

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

Civil Action No. 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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**SCHEDULING ORDER IN A PATENT CASE**

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Pursuant to Federal Rule of Civil Procedure 26(f) and D.C.COLO.LPtR 2, the parties to the above-titled action, Plaintiff Collect, LLC (“Collect”) and Defendants Samsung Electronics Co., Ltd and Samsung Electronics America, Inc. (collectively, “Defendants” or “Samsung”), jointly submit this Proposed Scheduling Order.

**1. DATE OF CONFERENCE AND  
APPEARANCES OF COUNSEL AND PRO SE PARTIES**

a. Scheduling Conference set for **Monday, June 10, 2019 at 10:00 AM in Courtroom A501 before Magistrate Judge Michael E. Hegarty.**

b. **Attorneys for Plaintiff Collect LLC:**

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**2. STATEMENT OF JURISDICTION**

Collect alleges that this is an action for patent infringement arising under 35 U.S.C. § 101

*et seq.* Collect alleges that the Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Collect alleges that venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b). Samsung reserves the right to seek transfer of this case under, for example, 28 U.S.C. §1404.

### **3. STATEMENT OF CLAIMS AND DEFENSES**

#### **a. Plaintiff Collect:**

Collect filed its complaint (the “Complaint”) in this action on February 14, 2019. Collect alleges that Samsung has directly infringed the following U.S. Patents: Nos.: 6,043,839 (“the ‘839 Patent”); 6,275,255 (“the ‘255 Patent”); 6,424,369 (“the ‘369 Patent”); 6,452,626 (“the ‘626 Patent”); 6,862,036 (“the ‘036 Patent”); 6,982,740 (“the ‘740 Patent”); 6,982,742 (“the ‘742 Patent”); 7,002,621 (“the ‘621 Patent”); 9,186,052 (“the ‘052 Patent”); 9,198,565 (“the ‘565 Patent”); and 9,667,896 (“the ‘896 Patent”) (collectively the “Patents-in-Suit”) by making, using, selling, offering for sale and/or importing its products and services that utilize smaller and configurable complimentary metal-oxide semiconductor (“CMOS”) imaging sensor technology pioneered by Collect. Samsung smartphones and tablets implementing CMOS technology services are collectively referred to herein as the “Accused Products.” The Accused Products include Samsung smartphones: Samsung Galaxy - Models S5, S6, S7, S8, S9, J, and A (including “plus” and “edge” configurations); and (ii) Samsung Galaxy Note – Models 3, 3 Neo, 4, 5, 7, and 8. The Accused Products also include Samsung tablets: Samsung Galaxy Tab – Models 4, A, A2, A3, S, S2, S3, S4, TabPro, TabPro S, and TabPro S2.

Collect also alleges that Samsung continues to infringe the ‘742 Patent by making, using, selling, offering for sale and/or importing the Accused Products.

Collect additionally alleges that Samsung has induced infringement of the '839, '255, '369, '626, '036, '740, 742, '621, '052, '565, and '896 Patents by instructing, directing, and/or requiring others to perform all or some of the steps of method claims of the Patents-in-Suit.

Collect further alleges that Samsung's infringement is willful.

b. **Defendants Samsung:**

Samsung asserts that the complaint fails to state a claim for patent infringement and has moved to dismiss under Rule 12(b)6, Fed.R.Civ.P.

Samsung has not and does not infringe any asserted claim of any of the Patents-in-Suit.

Samsung alleges that each asserted claim of each of the Patents-in-Suit is invalid and/or unenforceable.

Collect is not entitled to damages or an injunction.

Any infringement by Samsung of the Patents-in-Suit (and Samsung contends there has been no such infringement) is not willful.

Collect is not entitled to any of the relief it seeks in its Complaint.

Samsung is entitled to its costs, attorneys' fees and other expenses.

Samsung is still investigating its defense and reserves the right to raise additional defenses, including but not limited to defenses concerning venue, jurisdiction, implied licenses, and limitations on damages.

**4. UNDISPUTED FACTS**

The following facts are undisputed:

- Samsung makes, uses, sells and offers for sale the Accused Product.

## **5. COMPUTATION OF DAMAGES**

Collect seeks all damages to which it is entitled under the Patent Laws, including 35 U.S.C. § 284, arising from Defendants' infringement. Plaintiff seeks damages in an amount adequate to compensate for the infringement, which includes, but is not limited to, a reasonable royalty for the use of the invention, together with interest and costs fixed by the Court. Plaintiff additionally seeks an accounting of all infringing sales and revenues. Plaintiff also seeks an award of attorneys' fees and expenses under 35 U.S.C. § 285. Such costs, fees, and expenses cannot be computed at the present time and depend on a variety of factors such as the length and intensity of the litigation and the positions that Defendant takes.

Samsung contends that Collect is not entitled to any damages. Samsung also seeks an award of attorneys' fees and expenses under 35 U.S.C. § 285 and other applicable statutes. Such costs, fees, and expenses cannot be computed at the present time and depend on a variety of factors such as the length and intensity of the litigation and the positions taken by Plaintiff.

## **6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)**

- a. Date of Rule 26(f) meeting.

**Friday, May 24th, 2019**

- b. Names of each participant and party he/she represented.

**(i) Plaintiff Collect:** Ken Eichner, Lynn Hartfield, Jonathan S. Caplan Marcus A. Colucci.

**(ii) Defendant Samsung:** Steven Pepe, Evan M. Rothstein, Scott Taylor, and Alexander Middleton.

- c. Statement as to when Rule 26(a)(1) disclosures were made or will be made.

**Friday, June 24, 2019** (14 days after Initial Scheduling Conference).

- d. Statement concerning any agreements to conduct informal discovery:

- Parties agree to work in good faith to conduct discovery but have not reached any agreement to conduct informal discovery at this time.

e. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system:

- Parties agree to work in good faith to conduct discovery and to reduce discovery costs if possible but have not identified any particular procedures at this time.

f. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

(i) preserve electronically stored information

- The Parties agree to take reasonable steps to preserve potentially relevant discoverable information.

(ii) facilitate discovery of electronically stored information

- All data, files, and communications that, in the ordinary course of business, are recorded in electronic media (including, but not limited to, electronic mail and attachments, and word processing files) shall be produced in Tiff format with extracted text allowing searchability, as reasonably feasible.
- All data, files, and communications that are impracticable to produce and/or review in TIFF format (e.g., Excel, PowerPoint, MPEG, etc.) may be produced in native format, except that any such files that are privileged in whole or part need not be produced in native format. The parties will meet and confer to discuss requests for the production of files in native format, on a case-by-case basis. Further, as discovery progresses, the Parties will continue to confer in good faith regarding the methods of production of electronic materials, including appropriate methods for the production of partially-privileged materials and the authentication and preservation of the integrity of any native files produced by the Parties.
- Additionally, the electronic documents will be marked with appropriate production numbers and confidentiality designations. The media to be used in the production of electronically stored information shall be FTP, USB, external drive or its equivalent.

(iii) limit the associated discovery costs and delay

(iv) avoid discovery disputes relating to electronic discovery

(v) address claims of privilege or of protection as trial-preparation materials after production of computer-generated records

- The inadvertent disclosure of protected communications or information, including protected communications, shall not constitute a waiver of any privilege or other protection (including

work product) for the protected communications or information or the subject matter of the protected communications or information.

- The parties agree to the following procedure in the event that privileged information is inadvertently produced:
  - Inadvertent production of documents or information subject to attorney-client privilege, work product immunity, or any other applicable privilege or immunity shall not constitute waiver of such privilege. The Producing Party that believes it has inadvertently produced a privileged document shall have the right to request that the document be returned or destroyed.
  - The Producing Party shall specify in writing the Bates-stamp number(s) of the document requested to be returned or destroyed and the basis of the privilege being asserted (e.g., it shall be sufficient to state solely that the document is protected by the work product doctrine, the attorney-client privilege, or another privilege).
  - Upon such request, the Receiving Party in possession of the document shall return the document to the Producing Party, or confirm destruction of the document, within five (5) business days—regardless of whether the Receiving Party has an objection to the basis of the privilege(s) asserted—and shall destroy any copies, including electronic copies, of such a document, and any documents, information or material derived from or based thereon.
  - The Producing Party shall provide the Receiving Party with a privilege log of any such returned or destroyed materials within fourteen (14) calendar days of such request that identifies the basis for it being withheld from production.
  - The parties agree that returning a document pursuant to this Order does not waive or otherwise alter the right of a party to object to the basis of the privilege asserted.
  - Once an inadvertently produced document or information has been used during a deposition, used as an exhibit to a pleading filed with the Court, identified for use at trial or otherwise disclosed to the Court, the Producing Party has fourteen (14) calendar days from the date of disclosure to provide notice of the inadvertent production. Notwithstanding any other provision of this Order, failure to provide notice within this fourteen (14) calendar day period shall constitute a waiver of any applicable privileges or immunities with respect to the inadvertently produced documents or information only, and shall not be construed as a general waiver of any applicable privilege or immunity with respect to the subject matter disclosed therein.
- The Parties further agree that it is not necessary to include in the privilege log privileged communications and/or documents between, on the one hand, (a) counsel of record in this litigation and, on the other hand, (b) the Parties with whom such counsel had an attorney-client relationship at the time of the communication or document provided that such documents were not disclosed beyond those with an attorney-client relationship. The Parties further agree that it is not necessary to include in the privilege log any protected work

product prepared by counsel of record in this litigation in connection with such counsel's attorney-client relationship with a Party. The Parties further agree that claims of privilege or work product protection that apply to documents or information created after the date on which the Complaint was filed need not be logged.

- The log will set forth the bates number (if any) of the privileged document and: (1) the date of its creation; (2) its author(s); (3) its recipient(s); and (4) a brief general description of the document along with the basis for the privilege assertion.

g. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case.

#### **7. CONSENT**

**At least one of the parties did not consent to the exercise of jurisdiction of a magistrate judge.**

#### **8. CASE PLAN AND SCHEDULE**

##### **Plaintiff Collect:**

Plaintiff proposes to follow the Local Patent Rules which provide a set amount of time for the parties to provide their respective contentions and do not limit the number of claims that may be asserted.

Defendants have stated their intention to limit the number of claims that Plaintiff can assert to 50 claims in its initial infringement contention and 25 in its final infringement contention. Defendants' request to limit the number of claims is premature. Indeed, Defendants want to limit the number claims even before Defendants have produced a single document or discovery response. Further, Defendant have not explained which claims or claim elements it will find more challenging and time consuming to respond to.

Additionally, Plaintiff filed this action on February 14, 2019 and Defendants have had a significant amount of time to study and evaluate the Patents-in-Suit. Indeed, Defendants have recently filed a 12(b)(6) motion to dismiss Plaintiff's Complaint, alleging (incorrectly) non-infringement of the exemplary claims and arguing there can be no infringement of any claims. In



making its argument, Defendants have presumably reviewed all of the potential claims. As such, Plaintiff believes no further restrictions to the Local Patent Rules are necessary at this time.

Notwithstanding the above, Plaintiff will agree to meet and confer with Defendants to reduce the number of claims in its final infringement contentions, following claim construction. Plaintiff will further agree to meet and confer with Defendants to further reduce the number of claims following expert discovery.

Additionally, Defendants have not identified the number of proposed prior art references it may assert and does not propose any limitations on the number of prior art references and/or combinations of references. Plaintiff requests that Defendants agree to meet and confer to limit the number of prior art references and combinations of references following claim construction and further reduce the number of prior art references and combinations of references following expert discovery.

**Defendants Samsung:**

The Patents-in-Suit include 457 claims in total. Defendants believe that the time frames for infringement contentions and invalidity contentions identified in the Local Patent Rules were based on the assumption that a reasonable number of claims are included in infringement contentions.

To this end, Defendants propose that Plaintiff shall assert in its Infringement Contentions no more than 50 claims across all Patents-in-Suit. Moreover, Plaintiff shall assert in its Final Infringement Contentions no more than 25 claims across all Patents-in-Suit. Other courts have imposed similar limitations on the number of claims a plaintiff may assert at the outset of a case for the sake of judicial economy, management of the court's docket, and the unfair prejudice to

defendants if they must provide non-infringement and invalidity charts before a plaintiff reduced its number of asserted claims. *See, e.g., Medtronic Minimed Inc. v. Animas Corp.*, No. CV 12-04471 RSWL RZX, 2013 WL 3322248, at \*3 (C.D. Cal. Apr. 5, 2013) (limiting plaintiffs to 45 total claims—4 claims for each of the 9 patents-in-suit—out of a possible 255 claims); *W. View Research, LLC v. BMW of N. Am., LLC*, No. 16-CV-2590 JLS (AGS), 2017 WL 606511, at \*2-3, n.3 (S.D. Cal. Feb. 15, 2017) (limiting plaintiff’s infringement contentions to 24 claims out of a possible 112 claims); *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1311-12 (Fed. Cir. 2011).

While Defendants are willing to agree to the presumptive limits in the District of Colorado’s “Scheduling Order in a Patent Case,” Defendants do not believe they can effectively prepare non-infringement and invalidity contentions for potentially hundreds of asserted claims in the presumptive 42-day timeframe. If reasonable limitations are not placed on the number of claims asserted by Plaintiff in its Infringement Contentions, the presumptive deadlines will need to be modified to permit Defendants sufficient time to prepare non-infringement and invalidity charts, and Defendants reserve the right seek such modification.

- a. Deadline to join parties: **October 10, 2019**

**Infringement Contentions**

- b. Deadline to serve Infringement Contentions, Claim Chart(s), and produce accompanying documents: **28 days after the District Judge issues an Order on Samsung’s proposed 12(b)(6) motion.**

- c. Deadline to serve Response to Infringement Contentions and produce accompanying documents: **42 days after service of Infringement Contentions.**

**Invalidity Contentions**

- d. Deadline to serve Invalidity Contentions and Claim Chart(s) and produce accompanying items of prior art: **42 days after service of Infringement Contentions.**

e. Deadline to serve Response to Invalidity Contentions and Claim Chart(s) and produce accompanying documents: **42 days after service of Invalidity Contentions.**

**Opinion of Counsel**

f. Deadline to make opinion(s) of counsel available for inspection and copying: **60 days before the close of discovery.**

**Claim Construction**

g. Deadline for parties to exchange list of claim terms to be construed and proposed construction, specifically identifying up to ten (10) of the most critical terms to be construed: **28 days after service of Response to Invalidity Contentions.**

h. Deadline to file Joint Disputed Claim Terms Chart: **28 days after exchange of claim terms to be construed.**

i. Proposed month for technology tutorial with District Judge and Magistrate Judge (optional):

- The parties are willing to provide a technology tutorial at the start of the claim construction hearing or at any other time that the Court desires.

j. Deadline to file opening Claim Construction brief and all supporting evidence: **28 days after filing Joint Disputed Claim Terms Chart.**

k. Deadline to file Response to opening Claim Construction brief and all supporting evidence: **21 days after service of opening claim construction brief.**

l. Deadline to file reply brief in support of opening Claim Construction brief: **7 days after service of response brief.**

m. Proposed month for claim construction hearing and estimated time necessary for the hearing. **April 2020 (or at such time determined by the Court following the close of claim construction briefing); 5 hours.**

**Final Patent Disclosures**

n. Deadline to file Final Infringement Contentions: **28 days after Court's Claim Construction Order.**

o. Deadline to file Final Invalidity Contentions: **21 days after receiving Final Infringement Contentions.**

**Fact Discovery, Expert Disclosures, and Dispositive Motions Deadlines**

p. Fact discovery deadline: **Friday, June 10, 2020 or 60 days after Court's Claim Construction Order, whichever is later.**

q. Expert Witness Disclosure:

1. The parties shall identify anticipated fields of expert testimony, if any.

a. **Plaintiff Collect:**

- Technical experts concerning infringement and validity of the patents-in-suit;
- Economic experts concerning Collect's claims of damages; and
- Survey experts.

b. **Defendants Samsung:**

- Technical experts concerning noninfringement and invalidity of the patents-in-suit; and
- Economic experts concerning Collect's claims of damages
- Survey experts

2. Limitations which the parties propose on the use or number of expert witnesses.

**None.**

3. The parties shall designate all affirmative experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2):

Parties will identify affirmative experts **on or before February 28, 2020.**

Opening expert reports (where the party has the burden of proof) shall be served **35 days after close of fact discovery.**

Reply expert reports shall be served **21 days after service of rebuttal reports.**

[This includes disclosure of information applicable to "Witnesses Who Must Provide A Written Report" under Rule 26(a)(2)(B) and information applicable to "Witnesses Who Do Not Provide a Written Report" under Rule 26(a)(2)(C).]

4. The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2)

Parties will identify rebuttal experts **on or before March 20, 2020.**

Parties will serve rebuttal expert reports **35 days after Opening Reports.**

[This includes disclosure of information applicable to "Witnesses Who Must Provide A Written Report" under Rule 26(a)(2)(B) and information applicable to "Witnesses Who Do Not Provide a Written Report" under Rule 26(a)(2)(C).]

- r. Expert Discovery Deadline: **28 days after reply reports.**
- s. Dispositive motions deadline: **28 days after close of expert discovery.**

[The parties shall file, contemporaneously with the completion of claim construction briefing, a "Joint Motion for Determination." which will serve as notice to the court that briefing has been completed.]

## **9. DISCOVERY LIMITATIONS**

a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules.

[Any party who proposes to exceed the numerical limits set forth in Fed. R. Civ. P. 30(a)(2)(A)(I) should be prepared to support that request by reference to the factors identified in Fed. R. Civ. P. 26(b)(2)(C).]

Each side shall be allotted 70 hours of deposition time. For any deposition that requires the use of an interpreter, allotted deposition time shall be increased by a factor of 1.5. In addition to the total allotted time, each side is further limited to 10 depositions of witnesses in their personal capacity (*i.e.*, excluding Rule 30(b)(6) deponents).

**None**

b. Limitations which any party proposes on the length of depositions.

No witness shall be deposed for more than 7 hours. Should a party believe in good faith that additional deposition time is necessary for questioning a fact witness, the parties agree to discuss in good faith additional time for that particular witness.

c. Limitations which any party proposes on the number of requests for production and/or requests for admission.

- Requests for Admissions shall be limited to 25 (excluding requests under Federal Rules of Evidence for authenticity and admissibility).
- Requests for Production shall be limited to 25.

d. Other Planning or Discovery Orders

1. Deadline for filing proposed protective order(s): **14 days after the Court issues an Order disposing of Samsung's proposed 12(b)(6) motion.**
2. Other issues: **Before filing a motion for an order relating to a discovery dispute, the movant must request a conference with the Court by submitting an email, copied to all parties, to [hegarty\\_chambers@cod.uscourts.gov](mailto:hegarty_chambers@cod.uscourts.gov). See Fed. R. Civ. P. 16, cmt. 2015 Amendment.**

**10. DATES FOR FURTHER CONFERENCES**

- a. Status conferences will be held in this case at the following dates and times:
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b. A final pretrial conference will be held in this case on August 17, 2020 at 10:00 o'clock a.m.. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than five (5) days before the final pretrial conference.

**11. OTHER SCHEDULING MATTERS**

- a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement.
- b. Anticipated length of trial and whether trial is to the court or jury.

**The parties anticipate the trial will be to a jury, and estimate 7 trial days.**

c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facility at 212 N. Wahsatch Street, Colorado Springs, Colorado; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado; or the U.S. Courthouse/Federal Building, 103 Sheppard Drive, Durango, Colorado,

**The parties do not believe any pretrial proceedings would be more efficiently or economically conducted at the above-mentioned facilities.**

**12. NOTICE TO COUNSEL AND PRO SE PARTIES**

Motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1, by containing proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a).

In addition to filing an appropriate notice with the clerk's office, a prose party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case. In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any motion for withdrawal, motion for substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.

**13. AMENDMENTS TO SCHEDULING ORDER**

This Scheduling Order may be altered or amended only upon a showing of good cause.

DATED this 10<sup>th</sup> day of June, 2019.

BY THE COURT:

S/Michael E. Hegarty  
United States Magistrate Judge

APPROVED:

s/ Kenneth F. Eichner

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