Angle, VSB No. 37691  
robert.angle@troutmansanders.com  
TROUTMAN SANDERS LLP  
1001 Haxall Point  
Richmond, VA 23219  
T: (804) 697-1200  
F: (804) 697-1339

Maximilian A. Grant (admitted *pro hac vice*)  
max.grant@lw.com  
Gabriel K. Bell (admitted *pro hac vice*)  
gabriel.bell@lw.com  
LATHAM & WATKINS LLP  
555 Eleventh Street, N.W., Ste. 1000  
Washington, DC 20004  
Tel: (202) 637-2200; Fax: (202) 637-2201

Clement J. Naples (admitted *pro hac vice*)  
clement.naples@lw.com  
LATHAM & WATKINS LLP  
885 Third Avenue  
New York, NY 10022-4834  
Tel: (212) 906-1200; Fax: (212) 751-4864

Ron E. Shulman (admitted *pro hac vice*)  
ron.shulman@lw.com  
Richard G. Frenkel (admitted *pro hac vice*)  
rick.frenkel@lw.com  
Lisa K. Nguyen (admitted *pro hac vice*)  
lisa.nguyen@lw.com  
LATHAM & WATKINS LLP  
140 Scott Drive  
Menlo Park, CA 94025  
Tel: (650) 328-4600; Fax: (650) 463-2600

Julie M. Holloway (admitted *pro hac vice*)

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