

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

TOPWIRE LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.,
and SAMSUNG ELECTRONICS
AMERICA, INC.,

Defendants.

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CASE NO. 2:25-CV-01183-JRG-RSP

DISCOVERY ORDER

After a review of the pleaded claims and defenses in this action, in furtherance of the management of the Court's docket under Federal Rule of Civil Procedure 16, and after receiving the input of the parties to this action, it is ORDERED AS FOLLOWS:

1. **Initial Disclosures.** In lieu of the disclosures required by Federal Rule of Civil Procedure 26(a)(1), each party shall disclose to every other party the following information:
 - (a) the correct names of the parties to the lawsuit;
 - (b) the name, address, and telephone number of any potential parties;
 - (c) the legal theories and, in general, the factual bases of the disclosing party's claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial);
 - (d) the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a brief, fair summary of the substance of the information known by any such person;
 - (e) any indemnity and insuring agreements under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered

in this action or to indemnify or reimburse for payments made to satisfy the judgment;

- (f) any settlement agreements relevant to the subject matter of this action; and
- (g) any statement of any party to the litigation.

2. Disclosure of Expert Testimony.¹ A party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703 or 705, and:

- (a) if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, provide the disclosures required by Federal Rule of Civil Procedure 26(a)(2)(B) and Local Rule CV-26; and
- (b) for all other such witnesses, provide the disclosure required by Federal Rule of Civil Procedure 26(a)(2)(C).

3. Additional Disclosures. Without awaiting a discovery request,² each party will make the following disclosures to every other party:

- (a) provide the disclosures required by the Patent Rules for the Eastern District of Texas with the following modifications to P.R. 3-1 and P.R. 3-3:
 - i. If a party claiming patent infringement asserts that a claim element is a software limitation, the party need not comply with P.R. 3-1 for those claim elements until 30 days after source code for each Accused Instrumentality is produced by the opposing party. Thereafter, the party claiming patent

¹All expert reports should be written such that the report is organized with discrete paragraph numbers.

²The Court anticipates that this disclosure requirement will obviate the need for requests for production.

infringement shall identify, on an element-by-element basis for each asserted claim, what source code of each Accused Instrumentality allegedly satisfies the software limitations of the asserted claim elements.

ii. If a party claiming patent infringement exercises the provisions of Paragraph 3(a)(i) of this Discovery Order, the party opposing a claim of patent infringement may serve, not later than 30 days after receipt of a Paragraph 3(a)(i) disclosure, supplemental “Invalidity Contentions” that amend only those claim elements identified as software limitations by the party claiming patent infringement.

- (b) produce or permit the inspection of all documents, electronically stored information, and tangible things in the possession, custody, or control of the party that are relevant to the pleaded claims or defenses involved in this action, except to the extent these disclosures are affected by the time limits set forth in the Patent Rules for the Eastern District of Texas; and
- (c) provide a complete computation of any category of damages claimed by any party to the action, and produce or permit the inspection of documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered, except that the disclosure of the computation of damages may be deferred until the time for Expert Disclosures if a party will rely on a damages expert.

4. **Protective Orders.** The Court will enter the parties’ Agreed Protective Order.

5. **Discovery Limitations.** The discovery in this cause is limited to the disclosures described in Paragraphs 1-3 together with:

- (a) **Interrogatories:** Each Side³ may serve a maximum of 25 interrogatories on the opposing side.
- (b) **Request for Admission:** 25 requests for admission per Side (excluding requests for admission for the purpose of authenticating a document or establishing its admissibility, which are unlimited).
- (c) **Party Depositions:** Each side may take up to 60 total hours of fact deposition testimony of another Side. Depositions of experts and third parties do not count against these limits. Absent a showing of good cause, each deposition will be limited to no more than one (1) day of seven (7) hours pursuant to Fed. R. Civ. P. 30(d)(1) provided, however, that this limitation will not apply to a witness designated pursuant to Fed. R. Civ. P. 30(b)(6) to address voluminous noticed deposition topics. For each deposition requiring an interpreter, every 1.5 hours shall count as one hour of deposition time. Virtual depositions (e.g., Zoom) shall be taken during regular business hours of the witness, and counsel defending a party witness during a virtual deposition will be permitted to be in the same room as the deponent during the deposition.
- (d) **Third-Party Depositions:** Each Side may take up to 60 hours of third-party deposition testimony.
- (e) **Experts:** Expert depositions are not included in the hour limits set forth in 5(c) above. Each Side is limited to four (4) testifying expert witnesses. Unless the parties agree or the Court orders otherwise, each Side shall be permitted to depose the other

³ “Side” means a party or a group of parties with a common interest. For the avoidance of doubt, Samsung Electronics co., Ltd; Samsung Electronics America, Inc. are together considered a Side.

Side's expert witnesses for seven (7) hours per expert witness per expert report. For example, an expert providing separate reports regarding infringement and validity may be deposed for fourteen (14) hours. Experts, however, shall not be deposed for more than seven hours in one day without the consent of the deponent. Any expert depositions on claim construction declarations, however, shall not be included in the 7-hour total per expert. Corrected or supplemental reports covering the same subject matter as a previous report shall not be counted as a separate report for purposes of this time limit.

- (f) **Modification:** Any party may later move to modify these limitations for good cause.
- (g) **Service of Deposition Notices:** The parties agree that employees of the parties may be served with deposition notices through the party's counsel.
- (h) **Required Consultation Regarding Scheduling:** For the convenience of witnesses, counsel, and parties, the parties shall confer about the scheduling and locations of the depositions of witnesses after the service of deposition notices and subpoenas. For witnesses located in the United States, a Party witness will be deposed near his or her office or home, or where the Party's attorneys have an office at the witness's discretion. For foreign witnesses, depositions shall take place at a location reasonably convenient to the witness (including at or near the witness's residence or principal place of business), unless the parties agree otherwise or the Court orders otherwise. Any deposition of a witness residing in or having a principal place of employment outside the United States will count for at least a

minimum of 3 hours, even if the deposition does not exceed 3 hours. Depositions of Party witnesses may be taken remotely.

6. **Privileged Information.** There is no duty to disclose privileged documents or information. However, the parties are directed to meet and confer concerning privileged documents or information after the Status Conference. By the deadline set in the Docket Control Order, the parties shall exchange privilege logs identifying the documents or information and the basis for any disputed claim of privilege in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection. Any party may move the Court for an order compelling the production of any documents or information identified on any other party's privilege log. If such a motion is made, the party asserting privilege shall respond to the motion within the time period provided by Local Rule CV-7. The party asserting privilege shall then file with the Court within 30 days of the filing of the motion to compel any proof in the form of declarations or affidavits to support their assertions of privilege, along with the documents over which privilege is asserted for *in camera* inspection. However, if the party asserting privilege seeks an *in camera* review by the Court, such party shall first obtain leave from the Court prior to delivery of documents to the Court.
7. **Signature.** The disclosures required by this Order shall be made in writing and signed by the party or counsel and shall constitute a certification that, to the best of the signer's knowledge, information and belief, such disclosure is complete and correct as of the time it is made. If feasible, counsel shall meet to exchange disclosures required by this Order; otherwise, such disclosures shall be served as provided by Federal Rule of Civil Procedure

5. The parties shall promptly file a notice with the Court that the disclosures required under this Order have taken place.

8. **Duty to Supplement.** After disclosure is made pursuant to this Order, each party is under a duty to supplement or correct its disclosures **immediately** if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.

9. **Discovery Disputes.**

- (i) Except in cases involving claims of privilege, any party entitled to receive disclosures (“Requesting Party”) may, after the deadline for making disclosures, serve upon a party required to make disclosures (“Responding Party”) a written statement, in letter form or otherwise, of any reason why the Requesting Party believes that the Responding Party’s disclosures are insufficient. The written statement shall list, by category, the items the Requesting Party contends should be produced. The parties shall promptly meet and confer. If the parties are unable to resolve their dispute, then the Responding Party shall, within 14 days after service of the written statement upon it, serve upon the Requesting Party a written statement, in letter form or otherwise, which identifies (1) the requested items that will be disclosed, if any, and (2) the reasons why any requested items will not be disclosed. The Requesting Party may thereafter file a motion to compel.
- (j) An opposed discovery related motion, or any response thereto, shall not exceed 7 pages. Attachments to a discovery related motion, or a response thereto, shall not exceed 5 pages. No further briefing is allowed absent a request or order from the Court.

- (k) Prior to filing any discovery related motion, the parties must fully comply with the substantive and procedural conference requirements of Local Rule CV-7(h) and (i). Within 72 hours of the Court setting any discovery motion for a hearing, each party's lead attorney (*see* Local Rule CV-11(a)) and local counsel shall meet and confer in person or by telephone, without the involvement or participation of other attorneys, in an effort to resolve the dispute without Court intervention.
 - (l) Counsel shall promptly notify the Court of the results of that meeting by filing a joint report of no more than two pages. Unless excused by the Court, each party's lead attorney shall attend any discovery motion hearing set by the Court (though the lead attorney is not required to argue the motion).
 - (m) Any change to a party's lead attorney designation must be accomplished by motion and order.
 - (n) Counsel are directed to contact the chambers of the undersigned for any "hot-line" disputes before contacting the Discovery Hotline provided by Local Rule CV-26(e). If the undersigned is not available, the parties shall proceed in accordance with Local Rule CV-26(e).
- 10. No Excuses.** A party is not excused from the requirements of this Discovery Order because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. Absent court order to the contrary, a party is not excused from disclosure because there are pending motions to dismiss, to remand or to change venue.
- 11. Filings.** Only upon request from chambers shall counsel submit to the court courtesy copies of any filings.

12. Proposed Stipulations by the Parties Regarding Discovery.

- (a) E-Discovery Order: Compliance with the Court's disclosure obligations and production requests under the Federal Rules of Civil Procedure 34 and 45 shall not include e-mail or other forms of electronic correspondence. Discovery and production of any ESI shall be governed by and shall be conducted in accordance with an E-Discovery Order ("ESI Order"). The parties agree to negotiate in good faith on the terms of an appropriate ESI Order including a discussion on whether email discovery is appropriate or proportional to the needs of the case here.
- (b) In addition to the service requirements in Fed. R. Civ. P. 45(a)(4), the parties agree that they will promptly serve the other party with copies of any subpoena or deposition notice directed to a third party. A party that receives or obtains documents related to this case from a third party in response to a subpoena issued in relation to this case will provide copies of those documents to each other party within 5 business days of receiving those documents. The parties agree to consult with each other before scheduling any third-party deposition and to provide at least 3 business days' notice of the selected court reporting agency to allow for the coordination of remote depositions, including the logistics of any electronic exhibits. The Party seeking to take a deposition may request to do so remotely.
- (c) The parties agree that the parties are not required to include on their respective privilege logs any materials or communications that came into existence on or after December 1, 2025, except as provided under Local Patent Rule 3-7.
- (d) The parties agree to accept service of letters, pleadings, discovery requests, and other documents (except in the case of documents required to be filed with the

Court electronically, the service of which is governed by the Local Rules, or documents that are too voluminous for email) directed to the party via email listserv addresses designated by each of the parties or via email to at least each attorney listed on the docket as attorney of record for the opposing party.⁴ The parties further agree that service via this method is deemed to have occurred on the date sent (i.e., before midnight, central time). Service after 5:00 p.m. Central Time shall be deemed served on the following day for purposes of calculating responsive deadlines. For clarity, this paragraph does not impact filings with the Court as governed by Local Rule CV-5(a)(3)(C).

- (e) The parties' agreement regarding inadvertent productions will be included in the parties' Proposed Protective Order.
- (f) The protections provided in Federal Rule of Civil Procedure 26(b)(4)(B) and (C) will apply equally to expert declaration as they do to expert reports. Testifying experts shall not be subject to discovery of any draft of their report or declarations in this case and such draft reports, declarations, notes, outlines, or any other writings leading up to an issued report or filed declaration in this litigation are exempt from discovery. In addition, all communications to and from a testifying expert, and all materials generated by a testifying expert with respect to that person's work in this case, are exempt from discovery unless relied upon by the expert in forming any opinions in this litigation.

⁴ Service via FTP site with emailed link and (if applicable) password information or other appropriate electronic means shall be deemed to comport with the requirements of electronic service.

- 13. Standing Orders.** The parties and counsel are charged with notice of and are required to fully comply with each of the Standing Orders of this Court. Such are posted on the Court's website at <http://www.txed.uscourts.gov/?q=court-annexed-mediation-plan>. The substance of some such orders may be included expressly within this Discovery Order, while others (including the Court's Standing Order Regarding Protection of Proprietary and/or Confidential Information to Be Presented to the Court During Motion and Trial Practice) are incorporated herein by reference. All such standing orders shall be binding on the parties and counsel, regardless of whether they are expressly included herein or made a part hereof by reference.

SIGNED this 10th day of April, 2026.


ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE