

IPR2020-00737
U.S. Patent No. 9,436,354

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS AMERICA, INC.
Petitioner,

v.

KANNUU PTY LTD.
Patent Owner.

IPR2020-00737
U.S. Patent No. 9,436,354

**PATENT OWNER'S BRIEF REGARDING ADDITIONAL DISCOVERY
FROM PETITIONER**

LIST OF EXHIBITS

Exhibit 2096	Deposition of Samsung
Exhibit 2097	Samsung's Initial Response to Kannuu's Interrogatory
Exhibit 2098	Samsung's Supplemental Response to Kannuu's Interrogatory
Exhibit 2099	NY Times article dated Jan. 18, 2021
Exhibit 2100	NY Times article dated Oct. 5, 2018

I. INTRODUCTION

The Board ordered Samsung to answer an interrogatory and to produce a witness for deposition. Paper 70 at 2. Samsung designated the same witness to verify its interrogatory response and to testify on Samsung's behalf at deposition. Both the verification and the deposition testimony required an investigation into the pertinent facts. Samsung, however, flouted the Board's Order and engaged in what can only be labeled a sham investigation that was designed to find nothing.

Whereas the interrogatory sought to determine the extent to which the people who had access to Kannuu's information were involved with Samsung's development of Samsung's predict-next-letter feature, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Similarly, whereas the deposition sought information regarding Samsung's development of its predict-next-letter feature during 2012-13, [REDACTED]

[REDACTED]

[REDACTED]

Samsung has taken a calculated risk that it can get away with withholding relevant information. The Board should not reward this improper behavior, and instead should weigh heavily this circumstantial evidence that further bolster's

Kannuu's secondary-considerations arguments, including regarding copying and nexus. Although discovery in the PTAB is much more limited than discovery in district court, the PTAB still is required to make factual determinations and parties that voluntarily utilize the PTAB's procedures by filing Petitions should not be permitted to flout their obligations to provide the limited discovery required of them.

II. THE BOARD CAN DRAW AN INFERENCE THAT THE INFORMATION SUPPRESSED/DESTROYED BY SAMSUNG FURTHER UNDERMINES SAMSUNG'S ARGUMENTS

Kannuu already has put forth compelling evidence that Samsung copied Kannuu's patented technology (Papers 39 & 81), technology that Samsung's engineers described not only as [REDACTED]. The additional discovery sought by Kannuu was designed to gain more detail regarding how Samsung misused the information that Kannuu shared with Samsung under NDA. Specifically, the Board authorized the following additional discovery:

(1) an interrogatory response identifying the names of any people who worked on Samsung's predict next-letter feature who also had access to information about Patent Owner's predict-next letter technology

* * *

(3) a deposition of the person most knowledgeable about Samsung's 2012-13 efforts to develop predict-next-letter technology.²

¹ Ex. 2028, SAMSUNG_K_00035579; SAMSUNG_K_00035583-86 (emphasis added).

² Paper 70 at 2.

In requesting additional discovery, Kannuu had called out four Samsung witnesses as being of particular interest: [REDACTED]

[REDACTED] Paper 46 (Kannuu's motion). Samsung's designated witness did not speak with any of them. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³ Ex. 2032, ¶¶8-26; Ex. 2028, SAMSUNG_K_00035601.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Samsung kept the witness in the dark about the Samsung internal documents that Kannuu has pointed to as evidence of copying, such as documents comparing Kannuu's approach to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Rather than speak with the relevant witnesses, Samsung's designated testifier spoke only with the people who were on a list provided to him by Samsung's attorneys. *Id.* at 18:4-6. Not only was that list wildly incomplete, his conversations were focused not on what Samsung did to develop its predict-next-letter feature as required by the Board's Order, but instead focused [REDACTED]

[REDACTED]. For example, [REDACTED]

[REDACTED]

[illegible]

Even Samsung's outrageously abbreviated and hamstrung investigation, however, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This

begs many questions, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴ These are all items that Kannuu would follow up on if follow-up discovery were permissible, but Kannuu has not sought such follow-up discovery in light of the Board’s Order. Paper 70 at 12 (“FURTHER ORDERED that further requests for additional or follow-up discovery by Patent Owner will not be authorized.”).

Samsung's counsel also evidently coached Samsung's witness during the breaks in the deposition and instructed the witness not to answer questions about what documents the witness reviewed during the breaks. *Id.* at 122:5-125:12.

The same Samsung witness who went along with the sham investigation strategy also was the person who supposedly verified Samsung's interrogatory response on May 3, 2021. Ex. 2098 at 6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] And when Samsung later supplemented its response (Ex. 2098), the response was woefully inadequate because Samsung failed to conduct a meaningful investigation as explained above.

Samsung's willful violation of the Board's Order regarding additional discovery follows Samsung's violation of its duty of candor to the Board. Samsung does not dispute that the Board's rules require that "[u]nless previously served, a party must serve relevant information that is inconsistent with a position advanced

by the party during the proceeding concurrent with the filing of the documents or things that contains the inconsistency.”⁵ Samsung should have produced the relevant information when it filed its Petition, but instead forced Kannuu to bring a motion to obtain the information. After Kannuu obtained the Order from the Board requiring Samsung to produce the information, Samsung chose to continue to suppress the evidence. Patent owners should not be subjected to such improper tactics when defending their Constitutionally protected patent rights.⁶

All of the foregoing is powerful circumstantial evidence that Samsung is withholding evidence that undermines Samsung’s arguments, and the Board can draw an adverse inference accordingly. *See, e.g., Goldberger Foods, Inc. v. U.S.*, 23 Cl. Ct. 295, 308 (1991), *aff’d* 960 F.2d 155 (Fed. Cir. 1992) (holding that plaintiff’s failure to furnish any of its primary records on raw beef prices warranted a “strong adverse inference” that such records would have a negative impact on its case); *UAW v NLRB*, 459 F.2d 1329, 1338 (D.C. Cir. 1972) (“If evidence within the

⁵37 C.F.R. § 42.51(b)(1)(iii).

⁶Samsung’s abusive conduct continues, as Samsung has recently filed ex parte reexamination requests with respect to the three Kannuu patents that were the subject of Samsung’s IPR Petitions that the Board already denied. Samsung is relying largely on the same art that was the subject of the IPR Petitions. *Id.* And Samsung is taking the unreasonable position that Kannuu’s current counsel cannot represent Kannuu in the reexamination proceedings because Kannuu’s current counsel has had access to the information that Samsung has wrongfully designated as Attorneys-Eye-Only in this case, even though Samsung states in its reexam requests that the same information can be used in the reexams.

party's control would in fact strengthen his case, he can be expected to introduce it even if it is not subpoenaed. Conversely, if such evidence is not introduced, it may be inferred that the evidence is unfavorable to the party suppressing it.”).

In some situations, a negative inference can be inferred only if the withholding of evidence is in “bad faith.” *See, e.g.*, Fed. R. Civ. P. 37(e). Such bad faith is evident from the facts outlined above. Moreover, Samsung's leaders have demonstrated a strong pattern of criminal corruption that further bolsters a finding that Samsung has acted in bad faith. As Samsung's witness testified, Samsung was founded by and remains under the control of the Lee family. *Id.* at 105:10-14. The current head of Samsung is Jay Yong Lee (known as “Jay Y. Lee”). *Id.* at 105:16-22. Jay Y. Lee is currently in prison, having been convicted of various corruption charges, including bribes to then-President of Korea Park Geun-hye. Ex. 2099 (NY Times article dated Jan. 18, 2021). Ms. Park is currently in prison for accepting those and other bribes. *Id.* Jay Y. Lee took over control of Samsung from his father (Ex. 2096 at 106:4-13), who likewise was convicted of corruptions charges. Ex. 2100 (NY Times article dated Oct. 5, 2018). The elder Mr. Lee avoided prison only because he was pardoned by the then-President of Korea (Lee Myung-bak, Ms. Park's predecessor) in exchange for bribes from Samsung. *Id.* The second pardon led to the conviction of Lee Myung-bak, who was sentenced to 15 years in prison in 2018. *Id.* Thus, Samsung's current and past leaders are convicted felons who have

brought disgrace not only to Samsung but to the country of Korea. Sadly, when asked whether Samsung's culture has changed in any way, Samsung's witness said that it hadn't. *Id.* 106:15-24.

III. CONCLUSION

Samsung's obfuscation in response to the discovery ordered by the Board is powerful circumstantial evidence that Samsung's arguments are not well taken. Having chosen to suppress and destroy relevant evidence, Samsung has shown that it has no respect for this Board's authority. Samsung's discovery abuse is further reason that the Board should find that Samsung has failed to meet its burden of proof.

Date: June 11, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing **PATENT OWNER'S BRIEF REGARDING ADDITIONAL DISCOVERY FROM SAMSUNG** was served on June 11, 2021 on the Petitioner by filing this document through the PTAB's E2E System as well as e-mailing a copy to qe-samsung-kannuu@quinnemanuel.com .

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