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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE (WILMINGTON)

SAMSUNG ELECTRONICS, CO.,
LTD.

Plaintiff,

vs.

Civil Action No. 1:23-cv-186

TECHNICAL CONSUMER PRODUCTS,
INC., doing business as TCP
LIGHTING,

Defendant.

- - -

Transcript of Video Oral Argument on
April 29, 2024, United States District Court of Delaware,
Before Judge J. Nicholas Ranjan, District Judge.

APPEARANCES:

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Ali R. Sharifahmadian, Esquire
Jin-Suk Park, Esquire
Ruifeng Pu, Esquire
Michael Nguyen, Esquire

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P R O C E E D I N G S

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THE DEPUTY CLERK: Good morning. The United States District Court for the District of Delaware is now in session. The Honorable J. Nicholas Ranjan sitting by designation. The matter now before the Court is Samsung Electronics Company Limited vs. Technical Consumer Products, Inc., et al. at 23-cv-186.

THE COURT: All right. Good morning, everyone. We're here today for an oral argument on a motion by Hawthorne Gardening Company to sever and stay.

Why don't we start by having counsel enter their appearances? We'll begin with Plaintiff's counsel.

MR. POFF: Yes, good morning, Your Honor. This is Adam Poff from Young Conaway. And I'm joined by Jin-Suk Park, Ali Sharifahmadian, and Ruifeng Pu, all from Arnold & Porter. And we're also joined by Michael Nguyen from Samsung.

THE COURT: All right. Good morning to all of you. And then for, I guess, both the Defendants, TCP as well as Hawthorne Gardening Company.

MR. JOYCE: Good morning. This is Alex Joyce from McCarter & English. I'm joined by Arthur Licygiewicz and Cat Garza from Norton Rose & Fulbright, as well as Jamie Stark on our behalf as well.

THE COURT: Great. Good morning. Well, why don't we

1 get started? I know there's also another matter, I suppose,
2 we should discuss, I think, pertaining to some Hague
3 Convention discovery. But let's start with the oral argument
4 on the motion to stay and sever. So I'll hear first from
5 Defendants since that's HGC's motion.

6 MR. LICYGIEWICZ: Certainly, Your Honor. Art
7 Licygiewicz on behalf of Hawthorne Gardening Company. May it
8 please the Court. This Court should exercise its discretion
9 to sever and stay the action brought by Samsung against HGC,
10 Hawthorne Gardening Company.

11 The action brought by Samsung has a central claim
12 that focuses on the LEDs that TCP acquires from Seoul
13 Semiconductor, which I'll refer to as SSC for short in this
14 case, that those LEDs infringe the patents-in-suit. And with
15 respect to HGC, that the Seoul Semiconductor LEDs that are
16 used in the Gavita lighting products that are produced for it,
17 that those LEDs infringe the '140 patents. If there's a
18 finding that the Seoul Semiconductor LEDs do not infringe the
19 patents-in-suit, then HGC's product sales, sales of the
20 products that include those LEDs, is not actionable.

21 Samsung's claims against HGC depend upon this Court finding
22 that the SSC LEDs infringe, and this Court can find that, can
23 reach that determination without HGC in this case.

24 The rationale discussed in this Court's Rothschild
25 decision and other decisions equally applies here: severing

1 the staying suits against secondhand entities like retailers
2 or distributors because they're not involved and would not
3 have substantive knowledge about the patent infringement which
4 begins at the design and manufacture stages. And why is that?

5 HGC does not make SSC LEDs. It does not design those
6 LEDs. It does not develop those LEDs, or any LEDs, for that
7 matter, and there's no dispute about that. HGC does not make
8 the light fixtures that are referenced in the amended
9 complaint, and there's no dispute about that. HGC does not
10 and did not select, purchase, or otherwise provide the SSC
11 LEDs that are ultimately at issue in this case, and that's not
12 in dispute. And, as noted by Samsung in its opposition to
13 this motion, SSC -- I'm sorry. HGC does not import the LEDs
14 that are at issue in this case or the lighting products that
15 contain those SSC LEDs.

16 Samsung says it's basing its infringement claims
17 against HGC under 35, U.S.C., 271(g), which requires that a
18 product which is made by a -- which requires a product made by
19 a process patented in the United States to show infringement,
20 and this applies whether the alleged infringement is based on
21 importation of the product, an offer for sale, sale, or use of
22 the product in the U.S.

23 In short, the infringement case here will rise or
24 fall on the question of whether the Seoul Semiconductor LEDs
25 are found to infringe the patents-in-suit and, in HGC's case,

1 the '140 patent. We don't have to go down the path that
2 Samsung wants to take this Court down relative to
3 Section 271(g) and its argument on those points.

4 The key inquiry in this case centers on the LEDs
5 themselves. HGC does not have documentation or information
6 concerning those LEDs. Accordingly, at a minimum, this case
7 against HGC should be stayed and/or -- it should be severed
8 and/or stayed. Such a stay is warranted. It's appropriate in
9 this case. It's especially appropriate when a customer does
10 not have the information necessary to defend itself against
11 infringement claims. And since those claims focus on and they
12 center on the Seoul Semiconductor LEDs, maintaining HGC in
13 this case would be inappropriate.

14 The amended complaint indeed alleges that the HGC
15 products infringe because they, quote, contain LED chips
16 manufactured by Seoul Semiconductor that incorporate the
17 technologies covered by the '140 patent, that TCP makes the
18 Gavita light fixture for HGC using LED chips manufactured by
19 Seoul Semiconductor. And one thing that we must keep in mind
20 that further shows why a stay is appropriate, a severing and
21 staying is appropriate, is that HGC agrees that it will be
22 bound by any judgment against TCP as to whether the Seoul
23 Semiconductor LEDs used by TCP infringe the '140 patent.

24 THE COURT: Can I ask you a question on that because
25 I know from -- it seems like from Samsung's response brief,

1 they're not fully satisfied with HGC's stipulation on that.
2 That is, it doesn't have enough, I guess, meat on the bones or
3 it might leave some -- something's maybe left open. I mean,
4 you know, if I were to grant the motion, and I suppose there
5 would be some type of stipulation that's entered, maybe tell
6 me what that would exactly say. Would it extend to, you know,
7 a determination? I think you mentioned judgment. I mean, I
8 guess, would it extend to a determination as to damages, a
9 jury's determination as to damages in this case, and so forth?

10 MR. LICYGIEWICZ: To the extent that the damages
11 include products that are Seoul -- or offered for sale by HGC
12 in the United States, those would be -- that would be
13 information that would be provided through arguably one of two
14 sources, one, either TCP through importation records and/or
15 through third-party discovery of HGC.

16 HGC will be bound, will agree to be bound by the
17 determinations made by this Court relative to the infringement
18 of the '140 patent, the only patent it's accused of
19 infringing. Indeed, it would be bound by the judgments made
20 by this Court as to the validity of the '140 patents.

21 I'm not sure what else Plaintiff is necessarily
22 looking for, but for certain HGC would be amenable to entering
23 into an appropriate stipulation that confirms that it will be
24 bound by the judgments against TCP on the issues relative to
25 the infringement of the '140 patent.

1 THE COURT: Can I ask you, maybe going back on the
2 issue of the 271(g) issue importation, I mean who -- does HGC
3 import these products? It sounds like there's a little bit of
4 ambiguity on that as well as to where title is transferred.

5 MR. LICYGIEWICZ: HGC, based on the information we
6 have obtained from the companies, does not import the products
7 into the United States. They're not the importer for these
8 products, per HGC's records. That's as far as we know, and we
9 told the folks at Samsung that very fact.

10 THE COURT: I mean, how does it -- I guess, how does
11 it work on the TCP side? I mean, what are they doing? I
12 mean, are they selling it to a third -- it sounds like -- are
13 they transferring -- where does TCP transfer the title, I
14 suppose, is the question?

15 MR. LICYGIEWICZ: TCP could transfer title either in
16 the United States when it enters the port in the United States
17 and hits land, or in some cases, it could transfer title upon
18 leaving the port in China. These products are manufactured
19 in conjunction -- with TCP -- by TCP China in conjunction with
20 a third party that -- a related TCP entity. So they're
21 manufacturing in China by these entities.

22 And once these entities then ship the product, and I
23 think the supply agreement gives some illustration as to the
24 terms of transfer, but, typically, those are when those
25 products hit the U.S. soil. In many instances, that is the

1 time when the transfer occurs of title. In other instances,
2 it lists the importer of record, depending on who the importer
3 of record is, whether it be TCP-U.S., whether it be TCP-China,
4 where it be the Chinese entity that is working with TCP to
5 manufacture these products. I can't say for certain in
6 100 percent of these cases it's always when it hits the U.S.,
7 but at a minimum, it is when it leaves the port of call in
8 China.

9 THE COURT: Okay. Maybe sort of a separate question,
10 I mean, assuming I grant the motion, say we go forward with
11 this case, there's a determination that TCP infringes the '140
12 patent, the patent's otherwise valid, you know, final
13 determination, and then I suppose we sort of lift the stay in
14 the case against -- at that point against HGC proceeds, what
15 happens next, I guess, is the question? I mean, I would
16 anticipate there would be a need for damages, discovery at
17 that point, and then potentially a trial on damages. I mean,
18 is that, from HGC's point of view, what -- maybe walk me
19 through once the stay would be lifted.

20 MR. LICYGIEWICZ: Your Honor, once the stay would be
21 lifted, the only remaining issues we believe that would be on
22 the table would be for any damages associated with sales,
23 offers to sell of the product that are accused in the United
24 States that are not otherwise covered by damages that were
25 obtained by Samsung through -- or from TCP. In other words,

1 if there are some products, for whatever reason, that are not
2 covered by the TCP case, and the discovery and the damages in
3 the TCP case that there -- maybe there's a one-off somewhere
4 here or there or not, or there's a product for whatever reason
5 that wasn't otherwise covered, then the issue would be damages
6 relative to those uncovered products or those products that
7 would not otherwise be handled during the TCP case.

8 THE COURT: Okay.

9 MR. LICYGIEWICZ: And that's a very limited issue for
10 the Court. And in the event that, for example, one of the
11 things that also is a consideration here, and we haven't yet
12 discussed this, is potential bifurcation of damages issues if
13 this case -- if the Court decides not to grant the motion to
14 sever and stay. That would also ameliorate any potential
15 prejudice with respect to HGC, and Samsung would suffer no
16 prejudice by essentially staying the claims because they
17 relate only to the damages that may be suffered by HGC. HGC
18 doesn't have the technical information in this case and
19 there's no doubt about that.

20 Also, discovery's not complete and, as Your Honor
21 alluded to earlier, we are going to be discussing what should
22 occur relative to the dates on the schedule in view of the
23 joinder -- the pending joinder of Seoul Semiconductor to the
24 case, which those papers are already in the hands of the
25 central authorities in South Korea, will serve upon Seoul

1 Semiconductor, and those have been in the hands of the central
2 authority since the 23rd and that process is underway.

3 And as a result, there shouldn't be any type of
4 prejudice by Samsung by this -- by the calendar, by having the
5 schedule in place, as we can work around those issues. And
6 then it would have the party that it needs to obtain
7 information from, in this case, information that HGC does not
8 have.

9 THE COURT: Okay. All right. Thank you. I
10 appreciate it.

11 Why don't I hear from Plaintiff's counsel?

12 MR. PARK: Good morning. Jin Park, Arnold & Porter,
13 for Samsung.

14 THE COURT: Good morning.

15 MR. PARK: Thank you for the opportunity to be heard.
16 So in listening to HGC's argument, one of the things, I think,
17 that they're forgetting -- rather, their perspective is
18 one-sided, meaning they seem to think that, well, we go to
19 trial, and if they win and if, for example, the patents are
20 found invalid, you know, case over. What they're not really
21 articulating to you, I think clearly, is what happens if
22 Samsung wins or the other situations that could occur at
23 trial.

24 And so as part of that, and as furtherance to the
25 discussion that HGC counsel had, one of the key things we want

1 to clearly articulate is the 271(g) issue, Your Honor, and
2 more importantly, under that, who the true defendant is. And
3 so for context, 271(g) provides U.S. patent holders
4 protections for products made by using a patented system
5 abroad. That's to prevent the circumvention of the
6 protections provided by the U.S. patents laws just by doing it
7 outside the country.

8 And so direct infringement under this section would
9 be importation, as well as the sale, offer for sale, and use
10 of the goods in the United States. And that's relevant here
11 because, as to the HGC products, HGC is the only defendant
12 that directly infringes. This is important to note because --
13 rather, something that was really important to note was what
14 HGC and TCP seemed to, in our view, obfuscate with respect to
15 importation because, for example, if -- and we've asked them
16 of course, and they said HGC doesn't import. And then we
17 said, well, does TCP import? And they said, well, look at the
18 agreements.

19 And even in response to your questions, Your Honor,
20 as to who is the importer, I don't think that answer was
21 clear. Counsel seemed to say, it could pass title outside, it
22 could pass in the United States, it could be a third party.
23 So it's not clear whether or not TCP falls within the 271(g)
24 acts of infringement for -- acts of infringement.

25 And so in any event, based on what we know now, and

1 this is not in dispute, is that HGC is the direct infringer
2 because they sell the goods in the United States, they offer
3 for sale the goods in the United States. That's unmistakable
4 and undisputed. This is important because the customer-suit
5 exception applies only when the customer, and to quote the
6 phrase, "is merely a reseller."

7 And to be clear, however, that shorthand doesn't mean
8 that if you resell, you're free to go. That seems to be what
9 HGC sometimes argues in their brief, that because we just
10 resell, or we resell, that's enough. That's not. It means
11 the customer is simply a conduit in the supply chain and more
12 importantly, that the customer's liability overlaps with the
13 manufacturer such that, for example, if a plaintiff recovers
14 from the manufacturer, it can't recover from the customer.

15 That's not the case here. It's actually the reverse
16 in terms of liability with respect to TCP because TCP's
17 liability in the case, as asserted for 271(g), which is under
18 indirect infringement, is predicated on direct infringement by
19 HGC. And so relatedly, HGC in their brief argues that Samsung
20 can still have full recovery from TCP because it has
21 allegations of inducement, again, under 271(b). But in order
22 to prove indirect infringement, Samsung would need to prove
23 direct infringement by HGC.

24 And one thing to note with respect to the interaction
25 or the differences between 271(b) and 271(g), or indirect and

1 direct infringement, is that the elements of the offense, as
2 it were, for indirect infringement is different for TCP. That
3 is, elements for indirect infringement, for inducement of
4 infringement includes a mens rea specific intent requirement.
5 And so conceivably, if HGC were not in the case, Samsung, in a
6 first trial with TCP, would be required to establish direct
7 infringement by HGC without them even being there at trial in
8 front of the jury and then prove indirect infringement by TCP.

9 And if Samsung were unable, for some reason, to
10 establish indirect infringement because, for example, it
11 couldn't establish the element, the mens rea element of
12 specific intent, then Samsung would have to conduct a second
13 trial with HGC alone on direct infringement. That it would be
14 a true waste of both the Court and Samsung's resources, as
15 well as highly prejudicial to Samsung. This is the opposite
16 of the purposes of the customer-suit exception as well as the
17 general factors for stay.

18 And indeed, a similar issue was addressed in the --
19 and excuse my pronunciation here of this case, Your Honor --
20 Erfindergemeinschaft UroPep vs. Eli Lilly, and that's at 2016
21 Westlaw 1659924, Eastern District of Texas, April 26, 2016.
22 This case was discussed in the DoDots Licensing vs. Samsung
23 case that was raised by HGC in its reply brief. And that
24 citation is the reply brief docket entry 124, at 4, Note 2.

25 In the UroPep case, if I'm -- Your Honor, it dealt

1 with method claims. And in particular, method claims that
2 could only be infringed when the relevant drug, the relevant
3 good there, which was a drug, was administered. So method
4 claims can only be in this case infringed when used. And so
5 that is the manufacturer that sold the drug would not directly
6 infringe. Only the customer would directly infringe when they
7 administered the drug. And so the UroPep court distinguished
8 those facts from the In re Nintendo case that we've discussed
9 in our briefing because the customer in UroPep was the direct
10 infringer, and the manufacturer was the indirect infringer,
11 and held that the customer-suit exception didn't apply.

12 The Court also agreed with the plaintiff's argument
13 that it was entitled to prove direct infringement to the jury
14 with the actual direct infringer present as a party rather
15 than asking the jury to accept that an absent third party
16 directly infringes. That's exactly the case here, Your Honor.

17 And to note, this is in contrast. This patent and
18 Samsung's allegation and this issue in this patent, the '140
19 patent, is different from the other three patents in the case
20 where a customer is not needed because TCP directly infringes.
21 And so to that point, Your Honor, Samsung didn't bring in HGC
22 on a whim. It's necessary because they're the direct
23 infringers.

24 And on a related note, Your Honor, and to keep in
25 mind that both TCP and HGC are properly joined under

1 Section 299. Again, no dispute, they're part of the same
2 supply chain that ultimately sells the infringement product.

3 In addition, and I wanted to articulate this to make
4 this clear that while the involvement of the 271(g) issues and
5 the attendant facts may be novel, the Court is not making new
6 law. It's just simply that in light of the 271(g) issue, HGC
7 is a direct infringer, which makes them the true defendant.
8 And so as a true -- as a consequence, they're not mere
9 resellers. And consistent with decisions like UroPep, the
10 customer-suit exception doesn't apply. And notably, there are
11 no cases that we found that hold otherwise with similar facts.

12 I'll stop there, Your Honor, if you have any
13 questions.

14 THE COURT: It's a little bit -- I understand the
15 argument. It's a little bit peculiar though, in a sense,
16 because, you know, you go after the direct infringer here who
17 in effect doesn't really directly -- you know, they're not
18 making the -- in other words, they're -- the liability there
19 is predicated, I'd suppose, on the importation. But, you
20 know, when you get into the meat of discovery, they're not the
21 ones with the specs, they're not the ones with, at least how
22 it's been represented, making the products.

23 And so you know, while -- I'm just trying to think
24 sort of how it would play out in a -- what it would look like
25 in a trial, I suppose, where you're advancing a claim under

1 271(g), you're pointing the finger at HGC as the direct
2 infringer. And it sounds like you go to TCP under an indirect
3 infringement theory of mens rea, which maybe that would be
4 very easy to prove here because they're the ones actually
5 making the product. But I'm just -- it's not a good question,
6 but hopefully you get the gist of what I'm sort of chewing on
7 a little bit.

8 MR. PARK: I do, and I hope I'm answering it
9 properly, Your Honor. And so at a trial, we would need to
10 show the acts. And so with your discussion with HGC counsel,
11 it wasn't clear to me, and you had asked the question, well,
12 what happens after? Right? What's the second trial going to
13 look like? We still have to establish the acts. Without HGC,
14 Your Honor, and without those acts that infringe under 271(g),
15 those products are unreachable. Like, TCP can do whatever
16 they want in China. And if it never touches U.S. soil, then
17 we can't reach those. The only way to legally reach those
18 products is under 271(g). And we, Samsung, have the burden to
19 show those acts were committed.

20 Surely, surely, Your Honor, we also have the burden
21 to show the technical aspects, the technical aspects of it.
22 But that's relevant in any situation, any case in the patent
23 case where we have to show. And again, the same in UroPep.
24 The manufacturer surely had that information. They surely had
25 all processing. The customer who is administering the drug

1 surely didn't know how it was made, but it was really the
2 method of applying the drug that was infringing.

3 And so, again, the analogy runs weak, maybe, as all
4 analogies do. But in terms of looking at the core of who is
5 infringing in this case, that it would be HGC. And again,
6 otherwise Samsung would be, in a first trial, burdened with
7 having to point a finger at an empty chair, right, not have
8 witnesses there. How can we bring them? They're not even a
9 party. And we asked HGC prior to the process, prior to them
10 filing the motion, said, would you participate in discovery
11 with us then at least, or something. They said no, you can
12 subpoena us as a third party.

13 THE COURT: Okay. Okay. Thank you, I appreciate it
14 I think I understand the argument.

15 Mr. Licygiewicz, I'll give you the last word here.

16 MR. LICYGIEWICZ: Yeah. I appreciate that, Your
17 Honor. There are a couple of points I do want to make.
18 First, let's talk about the last part of what counsel for
19 Samsung discussed, and that's discovery.

20 The discovery in this case really when we get down to
21 it for the showing under a 271(g), setting aside the proofs
22 necessary to show that the LEDs infringe, what Samsung's going
23 to need to establish is the sale of the product in the U.S.
24 and/or in some cases, indeed it maybe is the case, I -- strike
25 that. If there is an odd case out there where the importation

1 is made by HGC, that would have to be considered. But there's
2 no doubt here that HGC sells the products, that are identified
3 in the complaint, that they sell those products in the U.S.

4 The discussion that counsel for Samsung had focussed
5 on, direct infringement, direct infringement, direct
6 infringement under 271(g). And Your Honor's question was
7 right to the point here: when we get to it, what are we left
8 with? We're left with looking at, really the crux of the
9 issue here is whether the LEDs that are supplied by Seoul
10 Semiconductor, who is being brought into this case, whether
11 those LEDs would infringe, and that's the predicate finding
12 that has to be made before we even get to the question of
13 direct infringement under 271(g) and the importation and/or
14 sale, offer for sale, or use in the United States. And that's
15 information that HGC, it doesn't have the technical
16 information relative to those LEDs. No one's arguing that it
17 does. No one should argue that it does.

18 And indeed, one of the things that counsel referred
19 to was the supply chain. And yes, we looked at the supply
20 chain here and once we bring Seoul Semiconductor into this
21 case, HGC is going to be even one step further removed from
22 the core of the issue in this case, and that's the
23 infringement of -- the alleged infringement of the Seoul
24 Semiconductor LEDs. That's the linchpin here. We don't need
25 to drag HGC along for the ride to determine whether those LEDs

1 infringe the patent in the suit. And namely, within HGC's
2 case, the '140 patent.

3 Accordingly, this Court should use its discretion to
4 stay the proceedings against HGC, to sever those and to stay
5 them so that HGC does not have to expend significant resources
6 internally responding to discovery that in fact was
7 duplicative of the discovery that was served upon TCP. And
8 70, almost 80 requests for production, series of
9 interrogatories that were detailed regarding the technical
10 nature of these products, that's information that we told them
11 and we've responded that that's not the information. HGC
12 doesn't have that information.

13 So, in short, there is nothing that I've heard today
14 that says this Court needs to keep in a party that doesn't
15 have that information that's central to the main issue of
16 infringement in the case. And that main issue, as I've said,
17 is the infringement of the SSC LEDs. And indeed, cases have
18 gone the other way as we've cited in our briefs that have
19 appropriately severed and stayed cases against customers who
20 do not have the information of that, related to that central
21 claim in the case, the infringement of the underlying
22 component in this case, the LEDs.

23 THE COURT: Okay. All right. Thank you, everyone.
24 I appreciate it. I understand the arguments here. I've read
25 the briefs. I'm going to go back and just take a look at

1 briefs again in some of these cases. I'll also order a copy
2 of this transcript, costs to be split between the parties,
3 just so I can look at it if I need to. But I'll take it under
4 advisement and I'll issue a decision pretty quickly on this
5 issue. But I appreciate it. Well argued.

6 Let's talk about the other thing, I think, that was
7 raised, and this was in the parties' joint status report at
8 ECF 127, which was that there might be a need to adjust the
9 schedule in light of Seoul Semiconductor not agreeing to, I
10 guess, waive the formalities of the Hague Convention here.

11 I suppose one question is, are all parties, I
12 suppose, in agreement on modifying the schedule here? One
13 question. Two, assuming that to be the case, would that have
14 any effect, I suppose, on our upcoming hearing, the claim
15 construction proceedings which have been briefed, or is this
16 just limited to, you know, adjusting the rest of the schedule
17 as to discovery to account for -- of this Hague Convention
18 issue? So I'll open it up to anyone who wants to address in
19 the first instance.

20 MR. SHARIFAHMADIAN: Good morning. This is Ali
21 Sharifahmadian for Samsung. I guess I will address that issue
22 first on behalf of Plaintiffs.

23 I believe that both parties are in agreement that
24 some form of adjustment is needed to the schedule. I think,
25 roughly speaking, as we noted in our status update to the

1 Court, we expect, or the parties expect, about four months to
2 serve SSC. And then, probably once they've entered, a six-
3 month extension of the fact discovery period and then
4 extending schedule beyond that.

5 So broadly speaking -- I will let Mr. Licygiewicz
6 correct me if I am wrong. But broadly speaking, I think we're
7 in agreement on those outlines. As to the very specific
8 details or specific dates, I don't believe we've discussed
9 those or agreed to those. It's Samsung's position that the
10 claim construction issues have been fully briefed, they're
11 ready to go, and that we should hold a hearing on March --
12 excuse me, on May 14th, as currently scheduled.

13 There's one additional issue that I wanted to just
14 flag for the Court which is, while obviously TCP is trying to
15 serve SSC and once they come into the case they will be
16 subject to discovery and I believe both parties will be able
17 to obtain discovery from SSC, we would -- we have been working
18 on and we would like to still pursue Hague discovery against
19 SSC in parallel. We've been somewhat hampered in our ability
20 to do that. I believe Your Honor is familiar with some of the
21 history in this regard and I just wanted to update you on
22 where things stand.

23 As you may recall, there are over 100 products at
24 issue here. I don't have the exact count, but certainly over
25 100 products that are at issue here. We asked -- we -- it

1 took a while to negotiate with TCP the ability to share the
2 product information with certain people at our client to get
3 their assistance in trying to perhaps narrow the products in
4 the case, particularly if we have to seek discovery from SSC
5 through Hague.

6 Unfortunately, you know, the information that we have
7 is somewhat -- we did share that information, it's somewhat
8 cryptic. It's still difficult to try and narrow it just based
9 on the limited information that we have from TCP in this
10 regard. So we have asked and we have been going back and
11 forth with TCP about financial sales information because,
12 without any additional information at a minimum, what we can
13 do is at least focus our discovery efforts on the products
14 that have been sold the most. And we have been trying to get
15 that information from TCP -- well, from the very earliest.
16 But, you know, since we shared this information with our
17 clients, we've been -- for over a month we've been trying to
18 get this sales information and we really haven't made much
19 headway on that front.

20 What we would like is to receive the sales
21 information so that we can also serve in parallel the Hague
22 Convention discovery on SSC. Now, that may become moot, you
23 know, if SSC is in the case down the line, but who knows
24 what's going to happen with SSC and what they may do if and
25 when they appear? So we don't want to just give up on that

1 front.

2 And I just wanted to at least make the Court aware
3 that we are trying to move things along in this parallel path
4 as well but somewhat hampered by inability to get the sales
5 information that we've requested from TCP.

6 THE COURT: Okay. Thank you.

7 Mr. Licygiewicz, any response?

8 MR. LICYGIEWICZ: Yes, Your Honor, a couple of
9 points. With respect to counsel's comment about the
10 extension, yes, we agree that things need to be extended in
11 this case to account for at least the service by Hague
12 Convention, which will take roughly four months, as we
13 understand it.

14 As I alluded to earlier today, the information that
15 needs to be served upon, the documents that need to be served
16 upon Seoul Semiconductor were provided to the central
17 authority for South Korea on April 23, 2024. So last Tuesday.
18 So we expect within four months to hear back from the central
19 authority. We will not have any updates from them. The next
20 thing we would hear is upon service, once service has been
21 made. So we will be effectively in a black out window from
22 them at that point in time.

23 On the issue of claim construction, this is one where
24 we want to tread carefully here. And I think it's prudent to
25 tread carefully because with Seoul Semiconductor being really

1 the focus of this case, I don't want to do anything that's
2 going to prejudice Seoul Semiconductor's rights or abilities
3 to put forth their own arguments on claim construction. After
4 all, these products will apply to, or the constructions will
5 apply to the products that are accused in the infringement.
6 And then what would be really foreseeable in this case and
7 what, frankly, I've done in other cases in the past when I've
8 intervened, is to seek subsequent claim construction briefing
9 because I'm a new party and what was determined previously
10 with respect to the claim construction issue did not involve
11 me.

12 And I think in order to streamline that, and since
13 the issue's already briefed and all we're waiting for is the
14 hearing at this point in time, given the amount of time it's
15 going to take to complete the service and before we hear back
16 from the central authority in South Korea, I think it would be
17 prudent to move that claim construction until a date after
18 Seoul Semiconductor is further in this case. That way we only
19 handle this claim construction issue once, we're not dealing
20 with the issue of potential prejudice to Seoul Semiconductor
21 from the hearing proceeding without it having the benefit of
22 having a voice in that hearing. And we can avoid that issue
23 overall for purposes of this case, for purposes of appeal,
24 et cetera.

25 With respect to the sales information that counsel

1 was talking about, we have asked our client to provide
2 information to get that information actually from the folks in
3 China relative to these are the products that are the higher
4 sellers for the -- that utilize the SSC chips that are
5 included that are the reference in this case. It's a little
6 challenging to pull information out of China. Even if they
7 are a related company of yours, it still is very challenging
8 and I'm sure you can appreciate that. But we are making those
9 efforts. We will keep working with Samsung to try to obtain
10 that information and to try to work out something that allows
11 them to then focus on more, shall I say, high value targets in
12 this case as opposed to all hundred-some-plus-odd products
13 that they've accused infringement at this point in time.

14 So if Your Honor has any questions, I'm happy to
15 answer them.

16 THE COURT: Yeah. One thing on -- going back to
17 Seoul Semiconductor. I don't know if either counsel's been in
18 touch with their attorneys at all, if they've retained outside
19 counsel at all, and if there have been any discussions on
20 their involvement. I mean, the tenor of the status report
21 seems like they -- the message is to go pound sand a little
22 bit. But I don't know if they've been -- you know, at some
23 point they're going to have to enter this case. And
24 obviously, we're already over claim construction, I'd hate to
25 slow things down. But I guess the point is taken with respect

1 to I don't want to also have to redo things or hear a
2 supplemental briefing or do a supplemental hearing. But some
3 of that might depend on, you know, it's one thing to have new
4 counsel in here, they're getting up to speed, they're working
5 diligently. It's another thing for, you know, someone to not
6 want to participate and then hold everyone else hostage, I
7 guess, is the concern there. So have counsel talked to them
8 at all or are there attorneys out there retained anywhere?

9 MR. LICYGIEWICZ: Your Honor, Art Licygiewicz on
10 behalf of TCP and HGC. I have had communications with outside
11 counsel for Seoul Semiconductor, and your phrase of going to
12 pound salt is a very -- or pound sand, however you want to put
13 it, is a polite way to say what I've heard from them with
14 respect to this case.

15 They are certainly not, at least right now, it
16 appears, not amenable to working with anybody in this case to
17 move this case forward at this time until they presumably
18 enter into the case. I know they've been searching for an
19 outside counsel to handle the actual litigation when this case
20 goes forward. And I've had discussions with my clients about
21 that as well because of some of the names that were floated.
22 But we have had those communications and it's a very -- I
23 mean, I have a positive relationship with their outside
24 counsel, but at the same time, I get a lot of the go pound
25 sand.

1 THE COURT: Okay.

2 MR. SHARIFAHMADIAN: If I may?

3 THE COURT: Yes.

4 MR. SHARIFAHMADIAN: We have not had direct -- we
5 have not had communications with SSC's counsel. But I think
6 it is, as far as, you know, whether the claim construction
7 hearing should go forward, as I believe Your Honor used the
8 term "being held hostage," I mean, it's not as if SSC is not
9 aware of what's going on in this case, and so far they've
10 chosen not to participate.

11 And they are taking -- at least from all outside
12 appearances, they seem to be taking the position that they're
13 not liable or required to defend TCP. So I don't know why or
14 how they could, you know, come in and -- there's no
15 expectation right now that they would come in and want to
16 participate in the claim construction process. So I think in
17 terms of what they would want to do or whether the Court
18 should now hold things up, that's pure speculation at this
19 point, and that's why it should go forward.

20 On the issue of sales, I just want to clarify
21 something. Here the sales that are at issue are U.S. sales,
22 Your Honor. And so I don't know why the U.S. entity would not
23 have access to its own sales information and why it would need
24 to go to the Chinese entity to find out which ones are the
25 larger sellers in the U.S. So that answer didn't quite make

1 sense to me as I heard it.

2 But in any event, you know, we would request that
3 there be some form of either very -- another status update if
4 the Court either required another status update or another
5 status hearing fairly soon to get some clarity on exactly when
6 this sales information is going to be produced. I can
7 appreciate that perhaps it may be difficult to get information
8 from China sometimes, but at the same time, I believe there
9 needs to be some incentive to actually do so.

10 THE COURT: Well, I guess what I'm thinking of, maybe
11 both the -- all of the issues we talked about here, one, I
12 have no issues with modifying the scheduling order. I said I
13 had no issues, but then I hate to do it. And I think maybe at
14 our first status conference I mentioned this to counsel, that
15 I don't like extensions generally. And I think I was even
16 concerned at our first status conference when I had a sense
17 that there could be some Hague issues and knew that those
18 could potentially prolong the schedule. But that's -- so be
19 it. I think it has to be done. And so I'm fine extending the
20 schedule.

21 So I would just ask counsel to confer as to the
22 specific, you know, dates, kind of what makes sense based on
23 the timeline under The Hague. And then maybe say, like, one
24 week from today file a proposed, you know, amended scheduling
25 order. And then, you know, if there are any disputes in it

1 with respect to that order, just flag it as part of the
2 submission. But hopefully, it'll give you all about a week to
3 confer and hammer that out.

4 The second -- my preference would be to not move the
5 claim construction hearing. In light of what I've heard, it
6 doesn't sound like it probably is worth it to move it. But I
7 do also want to tread a little bit cautiously here. And what
8 I would like to do is, what I'm going to do is issue an order
9 that basically, you know, orders Seoul Semiconductor to
10 provide its position as to, you know, the claim construction
11 hearing and whether it intends to, you know, appear there or
12 file any supplemental briefs, or would need an extension of
13 that hearing because that anticipates participating in that
14 hearing, and then request that counsel here, you know, serve a
15 copy of that by email on whoever's the best contact.

16 It sounds like, Mr. Licygiewicz, you might have an
17 email address for somebody there, just to let them know that,
18 you know, it's now or never, a little bit -- the order will
19 say it's now or never and then order them, you know, pretty
20 soon, probably -- I'll get that order out today and probably
21 get them by the end of the week to state their position as to
22 whether they intend to participate in that aspect of the case.
23 And I guess I'll wait to see if they do respond and if they do
24 file anything, what they say on that. But I think if they do
25 indicate a strong view that they need to participate and

1 they're going to need some additional time, as much as I hate
2 to do it, I might, you know, continue our claim construction
3 that's coming up in a few weeks.

4 You know, my preference would be not to do that, for
5 everybody to continue down that path. You know, to the extent
6 people are intending to appear, don't cancel flights or
7 anything and keep on preparing. But we'll give them a chance,
8 at least, to say something, but it will be, you know, by the
9 end of the week.

10 And then on the sales information, I fully can
11 appreciate maybe the difficulty with coordinating with a
12 client particularly if there is, you know, contacts in China
13 that need to be consulted. But I do think it, you know,
14 information is clearly discoverable. And I think it would
15 inure to the defendant's benefit to really narrow down what is
16 really at issue as opposed to going down the road of getting
17 all of the sales information. And so, I am going to issue an
18 order that would order, you know, counsel to confer on this
19 issue and then file a status report on it in two weeks. I
20 anticipate there might be a need for multiple conversations on
21 that front, including potentially with clients, but I would
22 like to make sure that stays on track.

23 And again, my view is that, and hopefully it would be
24 TCP's view, it sounds like this is a proposal that would
25 potentially inure to its benefit as opposed to having to

1 produce more voluminous information. It sounds like we're
2 just coming to the most important stuff, at least at the
3 outset.

4 So that would be my thought in terms of sort of how
5 to proceed with some issues that have been raised here on this
6 conference. Any questions about any of that or concerns or
7 objections or anything? Mr. Sharifahmadian?

8 MR. SHARIFAHMADIAN: No, Your Honor. Thank you.

9 THE COURT: Thank you. Mr. Licygiewicz?

10 MR. LICYGIEWICZ: No, Your Honor.

11 THE COURT: Okay. Mr. Licygiewicz, I'm right, you at
12 least have an email address of somebody you can --

13 MR. LICYGIEWICZ: I do.

14 THE COURT: Okay.

15 MR. LICYGIEWICZ: I've been communicating with one of
16 their outside counsel, that -- she and I have gone back and
17 forth for a number of years now.

18 THE COURT: Okay. Okay. I appreciate it. If you're
19 able to transmit that then --

20 MR. LICYGIEWICZ: I will.

21 THE COURT: I appreciate that.

22 MR. LICYGIEWICZ: I will forward your order. I will
23 copy counsel for Samsung on it just to make it crystal clear
24 to the outside counsel for SSC that this Court means business
25 and it needs an answer from SSC.

1 THE COURT: Yep. I appreciate that. Okay. Well,
2 thank you, everyone.

3 Anything else that anyone wants to raise while I have
4 you on the call on this hearing here? Plaintiff, anything
5 further?

6 MR. SHARIFAHMADIAN: Not at this point, Your Honor.
7 Thank you.

8 THE COURT: From the defendants?

9 MR. LICYGIEWICZ: Nothing else, Your Honor.

10 THE COURT: All right. Great. Thank you. And on
11 the motion to stay and sever, like I said, I'm just going to
12 take a look again at some of these cases here and then I'll
13 take it under advisement and hopefully get an order out pretty
14 shortly.

15 Thank you, everyone.

16 (Proceedings concluded at 10:55 a.m.)

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19 C E R T I F I C A T E

20 I, SHARON SIATKOWSKI, RMR, CRR, CRC, CRI,
21 certify that the foregoing is a correct transcript from the
record of proceedings in the above-entitled matter.

22 s/Sharon Siatkowski
23 SHARON SIATKOWSKI, RMR, CRR, CRC, CRI
24 Official Court Reporter
25