IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BISHOP DISPLAY TECH LLC v. SAMSUNG ELECTRONICS CO., LTD., et al.	§ § § § §	Case No. 2:21-CV-00136-JRG
BISHOP DISPLAY TECH LLC v. SAMSUNG ELECTRONICS CO., LTD. et al.	§ § § § §	Case No. 2:21-CV-00139-JRG

JOINT MOTION FOR ENTRY OF PARTIALLY DISPUTED
DOCKET CONTROL ORDER

Pursuant to the Court's August 27, 2021 Order (ECF 20) the parties submit this Joint Motionfor Entry of Partially Disputed Docket Control Order.

The parties have met and conferred and have agreed to propose a schedule that extends the date for Jury Selection from September 12, 2022 to December 5, 2022. The parties have proposed to extend many of the remaining deadlines accordingly. The parties submit that good cause exists to extend these deadlines, including that there are seven patents at issue in Case Nos. 2:21-cv-136 and six patents at issue in Case Nos. 2:21-cv-139, and the large majority of those patents are not familial and do not share specifications (there are eleven different patent families at issue). While most of the patents generally relate to liquid crystal display technology, they concern different aspects of that technology, and Plaintiff has currently accused more than 1,500 televisions, monitors, laptops, and LCD panels of infringement. Another patent at issue concerns lasers used in displays. Further, at the Court's direction the parties are filing a Joint Notice Regarding Consolidation, and have agreed that it would be feasible and helpful to consolidate the

two cases for discovery and pretrial purposes. The parties believe the proposed extension will facilitate the consolidation of the number of issues the parties will be developing.

Moreover, Samsung Display has advised that certain technical documents providing details of the design, operation, and manufacture of the liquid crystal displays in the accused products are subject to the Act on Prevention of Leakage and Protection of Industrial Technology ("IAT") of the Republic of Korea. Under the IAT, Samsung Display is required to obtain approval of the South Korean Ministry of Trade, Industry, and Energy to transfer such documents out of the Republic of Korea.[1] Samsung Display has been seeking such approval, but advises that there could be delays in the approval process that are not within the parties' control, which could impact the time at which Samsung Display is able to produce in the United States the full set of documents required under P.R. 3-4(a). While the parties have a disagreement over whether the Docket Control Order should include a discussion of the IAT in relation to the deadline to comply with P.R. 3-4(a), it is apparent that there is some uncertainty about the production of relevant information that further demonstrates good cause for the extension requested herein.

Thus, the parties propose the same schedule for the Docket Control Order. The only disputed issue, as discussed below, is whether the Docket Control Order should include a discussion of the IAT in relation to the deadline to comply with P.R. 3-4(a). The parties' positions regarding that dispute are set forth below. Plaintiff's proposed Docket Control Order is submitted with this motion as Exhibit A, and Defendants' proposed Docket Control Order is submitted as Exhibit B.

[1] To the extent Samsung Electronics has possession, custody, or control of non-duplicative Samsung Display documents subject to the IAT, Samsung Electronics may also need to seek approval.

A. Plaintiff's Position on the Disputed Provision

Plaintiff agreed to a four-week extension for Defendants to disclose invalidity contentions under P.R. 3-3 and produce documents under P.R. 3-4—a substantially longer time period than Plaintiff received to serve its preliminary infringement contentions. Pertinent to this disputed issue, that extension applies to Defendants production of documents showing the operation and elements of the Accused Instrumentality under P.R. 3-4(a). Defendants then identified the IAT, which purportedly applies to the technology in this case and requires approval from the Korean government to produce certain technical documentation in this case, and would potentially further delay the production of information covered by P.R. 3-4(a).

Plaintiff has asked for specific information demonstrating that the technology is in fact covered, specifying what documentation would potentially be implicated, and explaining what the approval and production process would be. Defendants have been unable to provide any of that information, other than providing an English copy of the IAT, vaguely noting that the IAT covers the technology of the accused products, and noting that they were unable to comment further because they are not South Korean lawyers. While Plaintiff has explained that it will cooperate reasonably and in good faith with Defendants if issues arise beyond Defendants' control that delay production, Plaintiff is unable to agree to including the provision in the DCO at this stage without further information. Indeed, Defendants have not even provided any documents or information evidencing the submissions made to the South Korean government related to the IAT, or the government's response, if any. To the extent issues do arise, Plaintiff would expect to at least know what types of documents are implicated and what the timing of production will be, and the reasons for the delay.

Further, Plaintiff requested case law related to applicability of IAT in litigation in the

United States, but Defendants have been unable to provide such information. Rather, the only information provided by Defendants in this regard was to a joint submission of a docket control order having a similar provision entered by the Court in *Solas OLED Ltd. v. Samsung Display Co., Ltd. et al*., 2:21-cv-104 (E.D. Tex.). *See id*. at Dkt. No. 50 (October 25, 2021). But that joint docket control order is not precedent or authoritative, and Plaintiff is not privy to the circumstances in that case or the reasons why the plaintiff agreed.

Finally, inclusion of the IAT provision in the Docket Control Order serves no purpose; it is not a deadline that the parties, or the Court, would observe, but rather an alleged explanation proffered by the Defendants for why they may not be able to produce documents timely. Additionally, Defendants' attempt in their section below to redirect blame to the Plaintiff is misplaced, at best. First, Plaintiff produced the documents in their possession, custody, or control under P.R. 3-2. Second, the production that Defendants reference below (an argument that was first submitted into this joint filing at 9:00 pm CT on the night of the filing) under Paragraph 3(b) of the Discovery Order are all publicly available user manuals. None of this has anything to do with the concerns expressed above about Plaintiff's inability to agree at this stage without more information that Defendants should get more time to produce clearly relevant information.

Thus, Plaintiff submits that the inclusion of the Defendants' provision is an unwarranted departure from the norm in this district, particularly here where there is insufficient information demonstrating any need for its inclusion.

B. Defendants' Position on the Disputed Provision

Under the South Korean Act on Prevention of Leakage and Protection of Industrial Technology ("IAT"), technical documents that relate to Samsung Display's LCD technology, including the design, operation, and manufacture of the LCD display panels used in the accused

products, may not be transferred out of Korea without export approval from the South Korean Ministry of Trade, Industry, and Energy. The IAT establishes criminal penalties for exportation of information subject to the Act without approval of the South Korean Ministry of Trade, Industry, and Energy.

Samsung Display has been working diligently to seek the required export approvals for the 2:21-cv-136 (E.D. Tex.) and 2:21-cv-139 (E.D. Tex.) cases. While Samsung Display is hopeful that it will obtain export approval in time to make the P.R. 3-4(a) production by December 8, 2021, the timing of such approval is outside of Samsung Display's control. That Plaintiff has accused more than 1,500 televisions, monitors, laptops, and LCD panels of infringement further complicates the export approval process.

Defendants proactively informed Plaintiff about this export control requirement to work out a schedule that would account for their need to obtain approval from the South Korean Ministry of Trade, Industry, and Energy. Samsung Display also promptly initiated the process to obtain the necessary approvals, and Defendants have committed to Plaintiff that they will continue to make good faith efforts to obtain the approvals by December 8, 2021.

Defendants therefore propose including the below language in the Docket Control Order to (a) require Defendants to make a good faith effort to obtain all necessary export approvals under the IAT by the P.R. 3-4(a) deadline; and (b) minimize the uncertainty and resulting prejudice caused by any unforeseen delay by the South Korean government in approving Defendants' request for export approval, which is outside of Defendants' control:

December 8, 2021	Comply with P.R. 3-4(a) (Documents Sufficient to Show Operation of Accused Instrumentalities) for documents that do not require approval under the Act on Prevention of Leakage and Protection of Industrial Technology ("IAT") of the Republic of Korea. Defendants will make a good faith effort to obtain necessary export approvals under the IAT by the P.R. 3-4(a) deadline, but to the extent there are any delays with the approval process, Defendants will produce their technical documents within 5 business days of receiving the Korean government's approval. If Defendants have not received approval of the Korean government allowing them to substantially complete their P.R. 3-4(a) document production by December 31, 2021, Defendants will notify Bishop Display of such fact, and then the parties agree to meet and confer in good faith to discuss whether adjustments to the case schedule may be appropriate to avoid prejudice to the parties.

Defendants note that the same or similar language has been used in Docket Control Orders in other recent cases before this Court. *See, e.g.*, *Solas OLED Ltd. v. Samsung Display Co., Ltd. et al.*, Case No. 2:21-cv-104-JRG, ECF 50 at 6 (E.D. Tex.); *Solas OLED Ltd. v. Samsung Display Co., Ltd. et al.*, Case No. 2:19-cv-152-JRG, ECF 43 at 4–5 (E.D. Tex.).

Although Plaintiff has declined to agree to the above language, it acknowledges that the required export approval process and associated potential delays under the IAT support the good cause to extend the dates for the *Markman* hearing and Jury Selection and the correspondingly longer fact discovery period in these cases. Moreover, while Plaintiff states that it previously "agreed to a four-week extension for Defendants to . . . produce documents under P.R. 3-4," Plaintiff omits the critical context that this extension was coupled with a two-week extension of Plaintiff's deadline to serve its infringement contentions, which, for the first time, identified the set of products accused of infringement. Defendants could not begin collecting responsive technical documents in earnest until Plaintiff served its infringement contentions. And contrary to Plaintiff's statement that Defendants have been unable to provide any information concerning

the approval process, including the scope of affected documents, Defendants have explained that the export restrictions apply to documents concerning the design, operation, and manufacture of SDC's LCD displays and provided Plaintiff's counsel with information about the IAT and what is subject to it. *See, e.g.*, English translation of Act on Prevention of Leakage and Protection of Industrial Technology, Act No. 10962, art. 1, Jul. 25, 2011 (S. Kor.) (provided by the Korea Legislative Research Center); *see also* "National Core Technology List Updated," Kim & Chang IP Newsletter, Spring/Summer 2017.

Defendants' proposal does not inject any delay. To the contrary, it provides that Defendants will make good faith efforts to obtain export approval to produce the documents by December 8. Moreover, Defendants have already begun their document production to Plaintiff under the Court's rules and orders, including on October 20, 2021 pursuant to Paragraph 3(b) of the Court's Sample Discovery Order. In contrast, Plaintiff did not produce any documents on October 20, 2021 in accordance with Paragraph 3(b) of this Court's Sample Discovery Order, nor did Plaintiff seek any extension of the deadline.

Defendants respectfully submit that the above provision promotes an orderly discovery process and judicial economy.

Dated: October 27, 2021

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that counsel for the Plaintiff and Defendant have conferred about the substance of this motion and present the motion as partially disputed.

/s/ Patrick J. Conroy

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel listed above and counsel who are deemed to have consented to electronic service on October 27, 2021.

/s/ Patrick J. Conroy