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**UNITED STATES DISTRICT COURT
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.

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) Case No. 5:22-cv-00113
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JURY TRIAL DEMANDED

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DEFENDANTS' MOTION TO DISQUALIFY MAYER BROWN LLP

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I. INTRODUCTION

Mayer Brown has conflicts of interest under Texas Rule of Professional Conduct 1.09 and ABA Rules 1.9-1.10, which preclude it from representing Plaintiffs Pantech Corporation and Pantech Wireless, LLC (collectively, “Pantech”) in this matter. At least six members of the Mayer Brown team previously represented Defendants LG Electronics Inc. and LG Electronics U.S.A., Inc., (collectively, “LGE”) in substantially related matters for over seven years.

LGE repeatedly entrusted Mayer Brown with highly sensitive privileged and confidential information regarding LGE’s technologies, products, financials, business practices, litigation strategies, and licensing policies that are relevant here (collectively “LGE Confidential Information”).¹ LGE should not be forced to litigate this case against its former counsel privy to confidential information that may be used to LGE’s disadvantage and Pantech’s advantage. Despite multiple requests, Mayer Brown has refused to withdraw and should be disqualified.

II. FACTUAL BACKGROUND

Pantech filed this action on September 2, 2022, asserting seven patents related to smartphones and cellular communications—including five purported standard essential patents (“SEPs”) allegedly relating to LTE and 5G—against LGE cellular devices including, among others, the LG Phoenix, LG V40, LG V35, LG V20, LG G7, LG G Pad, LG G Pad X, LG G Pad II, LG G Pad 7.0 LTE, and LG Stylo 3 Plus. Dkt. 1 (“Compl.”) ¶¶ 11-13.

A. Pantech’s Counsel Represented LGE for Over Seven Years, Including in Multiple Matters Involving the Same and Substantially Related Technologies and Issues, and Had Access to Relevant LGE Confidential Information

Multiple members of the Mayer Brown team spent over seven years representing LGE on patent litigation matters—many of which involved smartphone/cellular technology and alleged

¹ Copies of the underlying LGE Confidential Information disclosed to Mayer Brown are available for under seal *in camera* inspection by the Court at the Court’s request.

SEPs just like the instant case. Jamie Beaber represented LGE from at least 2012-2020 in at least eight matters. Declaration of Hojun Suh (“Suh”) ¶ 4. While Mr. Beaber did not bill for his time as part of a billing arrangement, he served as lead counsel in these matters, was intimately involved in each of them, and was the primary point of contact. *Id.* James “Tripp” Fussell, Pantech’s apparent lead counsel here, likewise served as long-term counsel for LGE and handled a dozen patent matters on LGE’s behalf for over a decade, spanning his time at both Mayer Brown and Fish & Richardson. *Id.* ¶ 6. Other members of the Mayer Brown team representing Pantech here, including Saqib Siddiqui, Tiffany Miller, Baldine Paul, and Graham M. Buccigross, also represented LGE on substantially related matters. *Id.* ¶ 5. Collectively, these attorneys representing Pantech in the present case adverse to LGE previously spent thousands of hours representing LGE on similar patent matters and had access to volumes of LGE Confidential Information. *Id.* ¶¶ 5-16.

Among the matters on which these Mayer Brown attorneys represented LGE, at least the following are substantially related to the instant case brought by Pantech. *See* Suh ¶¶ 3-18; Declaration of Soo Hong (“Hong”) ¶¶ 2-18.

Former LGE Matter	Approximate Dates of Representation	Products at issue in prior litigation and accused by Pantech	Pantech Counsel Involved in Past Matter
			Jamie Beaber Tripp Fussell Baldine Paul Tiffany Miller Saqib Siddiqui Graham Buccigross
<i>Cellular Comm’s Equip. v. LG Electronics, Inc.</i> , Nos. 6:13-cv-00508, 6:14-cv-00982, 6:16-cv-00365 (E.D. Tex.) (“CCE”) (Exs. 1-6)	June 2013 – Aug. 2016	4G LTE enabled devices, including the LG G Pad 7.0 LTE and others	Jamie Beaber Baldine Paul Tiffany Miller Saqib Siddiqui
<i>Core Wireless Licensing v. LG Electronics, Inc.</i> , No. 2:14-cv-00911 (E.D. Tex.)	Sept. 2014 –	Communication devices including the LGE G Pad 7.0 LTE	Jamie Beaber

("Core Wireless") (Exs. 7-8)	Nov. 2020 ²	and others	
<i>Mobile Tele. Tech. v. LG Electronics, Inc.</i> , No. 2:13-cv-00947 (E.D. Tex.) ("MTT") (Exs. 9-10)	Nov. 2013 – Mar. 2016	Network operation centers and mobile units, including LG Phoenix and others	Jamie Beaber Tiffany Miller
<i>Jenam Tech, LLC v. LG Electronics, Inc.</i> , No. 4:19-cv-00249 (E.D. Tex.) ("Jenam") (Exs. 11-12)	Apr. 2019 – Jan. 2020 ³	Smartphone and tablets, including the LG V40, V35, G7 series, LG G Pad, G Pad X, and G Pad II and others	Jamie Beaber Tiffany Miller Baldine Paul Saqib Saddiqui

Each of these matters involved smartphones/cellular technology and products accused of infringement that are also accused in Pantech's Complaint here.⁴ During those past representations of LGE, Mayer Brown thus gained access to relevant LGE technical, financial, and marketing information for products here accused of infringing Pantech's patents, along with LGE Confidential Information pertaining to [REDACTED]. *See, e.g.*, Suh ¶¶ 15-16; Hong ¶¶ 11-18. In addition to that information, Mayer Brown had access to highly confidential schematics and source code for several accused products. *See, e.g.*, Hong ¶¶ 11-13. In addition, [REDACTED] and CCE matters involved alleged SEPs relating to the same cellular standards as those purportedly at issue here.⁵ And several patents-at-issue in these proceedings were asserted

² While Mr. Beaber never withdrew from the *Core Wireless* case prior to its natural termination in Nov. 2020, Mayer Brown's substantive work on the case terminated before that point. Suh ¶ 11.

³ Mr. Beaber also never withdrew from the *Jenam* case prior to its natural termination in June 2020, but Mayer Brown ceased working on the matter in January 2020. *See* Suh ¶ 18.

⁴ In addition to the matters listed above, Mayer Brown represented LGE on at least three other patent cases related to cell phone technology: *CyWee Group Ltd. v. LG Electronics, Inc.*, No. 3:17-cv-01102 (S.D. Cal.) ("CyWee") (Exs. 13-14) from 2017-2018; *Integrated Cir. Devices & Prods. Containing the Same*, ITC-337-TA-873 ("Integrated") (Exs. 15-16) from 2013-2016; and *Azure Networks, LLC v. MediaTek Inc.*, No. 6:12-cv-00252 (E.D. Tex.) ("Azure") (Exs. 17-18) from 2012-2013. Suh ¶ 4.

⁵ For example, U.S. Pats. 8,848,556, 8,868,060, 8,055,820, 8,385,966 and 6,810,019 at issue in CCE were declared essential to 3GPP TS 36.321, TS 36.331, TS 38.300, TS 36.213, and TS 36.321 standards (*see* Exs. 30-34)—many of the exact same technical specifications that Pantech alleges to be covered by asserted U.S. Pat. 9,854,545 (Compl. ¶¶ 15, 65). Similarly, U.S. Pat. 6,810,019

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against the same or similar features as those accused here. For example, like U.S. Patent 9,575,631 asserted here (Compl. ¶ 20), two patents (U.S. Nos. 8,713,476 and 8,434,020) at issue in *Core Wireless* pertained to how the accused products allegedly present user interface elements to users for accessing applications. Suh ¶ 11. And similar to U.S. 7,283,839 asserted here (Compl. ¶ 19), three patents (U.S. Nos. 5,809,428, 5,754,946, and 5,894,506) at issue in *MTT* pertained to how the messaging services and applications operating on the accused devices process messages. Suh ¶ 9 (citing Ex. 9 ¶¶ 6, 10, 14, 21, 24, 30, 33; Ex. 10).

As another example, ██████████ Mayer Brown represented LGE ██████████
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██. Like the present case, ██████████ alleged SEPs targeting cellular communications, including some the same standards and features described in Pantech's Complaint here. *See id.* ¶ 14. For example, here Pantech's Complaint alleges that the asserted U.S. Patent 9,854,545 covers at least the 3GPP TS 36.321, TS 36.213, and TS 36.331 standards pertaining to the carrier aggregation functionality mandated by at least the LTE Advanced standard (Compl. ¶¶ 65-69), but—representing LGE—Mayer Brown analyzed these same standards and LGE Confidential Information to assess infringement ██████████ *See* Suh ¶¶ 14-16. Similarly, Pantech's Complaint here states that U.S. Patent 9,313,809 implicates the 3GPP TS 25.211 and TS 25.321 standards related to the communications protocols used in WCDMA, and that U.S. Patent 9,065,486 implicates the 3GPP TS 36.212 standard pertaining to turbo codes. Compl. ¶¶ 95-103, 109-117. Again, in representing LGE, Mayer Brown analyzed these same standards and LGE Confidential Information for infringement ██████████. Suh ¶¶ 14-16.

from *CCE* was also declared essential to TS 38.331 (*see* Ex. 30), a standard purportedly covered by U.S. Pats. 9,854,545 and 9,136,924 asserted by Pantech (Compl. ¶¶ 15, 51, 59, 65).

[REDACTED]

More generally, Mayer Brown's work [REDACTED] included a detailed examination of LGE's products, including whether and how LGE products implemented certain technical standards or optional features of those standards. *Id.* ¶ 15. As part of that process, Mayer Brown conducted interviews with LGE in-house personnel, suppliers, and partners, and was provided access to confidential details concerning LGE hardware, software, and source code. *Id.* Moreover, LGE provided Mayer Brown with confidential financial and market information for specific LGE product lines, confidential business information for LGE's various LTE, UMTS, CDMA, and GSM product lines, and sales information for particular LGE products accused in the present action. Suh ¶ 16. Furthermore, as part of its work [REDACTED] Mayer Brown learned the intimate details of [REDACTED], including the confidential details of [REDACTED] licenses, several of which included [REDACTED]. Suh ¶ 16; Hong ¶ 18.

B. Engagement Letters

None of the engagement letters for the above matters contains a waiver regarding any litigation brought by Pantech against LGE. For example, the engagement letters for the [REDACTED] matters do not contain any form of meaningful waiver. Exs. 19-21.

After [REDACTED] LGE decided to end its relationship with Mayer Brown, and gradually transitioned it off all LGE matters. Suh ¶ 17. The last time LGE retained Mayer Brown was during the subsequent *Jenam* matter, [REDACTED] Mayer Brown provided a draft engagement letter to LGE on July 17, 2019, seeking a sweeping waiver [REDACTED] LGE rejected the proposal on July 24, 2019, finding the waiver to be unacceptable. Kim ¶ 5 (citing Ex. 23 at 2).

[REDACTED]

LGE and Mayer Brown corresponded regarding the scope of the waiver multiple times. Ex. 23. On September 12, 2019, Mayer Brown provided a subsequent draft with a more limited waiver permitting Mayer Brown to represent only [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]” Ex. 24 at 3.⁶ LGE signed the revised waiver on September 16, 2019. Kim ¶ 7. The *Jenam* letter does not mention Pantech.

C. During Pre-Litigation Discussions, LGE Refused to Negotiate with Mayer Brown Due to the Conflict and Instead Dealt Directly with Pantech

LGE learned of Mayer Brown’s representation of Pantech after Pantech [REDACTED] [REDACTED] in November and [REDACTED] in December 2020. Kim ¶ 8. Following preliminary communications with Pantech where LGE stated that it did not want Mayer Brown involved in January 2021 and formally objected to Mayer Brown’s involvement in March 2021, LGE wrote to Mayer Brown on April 7, 2021 and informed it that representing Pantech in the licensing matter adverse to LGE presented a conflict of interest because of overlapping factual and legal issues with its prior work for LGE (Kim ¶ 9), and its knowledge of relevant LGE Confidential Information. Ex. 26 at 4.

Mayer Brown responded on April 20, 2021, contending that the “engagement/waiver letter for the *Jenam* matters” waived the conflict, and that the Pantech matter was not substantially related to any matter where Mayer Brown represented LGE within the last five years. *Id.* at 3.

⁶ That provision was in addition to paragraph A.9.5 of the International Terms of Business provided to LGE by Mayer Brown, but to the extent there was a conflict between the engagement letter and the International Terms, [REDACTED]. Ex 24 at 3. The International Terms, for their part, state that the firm “may now or in the future without your consent act for your competitors, adverse parties or our other clients whose interests are or may be opposed to or in conflict with yours or your Affiliates in matters not substantially related to Particular Matters we are handling for you.” Ex. 25 at A.9.5.

[REDACTED]

LGE responded on April 28, 2021 rejecting the notion that it had waived the conflict arising from Mayer Brown's representation of Pantech here, and explaining that [REDACTED]

[REDACTED]

[REDACTED]

Mayer Brown responded on April 28, 2021, with a conclusory assertion that [REDACTED] was not substantially related. Regarding the provisions in the *Jenam* letter [REDACTED] Mayer Brown argued (without merit) that those provisions were irrelevant because "IdeaHub/Pantech were clients of MB and adverse to LGE before LGE executed [the *Jenam*] waiver (and, in fact, were noted in the earlier version of the joint representation agreement and discussed with Mr. Chang Kim by phone)." *Id.* at 2.

LGE responded on April 30, 2021, reiterating that [REDACTED] and Pantech matters are substantially related, Mayer Brown had obtained relevant LGE Confidential Information during [REDACTED], LGE did not waive the Pantech conflict in the *Jenam* engagement letter, and LGE would never have agreed to do so. *Id.* at 1-2. Indeed, Mayer Brown never discussed Pantech with Mr. Chang Kim when negotiating the waiver in the *Jenam* engagement letter. Kim ¶ 6.

On April 30, 2021, Mayer Brown repeated its assertion that the Pantech and [REDACTED] matters were not substantially related. But instead of citing the language in the *Jenam* engagement letter that it had relied on previously, Mayer Brown pivoted to a newly-minted position that paragraph A9.5 of the firms International Terms of Business waived the conflict. Ex. 26 at 1.

Following that April 2021 exchange, LGE ceased communicating with Mayer Brown, and instead communicated directly with Pantech due to Mayer Brown's conflict. Kim ¶ 10.

D. Mayer Brown Has Refused to Withdraw from the Litigation

Following a breakdown in licensing negotiations directly between LGE and Pantech, Pantech filed the present action on September 2, 2022, represented by Mayer Brown adverse to

[REDACTED]

LGE. LGE subsequently retained Ropes & Gray as counsel October 24, 2022. Kim ¶ 11.

After investigating Mayer Brown's conflict of interest, Ropes & Gray sent a letter on Dec. 2, 2022 demanding that Mayer Brown withdraw here as Pantech's counsel adverse to LGE. Ex. 27. Mayer Brown responded on Dec. 8, 2022 and falsely asserted that it had "not represented LGE related to any substantive patent matters for more than five years," that the *Jenam* and [REDACTED] matters did not involve LGE Confidential Information, and that the *Jenam* engagement letter permitted it to represent Pantech. Ex. 28 at 1-2.

Ropes & Gray responded on December 16, 2022, noting that [REDACTED] as well as Mayer Brown's other former LGE matters, were substantially related to the present action, and that Mayer Brown failed to present a cogent rationale for why the alleged waiver in the *Jenam* letter would apply to the present action. Ex. 29 at 1-2. Following a meet and confer, Mayer Brown still refuses to acknowledge the conflict, and the parties are at an impasse. This motion followed.

III. LEGAL STANDARDS

Motions for attorney disqualification in federal courts are governed by federal standards under the law of the regional circuit. *Ring Plus, Inc. v. Cingular Wireless Corp.*, 614 F.3d 1354, 1365 (Fed. Cir. 2010); *In re Dresser Indus., Inc.*, 972 F.2d 540, 543 (5th Cir. 1992). When considering motions to disqualify, the Fifth Circuit directs courts to look first to the rules promulgated by the local court itself. *In re ProEducation Int'l, Inc.*, 587 F.3d 296, 299 (5th Cir. 2009); *F.D.I.C. v. U.S. Fire Ins. Co.*, 50 F.3d 1304, 1311–12 (5th Cir. 1995). In turn, the Eastern District of Texas local rules require courts to look to both the Texas Disciplinary Rules of Professional Conduct ("Texas Rules") and the ABA Model Rules ("ABA Rules"). See E.D. Tex. L. R. AT-2(a); *Parallel Networks, LLC v. Abercrombie & Fitch Co.*, No. 6:10-CV-111, 2016 WL 3883392, at *2 (E.D. Tex. Apr. 1, 2016) (Schroeder, J.).

Texas Rule 1.09 sets out an attorney's duties to former clients. Rule 1.09(a) states:

(a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:

- (1) in which such other person questions the validity of the lawyer's services or work product for the former client;
- (2) if the representation in reasonable probability will involve a violation of Rule 1.05; or
- (3) if it is the same or a substantially related matter.

Analogous provisions appear in ABA Rule 1.9, and the Fifth Circuit has acknowledged that “ABA Rule 1.9 is identical to Texas Rule 1.09 in all important respects[.]” *Am. Airlines*, 972 F.2d at 615 n.2 (focusing on Texas Rules due to their similarity to ABA Rules regarding former clients).

Two prongs of the Texas Rule are relevant here. First, the Texas Rule explicitly bars the reasonably probable use of a former client’s confidential information to the disadvantage of that client. Specifically, Texas Rule 1.09(a)(2), which incorporates Texas Rule 1.05, bars representation of an adverse party “if the representation in reasonable probability will involve a violation of [the attorney’s confidentiality obligations in] Rule 1.05.” In other words, the Texas Rule “prohibits a lawyer’s use of confidential information obtained from a former client to that former client’s disadvantage.” *Am. Airlines*, 972 F.2d at 615. ABA Rule 1.9(b)(2) similarly precludes lawyers from using previously obtained confidential information against a former client.

Second, even absent specific confidential information from past representations being misused, Texas Rule 1.09(a)(3) prevents lawyers from becoming adverse to former clients in “the same or a substantially related” matter. As explained in the commentary, the “substantially related” prong “primarily involves situations where a lawyer ***could have acquired*** confidential information concerning a prior client that ***could be used*** either to that prior client’s disadvantage or for the advantage of the lawyer’s current client or some other person. It thus largely overlaps the prohibition contained in paragraph (a)(2) of this Rule.” Texas Rule 1.09 cmt. 4B (emphasis added). Analogous provisions appear in ABA Rule 1.9(a), with the commentary describing matters as

“substantially related . . . if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter.” ABA Rule 1.9 cmt. 3. If a matter is substantially related, an irrebuttable presumption arises that confidential information and secrets were conveyed to the lawyer during the prior representation. *Am Airlines*, 972 F.2d at 614.

When determining whether matters are substantially related, courts consider the facts and legal issues involved in the present case, as well as the “nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.” ABA Rule 1.9 cmt. 3. The subject matter between two representations “does not need to be ‘relevant’ in the evidentiary sense to be ‘substantially related.’ It need only be akin to the present action in a way reasonable persons would understand as important to the issues involved.” *Am. Airlines*, 972 F.2d at 623. Under the Texas Rules, in particular, courts may also consider whether an attorney acted as long-term counsel and gained knowledge of the tactics that will be used in the litigation. *Texaco, Inc. v. Garcia*, 891 S.W.2d 255, 256-57 (Tex. 1995) (a firm must be disqualified when its partners represented the opposing party for seven years in cases involving “similar liability issues, similar scientific issues, and similar defenses and strategies”).

IV. MAYER BROWN SHOULD BE DISQUALIFIED

A. Mayer Brown Attorneys Had an Attorney-Client Relationship with LGE and Continue to Owe Duties to LGE as a Former Client

Mayer Brown represented LGE on at least [REDACTED] *Jenam*, *Core Wireless*, *MTT*, and *CCE* matters described in Section II.A, and is bound by the duties to former clients set forth in Texas Rule 1.09 and ABA Rule 1.9.⁷ Mayer Brown’s representation here of Pantech adverse to

⁷ During the April 2021 pre-litigation exchange, Mayer Brown at one point suggested Pantech was a *current* client adverse to LGE at the time it signed the *Jenam* letter on the basis that IdeaHub/Pantech was a client at that time. Ex. 26 at 2. This is contradicted by the *Jenam* letter,

[REDACTED]

LGE violates those duties and creates an impermissible conflict under Texas Rule 1.09(b)-(c). First, there is a “reasonable probability” that Mayer Brown’s representation of Pantech will result in the misuse of LGE Confidential Information previously divulged to Mayer Brown. *See* Texas Rule 1.09(b). Second, even setting aside the known instances where Mayer Brown was given LGE Confidential Information, disqualification is proper because Mayer Brown’s past representations of LGE are substantially related to the present action—raising an irrebuttable presumption that confidential information and secrets were conveyed to Mayer Brown during the prior representations. *See* Texas Rule 1.09(c); *Am. Airlines*, 972 F.2d at 614. In other words, it is sufficient to demonstrate that Mayer Brown “could have acquired confidential information” that “could be used” to either LGE’s disadvantage or Pantech’s advantage in the present action—warranting disqualification. Texas Rule 1.09 cmt. 4B.

B. Mayer Brown Has an Impermissible Conflict Because It Knows LGE Confidential Information Usable to LGE’s Disadvantage in this Case

LGE may disqualify Mayer Brown by “pointing to specific instances where it revealed relevant confidential information regarding its practices and procedures,” *Am. Airlines*, F.2d 605 at 615, or otherwise showing a “reasonable probability” that Mayer Brown’s representing Pantech here will violate Mayer Brown’s confidentiality obligations to LGE. Texas Rules 1.09(a)(2), 1.05.

As discussed above in Section II.A, relevant LGE Confidential Information was revealed to Mayer Brown over the course of at least five litigations that spanned at least seven years. During [REDACTED] matter, for example, LGE revealed the details of its [REDACTED]

which assured that there was [REDACTED] Ex. 24 at 2-3. Nevertheless, the duties owed to *current* clients under Texas Rule 1.06 and ABA Rule 1.7 similarly bar adversity in “substantially related” matters, and further require “full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation” (Texas Rule 1.06(b)) and that “each affected client gives informed consent, confirmed in writing” (ABA Rule 1.7). Not only is the *Pantech* matter here substantially related to prior matters where Mayer Brown represented LGE, as explained herein, but no informed written consent was given either.

██████████, and the details of ██████████ licenses relating to ██████████ ██████████. Suh ¶ 16. That information—including the approaches LGE used to value patents and the concessions made in prior negotiations—are easily used to LGE’s disadvantage during possible settlement negotiations, or any future proceeding with issues relating to SEPs, including damages. LGE also provided Mayer Brown with confidential technical and financial information about accused LGE products, and the methods used to implement certain standards. Suh ¶¶ 15-16; Hong ¶ 18; see § II.A. Indeed, as discussed in Section II.A, several of the same industry standards at issue here were also at issue in ██████████ and *CCE* matters. Other examples of relevant LGE Confidential Information include the highly confidential source code and service manuals provided to Mayer Brown as part of the *CCE*, ██████████ and *Jenam* matters, which included schematics and source code for accused products likely to be at issue for at least asserted Pantech patents 7,283,839 and 9,575,631. Hong ¶¶ 11-18; Suh ¶ 16; see § II.A. All of that Confidential Information is readily used to LGE’s disadvantage at various points in the proceeding, including claim construction and the preparation of contentions and expert reports related to infringement, invalidity, and damages.

Given the extent and nature of the LGE Confidential Information shared with Mayer Brown, there is a “reasonable probability” that some will be used—deliberately or inadvertently—to LGE’s disadvantage if Mayer Brown continues as Pantech’s counsel. See Texas Rule 1.09(a)(2). The remedy for that clear conflict of interest is disqualification. See *Am. Airlines*, 972 F.2d at 611.

C. Mayer Brown Also Has an Impermissible Conflict Because the Present Case Is Substantially Related to Its Past Representations of LGE

Mayer Brown must also be disqualified for the independent reason that the present case is “substantially related” to its past representations of LGE. See Texas Rule 1.09(a)(3); *Am. Airlines*, 972 F.2d at 615. The substantially related inquiry applies where the nature of the prior action is such that “a lawyer *could have acquired* confidential information concerning a prior client that

At minimum, ██████████ *CCE*, *Jenam*, *Core Wireless* and *MTT* matters are substantially related to the present case. Not only was there a substantial risk of Mayer Brown obtaining relevant LGE Confidential Information, but, as explained above, Mayer Brown in fact *did* obtain Confidential Information during the course of these prior matters that could be used to Pantech's benefit at several stages of the present litigation. *See* § IV.B. Additionally, the cases were directed to technology that significantly overlaps with the accused technology here (*see* § II.A)—creating a substantial risk of Mayer Brown having obtained yet further LGE Confidential Information that could be used to LGE's disadvantage. *See* Texas Rule 1.09 cmt. 4B; ABA Rule 1.9 cmt. 3. Because those cases are substantially related to the present case, an irrebuttable presumption is created that relevant confidential information was conveyed to Mayer Brown. *Am. Airlines*, 972 F.2d at 614.

As demonstrated by Mayer Brown’s shifting positions and repeated inability to point to an applicable waiver (*see* Sections II.C-D), there is no waiver—in the *Jenam* letter, the International Terms of Business, or anywhere else—that would apply to the present case. The alleged waiver in the *Jenam* letter applies only to [REDACTED]

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A.9.5 provides a waiver only for matters “*not substantially related*” to the Particular Matters [Mayer Brown is] handling for you.” Ex. 25 at A.9.5 (emphasis added). As discussed in Sections II.A and IV.B, the technology involved in the Pantech case (including the accused products, the standards at issue, and even accused features) is substantially related to multiple prior matters where Mayer Brown represented LGE, including ██████████ *CCE, Jenam, Core Wireless* and *MTT*.

E. The Present Motion Is Timely

The present disqualification motion is timely, and ripe for adjudication. Untimeliness is found only where “the delay in moving for a disqualification is for an extended period of time, or where it is done on the eve of trial.” *Stonecoat of Texas, LLC v. Procal Stone Design, LLC*, No. 4:17-CV-00303, 2019 WL 9899506, at *12 (E.D. Tex. Mar. 8, 2019). Neither is true here.

We are at the earliest stages of litigation: only the Complaint and LGE’s Partial Motion to Dismiss have been filed and no other discovery or hearings have taken place. LGE has also brought this motion promptly—less than four months from the filing of the Complaint and before any other substantive filings in the case. *Islander E. Rental Program v. Ferguson*, 917 F. Supp. 504, 507–08 (S.D. Tex. 1996) (no waiver where conflict raised just four months after action was initiated).

Mayer Brown has falsely suggested that LGE had delayed raising the issue for tactical reasons, and implied that the matter was “resolved” during pre-litigation discussions in April 2021. Ex. 28 at 1. At the outset, the only “resolution” in April 2021 was LGE cutting out Mayer Brown from the negotiations by dealing directly with Pantech. See Sections II.C-D. Moreover, LGE was under no obligation to take further steps in anticipation of some hypothetical future litigation. See, e.g., *Staton Techiya, LLC v. Samsung Elects. Co.*, No. 2:21-CV-00413, 2022 WL 16964746, at *2 (E.D. Tex. Nov. 16, 2022) (prior knowledge that a conflict might exist “as soon as suit was filed” did not constitute waiver; and it was “not unreasonable for Samsung to wait . . . to demand that Ahn and Cho remove themselves from the handling of the patent infringement litigation”).

[REDACTED]

[REDACTED]

F. The Appropriate Remedy Is Disqualification

By default, “when lawyers are or have become members of or associated with a firm, none of them shall knowingly represent a client if any one of them practicing alone would be prohibited from doing so.” Texas Rule 1.09(b); *see also* ABA Rule 1.10. At least six Mayer Brown attorneys named in Pantech’s Complaint (*see* § II.A) have conflicts of interest under Texas Rule 1.09(a) and ABA Rule 1.9 barring them from representing Pantech. No attempt has been made to screen out those attorneys, and their conflicts are imputed to the entire firm. Texas Rule 1.09(b).

The Court is to “balance the likelihood of public suspicion against a party’s right to counsel of choice,” and also consider the challenging party’s “reasonable expectations.” *Rembrandt Techs., LP v. Comcast Corp.*, No. 2:05-CV-443, 2007 WL 470631, at *4 (E.D. Tex., Feb. 8, 2007) (citation omitted). LGE reasonably expected Mayer Brown to adhere to its duty of loyalty—preventing Mayer Brown from becoming adverse to LGE in matters involving substantially related subject matter. Not disqualifying Mayer Brown would “raise public suspicion of the legal profession generally, and cause the public to question the extent of an attorney’s loyalty to his client and whether information given to an attorney is truly confidential.” *Islander*, 917 F. Supp. at 514. These concerns far outweigh Pantech’s choice of counsel, particularly given the infancy of this case and Pantech’s decision to continue working with Mayer Brown after learning of the conflict.

V. CONCLUSION

LGE respectfully requests that the Court grant this Motion and enter an order disqualifying Mayer Brown and requiring Plaintiffs to take steps to ensure that any LGE Confidential Information that Mayer Brown may possess is not utilized in this case to Pantech’s advantage, or LGE’s disadvantage. LGE respectfully requests oral argument on this motion.

Respectfully submitted,

/s/ Jennifer H. Doan

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document is being served via email on counsel of record on this the 30th day of December 2022.

/s/ Jennifer H. Doan
Jennifer H. Doan

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(h), the undersigned certifies that James L. Davis, Jr., counsel for LGE, met and conferred with Jamie B. Beaber, James A. Fussell, III, and Geoffrey Culbertson counsel for Plaintiffs on December 26, 2022. Discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve. Counsel for Plaintiffs is opposed to the relief requested herein.

/s/ James L. Davis, Jr.
James L. Davis, Jr.

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