

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

PANTECH CORPORATION and PANTECH
WIRELESS, LLC,

Plaintiffs,

v.

LG ELECTRONICS INC. and LG
ELECTRONICS U.S.A., INC.,

Defendants.

Case No. 5:22-cv-00113-RWS

JURY TRIAL DEMANDED

**PLAINTIFFS' SURREPLY IN SUPPORT OF OPPOSITION TO
DEFENDANTS' MOTION TO DISQUALIFY MAYER BROWN LLP**

I. INTRODUCTION

Like its Motion, LGE's Reply is predicated on a deeply flawed interpretation of its waiver agreement with Mayer Brown, provides no justification for its delay, and again (despite its new evidence¹) fails to meet the high bar necessary to warrant disqualification.

II. LGE's Waiver

LGE discontinued its relationship with Mayer Brown in 2017. Thereafter, it approached Mayer Brown to represent it, and Mayer Brown, then knowing that it had begun representing clients that may become adverse to LGE, requested a conflicts waiver. Such waiver was included as part of the Engagement Agreement that Mayer Brown negotiated with LGE—through LGE's highly experienced IP General Counsel, Chang Kim. Mayer Brown informed Mr. Kim that it represented clients that may become adverse to LGE in future matters, including litigation. Mayer Brown explained that it would be unable to represent LGE unless it agreed to waive in advance such conflicts. Ultimately, LGE promised never to seek Mayer Brown's disqualification [REDACTED]

[REDACTED] By so agreeing, LGE secured Mayer Brown's otherwise unavailable patent litigation expertise. Because LGE negotiated and agreed to the waiver, Mayer Brown concluded unsurprisingly that it was free to represent Pantech in this litigation.

Now, LGE is trying to renegotiate the agreement by seeking to interpret the [REDACTED] [REDACTED] to include all matters where Mayer Brown represented LGE from [REDACTED]

¹ "[I]t is well settled, in the Eastern District of Texas and elsewhere, that a district court has discretion to disregard evidence offered for the first time in a reply brief." *In re Apple, Inc.*, 581 F. App'x 886, 891 (Fed.Cir.2014) (J. Bryson dissenting, citing cases where Courts disregard new evidence or argument offered for the first time in the reply brief)

Mayer Brown has consistently advanced its interpretation that the waiver [REDACTED] is properly measured from [REDACTED].² It is clear that Mr. Kim had the same understanding at the time the waiver was negotiated and executed. Otherwise, there would have been no reason for Mr. Kim to pursue [REDACTED] because that would have [REDACTED]

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██████████ LGE's relationship with Mayer Brown. That is, ██████████ in the context proposed by LGE would make no sense unless it was for the ██████████ (i.e., Mayer Brown's interpretation and Mr. Kim's at the time of execution). Similarly, Mayer Brown's insistence that the waiver provision be included in the face of LGE's demand that it be removed can only mean that Mayer Brown and LGE were bargaining for an agreement that would further limit, not expand, the ABA rules.

III. The Timing of LGE's Motion is Tactical

The facts demonstrate that LGE was aware of the alleged conflict in December 2020 and raised the issue with Mayer Brown in April 2021, where it acknowledged the ██████████. Mayer Brown and LGE thereafter continued to discuss the scope of the waiver, and LGE appeared to accept Mayer Brown's position when it commenced negotiations with Pantech. Then, once this case against LGE was filed, ██████████ after Mayer Brown's work on the ██████████ matter concluded,³ LGE negotiated with Mayer Brown attorneys regarding an extension of time and sought to engage in settlement discussions through Mayer Brown, clearly respecting the waiver it had agreed to, without once raising even the notion that it believed a conflict existed. LGE waited more than three months to raise the alleged conflict, and did so at a time that would most disadvantage Pantech. It even went so far as to request that Mayer Brown not be able to work on an opposition to its motion to dismiss filed the same day as the present motion. Even if this was not a conscious tactical maneuver, the tactical ramifications of LGE's actions warrant a finding of waiver. *Abney v. Wal-Mart*, 984 F. Supp. 526, 530 (E.D. Tex. 1997).

³ In its Motion and Reply, LGE contends that "██████████ Core Wireless, and Jenam were all ██████████ at the time this suit was filed; however, Mayer Brown's work on the ██████████ matter ceased in June 2017 with only ██████████, and Mayer Brown performed no material work in the Core Wireless matter, ██████████ See Beaber Second Decl. at ¶¶3-4.

IV. The Timing of LGE's Motion Constitutes Waiver

Contrary to LGE's arguments, the cases teach that delay from when the client knew of the alleged conflict is the relevant time period. In *Advanced Training Grp. Worldwide, Inc. v. Proactive Techs. Inc.*, 436 F. Supp. 3d 870, 875 (E.D. Va. 2020), the court outlined four factors that determine when delay constitutes a waiver: "(i) when the movant learned of the conflict, (ii) whether the movant was represented by counsel during the delay, (iii) why the delay occurred, namely whether it was for tactical reasons, and (iv) whether disqualification would result in prejudice to the nonmoving party. *Id.* at 875 (citing *Reeves v. Town of Cottageville*, No. 2:12-cv-2765, 2014 WL 4231235, at *2 (D.S.C. Aug. 26, 2014) and *Buckley v. Airshield Corp.*, 908 F. Supp. 299, 307 (D. Md. 1995)). All four factors point towards waiver here.

First, by its own admission, LGE learned of the conflict in November 2020, more than a year before the case was filed. Second, LGE was represented by very experienced in-house counsel at all relevant times. Third, LGE provides no explanation for its delay in pursuing the conflict; its conduct, including the timing of its motion, suggest tactical delay. Fourth, disqualification would unquestionably put Pantech at a disadvantage—Mayer Brown has represented Pantech pursuant to LGE's waiver agreement since the outset of this case.

V. There is No Conflict Notwithstanding the Clear Waivers

Even with what amounts to a complete do-over, LGE makes only broad, categorical statements about its technology and products, and fails to demonstrate a specific relationship between the accused functionalities in this and the allegedly conflicting matters.

LGE lists allegedly confidential information that "is readily used to Pantech's advantage at various points in the case," (Reply at 6-7) yet it makes no showing of how any such information would be material to this case. Indeed, though LGE makes broad allegations concerning relatedness and the information Mayer Brown has allegedly received through prior representations,

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[REDACTED]

LGE does not once mention the claim language of the patents at issue in this case to demonstrate how such “information” is important to the present case. *See In re Am. Airlines*, 972 F.2d 605, 619 (quoting *In re Corrugated Container Antitrust Litigation*, 659 F.2d 1341, 1346 (5th Cir.1981) (evidence must be “important to the issues involved”).

LGE relies heavily on *Micrografx, LLC v. Samsung Telecommunications Am., LLC*, No. 3:13-CV-3599-N, 2014 WL 12586177 (N.D. Tex. Mar. 7, 2014). In that case, however, the Court did a detailed comparison between the asserted claims of the patents at issue in the current and prior representations, concluding that “the patent technology involved in both cases allows graphic designers or third parties to update images or graphical objects in a library and deploy the objects to computer programs without rewriting the underlying programs.” *Id.* at *3. LGE has not even attempted to draw out this level of comparison, instead relying exclusively on the broad and conclusory allegations of its declarants. *See Peterson v. Sw. Airlines Co.*, No. 3:21-CV-1311-B, 2022 WL 541781, at *2 (N.D. Tex. Feb. 23, 2022)(“To meet this burden, the moving party must offer more than conclusory statements that the two matters are related; the movant must specifically identify the overlapping ‘subject matters, issues, and causes of action’ so as to allow ‘the court [to] engage[] in a “painstaking analysis of the facts and precise application of precedent.””)” (quoting *In re Am. Airlines*, 972 F.2d 605, 614 (quoting *Duncan v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 646 F.2d 1020, 1029 (5th Cir. 1981)); *see also* ABA Model Rule 1.9(b)(2) (confidential information must be “material to the matter.”).

Dated: January 25, 2023

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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served this 25th day of January, 2023, with a copy of this document via electronic mail pursuant to Local Rule CV-5(d).

/s/ Geoffrey Culbertson
Geoffrey Culbertson

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
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**SECOND DECLARATION OF JAMIE B. BEABER IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS' MOTION TO DISQUALIFY MAYER BROWN**

I, Jamie B. Beaber, hereby declare and state as follows:

1. I am a Partner at Mayer Brown LLP ("Mayer Brown"), counsel for Plaintiffs Pantech Corporation and Pantech Wireless, LLC (collectively, "Pantech") in the above-captioned lawsuit. I submit this declaration in support of Pantech's Opposition to Defendants' Motion to Disqualify Mayer Brown LLP. I have personal knowledge of the statements herein, and, if called to do so, I could and would testify competently as to the same.

2. On October 1, 2015, LG Electronics, Inc. ("LGE") formally retained Mayer Brown to represent LGE in connection with [REDACTED] and LGE. *See* Defendants' Motion to Disqualify Mayer Brown LLP ("Mot.") at Ex. 19.

3. As noted in my previous declaration, Mayer Brown completed its work on behalf of LGE in connection with the [REDACTED] in June 2017. Thereafter, a decision was issued in September 2017. All work that was undertaken concerning [REDACTED] after June 2017

[REDACTED]
[REDACTED]
related to [REDACTED]

[REDACTED] This did not involve reviewing or analyzing any LGE information.

4. With respect to *Core Wireless (Core Wireless Licensing SARLL v. LG Electronics, Inc. et al* EDTX-2-14-cv-00911), Mayer Brown [REDACTED].

As I understand, LGE was represented on the matter by Greenberg Traurig, LLP. I, along with my colleague, Kfir Levy, made a notice of appearance in the case [REDACTED]
[REDACTED]

Mayer Brown [REDACTED] in connection with its appearance in the case and had [REDACTED] with any of the matters at issue in the case.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct and that this Declaration was executed on January 25, 2023 in Washington, D.C.

Dated: January 25, 2023

By: 

Jamie B. Beaber