

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:19-cv-00438-CMA-MEH

CELLECT, LLC, a Colorado Limited Liability Company,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., a Korean corporation, and  
SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation,

Defendants.

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**PLAINTIFF CELLECT LLC'S AMENDED AND SUPPLEMENTAL OBJECTIONS AND  
RESPONSES TO DEFENDANTS SAMSUNG ELECTRONICS CO., LTD., AND  
SAMSUNG ELECTRONICS AMERICA, INC.'S INTERROGATORY NO. 2**

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Pursuant to Fed. R. Civ. P. 26 and 33, Plaintiff Collect, LLC ("Collect") hereby provides its Supplemental Responses and Objections to Defendants, Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc.'s (collectively "Samsung") Interrogatory No. 2 ("Interrogatory"). Collect makes these objections and responses herein (collectively "Responses") based solely on its current knowledge, understanding, and belief as to the facts and information reasonably available to it as of the date of the Responses.

Additional discovery and investigation may lead to addition to, changes in, or modifications of these Responses. The Responses, therefore, are given without prejudice to Collect's right to supplement these Responses pursuant to Fed. R. Civ. P. 26(e), or to provide subsequently discovered information and to introduce such subsequently discovered information at the time of any trial or proceeding in this action.

## **GENERAL OBJECTIONS**

1. Collect hereby incorporates by reference its General Objections and Objections to Definitions to Instructions in its original Objections and Responses to Samsung's First of Interrogatories (Nos. 1-13), served on November 25, 2019.

2. Subject to and without waiving its General Objections and Objections to Definitions and Instructions, each of which is specifically incorporated into the specific Responses contained below, Plaintiff hereby respond to Defendants' Interrogatories as follows:

## **SPECIFIC OBJECTIONS AND RESPONSES**

### **INTERROGATORY NO. 2 (October 25, 2019):**

Separately for each asserted claim of the Patents-In-Suit, describe all facts supporting the alleged priority date for each claim, including, but not limited to identifying the alleged priority date for each claim, the column (or page) and line numbers in the earliest patent (or patent application) where the subject matter of each element of the asserted claim is described in accordance with 35 U.S.C. § 112, and identify all Persons with knowledge thereof and all Documents and Things referring or relating thereto.

### **RESPONSE TO INTERROGATORY NO. 2 (November 25, 2019):**

Collect objects to this Interrogatory as vague, indefinite, overly broad, unduly burdensome, and ambiguous, including, inter alia, the terms "the column (or page) and line numbers in the earliest patent (or patent application) where the subject matter of each element of the asserted claim is described in accordance with 35 U.S.C. § 112." Collect objects to this Interrogatory to the extent it inappropriately places the burden on

Collect to establish that the asserted claims are in compliance with 35 U.S.C. § 112.

Collect objects to this Interrogatory to the extent it is unreasonably cumulative and duplicative because it seeks disclosure of documents, information, and expert testimony that are subject to the District of Colorado Patent Local Rules and the schedule in this action. Collect objects to this Interrogatory as unduly burdensome and overbroad to the extent it seeks information not relevant to any claim or defense of any party and/or not reasonably calculated to lead to the discovery of admissible evidence. Collect objects to this Interrogatory to the extent it calls for a legal conclusion. Collect objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, or any other applicable law, privilege, doctrine, or immunity.

Subject to and without waiving the foregoing general and specific objections, Collect responds as follows:

The priority date for the asserted claims of the '839 Patent is October 6, 1997, based on its claim to priority to provisional patent application Ser. No. 08/944,322. The priority date of the '839 Patent is based on the totality of the disclosure of the provisional patent application Ser. No. 08/944,322.

The priority date for the asserted claims of the '255 Patent is October 6, 1997, based on its claim to priority to provisional patent application Ser. No. 08/944,322. The priority date of the '255 Patent is based on the totality of the disclosure of the provisional patent application Ser. No. 08/944,322.

The priority date for the asserted claims of the '369 Patent is October 6, 1997, based on its claim to priority to provisional patent application Ser. No. 08/944,322. The

priority date of the '369 Patent is based on the totality of the disclosure of the provisional patent application Ser. No. 08/944,322.

The priority date for the asserted claims of the '626 Patent is October 6, 1997, based on its claim to priority to provisional patent application Ser. No. 08/944,322. The priority date of the '626 Patent is based on the totality of the disclosure of the provisional patent application Ser. No. 08/944,322.

The priority date for the asserted claims of the '036 Patent is October 6, 1997, based on its claim to priority to provisional patent application Ser. No. 08/944,322. The priority date of the '036 Patent is based on the totality of the disclosure of the provisional patent application Ser. No. 08/944,322.

The priority date for the asserted claims of the '740 Patent is November 24, 1997, based on its claim to priority to provisional patent application Ser. No. 08/976,976. The priority date of the '740 Patent is based on the totality of the disclosure of the provisional patent application Ser. No. 08/944,322.

The priority date for the asserted claims of the '742 Patent is October 6, 1997, based on its claim to priority to provisional patent application Ser. No. 08/944,322. The priority date of the '742 Patent is based on the totality of the disclosure of the provisional patent application Ser. No. 08/944,322.

The priority date for the asserted claims of the '621 Patent is October 6, 1997, based on its claim to priority to provisional patent application Ser. No. 08/944,322. The priority date of the '621 Patent is based on the totality of the disclosure of the provisional patent application Ser. No. 08/944,322.

The priority date for the asserted claims of the '052 Patent is October 6, 1997, based on its claim to priority to provisional patent application Ser. No. 08/944,322. The priority date of the '052 Patent is based on the totality of the disclosure of the provisional patent application Ser. No. 08/944,322.

The priority date for the asserted claims of the '565 Patent is October 6, 1997, based on its claim to priority to provisional patent application Ser. No. 08/944,322. The priority date of the '565 Patent is based on the totality of the disclosure of the provisional patent application Ser. No. 08/944,322.

The priority date for the asserted claims of the '896 Patent is October 6, 1997, based on its claim to priority to provisional patent application Ser. No. 08/944,322. The priority date of the '896 Patent is based on the totality of the disclosure of the provisional patent application Ser. No. 08/944,322.

Furthermore, Collect incorporates by reference its disclosures in its November 21, 2019 Infringement Contentions (and any supplements thereto), as well as the document production connected with these disclosures, both of which were made pursuant to D.C.COLO.LPtR 4 and 5. In particular, Collect incorporates its response to D.C.COLO.LPtR 5(b) and (c).

Collect's investigation of this matter is ongoing, and it will comply with Fed. R. Civ. P. 26(e) as additional information becomes known to it.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2**  
**(December 20, 2019):**

Subject to and without waiving the foregoing general and specific objections, Collect further responds as follows:

All of the asserted Collect Patent claims are entitled to a priority date of October 6, 1997 – the filing date of the original application in the patent family which issued as USP 5,929,901 (also referred to herein as “the 1997 Disclosure”). All of the Asserted Patents claim priority to the ‘901 Patent. The 1997 Disclosure makes clear that the invention described therein is a reduced area imaging device which can be incorporated in other devices. All of the Asserted Patents also make similar statements in their respective specifications – a reduced area imaging device is described which is incorporated into another device – from medical devices such as endoscopes to wireless devices such as telephones and PDAs.

The ‘901 Patent specification at column 2, lines 21-41 plainly describes that while one intended use of the reduced area imaging device is in an endoscope, “it is also contemplated that the invention described herein has great utility with respect to oral surgery and general dental procedures .... it will also be appreciated by those skilled in the art that the small size of the imaging device set forth herein can be applied to other functional disciplines .... for industrial equipment and the like .... [and thus] can be used in the medical, dental **or industrial fields.**” (emphasis added). Further, the 1997 Disclosure incorporates by reference U.S. Pat. No. 5,471,515 (the “515 Patent”) and an article entitled “Active Pixel Image Sensor Integrated With Readout Circuits” appearing in NASA Tech Briefs, pp. 38 and 39 of the October, 1996 publication. The article and ‘515 Patent disclose active pixel CMOS sensors developed for NASA.

A person skilled in the art would understand this portion of the 1997 disclosure to be describing various existing devices which could incorporate Collect’s inventive reduced area imaging device. While endoscopes were one particular embodiment that

could incorporate the inventive reduced area imaging device, other existing devices could incorporate the reduced area imaging too – such as then-existing dental systems, industrial imaging equipment, both expressly mentioned in the 1997 Disclosure, as well as systems for use by NASA (e.g., satellite imaging systems) and products such as PDAs and wireless telephones that existed at the time as well.

The Asserted Patents that later expressly described PDAs and wireless telephone devices incorporating the inventive reduced area imaging device demonstrated that, in fact, the reduced area imaging device was a key aspect of the claims. In particular, these Asserted Patents used Jepson claims – a particular format for patent claims intended to generally recite conventional components to be improved upon (e.g., PDAs and wireless phones) and then particularly reciting the inventive claim elements following the transitional phrase “the improvement comprising.” See 37 C.F.R. § 1.75(e) (2019); *Geo. M. Martin Co. v. Alliance Mach. Sys. Int’l*, 560 F. Supp. 2d 893, 899 (N.D. Ca. 2008) (defining a Jepson claim). Collect’s use of the Jepson claim format for various PDA and wireless telephone claims comports with the 1997 Disclosure - which made the point that the invention related to a reduced area imaging device which could be incorporated into a variety of other devices. Similarly, the short link radio technology (later named Bluetooth) was known by a person skilled in the art by 1989 and no later than the 1997 disclosure. See WO 90/10361; WO 95/15044; U.S. Pat. No. 5,896,375; U.S. Pat. No. 6,590,928.

As a result, all of the Asserted Patent Claims are entitled to the 1997 Disclosure priority date of October 6, 1997 because every claim recites a reduced area imaging device fully supported by the 1997 Disclosure. To the extent Collect filed applications

labeled as a continuation-in-part and added additional text and figures describing particular devices which could incorporate the inventive reduced are imaging device, a person skilled in the art would have understood this subject matter as being included as part of the 1997 Disclosure at least for the reasons set forth above.

Collect's investigation of this matter is ongoing, and it will comply with Fed. R. Civ. P. 26(e) as additional information becomes known to it.

Dated: New York, New York  
December 20, 2019

Respectfully submitted,

By:

/s/ Jonathan S. Caplan

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 20, 2019, a true and correct copy of the foregoing document was caused to be served upon all counsel of interest in this case via electronic service.

By: /s/ Jonathan S. Caplan

*Attorneys for Plaintiff*