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

SINOTECHNIX LLC, *Plaintiff*, v. SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., AND SAMSUNG DISPLAY CO., LTD. *Defendants*.	Civil Action No. 2:24-cv-544-JRG **JURY TRIAL DEMANDED**

JOINT MOTION FOR ENTRY OF (DISPUTED) PROTECTIVE ORDER

Plaintiff Sinotechnix LLC and Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Display Co., Ltd. file this Joint Motion for Entry of (DISPUTED) Protective Order.

The Parties have conferred and agree to all terms of the proposed Protective Order, except the for the terms noted in Paragraphs 9 and 10(h)(1) of the proposed order attached hereto as Exhibit A. Plaintiff's disputed proposals are noted in blue text and labeled "Plaintiff's Proposal" in the attached exhibit, and Defendants' disputed proposals are noted in green text and labeled "Defendants' Proposal" in Exhibit A. The parties' positions are set forth below.

I. PLAINTIFF'S ARGUMENTS:

9: Defendants ask the Court to deviate from its model order by precluding disclosure of Attorneys' Eyes Only information to "in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action," so long as such in-house counsel "exercise no competitive decision-making authority on behalf of the client." *See* Ex. A, ¶¶ 5(c), 9 (Defendants' proposal). Defendants' proposal should be rejected because it inappropriately and unnecessarily limits Plaintiff's access to counsel of its choice. Here, the Court's default language (proposed by Plaintiff) limits any risk of inadvertent disclosure or competitive risk by allowing for disclosure of Attorneys' Eyes Only information only to "in-house counsel who exercise no competitive decision- making authority on behalf of the client." *See* Ex. A, ¶ 9 (Plaintiff's proposal). The provisions in the model order strike the appropriate balance between risk of inadvertent disclosure or competitive use and the "risk against the potential harm to the opposing party from restrictions imposed on that party's right to have the benefit of counsel of its choice." *In re Deutsche Bank Trust Co. Ams*., 605 F.3d 1373, 1380 (Fed. Cir. 2010).

10(h)(1): The Court's default language adequately prevents inadvertent disclosure of source code. Moreover, Plaintiff has agreed to numerous additional protections for source code material requested by Defendants. Nonetheless, Defendants propose language that arbitrarily and unnecessarily limits source code printing to no more than 200 pages and no more than five percent of a parties' source code. Defendants bear the burden to show good cause to include the proposed limits. *See Document Generation v. Allscripts*, No. 6:08-CV-479, 2009 U.S. Dist. LEXI 52874, at *7-8 (E.D. Tex. June 23, 2009). They cannot meet their burden.

Setting a specific page limit at this stage of the case is inappropriate. The Court and Sinotechnix have no knowledge of the scope, organization, or format of source code that will be

produced. Therefore, it is impossible to determine the number of source code printouts that may be necessary for Plaintiff to prepare and present its case. Moreover, there are six patents and over one thousand accused products at issue. It is unknown whether the parties will agree to representative products or even what the scope of representative products may be. Without more information, the Court and the parties cannot accurately determine the number of source code printouts required. Sinotechnix intends to print only the number of source code pages reasonably necessary to prove infringement. But at this stage, that number is unknown.

That other parties may have agreed to page limits in different cases with different facts and different accused products has no bearing on the dispute before the Court. Instead, the Court should determine whether there is an "'unacceptable opportunity for inadvertent disclosure'" of confidential information to an individual involved in "competitive decision making" with his or her client and then (2) "balance[s] this risk against the potential harm to the opposing party …." *In re Deutsch Bank*, 605 F.3d at1380. Here, the agreed provisions of the proposed Protective Order provide more than sufficient protections to prevent inadvertent disclosure of source code. For example, Source Code Material is limited to a small group of people and how it can be transmitted and stored is severely restricted. *See* Ex. A, ¶¶ 10(a)-(c), (l)-m) (limiting how and where reviewed), 10(e) (limiting who can view), (j) (restricting where kept), (k) (restricting how transported and stored); 10(h) (requiring log). Moreover, should the parties disagree whether a receiving Party's request to print pages is reasonable, the producing Party may seek protection from the Court by filing a Motion for Protection. Indeed, Plaintiff has proposed a streamlined mechanism for resolving such disputes. *See* Ex. A, ¶ 10(h)(1) (Plaintiff's proposal). Given the numerous protections in place for source code material, the Court should reject Defendants' proposal to arbitrarily limit source code printouts.

II. DEFENDANTS' ARGUMENTS:

9: The parties dispute whether Protected Material designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" ("HC-AEO") should be accessible by in-house counsel. Defendants submit that it should not. HC-AEO materials constitute "confidential or proprietary information or trade secrets" that should not be disclosed to persons who may—even inadvertently—misuse that information. *See* Proposed PO ¶ 6 (agreed). Plaintiff ostensibly seeks to disclose HC-AEO material to its sole disclosed representative—patent attorney Robert Katz. Plaintiff's Initial Disclosures dated Dec. 9, 2024, at 3 (identifying Mr. Katz as the individual with "[k]nowledge of the acquisition and ownership of the patents-in-suit"); https://www.katzfirm.com/about/founder/ ("Mr. Katz practices in the field of intellectual property litigation."). Defendants object to that disclosure because in-house counsel's review of HC-AEO materials—which may include confidential licenses, contracts, technical information, and know-how—risks misuse of that information (even if inadvertent). *In re Deutsche Bank Tr. Co. Americas*, 605 F.3d 1373, 1378 (Fed. Cir. 2010) ("It is very difficult for the human mind to compartmentalize and selectively suppress information once learned, no matter how well-intentioned the effort may be to do so.") (internal citation and quotation omitted). That is particularly true here, where entities affiliated with Mr. Katz have sued Samsung on multiple occasions concerning similar technologies and products as in this case. *Lexington Luminance LLC v. Samsung Electronics Co., Ltd. et al.*, Case No. 2:14-cv-00169 (E.D. Tex.); *SVV Tech. Innovations Inc. v. Samsung Electronics Co., Ltd. et al.*, Case No. 6:20-cv-00139 (W.D. Tex.). Indeed, Mr. Katz has signed USPTO materials on behalf of Plaintiff. And there may be others who Plaintiff has not disclosed and who similarly engage in serial lawsuits against Defendants. Plaintiff's proposal suggests that disclosure to in-house counsel who exercise no competitive decision-making authority should be permitted. But Plaintiff has not conducted any business other

than purchasing the patents-in-suit and filing a lawsuit—and that is precisely the scenario where disclosure would harm Defendants. "Federal courts [] uniformly found that the business decision to purchase a license may constitute 'competitive decisionmaking' for purposes of the protective order inquiry" and this court has specifically found that "litigation often involves competitive decisionmaking, particularly where one party's business frequently involves asserting and licensing patents." *Uniloc 2017 LLC v. Cardo Sys., Inc.*, No. 2:18-CV-00510-JRG, 2019 WL 13472203, at *4 (E.D. Tex. May 22, 2019) (citations omitted). Finally, Defendants' proposal allows the parties to make exceptions by agreement.

10(h)(1): If the production of source code becomes necessary in this case, Defendants' source code would constitute highly sensitive material for which Plaintiff should not be granted a vaguely defined right of printing. *Smartflash LLC v. Samsung Electronics Co., Ltd.*, et al., Case No. 6:13-cv-00448-MHS-KNM, at 4-5 (E.D. Tex. May 12, 2014) (adopting Defendants' source code page limit proposal because Plaintiff "offered no competing page limit proposal for printing source code. Given the highly sensitive nature of source code, there is good cause for some restrictions on printing."). Although Plaintiff argues that it cannot know the volume of printing that may be necessary, Defendants' proposal includes mechanisms to allow for additional printing if later circumstances in the case demonstrate a good faith basis for Plaintiff to request additional pages. Plaintiff has been unwilling to propose any page limits in this case or discuss expectations for a "reasonable number" during negotiation of the Protective Order to give Defendants an opportunity to explore compromise proposals. Plaintiff's flat rejection of any limitation on printing suggests an unwillingness to compromise and increases the risk of later, unnecessary disputes concerning what a "reasonable number" means should source code discovery become necessary.

The parties respectfully request that the Court resolve differences in the proposed protective order attached hereto as Exhibit A and enter a Protective Order.

Dated: December 16, 2024

Respectfully submitted,

/s/ Ryan Griffin

Patrick J. Conroy
Texas Bar No. 24012448
Ryan Griffin
Texas Bar No. 24053687
T. William Kennedy Jr.
Texas Bar No. 24055771
Jon Rastegar
Texas Bar No. 24064043
NELSON BUMGARDNER CONROY PC
2727 North Harwood Street, Suite #250
Dallas, Texas 75201
Telephone: (214) 446-4950
pat@nelbum.com
ryan@nelbum.com
bill@nelbum.com
jon@nelbum.com

Janson H. Westmoreland
State Bar No. 24131755
NELSON BUMGARDNER CONROY PC
3131 West 7th St., #300
Fort Worth, Texas 76107
Telephone: (214) 446-4950
janson@nelbum.com

Attorneys for Plaintiff
Sinotechnix LLC

/s/ Cosmin Maier

Melissa R. Smith
Texas Bar No. 24001351
GILLAM & SMITH, LLP
303 South Washington Avenue Marshall,
Texas 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257
Email: melissa@gillamsmithlaw.com

John M. Desmarais (pro hac vice)
Paul A. Bondor (pro hac vice)
Yung-Hoon Ha (pro hac vice)
Cosmin Maier (pro hac vice)
Taeg Sang Cho (pro hac vice)
Jennifer M. Przybylski(pro hac vice)
Lee J. Matalon (State Bar No. 24117858)
Asim Zaidi (pro hac vice)
Alexander Walker (pro hac vice)
DESMARAIS LLP
230 Park Avenue
New York, New York 10169 Telephone:
(212) 351-3400
Facsimile: (212) 351-3401
jdesmarais@desmaraisllp.com
pbondor@desmaraisllp.com
yha@desmaraisllp.com
cmaier@desmaraisllp.com
tcho@desmaraisllp.com
jprzybylski@desmaraisllp.com
lmatalon@desmaraisllp.com
azaidi@desmaraisllp.com
lwalker@desmaraisllp.com

Attorneys for Defendants
Samsung Electronics Co., Ltd. and
Samsung Electronics America, Inc.

/s/ Marc Pensabene

Melissa R. Smith
Texas Bar No. 24001351
GILLAM & SMITH, LLP
303 South Washington Avenue
Marshall, Texas 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257
Email: melissa@gillamsmithlaw.com

Ryan Yagura (Tex. #24075933)
ryagura@omm.com
Grace McFee (pro hac vice)
gmcfee@omm.com
Kelvin Han (pro hac vice)
kelvinhan@omm.com
O'MELVENY & MYERS LLP
400 South Hope Street, 19th Floor
Los Angeles, California 90071
Telephone: (213) 430-6000

Marc Pensabene (pro hac vice)
mpensabene@omm.com
Laura B. Gore (pro hac vice)
lgore@omm.com
O'MELVENY & MYERS LLP
1301 Avenue of the Americas, Suite 1700
New York, New York 10019
Telephone: (212) 326-2000

Attorneys for Defendant
Samsung Display Co., Ltd.

CERTIFICATE OF SERVICE

The undersigned certifies that on December 16, 2024, the foregoing document was electronically filed in compliance with Local Rule CV-5(a) and was served on all counsel of record who have consented to electronic service, per Local Rule CV-5(a)(3).

/s/ *Ryan Griffin*
Ryan Griffin

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for the parties have complied with the meet and confer requirement in Local Rule CV-7(h). This motion unopposed and filed jointly.

/s/ *Ryan Griffin*
Ryan Griffin